

Notification of tax authority about the option for taxation

Subsection 3 of § 16 of the VAT Act stipulates the opportunity of a VAT payer to add VAT to the taxable value of certain goods and services. A VAT payer shall notify the Estonian Tax and Customs Board thereof in writing before the supply is effected, during the same taxable period or earlier. If the taxpayer has notified the tax authority about it, he has no choice any more and he is obliged to add VAT to the taxable value of the transaction.

A VAT payer has the option to tax following goods and services:

1) the leasing or letting of immovables or parts thereof, except dwellings, and establishment of a usufruct on immovables or parts thereof;

2) immovables and parts thereof, except dwellings.

If the transferor of an immovable or the provider of the service connected with an immovable has registered for VAT liability before the transaction and the transaction is related to an immovable which is already in use, he has the option: if he notifies the tax authority in written, he can add VAT to the taxable value of the transactions related to immovables, except the transfer of dwellings which are already in use. Dwelling is defined in the Law of Obligations Act, it means a residential building or apartment which is used for permanent habitation.

A VAT payer can opt for taxation in respect of the transfer of immovables and parts thereof and in respect of the leasing or letting of immovables or parts thereof and establishment of a usufruct on immovables or parts thereof. A VAT payer can't opt for taxation in respect of the transfer of dwellings which are already in use and in respect of the leasing or letting of dwellings and establishment of a usufruct on dwellings.

If a VAT payer notifies the tax authority that he adds VAT to the taxable value of an immovable or part thereof, the tax authority has the right to check whether this notification is justified. Especially the tax authority checks whether the VAT payer has not treated as the object of taxation a dwelling which is already in use.

If a VAT payer has notified the tax authority, he has the right to tax:

a) transfer of the plot of land with a construction work on it (except dwelling which is already in use);

b) transfer of the plot of land with a construction work on it (except dwelling which is already in use), if the costs related to the improvements of this construction work are less than 110% of the acquisition

value of the construction work before the making of the improvements;

c) the leasing or letting of immovables or parts thereof (except dwellings) and establishment of a usufruct on immovables or parts thereof (except dwellings).

Since 01.01.2011, special arrangements for imposing VAT are applicable for immovable or part thereof which supply is usually exempt from VAT and a VAT payer is required to notify the tax authority pursuant to **subsection 3 of § 16** of the VAT Act about adding VAT to a taxable value of which. **Article 41¹ of the VAT Act** stipulates that if such immovable is transferred to the other Estonian VAT payer with VAT, the acquirer of the goods shall pay the sales price exclusive of VAT to the transferor. The acquirer of the goods shall calculate the amount of VAT mentioned on the invoice issued for the transaction as the amount of VAT to be paid by the acquirer instead of the transferor (so-called reverse charge).

Read more: **[Special arrangements for imposing tax on immovables, scrap metal, precious metal and metal products](#)**

3) services specified in clause 6 of [subsection 2 of § 16](#) and subsection 2¹ of § 16 of the VAT Act, except in cases where the service is provided to a taxable person or taxable person with limited liability of another Member State.

According to **[subsection 3 of § 16](#)** of the VAT Act, a VAT payer can opt for taxation in respect of the financial services and securities, supply of which is usually exempt from VAT according to clause 6 of subsection 2 of § 16 and subsection 2¹ of § 16 of the VAT Act. According to the amendment which is in force since 1 January 2006, a VAT payer has the option for taxation only in respect of domestic financial services, but not between Member States. Thus, a VAT payer can't opt for taxation in respect of financial services, provided to a taxable person or taxable person with limited liability of another Member State. According to the EU VAT Directive, a Member State may allow taxable persons a right of option for taxation in respect of the financial services, but this option is only noninternational and can't be used for cross-border transaction between Member States.

4) investment gold transferred to another taxable person by a taxable person who, during the business thereof, normally supplies gold for industrial purposes or by a taxable person who produces investment gold or transforms any gold used for other purposes into investment gold, or services relating to such supply which are provided by an agent acting in the name and for the account of another person.

If a VAT payer adds VAT to the taxable value of services pursuant to subsection 3 of § 16 of the VAT Act, such supply shall be taxed for at least two years as of the first taxable period. This two years limit is not established for goods because a VAT payer can opt for taxation by particular objects and the supply of the goods is always one-time transaction.

There is an enjoining in **[subsection 5 of § 16](#)** of the VAT Act. According to it, VAT shall not be imposed also on the supply of services which is deemed to constitute supply of electronically supplied services.

For example, the service of internet bank is a financial service by nature, although formally it's the electronically supplied service.

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