



Place of supply rules for services connected with immovable property from 1 January 2017

Overview

Article 47 of EU Directive 2006/112/EC (the “2006 Directive”) provides that the place of supply of services connected with immovable property is the place where the immovable property is located. Article 47 has been transposed into Irish VAT legislation under section 34(c) and section 33(2) of the VAT Consolidation Act 2010. Article 47 applies only where the service supplied is directly related to a specific property.

New EU regulation

With effect from 1 January 2017, all domestic VAT legislation within the EU will be amended to provide clarity and ensure uniformity in the treatment of such services throughout the EU. To this end, the Council of the EU are implementing the Regulation (EU) No 1042/2013 (the “Regulation”).

Is there a definition of “immovable property” in the new Regulation?

Article 13b of the Regulation defines immovable property as follows:

- any **specific** part of the earth, on or below its surface, over which **title and possession** can be created;
- any building or construction fixed to or in the ground above or below sea level which cannot be **easily dismantled or moved**;
- any item that has been installed and makes up an **integral part** of a building or construction without which the building or construction is incomplete, such as doors, windows, roofs, staircases and lifts; and
- any item, equipment or machine **permanently installed** in a building or construction which cannot be moved **without destroying or altering the building or construction**.

What does “sufficiently direct connection” with an immovable property mean?

Article 31a of the Regulation provides that services will be regarded as having a sufficiently direct connection with immovable property where they are derived from an immovable property and that property makes up a constituent element of the service and is central to and essential for, the services supplied.

Services will also be regarded as having a sufficient direct connection with immovable property where they are provided to, or directed towards, an immovable property, having as their object the legal or physical alteration of that property.

Paragraph two of Article 31(a) provides that services which are regarded as having a sufficient direct connection with immovable property include:

- drawing up of **plans** for a building or parts of a building designated for a particular plot of land regardless of whether or not the building is erected;
- provision of **on-site supervision** or **security services**;
- **construction** of a building on land, as well as construction and demolition work performed on a building or parts of a building;
- **construction of permanent fixtures** on land, as well as construction and demolition work carried out on permanent structures, e.g. pipelines;
- **work on land**, including agricultural services such as tilling and fertilising;
- **surveying and assessment** of the risk and integrity of immovable property;
- **valuation** of immovable property, including when needed for insurance purposes;

- **leasing or letting of immovable property**, including the storage of goods for which a specific part of the property is assigned for the exclusive use of the customer;
- **provision of accommodation** in the hotel sector or in sectors with a similar function, such as holiday camps or camping sites;
- **assignment or transfer of rights** such as the granting of hunting or fishing rights or the use of an infrastructure for which tolls are charged, such as a bridge or tunnel;
- **maintenance, repair or renovation** of a building or permanent structure, including services such as cleaning and tiling;
- **installation or assembly** of machine or equipment, which, upon installation or assembly, qualify as immovable property and the maintenance and repair of same;
- **property management** other than portfolio management of investments in real estate, consisting of the operation of commercial, industrial or residential real estate by or on behalf of the owner of the property;
- **intermediation** in the sale, leasing or letting of immovable property; and
- **legal services** relating to the transfer of a title to immovable property.

Services which are not regarded as having a sufficiently direct connection with immovable property are provided for in paragraph three of Article 31a and include:

- **drawing up of plans** for a building or parts of a building **if not designated** for a particular plot of land;
- **storage of goods** in an immovable property **if no specific part of the immovable property is assigned for the exclusive use of the customer**;
- **provision of advertising**, even if it involves the use of immovable property intermediation in the provision of hotel accommodation or accommodation in sectors with a similar function, such as holiday camps or sites developed for use as camping sites;
- **intermediation** in the provision of hotel accommodation or accommodation in sectors with a similar function, such as holiday camps or sites developed for use as camping sites, **if the intermediary is acting in the name and on behalf of another person**;
- **provision of a stand location at a fair or exhibition** site together with other related services to enable the exhibitor to display items, such as the design of the stand, transport and storage of the items, the provision of machines, cable laying, insurance and advertising;
- **installation or assembly**, the maintenance and repair, the inspection or the supervision of machines or equipment **which is not, or does not become, part of the immovable property**;

- **portfolio management** of investments in real estate; and
- specific **legal services** connected to contracts, including advice given on the terms of a contract to transfer immovable property, to enforce such a contract, or to prove the existence of such a contract, where such services are not specific to a transfer of a title on an immovable property.

Are there any explanatory notes on the new regulation?

The European Commission has published explanatory notes which provide background information and practical guidance on the place of supply rules. The explanatory notes are not legally binding and do not prevent member states and national tax administrations from adopting their own national guidance.

Conclusion

The amendments do not represent a fundamental change to existing legislation and the place of supply of services connected with immovable property remains where the immovable property is located. However, it is a welcome development that “immovable property” has been defined in the Regulation and that detailed explanatory notes have been made available. This should go some way to achieving a uniform application of the rules throughout the EU.

If your business operates services connected with immovable property in another EU member state, you should be mindful of the fact that the new rules may be applicable to your business.

Contact

Should you require any advice on the above matters, or indeed any indirect tax matter, please do not hesitate to contact a member of our team who will be more than happy to advise you.

Jarlath O’Keefe

Partner, Head of Indirect Taxes
T +353 (0)1 680 5817
E jarlath.okeefe@ie.gt.com

Marian Lee

Director, Tax
T +353 (0)1 680 5939
E marian.lee@ie.gt.com

Janette Maxwell

Manager, Tax
T +353 (0)1 680 5779
E janette.maxwell@ie.gt.com

24-26 City Quay, Dublin 2, D02 NY19

Offices in Dublin, Belfast, Cork, Galway, Kildare, Limerick and Longford.



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