



As from 1 January 2019, a lessor and a lessee can jointly choose to make a rental contract relating to professionally used real estate subject to VAT.

This long awaited new measure is set out in the law of 14 October 2018, which adds the provisions for this optional VAT regime to the VAT Code.

The basic rule remains, in accordance with the VAT Directive, that the rent of immovable property (for example a plot of land, an office space, a factory building, etc.) is in principle exempt from VAT.

However, as from 1 January 2019, both parties (lessor and lessee) may, subject to the conditions set out hereunder, choose to make a rental contract relating to professionally used real estate subject to VAT.

When a rental contract is made subject to VAT, the lessor must charge VAT on the rent, but he will also be able to deduct VAT on the construction works he had carried out (such as building costs). The lessee can deduct VAT on the paid rent.

This optional VAT regime is subject to the following conditions:

- The regime only applies to buildings and parts of buildings. When a building and a connecting plot of land are rented out simultaneously, the VAT regime also applies to the connecting plot of land.
- The rent of a plot of land does not qualify.
- The regime only applies when the lessee is subject to VAT (so only in a b2b-context), also the lessee must use the building exclusively for the purpose of his professional/economic activity.
- Both lessor and lessee must choose to apply

the regime.

- The regime only applies to new or renovated buildings. The costs of construction works of such a building may not have become due and payable prior to 1 October 2018. This means that on 1 October 2018 no VAT may have become payable on the actual construction works.
- When the lessee does not have a full right to deduct VAT and he is connected to the lessor on the basis of an exhaustive list of personal, financial or organizational ties, then the charged rent must be in line with the market price.
- A revision period of 25 years (instead of the usual 15 years) applies.

DISCLAIMER

The present text provides a general overview and does not set out certain nuances. It should not be considered as legal advice on which can be relied without further specific legal advice.



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