

inBrief



Does VAT apply to bare land that is leased to a tenant who will develop it?

By Shahram Safai | 3 November 2020

The supply of undeveloped (bare) land is exempt from value added tax (VAT) pursuant to Article 46 (3) of UAE Law No 8 of 2017.

Bare land (as opposed to covered land) is defined as '*land that is not covered by completed, partially completed buildings or civil engineering works*' pursuant to Article 44 of Cabinet Decision 52 of 2017. Accordingly, the supply (in this case, a lease) of land that does not have completed or partially completed buildings or civil engineering works is exempt from VAT, and hence no VAT is payable.

Note that land means '*any area on the surface of the earth which may include trees, plants or other natural objects in, under or on top of it*' (UAE Federal Tax Authority VAT Guide, Real Estate, VATGRE1, April 2020).

Land will not be considered to be bare land where it is covered by civil engineering works which are complete, or partially complete. Land will be considered to be bare land where there are civil engineering works which run underneath the land, but which do not break the ground surface of the land and to which land carries no right of access. Examples of civil engineering works include roads, bridges, and pipes used forming water or power services. Also, where land has been fenced to allow construction to commence and temporary movable structures were placed on the land then the fencing and movable structures will not change the classification of the land from bare land to covered land.

However, even if land that is leased to a tenant is bare to begin with, the classification of such land can change if the tenant develops the land. Accordingly, after the tenant commences construction such that the land has civil engineering works or a partially completed building, then the land is no longer bare land.

This subsequent change in nature of the land will not immediately affect the VAT treatment of the land, however if any further supply of the land is made by the landlord (for example entering into a

The Author



Shahram Safai

Partner

ssafai@afриди-angell.com

Tel: +971 4 330 3900

Shahram is a partner at Afridi & Angell's Dubai office. His practice consists of advising on real estate, venture capital, corporate law, and tax. He heads the firm's real estate and venture capital teams and has been highly sought after by boards and shareholders for strategic legal advice, especially during the Covid-19 pandemic. Shahram is qualified as a solicitor in England and Wales and is a member of the California State Bar. He is also a registered professional engineer.

new lease agreement, or if the supply is treated as being made periodically under Article 26 of VAT Decree Law No (8) of 2017), then this subsequent supply of the land would be subject to VAT at the standard rate as it would no longer be a supply of bare land. ■

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If you require more detailed information on VAT, please do not hesitate to contact Shahram Safai at Afridi & Angell at ssafai@afриди-angell.com.

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