

Tax regulations on construction contracts of flat for land basis

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The Law no. 6306 on the Transformation of Disaster Risk Areas was approved on 16 May 2012 and enacted through its publication in the Official Gazette dated 31 May 2012 no.28309. The adoption of the relevant law has brought about various new regulations in many areas in the construction sector.

Based upon that, the Law no.7104 dealing with all of the construction works under flat for land basis and clarifying various issues in the sector was enacted in April 2018. This law contains regulations that clarify the practices of firms in terms of both VAT and cost calculations. Areas that are clarified by the law may be listed as follows:

- ✓ First of all, it has become clear that the land delivery process for floor is a barter and it is accepted that both land deliveries and flat deliveries will be subject to VAT.
- ✓ In case the land owner is a real person, land delivery can be made without VAT. The cost of the land received should be certified and recorded through a note of expenses without VAT and withholding.
- ✓ For land deliveries, the arm's length price accepted in flat deliveries should be considered as VAT base.
- ✓ Concerning the relevant arm's length price calculation, first of all, land cost value should be calculated and all the cash and non-cash costs incurred in the land purchase should be taken into account while making this calculation. After calculating the cost of the land, a profit margin of 5% in wholesale and 10% in retail sales should be added to the land cost value for the calculation of the arm's length price which will be VAT base.

In addition, tax incentives are provided in many areas in terms of stamp tax, title deed fee and reduced VAT. Various tax incentives provided in flat deliveries at the end of the project may be summarized as follows:

- ✓ A 1% VAT is applied as the reduced rate for flats up to 150 square meters in flat deliveries. Also, for residential and office deliveries over 150 square meters; 8% VAT is applied as reduced rate instead of 18% VAT until December 31, 2019.
- ✓ Construction contracts sealed under flat for land basis within the scope of urban transformation are exempt from stamp tax.
- ✓ While the deliveries of flats in return for land made within the scope of urban transformation are exempted from the title deed fee, deliveries handled under the "others" classification are subject to reduced title deed fee of 30 per thousand instead of 40 per thousand effective until 31 December 2019.

Pursuant to the Tax Procedures Law (VUK) article 231/5, contracting companies should issue invoices over the imputed cost of flats within 7 days following the delivery of the flats they have made for the land owners.

Since the date that the contractor finalizes construction of the independent units such as residence and office under flat for land basis will be accepted as the date of delivery, it would

be assumed that the taxable event has also occurred on that date. Apart from that, it may be assumed that the date on which the building use permit issued is considered as the completion date of the construction.

There are many regulations that companies operating in construction sector should take into account when making cost calculations, particularly for construction projects of flat for land basis. In this respect, it will be useful to review their practices in terms of cost value, arm's length price, VAT calculations, documents and registration in parallel with the new arrangements in the legislation both in land purchases and building deliveries within the scope of the aforementioned projects.

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