

REVERSE CHARGE IN CONSTRUCTION SERVICES

The VAT Act was amended, effective 1 January 2017, to provide that customers of construction services may be liable to VAT on these services. VAT on construction services is to be accounted for by the customer (reverse charge) in certain cases listed in the law, including where the provider is a subcontractor (Article 17(1)(8) and 17(1h) VAT Act).

This law raises concerns among businesses as it fails to define the subcontractor. For that reason, and to facilitate correct application of the new law, the Finance Ministry published tax guidance on the topic on 17 March 2017 where it says that a subcontractor is “*a firm or person who does work on behalf of the general contractor*”.

Construction services subcontracting was also addressed by the private tax ruling issued on 17 March 2017 by Director of National Revenue Information, ref. 1061-IPTPP2.4512.17.2017.2.SM, which deals with the treatment of construction services provided under a consortium agreement. The authority held that where the consortium leader has the exclusive right and responsibility to account for the project directly with the employer, then each of the other consortium members is a subcontractor providing construction services to the leader which are subject to the reverse charge mechanism. Note, however, that consortium agreements are not regulated in the VAT Act, therefore mutual accounts between the members of each consortium should be analysed in light of the consortium's specific circumstances.

If this issue pertains to your business and you are interested in our assistance, please contact your WTS&SAJA consultant or our office.

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