

## Amendments to VAT Property Decree

On December 17, 2025 the Ministry of Finance published several amendments to the VAT Immovable Property Decree (the 'Amending Decree'). For an explanation of the in 2023 published VAT Immovable Property Decree, we refer to our [previous memorandum](#). The reasons for the substantive changes in the Amending Decree are, in particular, new case law and the legislative amendments on the changes to the low VAT rate for accommodation as of January 1, 2026.

Below we outline the most relevant amendments, without being exhaustive in addressing them.

### The terms 'building' and 'undeveloped land' within the meaning of VAT

The current Decree includes an explanation of the term 'building' for VAT purposes. The term 'building' is defined as follows: *"A structure that is firmly anchored to the ground but is not yet completed (already) constitutes a building for VAT purposes. This could include a half-finished building or a construction that is part of a building yet to be built, such as the foundation of a building."*

As a result of the judgment by the Court of Justice of the European Union ('CJEU') in the Lomoco Development et al. case (C-594/23), the following phrase has been deleted from the definition of 'building' in the Amending Decree: *"...or a construction that is part of a building yet to be built, such as the foundation of a building."*

In the same sense, the definition of 'undeveloped land' as defined in the current Decree has also been amended. Based on the Amending Decree, the following definition of undeveloped land will apply from now on: *"Land on or in which a partially demolished building is located, constitutes undeveloped land for VAT purposes if the partially demolished building can no longer serve a building function. There is also undeveloped land if there is a plot of land in which only old piles are located, regardless of whether they fulfill a function for a new building to be realized."*

Based on the above amendments (in combination with case law) it seems that in practice there is more likely to be undeveloped land within the meaning of VAT. Whether there is a building or undeveloped land within the meaning of VAT will have to be assessed on a case-by-case basis.

### First use for VAT purposes

First use within the meaning of VAT concerns the actual first and permanent use of a building in accordance with the objective designated use of the building in question. The current Decree states that this is (already) the case if actual activities are performed in the building with a view to the building being permanently used in accordance with its objective designated use. The example given here is of the situation where a tenant goes to work to make the rented space ready for the intended use (the 'fit-out activities'). The Amending Decree deletes this explanation and accompanying example. It seems that, in practice, this amendment makes the performance of fit-out activities less likely to be regarded as first use within the meaning of VAT, which we believe is correct.

### **Newly finished immovable property as a result of refurbishment**

The current Decree contains an explanation of when a renovation or refurbishment results in a newly finished immovable property within the meaning of VAT. In accordance with case law from the Dutch Supreme Court, it is stipulated here that only changes in the architectural construction of the immovable property, including the replacement of (part of) the existing architectural construction, can lead to the conclusion that a renovation has been so drastic that it has essentially created a new building. This criterion formulated by the Dutch Supreme Court has been criticized in practice, partly on the basis of CJEU case law. In the Amending Decree a footnote has been added to the current Decree stating that by virtue of the judgment by the Dutch Supreme Court (no. 24/02923), the Promo 54 judgment by the CJEU (C-239/22) does not change the criterion formulated by the Dutch Supreme Court.

### **Other changes**

- The Amending Decree further explains how the service must be qualified if the activities stemming from a purchase agreement/building contract have to be regarded as one service for the purposes of VAT.
- The current Decree contains an approval for the option VAT-taxed rental of conference, meeting and exhibition space. With regard to this approval, the Amending Decree clarifies that the landlord is (also) allowed to use the space that is rented out for VAT purposes, for other purposes.
- The section in the current Decree dealing with the renting out of hotels, guest houses, bungalow parks and holiday lets to persons who only stay there for a brief period has been deleted with a view to the change in the low VAT rate as of January 1, 2026. This also applies to the section on the letting of holiday homes via an intermediary.
- The Amending Decree includes a newly added section with regard to providing rental accommodation in the context of providing shelter for asylum seekers and refugees. It states that hotels, guest houses, bungalow parks and holiday lets that are used to provide shelter for asylum seekers and refugees and are rented out to, for example, the COA (the Central Agency for the Shelter of Asylum Seekers), constitute an exception to VAT-exempt rental and thus this is taxed at the general VAT rate. Moreover, the Amending Decree contains policy on providing shelter for refugees.

### **Final remarks**

As noted above, for the time being we have focused on the main points of the Amending Decree. Of course, we would be happy to help you determine which aspects of the Amending Decree may be relevant for your organization.

In practice, it is advisable to, where appropriate, carefully identify the VAT and real estate transfer tax consequences of property transactions. The tax advisors of KPMG Meijburg & Co's Real Estate Indirect Tax Group would be happy to help you identify any potential tax consequences. Feel free to contact one of them or your usual advisor.

KPMG Meijburg & Co  
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