

Regulation No. 577/1989, on Free and Special Registration for Rental or Sale of Real Estate

**1) Cf. Regulations Nos. 180/1993, 697/1997, 903/2000 and 1056/2005.*

CHAPTER I

On special registration

Article 1

(1) A party, who builds real estate on his/her own lot or on a rental lot and sells it to a taxable party, as provided for in Act No. 50/1988, on Value Added Tax, may apply for a special registration to the regional tax director. The special registration may apply to part of the real estate. Special registration does not apply to residential housing.

(2) An application for special registration must specify the real estate to which the registration is to apply. The following documentation must accompany an application:

1. a valid, written purchase contract between the builder and taxable party for the real estate;
2. a statement from the buyer on his/her intended use of the real estate;
3. the buyer's binding agreement to take over obligations to adjust the input tax, cf. the [second paragraph] of Article 16 of Act No. 50/1988, if there are changes in the use of the real estate resulting in a change in the right to deduction.

(3) [The statement and binding agreement referred to in Points 2 and 3 of the second paragraph must be registered as an encumbrance on the real estate concerned.]²⁾

1) Cf. Art. 1 of Reg. No. 180/1993. 2) Cf. Art. 1 of Reg. No. 697/1997.

Article 2

(1) If a builder is authorised by the regional tax director to receive special registration, he/she must specify the output tax for the building to which the registration applies in a special VAT report. Output tax shall be calculated as provided for in Reg. No. 576/1989, on Value Added Tax (VAT) on Construction Activities. A report must be submitted for each individual property covered by a registration. These reports shall be sent to the regional tax director without payment.

(2) In the input tax on a report as provided for in the first paragraph, a party may include VAT as referred to in the first paragraph of Article 3 of Reg. No. 576/1989. Furthermore, he/she may enter on the report input tax as provided for in the second paragraph of the same Article.

(3) The regional tax director shall check the report referred to in the first paragraph especially. If he/she accepts the report, the regional tax director will inform the collection agent of the National Treasury of his/her approval for the reimbursement of the input tax indicated on the report while collection of output tax is cancelled.

(4) VAT, cf. Article 2 of Reg. No. 576/1989, which a builder has remitted for a building to which a special registration applies, together with input tax as provided for in the second paragraph of Article 3 of that same Regulation, shall be repaid to the builder no later than 30 days after the regional tax director has approved the registration.

Article 3

(1) If the builder referred to in Article 1 has not concluded a contract for the sale of commercial real estate by the end of the first settlement period after building construction began, he/she can obtain authorisation from the regional tax director for special registration, provided the regional tax director approves the builder's report indicating that the property in question is intended for commercial use by a taxable party. It is a requirement for registration in this instance that the party provide a guarantee, [in the form of unconditional surety from a bank]¹⁾, for output tax as provided for in the first paragraph of Article 2, and input tax as provided for in the second sentence of the second paragraph of the same Article. This guarantee must be linked to the Construction Cost Index.

(2) A guarantee as referred to in the first paragraph, shall be cancelled:

- a. if the builder sells a taxable party the property to which registration applies and in this connection satisfies the provisions of the second paragraph of Article 1;
- b. if the builder is authorised a free registration, as provided for in Chapter II of this Regulation; or
- c. [if the builder utilises the real estate for his/her own taxable operations.]¹⁾

(3) [A guarantee as referred to in the first paragraph is intended to ensure collection of reimbursed input tax together with calculated output tax, having regard to indexation using the Construction Terms Index, if the conditions for registration no longer exist.]¹⁾

¹⁾ Cf. Art. 2 of Reg. No. 697/1997.

CHAPTER II

On free registration

Article 4

(1) A party renting real estate or a part of real estate [...] ¹⁾ for commercial purposes, may apply for free registration to the regional tax director.

(2) An application for free registration must specify the real estate or part of real estate to which the registration is intended to apply. The following documentation must accompany an application:

1. [a written rental agreement;
2. a statement from the lessee that he/she agrees to the free registration and thereby to payment of VAT on rental payments;
3. [a certificate that the statement referred to in Point 2 has been registered as an encumbrance.]²⁾³⁾

(3) Free registration may not apply to a building which is used fully or partly as residential accommodation.

(4) [If a property which has been granted a free registration is sold and the new owner has applied for free registration for the property, it is not necessary to include the documentation listed in the second paragraph with the application, provided the application concerns the same rental agreement to which the previous registration applied. Upon a change in ownership as referred to in this paragraph, however, documentation must be submitted to verify the change in parties to the rental agreement.]²⁾

¹⁾ Cf. Art. 2 of Reg. No. 180/1993. ²⁾ Cf. Art. 3 of Reg. No. 697/1997. ³⁾ Cf. Art. 1 of Reg. No. 1056/2005.

Article 5

(1) [[Free registration can never apply for a shorter period than two years.

(2) The initial date of free registration shall as a rule be the date when the lessee takes the property into service. In the case of a new building or if substantial improvements will be made to the property before that time, the lessor may apply for registration as provided for in Chapter I of this Regulation for such construction. If the regional tax director is of the opinion that the conditions of the second paragraph of Article 4 and of Article 5 of Regulation No. 515/1996, on the Registration of Parties Subject to VAT, are fulfilled, he/she may however waive the conditions of Article 3 of this Regulation on a guarantee. If a rental contract is rescinded before the two-year time limit referred to in the first paragraph has expired, and the property has therefore not been in use for six months or longer, this time will not be included in the adjustment period as provided for in Chapter IV of Regulation No. 192/1993, on input tax. The same shall apply if a property which has been granted free registration is not in use because it has not been possible to re-lease the property satisfying the conditions of Points 1-3 of the second paragraph of Article 4.^[1]²⁾

¹⁾ Cf. Art. 4 of Reg. No. 697/1997. ²⁾ Cf. Art. 1 of Reg. No. 903/2000.

Article 6

(1) A lessor, granted free registration, must collect output tax on the rental payment, including any security deposit he/she may demand from the lessee. If the rental paid is not equivalent to remuneration for normal rental of a comparable property, the tax value shall be determined as provided for in the second paragraph of Art. 8 of Act No. 50/1988.

(2) A lessee subject to VAT may include tax paid on the rental fee with input tax, in accordance with the general rules of Act No. 50/1988.

Article 7

A lessor may, in accordance with the general provisions of Act No. 50/1988, and Regulations adopted based upon it, include in input tax the VAT incurred after registration on his/her purchase of goods and services for [...] ¹⁾ improvements and maintenance of the real estate to which free registration applies, as well as for operational and administrative costs regarding the property.

¹⁾ Cf. Art. 5 of Reg. No. 697/1997.

Article 8

(1) If changes are made in the use of a property to which free registration applies, with the result that the requirements for such registration no longer exist, a correction shall be made to the input tax deduction provided for in the second paragraph of Art. 16 of Act No. 50/1988.

(2) A party who has been granted a free registration must notify the regional tax director of changes as referred to in the first paragraph no later than eight days after the change takes place.

CHAPTER III

Miscellaneous provisions

Article 9

Applications for free or special registration must be sent to the regional tax director on forms intended for the purpose which the Director of Internal Revenue shall have prepared. The Director of Internal Revenue shall decide what information is to be provided on these forms.

Article 10

Infringements against the provisions of this Regulation are liable to punishment pursuant to Art. 40 of Act No. 50/1988, on Value Added Tax.

Article 11

This Regulation is set by authority of Article 6 of Act No. 50/1988, on Value Added Tax, and shall enter into force on 1 January 1990.

Temporary Provision with Regulation No. 697/1997.

Notwithstanding the provisions of Point 1 of Article 2, a guarantee for output tax and input tax, which a regional tax director has approved prior to the entry into force of this Regulation, shall remain valid.