

ZERO-RATING FOR VAT

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1. WHEN VAT BECOMES PAYABLE

If you are a VAT vendor and are selling an asset, a business or part of a business, you may not always be required to charge Value Added Tax (VAT) on the purchase price. Whether VAT is to be charged will depend on the circumstances of the transaction. For example, a sole proprietor who is VAT registered can sell his/her machinery and charge VAT, but can't charge VAT on the sale of his/her personal house. A VAT vendor can only charge VAT on the sale of an asset if that asset forms part of the vendor's enterprise.

2. REGISTRATION FOR VAT

Registration for VAT is compulsory if a person carries on an enterprise and the total value of taxable supplies exceeds or will exceed R1 000 000,00 (One Million Rand) in any 12 month period. Voluntary registration for VAT is possible for enterprises under this threshold. The standard rate of VAT is 14%.

3. ZERO-RATING

There are some instances where VAT can be charged at 0% instead of 14%. This is known as zero-rating.

Section 11(1)(e) of the Value Added Tax Act No 89 of 1991 ("the VAT Act") sets out the requirements for zero-rating to apply:

- (a) The seller must be a registered vendor or be obliged in terms of the VAT Act to register as a vendor at the date of conclusion of the sale.
- (b) The Purchaser is not required to be a registered vendor at the date of conclusion of the agreement but must have made application for such registration at that time. The registration must, however, take place by the "time of supply", which is the date of invoice or the date upon which a portion of the purchase price is paid, whichever is the earlier.
- (c) The supply must consist of an enterprise or part of an enterprise which is capable of being operated separately.
- (d) The parties must agree that the supply is a going concern. In order to be a going concern:
 - i. The enterprise must be an income-earning activity on the date of transfer.
 - ii. The assets necessary for carrying on the enterprise must be handed over to the purchaser.

- iii. The consideration for the supply must include VAT at the rate of zero percent.

The above requirements must be included in a written agreement of sale.

When determining whether VAT at the rate of 14% must be charged or whether the transaction may be zero-rated, you therefore need to look at what you are selling. If it is an asset forming part of an enterprise then you are liable to charge VAT at 14%. If however, you are selling the “enterprise” itself as a going concern you may zero-rate the VAT provided you meet all of the requirements as set out above.

4. RESIDENTIAL LETTING OPERATIONS

In terms of section 12(c) of the VAT Act, rentals charged to a tenant in terms of a residential lease is an exempt supply and one cannot charge VAT on the rental.

An “enterprise” is defined in section 1(v) of the VAT Act as a taxable supply of goods or services. A residential letting operation does not fall within the definition of an “enterprise”. Neither does a lease of commercial property where the annual rental income does not exceed R60 000,00 (section 1(ix) of the VAT Act).

Section 11(1)(e) of the VAT Act states that only the sale of an enterprise can be zero-rated. Accordingly, sales of properties which are subject to a residential lease or a commercial lease where the annual rental is less than R60 000,00 cannot be zero-rated in terms of the VAT Act.

Purchasers of the above tenanted properties will therefore need to pay either transfer duty or VAT on the acquisition of these properties, depending on the facts of each transaction.

It is advisable to consult your attorney and accountant before concluding a sale agreement where VAT could be involved, especially if you are contemplating zero-rating the transaction.

For professional but personal advice on, and assistance with sale agreements and the zero-rating of transactions, please contact Stuart Fourie (stuart@fouriestott.co.za) or Vicky Stott (vicky@fouriestott.co.za) or visit our website for further information about our Firm and areas of expertise.