CHARTERED ACCOUNTANTS
PHYSICAL 1st FLOOR, 67 FLORIDA ROAD, DURBAN, KWAZULU NATAL, SOUTH AFRICA
POSTAL PO BOX 48619, QUALBERT 4078
TEL + 27 31 303 6130 FAX + 27 31 303 4399
EMAIL global@sjcasa.co.za WEB www.sjcasa.co.za

# MoneyTalk

## Avoid a common pitfall when buying VAT-able property

WHEN IT comes to selling property that is subject to VAT, it is critical that you understand exactly what's involved. Although pretty straight-forward, the basics are sometimes overlooked or misunderstood.

The transfer of immovable property in South Africa is either subject to transfer duty or to VAT, depending on the VAT vendor status of the seller. Basically, VAT takes preference over transfer duty, and the sale will be subject to VAT if the seller is a registered VAT vendor, and the property forms part of the vendor's enterprise. In this case, the liability to pay transfer duty falls away.

However, where these two conditions are not met, the sale is subject to transfer duty and not to VAT. Of course, the rate of VAT is a flat 14% and that of transfer duty a maximum of 8% (depending on the juristic nature of the purchaser). Given that the rate of VAT is so much higher, it is worth explaining how it is that, in so many property advertisements, one sees "no transfer duty" listed as a positive feature.

There are three reasons for this. Firstly, since in terms of the VAT Act prices are deemed to be inclusive of VAT, the advertised price of the property is all that the purchaser will pay in a transfer subject to VAT (besides, of course, legal and bond costs). In a transfer from a non-vendor, transfer duty will have to be added to the advertised price, making it that much more expensive. Secondly, as I understand their practice, banks tend to be more willing to finance the VAT component of the price of a property than the transfer duty, since the VAT tends to be seen as part of the purchase price whereas transfer duty is classified along with legal and bond costs. Thirdly, it makes for astute marketing.

Where the transfer is subject to VAT and is between registered VAT vendors, the transaction may be zero-rated, which makes it VAT neutral for both parties. This is in order to avoid the inconvenience of the seller having to pay the VAT over to SARS, while the purchaser waits for a refund in respect of the same VAT.

However - and herein lies the rub - in order for the zero-rating to be effective, the VAT Act contains a number of requirements, **all** of which must be fulfilled. These include the following:

- The property transferred must constitute an "enterprise" that is a "going concern", i.e. it must be capable of independent operation;
- The agreement of sale must state that the enterprise is disposed of as a going concern;
- The agreement of sale must state that such enterprise will be an income-earning activity as at the date of transfer. This implies that if it is a tenanted property, a lease must cover the date of transfer);
- The agreement of sale must state that the stated price is inclusive of VAT at the rate of zero percent; and
- All of the assets which are necessary for the running of the enterprise must be transferred from the seller to the buyer.

If **any** of these requirements is not fulfilled, the zero-rating falls away, and in order to cover this possibility, it is usual to insert a clause to the effect that should the transfer of the property turn out not to be zero-rated, the stated price is deemed to be exclusive of VAT. Such a clause will result in the purchaser having to suffer the cash flow consequences of having to pay the VAT over to the seller, and then claiming such VAT back from SARS - a process that can take up to three months depending on how the purchaser's tax periods fall in relation to the purchase date.

Next time you are involved in a zero-rated transaction, be sure to run through this checklist!

*Copied from a Tax Breaks publication by David Warneke, a tax partner at Cameron Prentice*

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*20 June 2008*