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MoneyTalk

Zero-rated property sales under scrutiny

The sale must be of a going concern to qualify for zero-rating

SARS is increasingly auditing taxpayers who have zero-rated the sale of a fixed property in terms of Section 11(1) (e) of the Value-added Tax Act.

Of particular concern is that SARS is actively seeking arguments to unravel the application of Section 11(1)(e) of the Act, in what appears to be an attempt to increase collections through the mechanism of penalties and interest, in not attacking the formal procedures required for the application of the section but rather the underlying requirement that there was a sale of a 'going concern'.

The fact that the source documents provide for a zero-rating of VAT as a sale of a 'going concern', or that the correct documentation was submitted to SARS, appears to be irrelevant to the tax man.

Section 11(1)(e) allows for the sale of a fixed property to be zero-rated if its income-earning activity is transferred at the time of the sale. If this is done, the transaction is regarded as a sale of a going concern.

Ordinarily this is a question of fact and will depend on the particular circumstances. If a block of flats is sold, for

example, the leasing activity—the tenants—must be disposed of together with the property in order to constitute the transfer of an income earning activity. A failure to transfer this income-earning activity will result in a simple sale of an asset which would attract VAT at the standard rate.

SARS is now investigating whether taxpayers actually transferred the income-earning activity at the time of the sale. If not, the transaction will attract VAT in addition to penalties and interest from the date of the original sale.

The current budget deficit and increased pressure on SARS to increase revenue collection suggests that it is probable that any incorrect applications of Section 11(1)(e) will be discovered. Therefore, it's important to comply strictly with both the procedural and the substantive requirements of Section 11(1) (e) when selling a fixed property as a going concern.

Furthermore, it is recommended that taxpayers review any historic sales and ensure that an income earning activity was actually transferred at the time of the sale.

In our experience, if a taxpayer has made a genuine error, SARS will tend to be lenient if full disclosure of any incorrect tax treatments is made.

Extracted & summarised from a Moneyweb publication by Dylan Buttrick.

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