

Where Seller and /or Purchaser Are VAT Vendors In Respect of The Immovable (fixed) Property Being Sold

The subject of VAT is complex and this only as a guide and is not comprehensive. Always seek professional advice before committing yourself to a purchase or sale of immovable property where there is a possibility of VAT implications. This deals with VAT where the Seller and/or Purchaser are VAT Vendors in respect of the immovable property being sold. See our Transfer and Bond Costs Tables where neither Seller or Purchaser are VAT Vendors in respect of the immovable property being sold.

General Principles

- (a) Purchase price is R100 000.00 plus VAT of R14 000.00 which equals R114 000.00.
- (b) Note that the Seller and/or Purchaser may be registered as VAT Vendors for the purpose of their business, but not in respect of the property being sold (e.g. the property or portion thereof is not being or intended to be utilised for the business or enterprise of the VAT Vendor). Therefore, if an Attorney who is a VAT Vendor, for the purpose of his business, sells a house as a residence, Transfer Duty will be payable by the Purchaser and VAT is not a factor. If on the other hand the same Attorney sells a house which is being utilised as his offices, VAT must be considered and not Transfer Duty by the Purchaser. This will of course affect the purchase price. Consider whether the VAT Vendor utilises the property as part of the business or enterprise which is registered for VAT. If yes - the provisions apply. If no - Transfer Duty is payable.
- (c) Either Transfer Duty or VAT is payable not both. Where the property is part of a business being sold as a going concern by one VAT Vendor to another, the transaction is subject to VAT and not Transfer Duty but VAT is levied at a zero rate i.e. nothing is paid - (See C (i) below).
- (d) VAT returns are submitted to the Receiver of Revenue every second month.
- (e) OUTPUT VAT is payable with the Vendor's VAT Return and must be paid on or before the earliest of the following dates:-
 - i) Transfer; or
 - ii) Within six months of the date of sale. Date of Sale is the date of last signature whether or not the Agreement is subject to a condition such as the grant of a Bond or sale of the Purchaser's property; or
 - iii) Date of payment of any consideration. Usually a deposit is paid into Trust and the consideration is only paid on transfer. In an Installment Sale Agreement where Chapter II of the Alienation of Land Act applies, the deposit (first consideration) is usually paid on recording of the Contract in terms of Section 20 of the Alienation of Land Act.The Conveyancers are not responsible for the payment of the VAT to the Receiver of Revenue. VAT is paid by the VAT Vendor with his VAT return. The Conveyancers however, must apply for and obtain an exemption from Transfer Duty (Section 19 (15) of the VAT Act) before they can register transfer. VAT 249 Form and Declarations of Purchaser and Seller are submitted to the Receiver of Revenue who provides the Transfer Duty exemption.
- (f) INPUT VAT is the credit to which the Purchaser is entitled on purchase of the property, but only if VAT has been paid by the Seller, the Purchaser is also registered as a VAT Vendor at the time of the acquisition of the property and the property is to be used for the business of the Purchaser. The Purchaser should reflect his claim for INPUT VAT in his next VAT Return - (See below).
- (g) You must register as a VAT Vendor if the annual turnover from your business (enterprise) equals or exceeds R300 000-00. If your annual turnover is under R300 000-00 you may (if you so wish) apply to the Receiver of Revenue to be registered as a VAT Vendor (You should, in this instance, reasonably expect that your annual turnover will exceed R150 000-00 in the future).

Once registered as a VAT Vendor, you are obliged to charge VAT on all goods (including the property you use for business purposes) sold and services provided by you - which you would not have had to do as a non-VAT Vendor.

(h) No VAT is payable in respect of the rental paid for residential accommodation (i.e. houses, flats, sectional title simplexes and duplexes etc.) irrespective of whether or not the lessor is a VAT Vendor. VAT must be charged by a VAT Vendor in respect of:-

i) In respect of rental of commercial property as well as rental of accommodation in a "commercial rental establishment" (i.e. hotel, boarding house, hostel etc.)

ii) Any business undertaking in the course of which accommodation in any house, flat, apartment, room, caravan, house boat or camping site is regularly or systematically let or held for letting by the business for continuous periods not exceeding 45 days in the case of each occupation, if the total annual receipts and accruals from this supply exceed R24 000-00 or there are reasonable grounds for believing the total annual receipts will exceed that amount.

(i) VAT is not charged on occupational interest in respect of residential property.

(j) Where a VAT Vendor ceases to be registered as a VAT Vendor whether by death or otherwise, he will be deemed to have supplied the immovable property in the course of his business (enterprise). As a result, he will be liable to account for OUTPUT VAT on the lesser of the cost or market value irrespective of whether the VAT Vendor obtained an INPUT Tax credit on the purchase. This does not apply where property has been used solely for residential purposes.

(k) If fixed property is acquired and has been held or utilised by the VAT Vendor partly for the purposes of making taxable supplies immediately prior to the disposal of that fixed property, the VAT Vendor is deemed to have made that supply wholly in the course or furtherance of his enterprise and will therefore be accountable for VAT on the full purchase price, except in respect of fixed property acquired before the 30th September 1991 by a VAT Vendor who is a natural person and who used the property mainly as a private residence and did not claim any INPUT Tax credit in respect of the property.

(l) To assist in assessing the questions of VAT, the Agreement of Purchase and Sale should state whether the Seller and/or Purchaser are VAT Vendors in respect of the property being sold.

(m) In the sale of immovable property where VAT and not Transfer Duty is payable, the Conveyancer's fees for transfer and bond costs must still be paid - (See our Transfer and Bond Costs leaflet).

(n) Unless otherwise stated, the price of property sold by a VAT Vendor includes VAT.

A. Where Seller Is A VAT Vendor And Purchaser Is Not

The Seller must pay OUTPUT VAT - See Paragraph (e) of General Principles above. Such VAT is calculated as follows:-

$VAT = \text{Purchase price} \times \text{VAT rate} \div (100 + \text{VAT rate})$

EXAMPLE: Say the purchase price is R150 000-00 and the VAT rate is 14%

$OUTPUT\ VAT = R150\ 000-00 \times 14 \div 114$

= R18 421-05

i.e. the purchase price exclusive of VAT is R131 578-95.

B. Where The Purchaser Is A VAT Vendor But Seller Is Not

(a) Purchaser must pay Transfer Duty in the usual way.

(b) Purchaser can reclaim that transfer duty (not VAT) paid as a notional VAT INPUT in his next VAT return.

(c) If as a result the VAT return shows that the Receiver of Revenue owes the Purchaser money, the Receiver of Revenue should pay this credit to the Purchaser within 21 days of receipt or due date of VAT return.

C. Where Both Seller And Purchaser Are VAT Vendors

then distinguish between the situation where property is sold as part of a business as a going concern and the situation where property is not sold as part of a business as a going concern.

i) Where property is part of a business being sold as a going concern for example:-

- (a) Where the property sold is being rented out by the Seller as part of his business as a Lessor of commercial or industrial property (See (h) above); or
- (b) A VAT Vendor sells his cafe business and the property from which he carries on that business to a Purchaser as a going concern.

In this case, the transaction is Zero Rated i.e. VAT is payable but at a zero rate so nothing is paid. This must be reflected as such in the Seller's and Purchaser's VAT Return, and the VAT 249 Form must be completed. Transfer Duty is not payable.

To qualify for the zero rate, the Agreement of Sale must make it absolutely clear that the property is part of the Seller's business which is being sold as a going concern. In this regard it must provide:-

- (1) That the property and business is sold as part of a business which is a going concern;
- (2) The business will be an income earning activity on the date of transfer, on the date of occupation and possession and (if applicable) on the effective date.
- (3) The assets (including the property) which are being sold are those that are necessary for carrying on of the business as a going concern.

ii) Where property is not sold as part of a business as a going concern:

- (a) Seller must pay OUTPUT VAT - (See A above and Paragraph (e) of General Principles).
- (b) Purchaser claims VAT (not transfer duty) as INPUT VAT and reflects this in his next VAT return.

Example:

- (a) Purchase price of property is R150 000-00.
- (b) Both the Purchaser and Seller are VAT Vendors in respect of the property being sold. The property is not being sold as part of a business as a going concern.
- (c) $VAT = R150\ 000-00 \times 14\% = R18\ 421-05$.
- (d) On transfer the Conveyancer pays the Seller R150 000-00. The Seller then pays and reflects this in his VAT Return - (See Paragraph (e) of GENERAL PRINCIPLES) OUTPUT VAT of R18 421-05.
- (e) The Purchaser claims in his next VAT Return INPUT VAT of R18 421-05 and the Receiver of Revenue should pay this credit to the Purchaser within 21 days of receipt or due date of VAT Returns.
- (f) No Transfer Duty is payable.
- (g) Conveyancers must apply for a Transfer Duty exemption by submitting to the Receiver of Revenue VAT 249 Form and Declarations of Seller and Purchaser.

D. Sales By VAT Vendors Of Fixed Property Used In The Course Of Making Exempt Supplies

(e.g. the sale of residential property previously let out) will not attract VAT, but will attract Transfer Duty.