

ARTICLE: ZERO-RATED SALE

Best performing titles [*Select one*]:

1. How to pay 0% VAT on the sale of my property?
2. What are the requirements for a zero-rated sale?

Point of the article:

- Promoting the drafting of a zero-rated sale agreement;
- Promoting deal structuring advice; and
- Improving your firm's Google search ranking.

Primary area(s) of law:

- Property Law; and
- Commercial Law.

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WHAT ARE THE REQUIREMENTS FOR A ZERO-RATED SALE?

When purchasing a property, the purchaser will be liable to either pay transfer duty or Value Added Tax ("VAT") to the South African Revenue Service ("SARS"). If the seller is a registered VAT vendor and he/she sells his/her property, then VAT is payable to SARS instead of transfer duty.

If VAT is payable on the transaction, then the purchaser may be able to pay 0% VAT. This occurs when a sale is "zero-rated". Zero-rated sales can be applied to the sale of numerous assets; and is a particularly powerful mechanism when applied to the sale of a property, since the tax levied on the sale of a property is substantial as a result of the ever-increasing property prices in South Africa. A zero-rated sale concerning property transactions will occur where a property is sold as a going concern. "Going concern", in this context, means that the object of sale is actively generating income.

The requirements for a zero-rated sale are as follows:

- 1.The Seller must be a VAT vendor;
- 2.The Purchaser must be a VAT vendor;
- 3.The enterprise sold must be sold as a going concern;
- 4.The parties must agree in writing that the enterprise is being sold as a going concern as a term of their sale agreement;
- 5.The property must be an enterprise or part of an enterprise which is capable of separate operation; and
- 6.The assets necessary for carrying on the income-earning activity must be sold to the purchaser.

In transactions where all of the above requirements are met, VAT is indeed payable regarding the sale, but it is payable at a rate of 0% instead of the standard rate (currently 15%). This is in contrast to certain transactions which are exempt from VAT altogether. It should be noted that VAT may not be charged on residential rent and only on rent paid by businesses.

The most common type of zero-rated sale when dealing with property:

Sale of a non-property related business along with a property:

Mr. X owns and runs a popular gym in Sea Point and owns the property on which it is run. He decides to sell both the gym, together with the property on which the gym is situated, as part of the same transaction.

Things to look out for with zero-rated sales:

The South African Revenue Service will demand payment from the seller (not the purchaser as with transfer duty) of any VAT payable in respect of a transaction. Despite this, if there is any VAT payable, it is generally agreed that this will be incorporated into the purchase price so that the seller doesn't have to pay an additional amount to SARS. Of course, a zero-rated sale means that no VAT is payable. The agreement of sale usually states if the price includes or excludes VAT. This clause governs who pays the VAT. If the transaction does not meet all of the requirements of a zero-rated sale, the seller will have to pay the VAT to SARS. This is because the seller is the tax payer for the "goods" being sold. The "goods" in this case would be the property. It is worth mentioning that where the buyer is a VAT vendor and the seller isn't, then the buyer pays transfer duty and can reclaim what they paid as transfer duty in the submission of their next VAT return.

However, if they decide to sell the property later on, the sale will be subject to VAT since they are a VAT vendor.

In summary, this is how to ensure that your sale is zero-rated:

1. Ensure both parties are VAT vendors;
2. Confirm that the enterprise is being sold as a going concern;
3. Document the above in your agreement of sale; and
4. Dispose of necessary assets to the purchaser.

Understanding and applying the zero-rated sale mechanism can yield substantial tax savings in property transactions. Given the complexities involved, consulting with a legal expert is crucial to navigate the applicable VAT regulations and ensure compliance.

If you would like to utilise the zero-rated sale mechanism, contact us at [Insert email address] to assess your eligibility for a zero-rated sale and, if you wish, to draft the necessary agreements.

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