

Wednesday, 30 November 2016 20:27

Zero-rated VAT for a commercial property transaction

Written by eProperty News

The area of zero-rated VAT for a commercial property transaction can be confusing and must be properly understood if one wishes to avoid confusion and delays.

“Previously, it was common industry practice that a brief clause or addendum was utilised with the agreement of sale for a commercial property transaction in order to apply for the zero-rating of VAT,” says Jason Gregoriades, a member of the Rawson Property Group’s Commercial Business Development Team in Cape Town. These previously used methods are, however, no longer acceptable due to a more stringent set of requirements by SARS.

Misconceptions

Some misconceptions must first be dispelled, with regard to zero-rated VAT transactions, before looking at this subject in any depth. “The structuring of the sale of a commercial property with the VAT rated at 0%,” Gregoriades explains, “is a benefit offered by SARS to the seller and buyer of a specific property, should certain criteria be met to their satisfaction.”

First, it is often presumed that if VAT is applicable to a commercial property transaction, it will be simple to structure the Agreement of Sale in order to qualify for the VAT to be rated at zero percent. Sadly, this is not the case.

Second, there is the misconception that if one correctly structures the agreement of sale that the transaction qualifies for a zero-rating of VAT, that there are no additional costs relating to the transfer of the property. This is also most definitely not the case.

Facts

To begin with, a tax clearance certificate is required for the transfer of a property, thus problems and delays may arise in the event where either of the legal entities’ tax affairs are not up to date. Thereafter, SARS has a number of specific criteria which must be met in order for a commercial property transaction to be considered for a VAT rating of 0%. “The agreement of sale must be properly structured,” states Gregoriades, “containing all the necessary information and specifics.

Regarding the other costs applicable to the transfer of the property, such as the Deeds Office fee and the additional respective clearance certificates, these costs will still be applicable and payable should SARS permit the transaction to benefit from a zero-rating for VAT.

SARS Requirement

"SARS' current requirements for the transaction of a commercial property sale to be considered for a zero VAT rating, are quite specific and important to know," says Gregoriades.

These requirements include, but are not limited to the following:

- All necessary information to be provided as part of the original agreement of sale and not as an addendum or annexure.
- Both parties must be VAT vendors, thus, it is recommended that both parties include in the agreement their VAT registration numbers, a declaration that they are still registered for VAT and that their tax affairs are up to date.
- The nature of the contract must take the form of a sale of business which includes the property, as opposed to the traditional sale of property only. Both parties must state their agreement that the enterprise will be sold as a going concern and that a zero rating of VAT will be applied. In this case, the business practice is the letting of space within the property and the business itself is often described as a rental enterprise.
- The entire business, including any part of it which is capable of separate operation, must be disposed of as part of the transaction. In other words, the sale of the enterprise must include the property and all existing contracts must remain in place, such as the cleaning and security services.
- The business must be an income generating enterprise at the time of sale, with a strong likelihood that this income generation will continue up to the date of transfer and beyond.

The Risk

Should the application for a zero VAT rating be deemed unsuccessful by SARS, they have the authority to effect that the full VAT amount be applicable to the sale. A clause to this end must be included in the agreement, stating that the purchase price will increase to cover the potential addition of VAT to the sale price. "Buyers and sellers must be aware of the implications of this possibility," says Gregoriades, "should their submission be rejected by SARS for whatever reason."

"One needs a well-constructed agreement of sale, making sure all the boxes are ticked," suggests Gregoriades, "to take advantage of the zero-rated VAT benefit offered by SARS." In order to ensure all the criteria are met, it is recommended that you enlist the aid of an experienced commercial agent.