

VAT TREATMENT OF THE SUPPLY OF A TAXABLE ACTIVITY AS A “GOING CONCERN”

VAT Office Policy Statement [VP021]

(Issued April 2005)

Introduction

The VAT Office has had many queries relating to the zero-rating of the supply of a taxable activity as a going concern. This policy statement provides a summary of the correct VAT treatment to zero-rate the supply of a taxable activity or part of a taxable activity as a going concern. “The VAT Act” means the Value Added Tax Act No.12 of 1998.

Policy Summary

- The supply of a taxable activity or part of a taxable activity that is sold by a VAT registered person as a “going concern” to another registered person can be zero-rated if the supplier and the recipient of the supply agree in writing that the supply is of a going concern.
- To qualify as a “going concern” the supply must meet the conditions set out in Section 2 of the VAT Act.

Legislation

The term “going concern” is defined in section 2 of the VAT Act. For a supply to qualify as a supply of a going concern it must meet the following conditions:

- (a) there is a supply of a taxable activity, or a part of taxable activity where that part is capable of separate operation; and
- (b) all of the goods and services that are necessary for the continued operation of that taxable activity or that part of a taxable activity are supplied to the recipient; and
- (c) the supplier carries on, or is to carry on, that taxable activity or part of that taxable activity up to the time of transfer to the recipient.

Clause 9 of the Third Schedule of the VAT Act provides the criteria to zero-rate the supply of a taxable activity as a going concern. It states that a supply is zero-rated where that supply is:

- (i) a supply to a registered person of a taxable activity, or part of a taxable activity, that is, or is to be transferred from the supplier to the recipient as a going concern; and
- (ii) agreed by the supplier and the recipient, in writing, to be the supply of a going concern.

Paragraph (a) of the definition of “going concern” refers to ‘a part of a taxable activity where that part is capable of separate operation’. This provision addresses the fact that a registered person may sell only part of their overall taxable activity and that it is possible to operate that part as a separate business.

It is important to note that zero-rating only applies when the supply is made between two VAT registered persons.

Going Concern Checklist

The following checklist is provided to ensure that a supply of a taxable activity or part of a taxable activity meets all the criteria to be the supply of a going concern:

- (i) Are both the supplier and recipient registered for VAT?
- (ii) Does the supply constitute the transfer of the whole or part of a taxable activity as a “going concern” (as defined in section 2)?
- (iii) Are all the goods and services that are necessary for the continued operation of that taxable activity or that part of a taxable activity being supplied to the recipient?
- (iv) If the supply is part of a taxable activity, is that part capable of separate operation?
- (v) Is the supplier carrying on the taxable activity or part of that taxable activity up to the time of transfer to the recipient?
- (vi) Have the supplier and recipient agreed in writing that the supply is the supply of a taxable activity as a going concern?

Example 1

A cattle farm is owned by a VAT registered person and is sold to another VAT registered person. The land, livestock, buildings and machinery are all included in the sale. The vendor continues to run the farm up to the settlement date and the vendor and purchaser agree in writing that the supply is a going concern. In this case all the criteria have been met to qualify the sale of the farm as the supply of a taxable activity as a going concern. If only the land and buildings were sold, and the vendor retained the machinery and livestock, the sale would not qualify as a going concern as it is necessary for all the assets required for the continued operation of that taxable activity to be supplied.

Example 2

A VAT registered property developer is building a tourist resort. The resort is half built when the developer decides to sell it to another VAT registered person. Although all the assets of the business may be transferred this is not a supply of a taxable activity as a going concern. This is because at the time of the supply the resort was not operating as a taxable activity (no supplies were being made).

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Example 3

A VAT registered owner of a hairdressing salon wishes to sell his business. The sale includes the lease on the building, all the stock, and all other assets belonging to the business. The owner closes the salon while he tries to sell it. After 3 months the owner finds a VAT registered buyer to buy the business. This sale of this business would not qualify as a going concern as the definition of going concern requires the supplier to carry on the taxable activity up to the time of its transfer to the recipient.

Example 4

A VAT registered person owns stores in Port Vila and Luganville and may decide to sell the store in Luganville only – this store is only part of the registered person's overall taxable activity but is capable of separate operation in its own right. The sale of this store could be zero-rated assuming all other criteria listed in the going concern checklist are met.

Enquiries

Any enquiries on the VAT treatment of a going concern should be directed to the VAT Office.
