

SEPTEMBER 2015

“God always gives His best to those who leave the choice with him”.
-Jim Elliot

DO YOU WANT TO SELL WITH A ZERO PER CENT VAT RATING?

The supply of an enterprise or part of an enterprise is a taxable supply which must be taxed at a VAT rate of 14%. The VAT Act allows for the supply of an enterprise or part thereof, capable of separate operation to a registered vendor, to be transferred at a zero per cent VAT rate.

To qualify for a zero-rated VAT transaction in terms of the VAT Act, the following requirements must be complied with:

- The seller and purchaser must be registered as VAT vendors.
- The supply must consist of an enterprise or part of an enterprise which is capable of separate operation.
- The parties must agree in writing that the supply is a going concern.
- The seller and purchaser must, at the conclusion of the agreement, agree in writing that the enterprise will be an income-earning activity on the date of transfer thereof.
- The assets necessary for carrying on the enterprise must be disposed of to the purchaser.
- The parties must agree in writing that the consideration for the supply includes VAT at the zero rate.

The definition of "enterprise" as per the VAT Act includes any leasing activities. To give an example, for the transfer and supply of an enterprise that consist of leasing activities, the contract must, in addition to the above, state that the all facets of the leasing activity are disposed of together with such fixed property in order to constitute an income-earning activity. An enterprise consisting of leasing activities must at minimum include the underlying assets, i.e. the land or property that is subject of the lease and the agreements.

Law & Laughter

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A good lawyer knows the law. A great lawyer knows the judge.

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SALE OF SECTIONAL TITLE UNITS AND ERVEN PRIOR TO TOWNSHIP PROCLAMATION

In the recent case of Erf 441 Robertsville Property CC and Another v New Market Developments, the developer sold several properties in a mixed development consisting of full title erven and sectional title units, before the township was proclaimed.

Section 67 of the Town Planning and Townships Ordinance 15 of 1986 (the "Ordinance") provides as follows:-

- (1) After an owner of land has taken steps to establish a township on his land, no person shall, subject to the provisions of section 70:
 - (a) enter into any contract for the sale, exchange or alienation or disposal in any other matter of an erf in the township;
 - (b) grant an option to purchase or otherwise acquire an erf in the township, until such time as the township is declared an approved township.....
- (2) Any contract entered into in conflict with the provisions of subsection (1), shall be of no force and effect.

It was clear that the sale of the full title erven by the developer were void in terms of section 67 of the Ordinance. The question dealt with by the judge in this case, was whether the pre-proclamation sale of the sectional title units (sections) were also void based upon Section 67 of the Ordinance.

The judge found that a sectional title section, being a unit plus an undivided share in the common property in the scheme, was not an erf in terms of section 67 and therefor section 67 of the Proclamation was not applicable to sectional title units.

Although the judgement has been criticized, currently pre-proclamation contracts for the sale of sectional title sections are valid and enforceable in our courts.

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