

Selling your business as a going concern

 By [Graeme Palmer](#)

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Usually when a business is sold, it is a taxable supply that is subject to value added tax (VAT) at the standard rate of 15%. There is however a provision in the Value Added Tax Act 89 of 1991 (VAT Act), section 11(1)(e), which allows for the sale of a business at the rate of 0%, provided certain requirements are met.



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Both the seller and the purchaser must be registered VAT vendors to qualify for the zero rating. If a prospective purchaser is not registered as a vendor for VAT, the purchaser should have at least applied for registration before concluding the agreement. The agreement should cover the situation where zero rating does not apply due to the requirements not being met, and in such circumstances, the purchaser should become liable to pay VAT at the standard rate.

The seller and the purchaser must agree in writing that the sale of the business is a going concern. This means that there must be an income earning activity on the date that ownership of the business is transferred to the purchaser. For example, where a landlord sells the rental property to his tenant there is no going concern as the income earning activity (i.e., the rental enterprise) ceases and it is not transferred to the purchaser.

It is also a requirement that the assets which are necessary for carrying on the business are disposed of by the seller to the purchaser. Assets not required for operating the business, such as old stock or book debts, do not need to be sold with the business. An asset which is merely capable of being operated as a business does not qualify as income earning activity. There must be an actual or current business operation. The sale of a dormant business or a business that is still to commence is not a going concern.

Not only must the parties agree in writing that the business is sold as a going concern, but also that the purchase price includes VAT at the zero rate. If the parties fail to record this in writing, the zero rate will not apply, notwithstanding that the sale of the business was in fact transferred as a going concern.

Finally, when selling your business as a going concern, it is important to keep copies of all documents that can prove that you met the zero rating requirements, such as the purchaser's notice of VAT registration, the sale agreement, and the zero rated tax invoice.

ABOUT GRAEME PALMER

Graeme Palmer is a director in the commercial department of Garlick & Bousfield.

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