



TANZANIA REVENUE AUTHORITY

ISO 9001:2015 Certified

THE TAX ADMINISTRATION ACT, CAP. 438

PRACTICE NOTE
(Made under Section 9)

VALUE ADDED TAX ON IMMOVABLE PROPERTY
(RESIDENTIAL PREMISES)

PRACTICE NOTE NUMBER 012/2022

DATE OF ISSUE NOVEMBER, 2022

TABLE OF CONTENTS

1.0 TAX LAW.....	1
2.0 PURPOSE OF THIS PRACTICE NOTE	1
3.0 INTERPRETATION	1
4.0 HOW DOES THE LAW APPLIES	1
4.1 Taxability of Immovable Properties	1
4.2 Exemption of Immovable Property	2
4.3 Taxability of Residential Premises of Unregistered Persons.....	4
4.4 Creation of New Residential Premises for Vat Purpose.....	5

1.0 TAX LAW

This Practice Note applies to VAT chargeable on immovable property under Section 46 and Item 11 of Part I of the Schedule to the Act.

2.0 PURPOSE OF THIS PRACTICE NOTE

This Practice Note is issued for the purpose of providing guidance to the general public on interpretation and application of the tax treatment of immovable property

3.0 INTERPRETATION

In this Practice Note, unless the context requires otherwise –

“the VAT Act” means the Value Added Tax Act Cap 148.

“VAT” means the Value Added Tax

Definitions or expressions used in this Practice Note which are used in the Act shall have the same meaning in this Note as they have in the Act.

4.0 HOW DOES THE LAW APPLIES

4.1 Taxability of Immovable Properties

4.1.1 Taxability of immovable property under the VAT Act has been based on the usage and status of the immovable property.

4.1.2 The Act broadly classifies immovable property into two categories

- i. Interests in land; and
- ii. Accommodation

4.1.3 Accommodation is further distinguished between accommodation for commercial purposes and accommodation for residential purposes.

4.1.4 VAT is chargeable on all commercial accommodation which include, all accommodations other than accommodation used regularly as individual's main residence (residential premises)

4.1.5 The following are considered as commercial accommodation

- hotel, motel inn, boarding house, guest house, hostel, lodge, cottage
- serviced apartment or similar establishment,

- sites developed for use as camping sites,
- Buildings where lodging is regularly or normally provided for a periodic charge,
- other accommodation offered for short term occupation by person other than as the individual's main residence

4.1.6 The Act has been exempted accommodation occupied by individual for residential purposes from VAT upon fulfilment of certain conditions.

4.1.7 This practice note, focuses on VAT treatment on interests in land and residential premises by setting out the required tax treatments on all transactions involving interests in land and residential premises

4.2 Exemption of Immovable Property

4.2.1. Item 11 of the exemption schedule to the VAT Act exempts the supply of certain immovable property from VAT chargeability

4.2.2. Specific listing of exempted supplies, implies that, all supplies of immovable property made in the course or furtherance of a person's economic activity are taxable supply with the exception of listed items only.

4.2.3. Item 11 has listed the following are supply of immovable property as exempt supply for VAT purposes.

i. A sale of vacant land

The word 'sale' is not defined in the Act. However, the ordinary meaning of 'sale' is the transfer, or agreement to transfer the property to a buyer for a price.

Therefore, for the purposes of item 11, VAT exemption is only applicable to disposition of vacant land for a consideration as opposed to lease, sublease or any arrangement involving vacant land.

This means that, any arrangement or dealing in land that does not transfer title ownership of land to the buyer as determined by laws governing land transactions, is a taxable supply and hence chargeable to VAT at a standard rate.

ii. A lease, license, hire or other form of supply, to the extent that it is a supply of the right to occupy and reside in residential premises.

The Act provides exemption only to the portion of the building that is occupied for residential purposes.

This means that, where the building has been used both for residential and nonresidential purposes, a separation should be made between taxable and exempt supply within the same building. For example, in a storey building where some floors have been rented out for shops or stores while other floors are being used for residential purposes, VAT exemption is only applicable to the floors that have been occupied for residential purposes only.

Separation of between taxable and exempt supply is equally required in any type of building or part of the building which has been used both for residential and nonresidential purposes.

However, where a building such as godown, store, warehouse, workshop or any building or structure of similar nature which is customarily used for commercial purposes but partly resided in as individual's residence, and it is impracticable to separate between commercial and residential portions, then whole building will be considered as a commercial building chargeable to VAT

- iii. A sale of immovable property, to the extent that the property relates to residential premises, not including:
 - a) the first sale of newly constructed residential premises; or
 - b) a subsequent sale if the premises have been occupied as a residence for less than two years.

Generally, the Act provides VAT exemption in the supply that relates to the disposition of a second hand residential premises with consideration of time in which the said premises has been resided in for residential purposes.

This means that, a sale of newly constructed residential premises should be charged VAT when it is sold by its first owner or developer for the first time. VAT is also chargeable to unoccupied new residential premises resold by any owner after the first owner or developer.

However, where the residential premises have been sold after being occupied by the developer or tenant, the sale is an exempt supply subject to passing the *de minimis* rule of two years.

This means that, any sale of a residential premises which has been occupied for an aggregate period of less than two years is a taxable supply. The aggregate period is determined by taking into account the time spent by each tenant occupied the residential premises in a continuous or intermittent periods.

For the purposes of this paragraph, a newly constructed residential premise which has been sold on a hire purchase, installment or any similar settlement arrangement and immediately resided in by the incumbent buyer such that the total period occupied by the buyer up to the final settlement has exceeded two years, the sale is considered as a sale of a newly constructed house and hence a taxable supply.

Also the residential premise which has been previously exempted by virtual of being old due to passage of time will cease to be exempted when is sold to a person and converted to commercial accommodation or where the building is substantially renovated to a status of a new building.

4.3 Taxability of Residential Premises of Unregistered Persons

4.3.1. The Act, requires any taxable person who makes taxable supply to be registered for VAT in order to charge and remit VAT the Commissioner.

4.3.2. The Act also grants powers to the Commissioner to register any person for the purpose of collecting or protecting loss of tax revenue.

4.3.3. Therefore, the key consideration for any person to be registered for VAT is the existence of tax payable.

4.3.4. Section 3 of the VAT Act imposes VAT to any taxable supply, which according to the Act include; all supplies other than exempt supplies, made by a person in the course or furtherance of economic activity.

4.3.5. The Act further, clarifies that, economic activity relates to activity carried out regularly or continuously by a person or activity in the nature of trading; off adventure or concern in nature of trade, carried out by a person including initial or final activities connected to trading or regular activity.

4.3.6. Given the requirement of the Act, VAT is chargeable to taxable supplies that are made regularly or in the nature of trading. This requirement pool into VAT all taxable transactions by persons conducting or found to be conducting business even if they are not registered for VAT.

4.3.7. Therefore, when any person makes taxable supply including immovable property to the extent of reaching VAT registration threshold, such person will be registered for VAT pursuant to section 33 of the VAT Act and pay VAT charged on the supply made by that person

For example, where a person (an individual or company) who purchases buildings, demolishes them and builds apartments, a supply of the apartments or units are treated as a taxable supply in the course or furtherance economic activity. Such an individual or a company is required to be registered for VAT purpose.

4.4 Creation of New Residential Premises for Vat Purpose

4.4.1 The Act imposes VAT on a sale of newly constructed residential premises and at the same time exempts a sale of used house from VAT upon fulfillment of two-year occupation condition.

4.4.2 While the term "new" is plainly clear, in certain circumstances a newly constructed residential premises does not necessarily involve construction of a new house from the scratch.

4.4.3 Depending on the factual circumstances of the involved premises, a new residential premises may be created through substantial renovations of an old building. This is due to the fact that; substantial renovations materially remove or replaces all or substantially all of the building.

4.4.4 Nevertheless, in making determination regarding nature and extent of renovations, consideration should be made on each case based on all relevant facts and circumstances.

4.4.5 Once determined that, a new residential premises have been created as a result of substantial renovations, appropriate VAT rate may be charged to the premises.

- 4.4.6 However, works associated with renovations, but not directly attributable to the building itself, for example, landscaping and beautification of surrounding land, are not considered as part of the renovation of a building.
- 4.4.7 Any minor additions such as new balcony or garage that are undertaken with renovations are also not included in determining whether a building has been substantially renovated.

Illustration 1:

New residential premises created through substantial renovations of a building - rented for over 2 years.

Michael, an individual who is not registered for VAT, acquired a 1980's style one-bedroom fibro weekender in September 2020 with the intention of renovating, renting and eventually selling the property.

Michael extensively modified the interior and exterior of the weekender. The fibro exterior of the house was replaced by bricks, some interior walls were removed and flooring throughout the house was completely replaced by polished hardwood floors. Air conditioning was installed, the existing kitchen was removed and a new extended kitchen was installed. The existing bathroom was removed and a new bathroom including a spa bath was installed. The building was repainted both inside and outside.

The work was completed in March 2021 and the weekender was rented for 6 years immediately following the modifications, but there were short periods between tenancies while the property was being advertised for sale. Michael sold the weekender in December 2021.

At the time of sale, we would be required to assess whether the supply of immovable property is a taxable supply or exempt supply.

To decide whether a supply is taxable or exempt two questions would need to be addressed

whether the supply is a sale of a 'new residential premises' or a subsequent sale?

if the supply is a subsequent sale, there would be a need to determine whether the property has been occupied as residential premises for at least 2 years

In this example, we consider that the work done amounts to substantial renovations of the building. New residential premises were created through substantial renovations in March 2021. Since the premises were last substantially renovated, the premises are new residential premises and as the residential premises have been used only to as resident for a continuous period of less than 2 years then the sale of the residential premises is a taxable supply.

Illustration 2:

Non-substantial renovations - large part of the building not affected.

Munira, a property speculator who is registered for VAT, acquires a large 2 storey, 4-bedroom Victorian terrace house with a separate kitchen, lounge room, music room and bathroom on the ground floor. Munira regularly buys, renovates and sells houses (usually two a year on average). She employs a builder to undertake the following work.

The old kitchen is replaced with beech panelled cupboards, which have expensive granite benchtops, and stainless steel appliances. The kitchen walls and ceiling are repainted and new linoleum is added to replace the existing floor covering. A small bathroom that existed off the kitchen is removed and a new bathroom is constructed in one of the upstairs bedrooms. The two walls between the former bathroom and kitchen are removed so that the kitchen is much larger and can now also be used as a dining room. She replaces the door and back window of the kitchen with French doors that open out onto the courtyard. The removal of the bathroom and addition of the French doors have opened up the back part of the ground floor of the house and the courtyard is now more accessible.

The dilapidated slate roof of the house is replaced with a new tile roof. The floorboards, joists and bearers in all of the ground floor rooms are also

replaced due to water damage. The ceilings in most of the downstairs rooms are replaced due to cracking and mould damage.

Although the renovation work is significant we do not consider the renovations to be substantial renovations. The house in its entirety has not been substantially renovated, as a number of rooms have not been affected. The 4-bedroom upstairs are untouched with the exception of one room which has become a bathroom. If Munira was to sell the house, she would be making an exempted supply.

However, where the changes described above are combined with further renovations such as the creation of a larger lounge room by removing a wall between the existing lounge room and music room, and the modernization of the upstairs bedrooms by replacing the existing plaster on the walls and ceiling with gyprock, installing skylights, repainting, and replacing old carpets with parquet and cupboards with new walk-in robes, we would consider that substantial renovations have occurred.

After the renovations, Munira puts the terrace house on the market for \$480,000. If Munira sells the residence in the course of her enterprise after undertaking the extra work described above.

Determination of taxability:

She is making a taxable supply in two reasons, first, the renovation made above is substantial and second due to being speculator and regularly buys, renovates and sells houses, she does business (furtherance her business).

Signed.....*Adhith*.....

Commissioner General

November, 2022.