

Value added tax (South Africa)



1. Relevant definitions

- 1.1 “goods” means corporeal movable things, fixed property and any real right in any such thing or fixed property . The definition basically refers to any tangible property and any real right in such tangible property;
- 1.2 “fixed property” in turn means land, any sectional title unit, any share in a shareblock company, any timesharing interest and any real right in any such land, sectional title unit, shareblock or timesharing interest;
- 1.3 “vendor” means any person who is or is required to be registered under the VAT Act;
- 1.4 “person” in turn includes any public authority, any local authority, any company, anybody or persons (corporate or unincorporate), the estate of any deceased or insolvent person and any trust fund;
- 1.5 “enterprise” briefly summarised comprises the following essential components –
 - 1.5.1 an enterprise or activity must be carried on continuously or regularly;
 - 1.5.2 the enterprise or activity must be carried on in or partly in the Republic of South Africa;
 - 1.5.3 in the course of conducting the enterprise, goods or services must be supplied to another person;
 - 1.5.4 the supply must be for a consideration
 - 1.5.5 the supply must be made in the course of furtherance of the enterprise
- 1.6 “consideration” includes any payment, whether in money or otherwise, or any act or forbearance. A deposit is not considered to be a payment unless and until the seller applies the deposit as consideration for the supply or such deposit is forfeited. Thus deposit held in trust does not qualify as consideration
- 1.7 “enterprise” excludes any activity which entails the making of exempt supplies. The supply by a landlord to a tenant of any accommodation in a dwelling is exempt from VAT and the sale of that residential property will not attract VAT. Similarly, the supply of any accommodation by an employer to any employee during the duration of his term of office is exempt from VAT and the sale of a company owned house used exclusively to accommodate employees will not attract VAT even though the company/seller is registered as a vendor

2. Is a sale of property subject to transfer duty or VAT

A property sale will be subject either to transfer duty or VAT. No transfer duty is payable on the acquisition of a property under a transaction which is a taxable supply under the VAT Act, provided that the necessary declaration forms are lodged with the South African Revenue Services. If the seller is not a VAT vendor but the supply of the property is an exempt supply then the transaction will be subject to transfer duty

3. The criteria used in determining whether or not a transaction is subject to VAT

VAT is to be charged on the supply by any vendor of goods or services in the course of or furtherance of any enterprise. In order for VAT to be charged all of these components have to be present otherwise VAT cannot be charged

4. Who is liable to pay VAT

The vendor supplying the goods (the seller) is liable to pay the VAT. Accordingly, if the contract provides for the price to be exclusive of VAT, and the parties intend the VAT to be recovered from the purchaser, the contract must provide accordingly

5. When is VAT triggered and at what rates are VAT payable

Where goods consist of fixed property or any real right in fixed property then the supply is deemed to take place on the earlier of the date of registration of transfer in the Deeds Office or the date on which any payment is made in respect of the consideration for supply

The above time of supply rules apply only to a sale of a fixed property which attracts VAT at the standard rate and do not apply to a sale of fixed property as a going concern which attracts VAT at the zero rate. In this instance the supply is deemed to take place at the time when an invoice is issued by the supplier or at the time any payment of consideration is received by the supplier in respect of that supply, whichever time is the earlier

6. Sales of going concerns

The supply of goods by a registered vendor to another registered vendor of an enterprise or part of an enterprise which is capable of separate operation will attract VAT at the rate of zero per cent. In order for a supply of an enterprise as a going concern to be zero rated the parties must agree in writing that the enterprise is disposed of as a going concern, will be an income earning activity on the date of transfer and that the assets which are necessary for carrying on the enterprise are at the same time disposed by the supplier to the recipient of the supply

The sale of vacant land or a vacant building can never be termed a "going concern" and can therefore never be zero rated

Where the property being sold is a leased building, the sale agreement must provide for the lease to be in existence at the transfer date and for the lease to be disposed

of together with the property in order to constitute an income earning activity. Currently, the rule is that the occupancy level of the building must be more than 50%

An agreement to sell a leased property to the existing tenant cannot be zero rated

The sale of a property which is contemporaneously with the transfer leased back to the seller can also not be zero rated

The supply can qualify for zero rating even though the purchaser was not registered as a VAT vendor at the time the agreement was signed, provided that the supply takes place to a person on or after the commencement of his enterprise

7. Notional input VAT credits

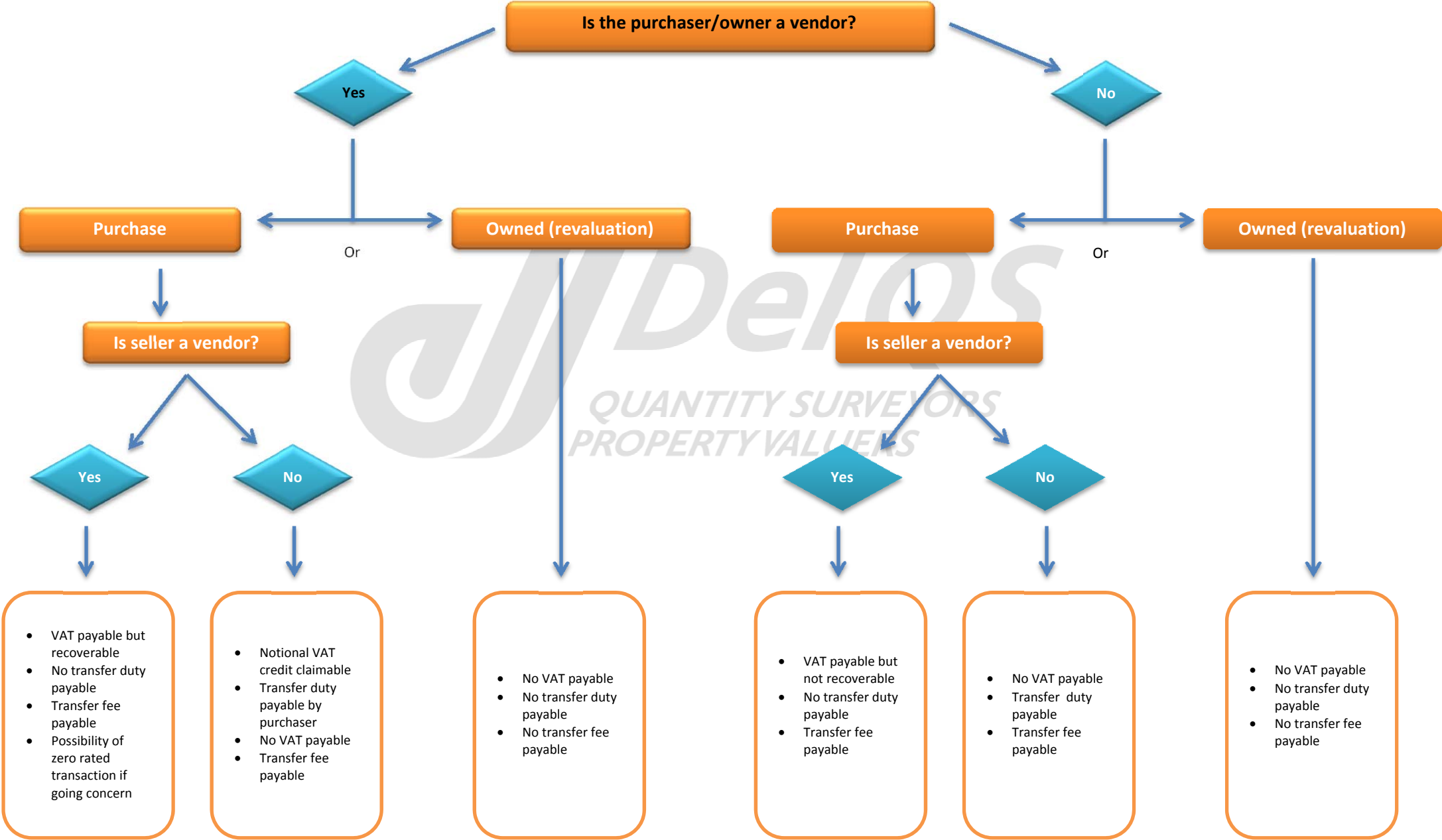
A registered vendor who purchases second-hand goods consisting of fixed property from a non-vendor will pay transfer duty on the purchase price, but will be entitled to a deduction of the so-called notional input tax. The notional input tax is calculated by multiplying the tax fraction (presently 14/114) by the purchase price

The amount of consideration in respect of which the input credit may be claimed is limited to the open market value both where the supply takes place between connected persons and under an arms-length transaction

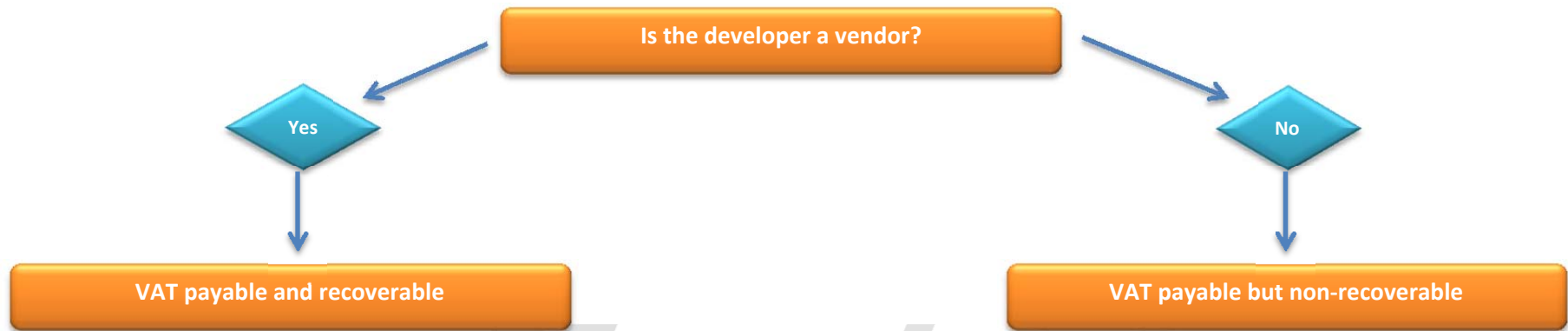
Where the second-hand goods consist of fixed property in respect of which transfer duty is payable, the amount of the input credit which may be claimed is limited to the amount of the transfer duty

The input tax credit may only be claimed after the transfer duty has been paid

Land transactions



Improvement transactions



DEFINITIONS

VENDOR

1. Building constructed for rental to public
2. Building constructed for rental to separately owned concern (arms length transaction)
3. Property investors eg Old Mutual Properties

NON-VENDOR

1. Building constructed for own use without paying rent
2. Universities, etc, government departments, semi-government institutions which do not generate profit from the rental of property
3. Local authority which constructs a building for use by a department which does not charge VAT

GREY AREAS

1. Local authority which constructs a building to be wholly or partly owned by a department which charges VAT