

VAT Taxpayer Guide

Transfer of Activity

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Disclaimer:

This information is intended to provide a general understanding of the relevant treatment under the Sultanate of Oman's Value Added Tax Law and aims to provide a better general understanding of taxpayers' tax obligations. It is not intended to comprehensively address all possible tax issues that may arise. While the Sultanate of Oman's Tax Authority ("TA") has taken the initiative to ensure that all information contained in this guide is correct, the TA will not be responsible for any mistakes and inaccuracies that may be contained, or any financial loss or other incurred by individuals using the information from this guide. All information is current at the time of preparation and is subject to change when necessary.

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1. Introduction

1.1. About this guide

Transfers of business assets are typically charged with Value Added Tax (VAT), but some special rules exist which relieve VAT when those assets are supplied as part of the transfer of an activity (sometimes called the “transfer of a business” or “transfer of a going concern”).

The purpose of this guide is to provide guidance and clarifications regarding the VAT treatment and implications in relation to the transfer of an activity and the VAT obligations which may arise.

The guide reflects the TA’s interpretation on the application and treatment of VAT with respect to the VAT Law and the Executive Regulations at the date of issuance of this guide. This is strictly a guideline and may not include some relevant legislative provisions from the VAT legislation. This guide is not binding on the TA, or on any taxpayer in respect of any transaction carried out, and it cannot be relied upon in case of dispute.

For further guidance on specific transactions, you may apply for a ruling, or visit the TA’s website at www.taxoman.gov.om

1.2. Who should use this guide?

You should read this guide if you are intending to act as the transferor or transferee of a business activity – whether a full business or partial business transfer.

1.3. Definitions

The following terms are dealt with in this guide:

- **Transfer of Activity:** the situation whereby an activity or part of an activity, which is capable of being operated as an Activity in its own right, is transferred by a Transferor to a Transferee.
- **Transferor:** the person transferring the activity.
- **Transferee:** the person to whom the activity is transferred.
- **Activity:** the activity that is conducted in a continuous and regular manner, particularly commercial, industrial, professional, artisanal, or service activity.
- **Taxable Value:** The value used as a base to compute VAT in accordance with the provisions of the VAT Law.
- **Supply:** A supply of Goods or Services for Consideration in accordance with the VAT Law.
- **Person:** Any natural or juristic person, including joint ventures, and partnership agreements signed outside the Sultanate which do not acquire the form of a company.
- **Taxable Person:** The person who conducts the activity independently for the purpose of generating income and is registered with the Tax Authority or is required to register with it pursuant to the provisions of the VAT Law.
- **Taxable Supplies:** The supplies on which Tax is charged at the standard or zero rate, and the Input Tax related thereto is deductible according to the provision of the VAT Law.

- **VAT Law:** The Value Added Tax Law of the Sultanate of Oman issued by Royal Decree No. 121/2020 dated 12/10/2020 promulgating the Value Added Tax Law, as amended from time to time.
- **Executive Regulations:** Regulations to the Value Added Tax Law issued by Royal Decree No. 53/2021 dated 10/03/2021, as amended from time to time.
- **GCC VAT Agreement:** The Unified Value Added Tax Agreement of the States of the Gulf Cooperation Council, executed on 27/11/2016 and as updated and amended.

2. Background

This guide deals with situations where the owner or owners of a business wish to transfer this business, to be carried on by new owners. A business transfer can be facilitated using different methods, including:

1. The owner ceases the business and sells the individual assets (e.g., commercial premises, equipment, existing customer contracts) to one or more third parties. The sale of assets is a supply of goods or services and is subject to VAT at the appropriate rate (usually 5%, unless zero-rating or exemption applies).
2. If the business is a legal entity held by shares, the owner can dispose of the shares in that legal entity. The legal entity is not affected by the sale of its shares (it continues to carry on its existing activity). The sale of shares is not subject to VAT (see section 5.3 of this guide).
3. The owner can sell all the constituent assets required to carry on the existing business as a continuing business (also called a “going concern”). In these cases, subject to certain conditions, the entire transfer may qualify to be supplied without VAT.

2.1. What is an Activity?

An “Activity” is a defined term as determined in the Omani VAT Law for VAT purposes. It is similar to the concept of the “Economic Activity” within the GCC VAT Agreement. There are two major features:

- The Activity is conducted in an ongoing and regular manner; and
- The Activity carried out is of a business nature – including commercial, industrial, professional, artisanal, or service activities. Conversely, undertakings which are of a purely private or domestic nature, or which are carried out by government within its sovereign capacity, would not constitute an Activity for VAT purposes.

A business which is a “going concern” is one which, at the time of transfer, is operational, and has all parts and features necessary to keep it in operation.

2.2. What is the Transfer of Activity?

A Transfer of Activity refers to the situation whereby an activity or part of an activity, which is capable of being operated as an Economic Activity in its own right, is transferred by a Transferor to a Transferee.

A Transfer of Activity is the transfer of the package of elements required to carry on the business. Depending on the commercial specifics of the transfer, this may comprise the transfer of some or all of its tangible assets, intangible assets, and liabilities:

- Tangible assets: assets that have a physical form. Include both fixed assets, such as machinery, buildings and land, and current assets,

such as inventory. Supplies of individual tangible assets are supplies of goods for VAT purposes.

- Intangible assets: an identifiable non-monetary asset without physical substance. Such as patented technology, computer software, trademarks, trade dress, licensing, royalty marketing rights. Supplies of individual intangible assets are supplies of services for VAT purposes.

For a sale of assets to be considered as a Transfer of an Activity for VAT purposes, the combined assets transferred must include all elements required for the undertaking of that Activity by the Transferee in their own right.

It is not necessary that liabilities are also transferred with the relevant assets, for the package to constitute the Transfer of Activity.

As a commercial decision, the parties could agree that liabilities in relation to the transferring activity will remain with the Transferor, or to transfer liabilities to the Transferee, subject to applicable laws.

3. Conditions for Transfer of Activity without VAT

3.1. Conditions

The VAT Executive Regulations provide five conditions that must be met in order for the Transfer of an Activity to not be subject to VAT.

- 1) The part of the Activity that has been partially transferred is capable of operating by itself.

This condition means that there must be a form of consistency between the goods and services at hand in such a way that collectively they are capable of being operated as a separate business.

Example: A used car business operates with three branches in Muscat, with one branch dedicated to luxury sport vehicles. It sells this premises with its stock of cars, the branch manager and key operational staff. This package of assets is a part of the existing activity, capable of being operated as a separate business. Subject to meeting the other conditions, this would qualify to not be subject to VAT.

Example: An electronics distributor wishes to exit its role distributing washing machines and white goods. It transfers its surplus stock and its exclusive right to sell a particular international brand to a competitor. This is a part of the Transferor's business, but the assets transferred are not capable of being operated as a business by themselves. This would be subject to VAT as an asset transfer.

2) The supply includes all of the elements of the transferred Activity – fully or partially - and the Activity’s elements consist of all tangible and intangible assets that are used to conduct the Activity and may include the Activity’s debts.

Identifying “all the elements” used within the transferred activity is a question of fact, depending on the nature of the activity.

Example: A manufacturing business transfers one of its factories, including all machinery in that factory necessary to make a product. It does not transfer the staff qualified to operate the machinery and the factory, or the sales contracts for supplying that product. The staff and sales contracts are important and valuable elements in conducting the Activity. This transfer does not qualify as meeting this condition and would be subject to VAT as an asset transfer.

Liabilities are not required to be transferred as “elements of the transferred Activity”.

3) The transferee uses the assets to carry out the same type of Activity that the transferor is engaged in. This Activity does not need to be identical to the Activity of the transferor, but the transferee must be licensed by the respective body to carry out the Activity and not only owning a group of assets.

The person acquiring the assets should start to use them as soon as commercially feasible; and for the purpose of carrying on an Economic Activity.

It is the continuation of an economic activity that is important, not necessarily that it is identical to that of the transferor.

Example: A popular international café in Sohar is sold to a new owner. The new owner changes the product offering and opening hours and markets the business as a boutique restaurant. Despite the change in product offering, it continues to use the same type of business and municipal licenses (issued by the relevant bodies) as was used in the past by the transferor. In this case the transferee will be viewed to carry out the same type of activity as the transferor, and this condition is met.

4) The transferor shall be a Taxable Person, and the transferee becomes taxable as a result of the Supply if he was not Taxable separate from the Supply.

The Transferee must either be a registered Taxable Person for VAT in Oman or become immediately required to register for VAT by conducting the activity that is transferred.

5) There must not be a series of consecutive transfers of the assets.

Example: an existing business owner (Person A) sells a package of assets forming a full business activity to another Taxable Person B. Person B does not operate the business himself, but instead immediately sells those assets on to another transferee (Person C). In this case, because B has not carried on the activity, the transfer of an activity provisions does not apply to any of the transactions. This means that the supplies of the underlying assets will be subject to the normal VAT provisions/liability.

A Transfer of Activity that meets all of the above conditions shall not be considered as a Taxable Supply in Oman.

If a transfer does not meet the above conditions, then the standard VAT rules apply to the transfer of each of the relevant assets transferred. VAT is due at the applicable rate on the taxable value of the assets.

3.2. Administrative obligations

The administrative obligations below apply to the transferor and transferee, in cases where a Transfer of Activity (meeting all conditions to be transferred without VAT) takes place.

3.2.1. Notification

Both the transferor and the transferee shall, jointly and severally, notify the Authority of the supply that is considered as a transfer of an activity if at all possible before the date or dates of transfer(s), and within a period no later than one month from the date of the transfer(s), provided that the notification includes the following details and documents:

1. The name and the address of both the transferor and the transferee.
2. Tax Identification Number for the transferor and the transferee.
3. The date of the transfer(s).
4. Details of the goods and services that form a part of the transferred Activity – fully or partially.
5. Copy of the agreement(s) between the transferor and the transferee.
6. Any other details or documents specified by the Tax Authority.

3.2.2. Invoicing

The transferor must provide the transferee with an invoice in which he indicates in addition to the details included in the tax invoice stipulated in Article (144) of the Executive Regulations, all the supplies resulting from the transfer of the activity, provided that it is indicated in the invoice that the supply is not taxable as a result of the transfer of the activity in accordance with Article (18) of the Law.

4. Registering for VAT

VAT is a self-assessed tax; therefore, persons are required to continually assess the need to be registered for VAT. Generally, VAT registration falls into two categories: Mandatory registration and Voluntary registration. If a taxable person's turnover exceeds the annual mandatory registration threshold of OMR 38,500, the Person is obligated to register; if it exceeds only the voluntary registration threshold, the Person has the option to register.

The following are taken into account for registration:

- Taxable supplies (i.e., standard and zero-rated supplies) less the value of any supplies that are part of the business' capital assets;
- Intra-GCC supplies of Goods and Services; and
- Value of goods and services supplied to the taxable person in the Sultanate where the Reverse Charge Mechanism is applicable.

More details regarding the requirements of VAT registration in the Sultanate of Oman are available at the TA's website at www.taxoman.gov.om

4.1. Registration by Transferee

The transfer of the activity does not result in the transfer of the Tax Identification Number from the transferor to the transferee, but rather the transferee must submit a new registration application and obtain a Tax Identification Number, unless he is already registered and has a Tax Identification Number before the supply transaction occurs.

4.2. Registration Cancellation due to Transfer of an Activity

A Transferor, who is a Taxable Person, may request to cancel his tax registration in cases where his Activity is transferred to another Person, and he is no longer required to be registered for VAT.

The cancellation procedures include applying to the Tax Authority within a period of (2) two months from the end of the tax year where the conditions for tax registration were not met through transferring the activity to another Person.

The application to cancel registration shall be submitted to the Tax Authority using the prescribed form on available on the Taxpayer Portal and must include details as prescribed and required by the Tax Authority.

The Tax Authority shall decide on the application to cancel Registration within thirty (30) days from the completion of all required details and documents.

5. Special Cases

5.1. Transfer of an Activity between members of the same VAT group

Members of the same VAT group are treated as being single taxable person for VAT purposes in Oman. For the purposes of VAT, a VAT group is treated as a single person and one member of the VAT group will become the Representative Member for the VAT group.

As such, any supplies between members of the same VAT group shall not be considered a supply and no VAT will be charged and, in any case, would not qualify as a transfer of an activity on the basis that there is no transfer for VAT purposes.

5.2. Transfer of Real Estate

The sale of commercial real estate situated in Oman is considered a supply of goods for VAT purposes and is in principle subject to VAT at 5%, regardless of whether or not the supplier or recipient is a resident in Oman.

The Tax Authority considers that a portfolio of commercial properties sold as an ongoing property business (i.e., together with assignment to commercial rental agreements) can be eligible to form the elements of an activity capable of separate operation. Provided that all other conditions are met, transfers of these types could constitute a Transfer of Activity that was not a Taxable Supply.

5.3. Transfer of Shares

In some cases, the Transferor is the owner of share capital in a separate legal entity, which directly owns and operates the Activity. The Transferee acquires some or all of the shares in that separate legal entity from the Transferor, meaning that it becomes an indirect owner of the Activity.

The separate legal entity continues to own the activity assets and operating without interruption. The share sale transaction simply changes the owner of that separate legal entity.

When shares are transferred, the underlying transferred assets remain part of the transferred company, and therefore no change of ownership occurs to the assets forming a part of the activity. Therefore, a share sale cannot be considered a Transfer of an Activity.

6. Input Tax Deduction

6.1. General

A taxable person may deduct input VAT it bore during the Tax Period in the course of carrying on its economic activity. Input VAT is any of the following:

- VAT charged on Taxable Supplies of Goods or Services to the Taxable Person by a VAT-registered supplier in the Sultanate of Oman
- VAT self-accounted by the Taxable person under the reverse charge mechanism on services purchased from non-residents; or
- VAT paid to the Oman Directorate General of Customs on the imports of goods into the Sultanate of Oman (or VAT reported on imports through the VAT return, where applicable).

The taxable person may only deduct input VAT charged on goods and services purchased in the course of carrying on economic activity to the extent that such purchases enable the taxpayer to make either taxable or zero-rated supplies.

Deductible input VAT is a credit entered on the VAT return which is offset against the VAT due on supplies made during that period. Input VAT may only be deducted on purchases within the Sultanate of Oman where the taxable person holds a valid supplier tax invoice for that purchase.

Input Tax deduction is subject to the following restrictions:

- Input VAT which is related to the taxpayer's VAT exempted activities, such as local passenger transport, is not deductible as input VAT.

- Input VAT may not be deducted on any costs not incurred or used as part of the economic activity.
- Some expenditure types, such as entertainment expenditures, food and beverage catering services, or costs relating to company vehicles, are also prohibited from deduction.

Please see the General VAT guide or other taxpayer guides for additional detail on input tax deduction, including proportional deduction for Taxable Persons who make both taxable and non-taxable supplies.

6.2. Deduction of VAT by the Transferor

In case the transfer of assets is considered as a transfer of activity in accordance with the Law and Executive Regulations, this means that the transfer of assets is not subject to VAT.

In this case, no supplies of goods and services are deemed to take place from a VAT perspective and the VAT treatment of the various supplies of goods and services will not individually need to be identified when transferring an activity.

VAT on costs incurred by the Transferor in relation to the transfer of an activity will be deductible in accordance with the proportion of the overall Economic Activity of the Transferor (if applicable, using the applicable proportional deduction method). If the Transferor transfers his entire business, deduction should be established with reference to the taxable nature of the transferred business activity.

In case the transfer of assets is not considered as a transfer of activity in accordance with the Law and Executive Regulations, this means that the VAT treatment of the Transferor's various supplies of goods and services

must be identified individually. In most cases, the sale of an individual activity asset will be a Taxable Supply.

For costs incurred relating to the sale of the assets, the input VAT will generally be attributed to those sales. The default rules for input tax deduction will apply to determine whether and to what extent the Transferor can deduct input VAT on costs related to the transfer of the assets.

If all assets sold by the Transferor are taxable supplies with VAT charged at 5%, the VAT incurred on related costs should be deductible in full.

6.3. Deduction of VAT by the Transferee

The Transferee may incur costs on the transfer from the Transferor itself, if assets are transferred as part of a Taxable Supply; or on third party costs incurred in relation to the acquisition of the activity (such as legal costs).

The default rules will apply to determine whether and to what extent the Transferee can deduct input VAT on costs related to the transfer itself and/or other costs related to the transfer.

The costs incurred by a Transferee in the course of acquiring an activity do not usually relate to a particular onwards Supply made by the Transferee. Instead, these relate to the ongoing activities of the business. If the ongoing activities of the acquired activity are taxable in nature, it is likely that the related costs will be deductible in principle.

7. Further inquiries

7.1. Contact Information

For more information, please contact the TA:

- Al Mawaleh South, Seeb
- P.O. Box: 285, P.C. 100
- Hours: Sunday – Thursday | 07:30-14:30
- Telephone: +968 2474 6996 / Call Center:1020
- Email: info@taxoman.gov.om

7.2. Forms and Publications

Further guidance, forms and publications will be issued by the TA and available to the public in due course.

7.3. VAT News

For current VAT news and updates, please visit the TA Taxpayer Portal:

www.taxoman.gov.om