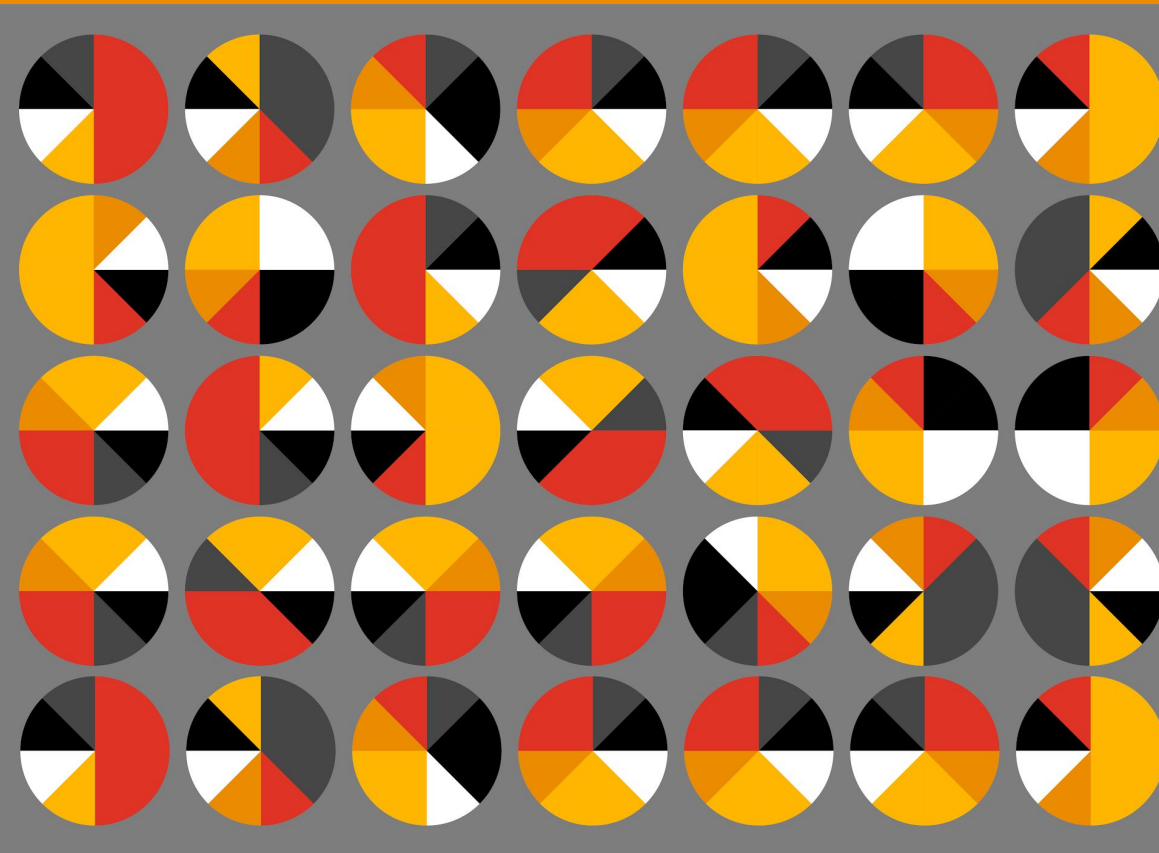


Saudi Arabia: Transfer of Real Estate under Going Concern

September 2020



In brief

The General Authority of Zakat and Tax ('GAZT') has issued Circular Number 2007003 explaining the application of the concept of Transfer of Going Concern ('TOGC') on the transfer of real estate.

The circular clarifies the instances wherein transfer of real estate would be construed as TOGC and hence Out of Scope ('OOS') for VAT purposes and vice versa.

The circular can be accessed through the following links (English and Arabic versions):

The English version can be accessed [here](#).

The Arabic version can be accessed [here](#).

In detail

What is TOGC?

In accordance with the provisions of Article 17 of the Implementing Regulations, the transfer of goods/services by a taxable person forming part of his/her economic activity shall not be considered as a 'taxable event' in case the following conditions are met:

- The goods and/or services transferred are can be operated as an Economic Activity in their own right
- Immediately following the transfer, the recipient uses those goods/services to carry on that same Economic Activity
- The recipient is a taxable person or becomes a taxable person as a result of the transfer
- The supplier and the recipient agree in writing that they wish for the transfer to be viewed as the transfer of an Economic Activity

The Circular number 2007003 issued by GAZT explains the application of the TOGC concept on transfer of real estate under following scenarios:

Nature of transfer	Considerations	VAT treatment
Transfer of a single asset	The transfer should constitute a transfer of a bundle of assets (i.e. transfer of property along with contracts or rights) to qualify as a going concern.	OOS for VAT purposes if all conditions of TOGC are satisfied
Commercial properties acquired by the transferor before sale	The transfer should constitute a transfer of real estate as part of a package of assets forming an entire business, or a standalone part of a business which can be separately operated by the transferee	OOS for VAT purposes if all conditions of TOGC are satisfied
Commercial rental activities	The transfer should constitute a package of assets (i.e. commercial property along with lease of that property) Exceptions: <ul style="list-style-type: none">- Vacant or partially vacant real estate transfer (without actively being marketed)- Sale and lease back arrangements	OOS for VAT purposes if all conditions of TOGC are satisfied Transactions mentioned under 'exceptions' would be subject to the standard VAT rate

Nature of transfer	Considerations	VAT treatment
Residential properties	The transfer of a 'residential property' being a dwelling which is used or leased as a primary residence, is not eligible to be transferred as a going concern	If a residential property is transferred together with an existing residential lease, the transaction is exempt from VAT and not OOS
Mixed use of building and complexes	<p>The transfer value for 'commercial rental' should be separately identified</p> <p>The transfer of non-commercial and residential real estate</p> <p>Exception:</p> <ul style="list-style-type: none"> - GAZT accepts that if the residential units form an ancillary part of the commercial building or complex, the entire building can be treated as a single composite supply of a going concern, provided that the building is transferred under a single land title and all other conditions are met. - GAZT considers that where 10% or less of the market rental value transferred is subject to existing residential leases, the residential leases will be ancillary to the commercial building 	<p>OOS for VAT purposes if all conditions of TOGC are satisfied</p> <p>The transfer should follow the prescribed VAT treatment as per the Implementing Regulations</p> <p>OOS for VAT purposes if all conditions of TOGC are satisfied</p>

Key takeaway

Taxpayers engaged in the supply of real estate should take note of the directions in the circular and also consider the new amendment to the VAT regulation and the new Transaction Tax of Real Estate disposal that entered into force as of 4 October 2020. Taxpayers should also consider the impact of VAT exemption on TOGC transactions previously planned to ensure overall compliance..

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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