

# Tax alert | Real estate transferred as part of a going concern

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Saudi Arabia's tax authority, the General Authority for Zakat & Tax (GAZT) has released a circular on VAT for real estate transferred as part of a going concern. The circular restates a number of points raised in its transfer of a business guidelines, but includes some information specifically for real estate transfers. A transfer of assets constituting an economic activity – a transfer of a going concern (TOGC) – is out of scope for VAT if certain criteria - listed in both the circular and the transfer of a business guidelines - are met.

### Commercial properties occupied by the transferor before sale

If property as well as the assets required to allow a business to continue are transferred, TOGC requirements can be met.

### Commercial rental activities

- A commercial property rental business is a taxable economic activity – so the transfer of a leased property can constitute a TOGC.
- If property is transferred with an existing lease, the transfer can constitute a TOGC if the lease is novated or if the previous lease is terminated and a new lease signed with a new tenant.
- A transfer of a vacant property (without an existing lease) does not qualify as a TOGC – even if it is being actively marketed. However, if it is a complex with numerous units, some of which are vacant, the transfer can still qualify as a TOGC providing the vacant units are being actively marketed.
- At least 50% of the market rental value must be transferred (subject to existing leases) to constitute an ongoing economic activity - unless there are exceptional circumstances.
- Short-term leases (less than 12 months), leases to related persons and leases substantially below market value have been identified by GAZT as indicators of leasing purely to meet TOGC criteria - and will be rejected by GAZT.

### Sale and lease-back arrangements

The initial transfer of a property (which is then subsequently leased back to the transferor) does not qualify as a TOGC.

### Transfers of primary residences

The transfer of residential property used as a primary residence is not a TOGC.

### Transfers of mixed-use buildings and complexes

- A mixed-use building or complex has both commercial and residential properties.
- The transfer of the commercial segment can qualify as a TOGC. Any transfer of the residential component follows the normal VAT treatment for real estate transfers.
- If the residential units are ancillary to the commercial units, it may be possible to treat the transfer as a single composite supply subject to the TOGC rules – but the building must be transferred under a single land title. Where 10% or less of the market rental value is transferred subject to existing residential leases, the residential leases are ancillary to the commercial building.

**Disclaimer:** This tax alert is based on our interpretation of the guidelines issued by the General Authority of Zakat & Tax (GAZT) and is for general information. Seek professional advice in relation to your particular circumstances.