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Selling your business – what is the price?

In many instances an enterprise is supplied as a going concern and 0% VAT applies. Alternatively, the transfer may be in terms of section 8(25), i.e. so-called VAT group relief provisions and the supply is not subject to VAT. Given that VAT is not payable, not much regard is given to the value of the supply for VAT purposes. BUT, what if the supply is subject to standard rate VAT? Suddenly you may be interested in the price.

One will think, “No problem, the agreement stipulates the price, right?”

True, the agreement will have a pricing clause, but the question is whether or not that clause is as straightforward as it seems. Let’s use an example. The Price clause in the agreement provides as follows:

> The selling price for the Assets is R1 million plus the Included Liabilities of R500 000.

How much are you paying for the assets? R1 million? R1,5 million? or R500 000? Will it make a difference if the Price clause rather stipulated the following?

> The selling price for the Assets and Liabilities is R1 million.

While you are considering the value of the supply of the assets, think of this …….. is the supply assets only, and the liabilities are utilised to calculate the value thereof, or are you transferring the obligation (liabilities) separately?

The seller who transfers the obligations separately is making a separate supply of a financial service, being the transfer of a debt security.

Since this is a supply which is exempt from VAT, the seller will have to consider whether it will be denied any input tax on goods or services acquired (i.e. legal costs) for the purposes of making this exempt supply or maybe it results in the seller having to apply apportionment.

What if the liability is inherent/entrenched in the asset and has a direct influence on the net asset value (e.g. mining right and rehabilitation obligation)? Can you then argue that the liability of R500 000 had a direct impact on determining the value of the asset at R1 million. Or, can it be said that the value of the assets is the R1 million and since you will also have to settle the inherent/entrenched liability in the future this is to be added to the R1 million?

Another pricing option that we see, especially in the mining industry, is where the selling price includes part payment in future commodity supplies. For instance the mining assets are sold today for R10 million and 20% of the future production for say 5 years. How is the VAT to be accounted for? If it is a percentage of future production, how do you know how much that will be? Even if is a fixed tonnage, do you use the current price of the commodity, an estimated future value or can you agree on a commodity price?

Where a price for the commodity is agreed, this price is usually substantially lower than the current prevailing price and this highlights another issue, namely, ‘Is there an argument to be made that there is a barter transaction?’

If the transaction is a barter, then the deemed value of a supply is calculated at the open market value of that which is received as payment. Should this deemed value then override your agreed value per tonnage?

It is evident from the above, that something as simple as the price to be attached to a supply can be a potential minefield.

Think carefully before you sign your next contract.

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