

## **VATR 47 (Govt Gazette No.55 of 26 May 2012)**

### **Facts**

C Ltd currently undertakes a number of activities and owns a significant land bank. The activities of the Company include agriculture, rental of buildings and investment holding, so that its principal recurrent income streams consist of sugar, molasses, agricultural and diversification revenue, rental income, interest and dividend.

The Company wishes to restructure its activities through the establishment of one or more wholly-owned subsidiaries as follows:

- the Company will retain ownership of the land asset as well as the investments;
- all agricultural and ancillary activities will be transferred to a wholly-owned subsidiary (WOS);
- the WOS will rent the land it needs for the conduct of its agricultural activities.

To implement the proposed restructuring exercise, the following scenarios are currently considered:

- ***Scenario 1***

Transfer of the agriculture and ancillary activities, including all the employees, to the WOS on a going concern basis.

Under this scenario the income of the Company will consist of dividend and rental income from land used by WOS.

- ***Scenario 2***

Transfer of the agriculture and ancillary activities to the WOS on a going concern basis. The legal employer of the employees will still be the Company, subsequent to the transfer. Under this scenario all the inventories of the Company will be transferred to the WOS.

- **Scenario 3**

Transfer of the agriculture and ancillary activities to the WOS on a going concern basis. Subsequent to the transfer some of the employees will be employed by the WOS, whereas in respect of the other employees who will still be employed by the Company a relevant corresponding charge will be made to the WOS.

- **Scenario 4**

Transfer of the agriculture activities in one WOS and transfer of the agricultural and ancillary activities to another wholly-owned subsidiary (WOS 2). The employees will be transferred to WOS and WOS 2 at the same time.

Based on its audited accounts as at 30 June 2010, the assets of the Company, amongst other assets, comprise of:

- *property, plant and equipment* which include land, buildings and motor vehicles
- *consumable biological assets* which include fertilisers and consumables.

### **Point at Issue**

1. Whether it can be confirmed that each of the scenarios 1 to 4 above would qualify as a transfer as a going concern in accordance with section 63 (3) of the VAT Act?
2. In the event any of the above scenarios would not qualify as a transfer as a going concern, whether the VAT treatment of the assets transferred would be as follows:
  - a. the value of the land would be exempt from VAT.
  - b. the value of the building would be exempt from VAT, with the understanding that any input tax claimed should be clawed back in accordance with section 21 (7) of the Act.
  - c. the value attributable to fertilisers would be zero-rated.
  - d. no output tax should be accounted on motor vehicles in respect of which credit for input tax was not allowed at the time of acquisition.

## **Ruling**

1. On the basis of information provided in the appendix to your ruling application, none of the scenarios provided would qualify as a transfer as a going concern in accordance with section 63 (3) of the VAT Act.
2. The VAT treatment of the assets mentioned in your application is as follows:
  - (i) The transfer of the land would be exempt from VAT in accordance with the provisions of item 47 of the First Schedule to the VAT Act.
  - (ii) The transfer of the building would be exempt from VAT in accordance with the provisions of item 48 of the First Schedule to the VAT Act. However, any input tax allowed on the building would be clawed back under the provisions of section 21 (7) of the Act.
  - (iii) The value attributable to fertilizers to be transferred would be zero-rated as provided under item 2 (g) of the Fifth Schedule to the Act.
  - (iv) Output tax should be accounted on the transfer of all motor vehicles, irrespective of whether input tax was disallowed at the time of acquisition, as section 63 (2) would not apply in the case of a restructure of business.
3. Furthermore, all other taxable assets to be transferred as a result of the restructure would be subject to VAT at their corresponding rates.