
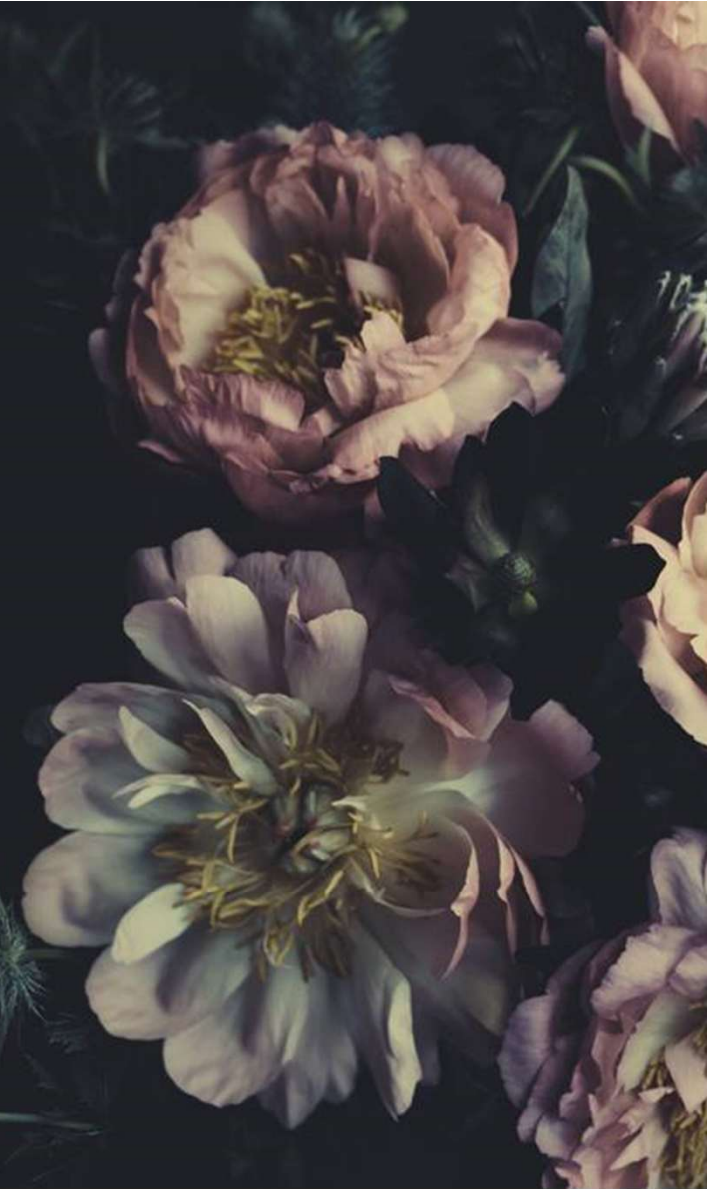


Death & Taxes

The VAT Story at Death



Stephan de Wet





Agenda



1. Can an estate be a vatable entity?
2. What assets, incomes & expenses are vatable ?
3. Impact on Executor / Administrator.
4. Impact on Beneficiaries.
5. Important Definitions
6. VAT Calculation in Deceased Estate





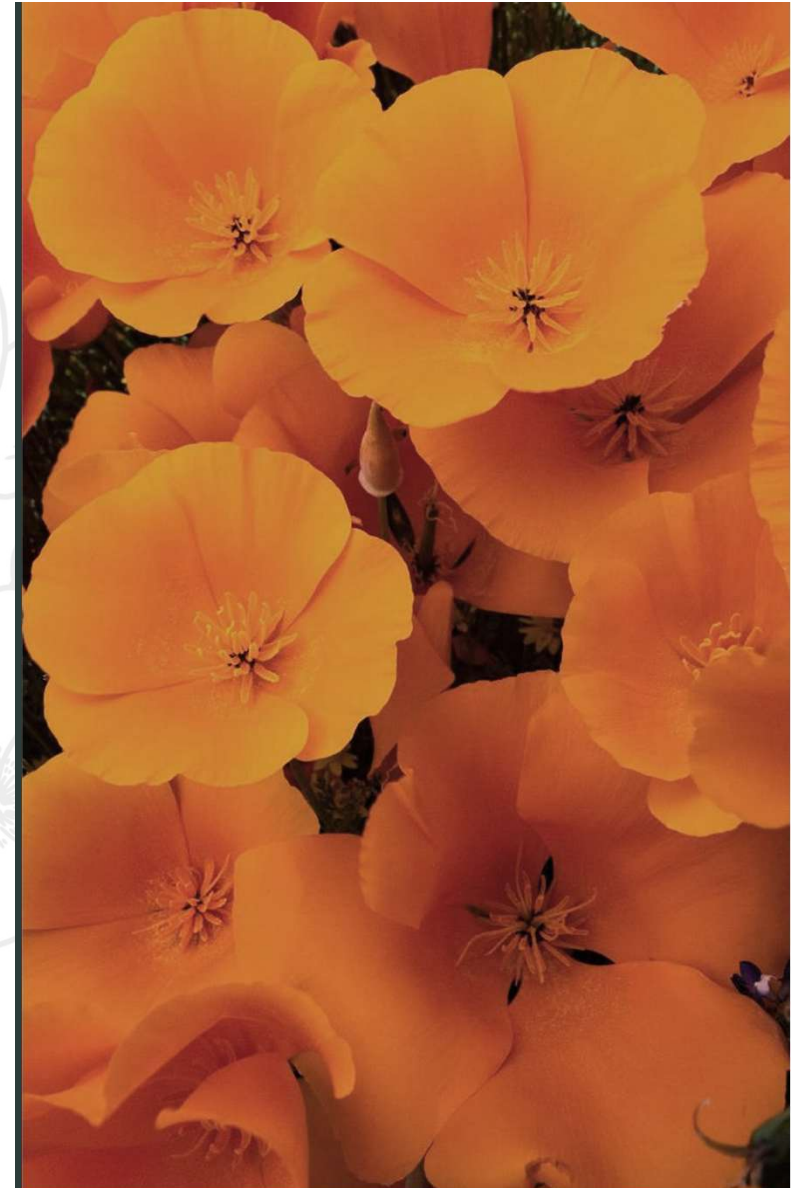
Can a deceased estate be a vatable entity?

Executor's Responsibility

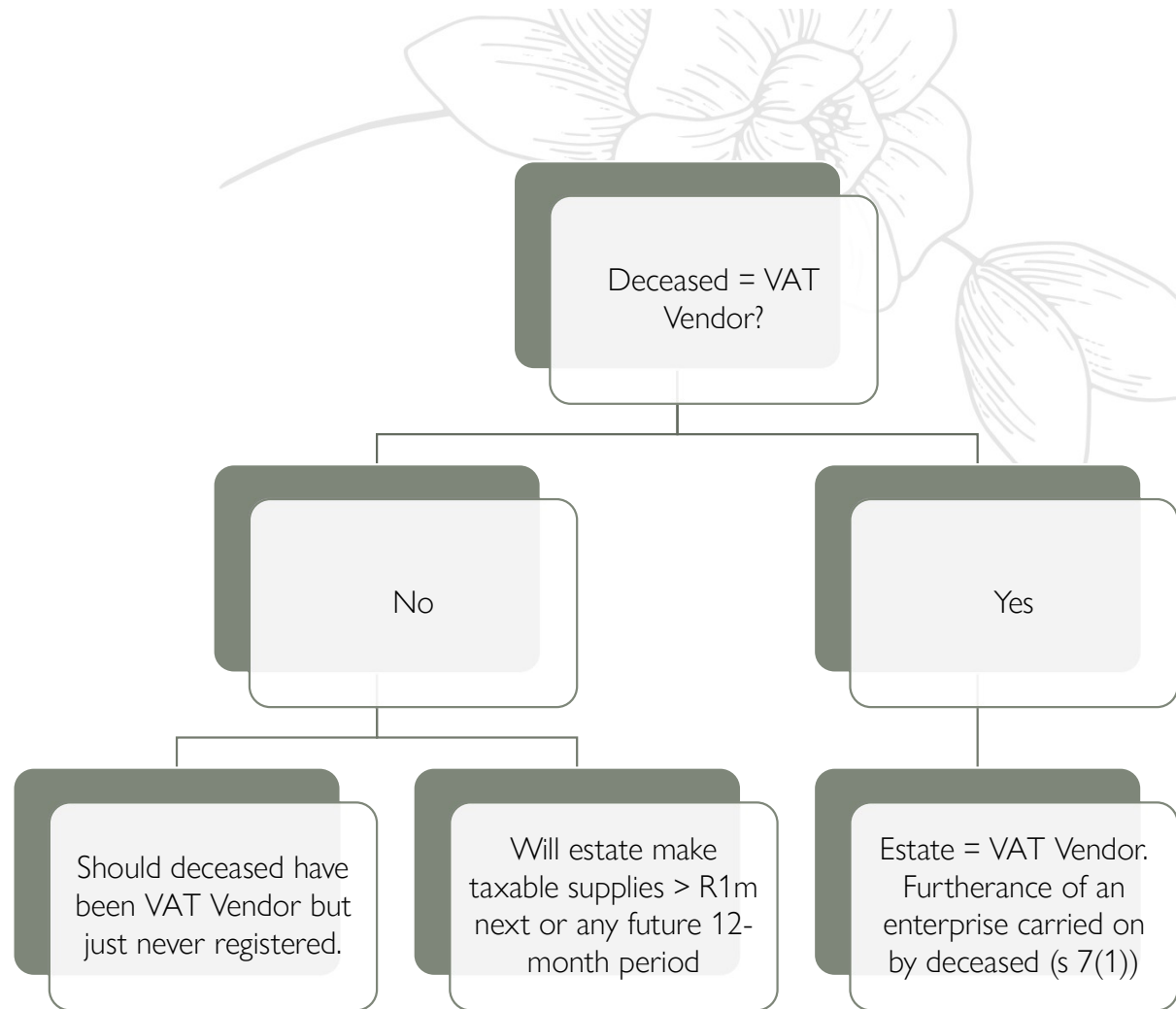


Determine whether the estate is liable for value added tax (VAT) and/or income tax.

If the deceased was registered as a vendor the Executor may have to register the estate for VAT purposes.



Decision Tree 1



Decision Tree 2

Should deceased have been VAT Vendor but just never registered.

Yes => estate =VAT Vendor.
Register

No – Consider VAT status of estate

Will estate make taxable supplies > R1m next or any future 12-month period

Yes – estate = VAT Vendor.
Register

No – No need to register for VAT.

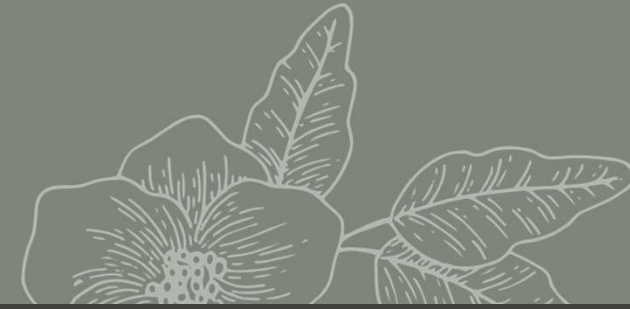
Estate = VAT Vendor.
Furtherance of an enterprise carried on by deceased (s 7(1))

= VAT Vendor
Register



What assets, expenses & incomes are
vatable?

What is a taxable supply?



Exempt Supplies – S12

Taxable Supplies

- Zero rated supplies – S11
- Standard rated supplies
 - All other supplies

Deemed supplies

Total of zero and standard rated supplies added to establish R1m threshold in past and/or next 12 months. If total > R1m then must register for VAT.

Is VAT payable on inheritance?

The distribution of any asset in the form of a bequest or legacy is a supply of goods or services, except in the case of a monetary distribution as “money” is specifically excluded from the definitions of “goods” and “services” in section 1(1) of the VAT Act.

What else is VAT imposed on?

The supply by a vendor of goods / services in the course or furtherance of an enterprise carried on by him (S7(1)(a))

What is a supply? S1(1)

Oxford English Dictionary: “to furnish” or “to provide”.

Which assets are taxable?



What is the impact on the Executor?



Is VAT payable on executors' fees?



The executor is also entitled to charge VAT on this fee, if he is registered as a VAT vendor, or if the agent appointed to assist in administering the estate, is registered as a VAT vendor.

Executor and trustee fees (regulated fees)



Graham NO v Master of the Supreme Court

Proceeds from the sale of goods or services include VAT – No further VAT added to Administration Fee.

Administration Fee is based on the proceeds of zero-rated or exempt goods or services – Must add VAT to regulated fee.

Duties of Executor

- Register estate for VAT – Decision Tree criteria
- Issue tax invoices – Value > R5 000 => full VAT invoice
- Maintain and preserve records
 - section 55 of the VAT Act and sections 29 and 30 of the TA Act
 - Min 5 yrs after final submission of VAT201
- Advertise or quote prices inclusive of VAT
- Submit VAT returns and pay tax – Monthly or bi-monthly
- Notify of cessation of enterprise – VAT123e 21 days

General Rule S 9 (1) - earlier of

1. date of invoice (issued by the supplier or the recipient); or
2. date of any payment of consideration is received

Fixed property - earlier of the date that any payment of the consideration for the supply is made, or the date that the property is registered in the name of the purchaser in a deeds registry

Connected persons

- Goods to be removed - time of removal
- Goods which are not to be removed - when made available to the recipient
- Services - when the services are performed

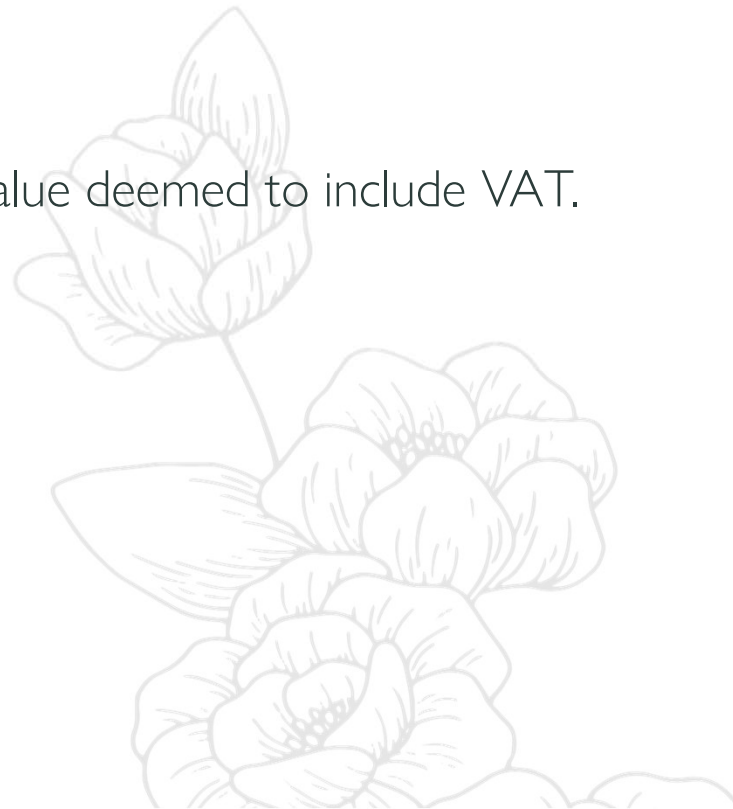
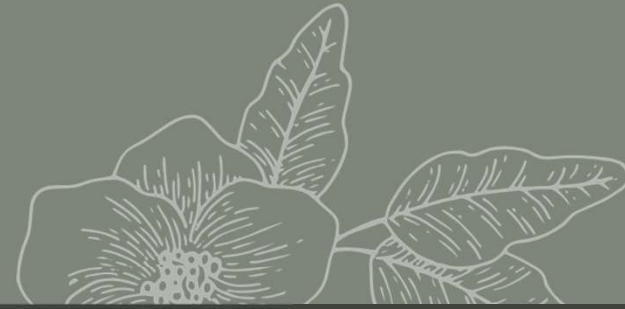
When is VAT payable?



What is the impact on Beneficiaries?

Duties of Beneficiaries

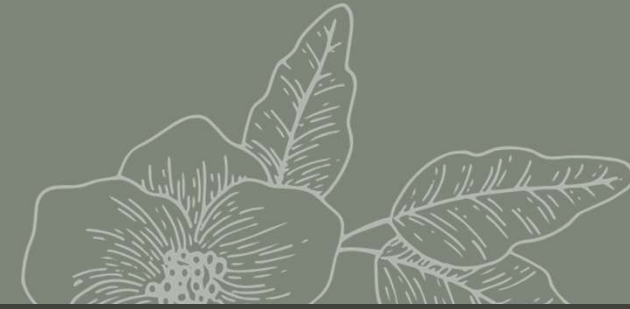
- Pay the VAT
- VAT Act – Inclusive. Every price or value deemed to include VAT.
- Will receive asset less VAT [15/115]





Important Definitions

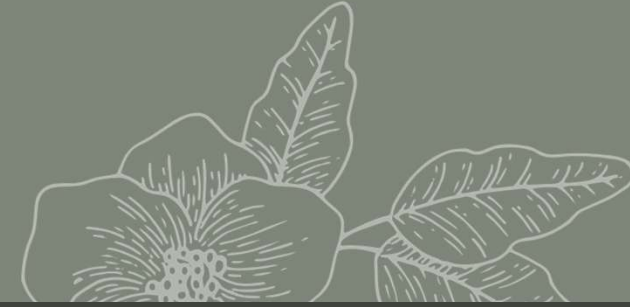
Person



Section 1(1) of the VAT Act

Includes bodies of persons (a term which includes partnerships) to be regarded as a person for VAT purposes.

Connected persons



Natural persons - third degree of consanguinity.

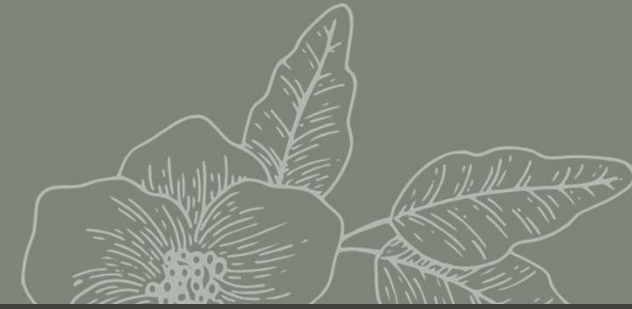
Trusts - any beneficiary of the trust fund.

Partnerships and close corporations

- any member of the partnership or close corporation, or
- any other person who is a connected person in relation to such member (for example, the spouse of the member).

A Company - deceased (or other person connected to that natural person) owns more than 10% of the shares or voting rights in that company.

Enterprise

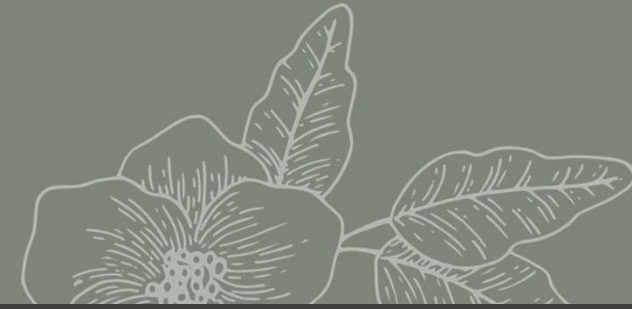


Any venture excluding the making of exempt supplies. [Section 12]

For example,

- the letting of a dwelling or
- the supply of land and improvements situated outside South Africa and
- any activity carried on by a natural person as a private or recreational pursuit or hobby

Supply



Section 1(1) of the VAT Act

The distribution of any asset in the form of a bequest or legacy is a supply of goods or services,

monetary distribution [“money”] is specifically excluded from the definitions of “goods” and “services”



VAT Calculation

Output VAT - Income Received by Estate



<u>Category</u>	<u>Asset / Income</u>	<u>Beneficiary</u>	<u>Standard</u>	<u>Zero Rate</u>	<u>Exempt</u>	<u>VAT</u>	<u>Reason</u>
<u>Output VAT</u>							
INCOME RECEIVED	Salary	Deceased and/or estate			80,000-		Not taxable
	Dividends	Deceased and/or estate			25,000-		Not taxable
	Interest	Deceased and/or estate			45,600-		Not taxable
	Rental Income	Deceased and/or estate			16,000-		Not taxable
	Farming Income	Deceased and/or estate	100,000				13,043sections 9 and 10 of the VAT Act. Taxable. Could be monthly
	Any other bus inc	Deceased and/or estate	100,000				13,043sections 9 and 10 of the VAT Act. Taxable. Could be monthly

Output VAT - Collections & Partial Supplies



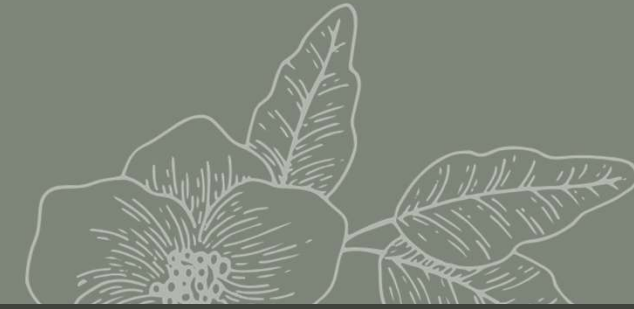
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<u>Output VAT</u>							
COLLECTION OF ESTATE CLAIMS	Cash Assets	Deceased and/or estate			2,250,000		-Not taxable
COLLECTION OF TRADE DEBTORS	Debtors Inv basis	Deceased and/or estate		-	575,000		-VAT pd already when invoiced
	Debtors Cash basis	Deceased and/or estate	575,000			75,000	VAT pd when inc rec'd
SHORT TERM INSURANCE CLAIMS RECEIVED	Insurance claim	Deceased and/or estate	55,000			7,174	Section 8(8) of the VAT Act. VAT pd when claim rec'd
ASSETS USED PARTIALLY TO MAKE TAXABLE SUPPLIES	Computer	Connected person	12,000				Section 8(16), 9(2)(a) & 16(3)(h) of the VAT Act. Assumed 60% business usage
	Residential Home	Connected person			2,400,000		-Purchased BEFORE 30.09.91
	Residential Home	Connected person	2,400,000			187,826	Section 10(4) of the VAT Act. Purchased AFTER 30.09.91. Claimed Input VAT on home office

Output VAT - Business Assets & Property



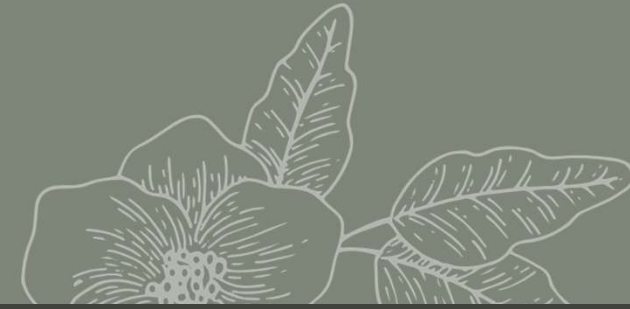
<u>Category</u>	<u>Asset / Income</u>	<u>Beneficiary</u>	<u>Standard</u>	<u>Zero Rate</u>	<u>Exempt</u>	<u>VAT</u>	<u>Reason</u>
<u>Output VAT</u>							
BUSINESS ASSETS	Delivery vehicle	Connected person	25,000			3,261	Section 10(4) of the VAT Act. connected person
	Other bus assets	Employees		50,000			-Not connected persons
BEQUEST OF PROPERTY HELD IN COMMON	Plot	Partner		2,000,000			-Not connected persons
	Plot	Connected person	2,000,000			130,435	Section 10(4) of the VAT Act. connected person
BEQUEST PRICE (BENEFICIARY PAYS R4.5MIL)	Farm	Connected person (VAT Vendor)	4,500,000			586,957	Section 10(4) of the VAT Act. connected person. Son continues to farm
(NO PMT INHERITS FULL VALUE)	Farm	Connected person (Not VAT Vendor)	10,000,000			1,304,348	Section 10(4) of the VAT Act connected person. Son does not farm.

Output VAT - Cash & Special Rights



CASH SHORTFALL CONTRIBUTION	Cash	Estate receives cash		200,000	No supply made by estate. Beneficiary contributed to cash shortfall in -estate
	indebted assets[s]	Beneficiaries		1,000,000	-Section 10(23) of the VAT Act taxable supply NIL consideration
FIDEICOMMISSUM	Farm	Connected person		5,500,000	Section 11(1)(e) of the VAT Act read with IN 57. VAT occurs in -Fiduciary's estate
USUFRUCT	Printing Press	Connected person	600,000		78,261 Section 10(4) of the VAT Act connected person
BARE DOMINIUM	Printing Press	Employee		50,000	-Not connected persons
USUS. RIGHT OF USE CANNOT SELL OR LET / LEASE	Residential Home	Any beneficiary		2,400,000	-Personal use asset
	Business Assets	Connected person	2,400,000		313,043 Section 10(4) of the VAT Act connected person
	Business Assets	Not Connected person		2,400,000	-Not connected persons

Output VAT – More Special Rights



<u>Category</u>	<u>Asset / Income</u>	<u>Beneficiary</u>	<u>Standard</u>	<u>Zero Rate</u>	<u>Exempt</u>	<u>VAT</u>	<u>Reason</u>
<u>Output VAT</u>							
HABITATIO. OCCUPY & LEASE OR SUBLEASE	Residential Home	Any beneficiary			2,400,000		-Personal use asset
GRAZING RIGHTS	Farm	Neighbour			-		-Not connected persons
	Farm	Connected person	230,000				30,000Section 10(4) of the VAT Act connected person
ABATEMENT OF LEGACIES	Residue of estate	Any beneficiary				-	Reduction of the distributable portion of the estate and not consideration of a taxable supply by the estate
MASSING OF ESTATES	Business Assets	Spouse (VAT Vendor)				-	-VAT in spouse estate
	Business Assets	Spouse (Not VAT Vendor)				-	-VAT in spouse estate
	Personal Use Assets	Spouse				-	-Personal use asset

Input VAT – Prof Fees, Bank Charges, Exemptions



<u>Category</u>	<u>Asset / Income</u>	<u>Beneficiary</u>	<u>Standard</u>	<u>Zero Rate</u>	<u>Exempt</u>	<u>VAT</u>	<u>Reason</u>
<u>Input VAT</u>							
PROFESSIONAL FEES	Assumed		55,000			7,174	Section 17(1) of the VAT Act. Incurred in production of output VAT
BANK CHARGES	Assumed		8,600			1,122	Section 17(1) of the VAT Act. Incurred in production of output VAT
LOANS TO THE DECEASED/INSOLVENT PERSON						-	-Section 2(1)(f) read together with section 12(a) of the VAT Act
UNPAID PREMIUMS - LIFE & RETIREMENT POLICIES						-	-Not taxable
UNPAID MEDICAL AID CONTRIBUTIONS						-	-Not taxable
OUTSTANDING RENTAL ON PERSON'S DWELLING						-	-Section 12(c) of the VAT Act

Input VAT – Fees, Commissions & Business Expenses



<u>Category</u>	<u>Asset / Income</u>	<u>Beneficiary</u>	<u>Standard</u>	<u>Zero Rate</u>	<u>Exempt</u>	<u>VAT</u>	<u>Reason</u>
<u>Input VAT</u>							
EXECUTOR FEES	3.5% Gross Assets		775,425	385,000			Clause 8(1) of the Regulation issued in terms of section 103 of the 158,892 Estates Act. 15/115 on Std Rated and 15% on Zero Rated
	6.0% Income Rec'd		49,800				Clause 8(1) of the Regulation issued in terms of section 103 of the 6,496 Estates Act. 15/115 on Std Rated and 15% on Zero Rated
WRITE OFF OF TRADE DEBTORS	Inv Basis		575,000				Section 22(1) read together with section 16(3)(a)(v) of the VAT. 75,000 Recovery of unpaid VAT previously declared
	Cash Basis					575,000	Section 22(1) read together with section 16(3)(a)(v) of the VAT. No -VAT previously declared
SALES COMMISSIONS	Assumed		886,680			115,654	Section 17(1) of the VAT Act. Incurred in production od output VAT
BUSINESS EXPENSES	Assumed		175,000			22,826	Section 17(1) of the VAT Act. Incurred in production od output VAT

Thank you

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