Legal & Policy

Value-Added Tax

VAT 404

Guide for Vendors

South African Revenue Service

10 IMPORTANT PRINCIPLES

1. All prices charged, advertised or quoted by a vendor must include VAT at the applicable rate. (Presently 14% for standard-rated supplies).

2. Vendors are charged with the responsibility of levying VAT and paying it over to the State after deducting permissible VAT inputs and other deductions – please make sure that you pay it over on time, otherwise penalties and interest will be charged.

3. VAT charged on supplies made (output tax) *less* VAT paid to your suppliers (input tax) and other permissible deductions = the amount of VAT payable/refundable.

4. You need a valid tax invoice or a debit note with your VAT number indicated on it as proof of any input tax deductions which you want to make. You must also keep records of all your tax invoices and other records of transactions for at least five years.

5. Goods exported to clients in an export country may be charged with VAT at 0%. However, if delivery takes place in RSA, you must charge VAT at 14% to your client, unless the goods are supplied under Part Two of the Export Regulations which allows the zero rate to be applied at the discretion of the supplier when the goods are to be exported *via* road or rail or are delivered to a harbour or an airport from where the goods will be exported. If your client is a vendor, the VAT charged may be deducted as input tax. If your client is not a vendor, and the goods are subsequently removed from the country, a claim for a refund of the VAT may be made at the offices of the VAT Refund Administrator (the VRA). The VRA is only present at the international airports in the Republic.

6. You may not register for VAT if you only make exempt supplies or if registered, deduct any input tax on goods or services acquired to make exempt supplies, for private use or other non-taxable purposes. Also, as a general rule, input tax may not be deducted where the expense incurred is for the acquisition of a motor car or entertainment, even if used for making taxable supplies.

7. You are required to advise the South African Revenue Service (SARS) within 21 days of any changes in your registered particulars, including any change in your authorised representative, business address, banking details, trading name or if you cease trading.

8. If you have underpaid VAT as a result of a mistake, report it to SARS as soon as possible, rather than leaving it for the SARS auditors to detect. You can make a request for correction on eFiling if registered as a user, otherwise go to your nearest SARS office.

9. You can pay your VAT by using various electronic methods, including eFiling, internet banking, and electronic funds transfer (EFT). You may also pay at certain banks.

10. Report fraudulent activities to SARS by calling the Fraud and Anti-Corruption Hotline on 0800 00 28 70. You may report an incident anonymously if you wish.

PREFACE

The VAT 404 is a basic guide where technical and legal terminology has been avoided wherever possible. Although fairly comprehensive, the guide does not deal with all the legal detail associated with VAT and is not intended for legal reference.

All references to sections hereinafter are to sections of the Value-Added Tax Act 89 of 1991 (the VAT Act), unless the context otherwise indicates. The Tax Administration Act 28 of 2011, the Income Tax Act 58 of 1962 and the Customs and Excise Act 91 of 1964 are referred to as the "TA Act", "Income Tax Act" and "Customs and Excise Act" respectively. The terms "Republic", "South Africa" or the abbreviation "RSA", are used interchangeably in this document as a reference to the sovereign territory of the Republic of South Africa, as set out in the definition of "Republic" in section 1(1). You will also find a number of specific terms used throughout the guide which are defined in the VAT Act and the TA Act listed in ***Chapter 19*** in a simplified form for easy reference.

The information in this guide is based on the VAT Act (as amended) and the TA Act (as amended) as at the time of publishing and includes the amendments contained in the *Taxation Laws Amendment Act 43 of 2014* and the *Tax Administration Laws Amendment Act 44 of 2014* which were promulgated on 20 January 2015 as per GG 38404 and GG 38406, respectively.

Below is a brief synopsis of some of the most important changes affecting the administration of VAT since the previous issue of this guide:

1. ***VAT registration of non-resident suppliers of electronic services*** – The VAT Act was amended in 2014 to provide that non-resident suppliers of certain electronic services must register and account for VAT in South Africa if the value of electronic services supplied has exceeded R50 000 and the supplies are either made to South African residents or payment originates from a South African bank account. The different types of electronic services to which these rules apply are set out in a Regulation. The conditions applicable to the registration of a non-resident supplier of electronic services have now been amended. With effect from 1 April 2015, the non-resident supplier will be liable to register in respect of the supply of electronic services where at least any two of the following three circumstances apply:

    - Electronic services are supplied to South African residents; or
    - Payment for such electronic services originates from a South African bank account; or
    - The recipient has an address (e.g. residential, business or postal) in South Africa,

    and the total value of taxable supplies of electronic services has exceeded R50 000.

    Section 11 was also amended with effect from 1 April 2015 to make it clear that electronic services supplied by non-residents may not qualify to be charged with VAT at the zero rate. Refer to ***Chapter 2*** for more details.

2. ***Voluntary VAT registration*** – The VAT Act was amended by expanding the scope of voluntary registration by allowing persons who meet certain conditions set out in regulations issued under section 23(3)(*b*) and (*d*) to apply for voluntary registration. At the time of publishing this guide, the regulations were issued in draft and available on the SARS website. Refer to ***Chapter 2*** for more details.

3. ***Definition of second-hand goods*** – The definition of second-hand goods, which already specifically excluded gold coins that are subject to the zero rate, was amended to also exclude gold and goods containing gold. With effect from 1 April 2015 vendors will not be entitled to deduct notional input tax on the acquisition of gold and goods containing gold which was previously owned and used. The compliance issues which the amendment intends to address are the fraudulent issuing of tax invoices and transactions involving illegally mined gold being misrepresented as purchases of second-hand jewellery. This amendment is part of a package of measures introduced by the government to combat illegal mining and the negative effect of such activities on the economy.

4. ***Customs legislation alignment*** – The VAT Act relies on certain provisions of the Customs and Excise Act with regard to the exportation and importation of goods to ensure that the correct VAT rate or exemption is applied to exports and imports whilst aligning the rules pertaining to the time and value of exports and imports. During 2014 the customs and excise legislative framework was fundamentally restructured by the introduction of the new Customs Control Act, 2014, and the Customs Duty Act, 2014 which are to replace the existing Customs and Excise Act. These new Acts will, however, only come into effect from a future date. As a result of this restructuring, a number of textual amendments had to be made throughout the VAT Act to address alignment issues, including reference to certain new definitions. The VAT amendments come into effect on the same date that the new Customs statutes become effective. Refer to ***Chapter 12*** for more details.

5. ***Timing of input tax deduction on importation of goods*** **–** A vendor is allowed an input tax deduction under section 16(3)(*a*)(iii) and (*b*)(ii) in respect of the VAT charged on the importation of goods acquired for taxable purposes. The deduction is subject to the vendor or his agent being in possession of a bill of entry or other document prescribed under the Customs and Excise Act relating to the importation as well as the receipt for the payment of the VAT to SARS when making the deduction. In terms of an amendment to section 16(3)(*a*)(iii) effective 1 April 2014, and section 16(3)(*b*)(ii), a vendor is only entitled to the deduction of input tax in the tax period in which the VAT is actually paid to SARS. A further amendment to section 16(3)(*a*)(iii) and (*b*)(ii) with effect from 1 April 2015, allows a vendor to deduct input tax if the imported goods have been released to the importer or its agent and the vendor is in possession of the relevant documentary proof. *Refer to* ***Chapter 12*** *for more details.*

6. ***Importation of equipment for exploration or production of petroleum*** **–** Government Notice No. R288 was published in *Government Gazette* 37554 on 17 April 2014. The Notice amends paragraph 8 of Schedule 1 to the VAT Act by the insertion of rebate item 460.23 to provide for an exemption from the levying of VAT on equipment imported on or after 1 January 2014 which is used in the exploration for, or production of petroleum. Similar relief is provided in the Customs and Excise Act in the form of a full rebate of customs duty. The exemption from VAT and the rebate of duty is subject to the conditions set out in the notes to rebate item 460.23.

7. ***Farming inputs*** – Certain changes to the law have been made regarding goods acquired for agricultural, pastoral or other farming purposes as follows:
   - *Zero-rating* – The zero rating under section 11(1)(*g*) which applies in respect of agricultural, pastoral or other goods described in Part A to Schedule 2 which are acquired for farming purposes will be repealed with effect from a future date to be determined by the Minister and published by way of notice in the *Government Gazette.* The notice will not be published earlier than 20 January 2016. The zero rating remains applicable until such date of repeal is determined and published.
   - *Exemption on importation* – The exemption in Paragraph 7 to Schedule 1 in respect of the importation of the goods mentioned in Part A to Schedule 2 will also be repealed from the future effective date mentioned above. The exemption also remains applicable until such date of repeal is determined and published.

8. ***Elimination of the four monthly tax period for small businesses*** – With effect from 1 July 2015, the four monthly tax period known as "Category F" will no longer be available. Category F was introduced from 1 August 2005, but very few vendors registered under this category as a result of other measures which were introduced to assist small businesses. Vendors registered under Category F will be absorbed into the bi-monthly categories (that is, either Category A or B).

9. ***Bargaining councils*** – The supply of any goods or services by a bargaining council to its members is exempt from VAT under section 12(*ℓ*) to the extent that the consideration for such supplies consists of membership contributions. With effect from 1 April 2015, the extent of the exemption has been expanded to apply to all goods and services supplied to any of its members which are within the scope and mandate of the bargaining council under section 27 of the Labour Relations Act, 1995. The intention of this amendment was to extend the scope of the exemption to include various administration services supplied by a bargaining council to its members which are not necessarily covered by membership contributions.

10. ***Relief period for temporary letting of dwellings by developers*** – Section 18B provided a relief period from 10 January 2011 until 31 December 2014 during which there was a suspension of the liability to declare output tax under section 18(1) for developers that temporarily let dwellings to tenants whilst still being held for sale. The relief period has now been extended until 31 December 2017.

11. ***Duties and responsibilities of agents*** **–** Section 54 has been amended to clarify, amongst others, that from 1 April 2015 –
    - an agent must issue a tax invoice within a period of 21 days when a supply is made by the agent on behalf of a principal if it is part of that agent's duties to issue tax invoices;
    - an agent must now also issue a statement envisaged in section 54(3) in respect of the importation of goods on behalf of the principal. The statement must include certain details in regard to the goods imported.

The following guides have also been issued and may be referred to for more information relating to the specific VAT topics:

- Vendors and Employers Trade Classification Guide (VAT/EMP 403);
- Guide for Fixed Property and Construction (VAT 409);
- Guide for Accommodation, Catering and Entertainment (VAT 411);
- Share Block Schemes (VAT 412);
- Guide for Estates (VAT 413);
- Guide for Associations not for Gain and Welfare Organisations (VAT 414);
- Guide for Municipalities (VAT 419);
- Guide for Motor Dealers (VAT 420);
- Guide for Short-Term Insurance (VAT 421).

This guide is not an "official publication" as defined in section 1 of the TA Act and accordingly does not create a practice generally prevailing under section 5 of that Act. It is also not a binding general ruling under section 89 of Chapter 7 of the TA Act nor a ruling under section 41B of the VAT Act unless otherwise indicated.

All previous editions of the *Guide for Vendors (VAT 404)* are withdrawn with effect from 1 April 2015.

Should there be any aspects relating to VAT which are not clear or not dealt with in this guide, or should you require further information or a specific ruling on a legal issue, you may –

- contact your local SARS branch;
- visit the SARS website at *www.sars.gov.za*;
- contact your own tax advisors;
- contact the SARS National Call Centre –
  - if calling locally, on 0800 00 7277; or
  - if calling from abroad, on +27 11 602 2093 (only between 8am and 4pm South African time);
- submit legal interpretative queries on the TA Act by e-mail to *TAAInfo@sars.gov.za*; or
- submit a ruling application to SARS headed "Application for a VAT Class Ruling" or "Application for a VAT Ruling" together with the VAT301 form by e-mail to *VATRulings@sars.gov.za* or by facsimile on +27 86 540 9390.

Comments regarding this guide may be e-mailed to: *policycomments@sars.gov.za*.

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CHAPTER 1

INTRODUCTION

1.1 WHAT IS VAT?

VAT is an abbreviation for the term value-added tax. It is an indirect tax based on consumption in the economy. Revenue is raised for the government by requiring certain traders (vendors) to register and to charge VAT on taxable supplies of goods or services for the benefit of the National Revenue Fund and to pay it over to the government. SARS is a government agency which administers the VAT Act and ensures that the tax is collected and that the tax law is properly enforced.

Many countries apply a form of indirect or consumption tax like VAT, and although these tax systems might be known by different names, for example, GST (Goods and Services Tax), the characteristics of the tax are normally quite similar. The generally accepted **essential characteristics** of a VAT-type tax are as follows:

- The tax applies generally to **transactions** related to **goods and services.**
- It is **proportional to the price** charged for the goods and services.
- It is **charged at each stage** of the production and distribution process.
- The **taxable person (vendor) may deduct the tax paid during the preceding stages on goods and services acquired** (that is, the burden of the tax is on the final consumer).

VAT is only charged on **taxable supplies** made by a vendor. Taxable supplies include supplies for which VAT is charged at **either the standard rate or zero rate**. Taxable supplies do not include:

- Labour services by employees to employers;
- Hobbies or any private recreational pursuits (not conducted in the form of a business);
- Occasional private sale of personal or domestic items;
- Exempt supplies. (*Refer to **Chapter 7***).

1.2 HOW DOES VAT WORK?

The South African VAT is destination based, which means that only the consumption of goods and services in South Africa is taxed.[1] VAT is therefore paid on the **supply of goods or services in South Africa** as well as on the **importation of goods into South Africa**. VAT is currently levied at the **standard rate of 14%** on most supplies and importations, but there is a limited range of goods and services which are either exempt, or which are subject to tax at **the zero rate** (for example, exports are taxed at 0% under certain circumstances). The **importation of services** is only subject to VAT where the services are imported for private, exempt or other non-taxable purposes. Certain imports of goods or services are exempt from VAT. *Refer to **Chapters 6** and **12** for more details.*

[1] This is known as the invoice-based credit method of the consumption-type VAT.

Persons who make **taxable supplies in excess of R1 million** in any consecutive 12-month period **or will exceed that amount in terms of a contractual obligation in writing** are **liable for compulsory VAT registration**.[2] A person may also **choose to register voluntarily** provided the **minimum threshold of R50 000**[3] has been exceeded in the past 12-month period. There are also certain other exceptional cases which are to be dealt with in Regulations, which prescribe other conditions which must be met if the applicant has not met the minimum threshold at the time of applying for voluntary registration. A vendor is a person who is registered or is required to be registered. *Refer to **Chapter 2** for more details.*

Vendors have to perform certain duties and take on certain responsibilities. For example, vendors are required to ensure that VAT is collected on taxable transactions, that they submit returns and make payments on time, that they issue tax invoices where required, that they include VAT in all prices advertised or quoted etc. *Refer to **Chapter 2** for more details.*

The mechanics of the VAT system are based on a **subtractive or credit input method** which **allows the vendor to deduct the tax incurred on enterprise inputs (input tax) from the tax collected on the supplies made by the vendor (output tax).** There are, however, some expenses upon which input tax is specifically denied, such as the acquisition of motor cars and entertainment. *Refer to **Chapter 8** for more details.*

The vendor reports to SARS at the end of every tax period on a VAT201 return, where the **input tax incurred is offset against the output tax collected for a specific tax period and the resulting net liability is paid to or net refund claimed from SARS** (normally by no later than the 25th day after the end of the tax period concerned). The VAT charged and collected by vendors is usually paid over to SARS every two months, but where the value of taxable supplies in a 12-month periods exceeds R30 million or where the vendor has obtained approval from SARS on written application, the vendor must account for VAT by paying and submitting returns electronically on a monthly basis. Certain farming enterprises are allowed to submit returns and pay VAT on a bi-annual basis. *Refer to **Chapter 3** for more details.*

Late payments of VAT attract a penalty of 10% of the outstanding tax. Interest is also charged at the prescribed rate on any late payments made after the month in which the payment for the tax period concerned was due as well as any balance of taxes outstanding for past tax periods. The TA Act imposes two types of penalties, namely, administrative non-compliance penalties (Chapter 15 of the TA Act) and understatement penalties (Chapter 16 of the TA Act). *Refer to **Chapter 10** for more details.*

It sometimes occurs that the result of the calculation for the tax period is a **refund**, instead of an amount payable to SARS. This happens, for example, where the vendor has incurred more VAT on expenses than has been collected on any taxable supplies made during the tax period, or where the vendor has mainly zero-rated supplies (for example, an exporter, or a business which sells only fresh fruit and vegetables). However, most vendors will not normally be in a refund situation, and should be paying VAT to SARS at the end of each tax period. Refunds must be paid by SARS within 21 business days of receiving the correctly completed refund return, otherwise interest at the prescribed rate is payable by SARS to the vendor. However, interest is only paid if certain conditions are met as a refund may be subject to the finalisation of the verification, inspection or audit of the refund. For example, no interest is paid where the vendor has outstanding taxes or returns for past tax periods or where SARS is prevented from gaining access to the vendor's records to verify the refundable amount.

[2] From 1 June 2014 non-resident suppliers of certain electronic services to South African residents are also required to register for VAT from the end of any month in which the threshold of R50 000 has been exceeded.

[3] In the case of persons that supply "commercial accommodation" the threshold is R60 000 and not R50 000.

The TA Act allows SARS to authorise the payment of a refund before the finalisation of the verification, inspection or audit if security in a form acceptable to a senior SARS official is provided by a vendor.[4]

The fact that there are often refunds under the VAT system and that it is self-assessed, makes it tempting for vendors to overstate input tax or to under declare output tax. SARS therefore places great importance on identifying high risk cases, conducting regular compliance visits and promoting a high level of visibility of auditors in the field. *Refer to* ***Chapters 9, 16*** *and* ***18*** *for more details.*

As VAT is an invoice-based tax, **vendors are generally required to account for VAT on the invoice (accrual) basis**, but the payments (cash) basis is allowed in some cases. For example, natural persons with a taxable annual taxable turnover of under R2 500 000, public authorities, municipalities and non-resident suppliers of certain electronic services that qualify as enterprises are allowed to account for their VAT on the payments basis. Other legal entities such as companies and trusts do not qualify for the payments basis of accounting. *Refer to* ***Chapters 3*** *and* ***4*** *for more details.*

Tax invoices for supplies made (including alternative or requisite documentary proof for zero-rated supplies), bills of entry for goods imported and the general maintenance of proper accounting records and documents are all very important aspects of how the whole VAT system operates. These documents form an audit trail which SARS uses to verify that the vendor has complied with the law. A tax invoice or bill of entry also serves as the documentary evidence of any VAT deducted by the vendor as input tax. A tax invoice must contain certain details and must be issued by the supplier within 21 days of making a taxable supply, regardless of whether the recipient has requested this or not. A full tax invoice must be issued where the consideration for the supply exceeds R5 000. *Refer to* ***Chapters 13, 14, 15*** *and* ***18*** *for more details.*

Example 1 – Mechanism of the VAT system

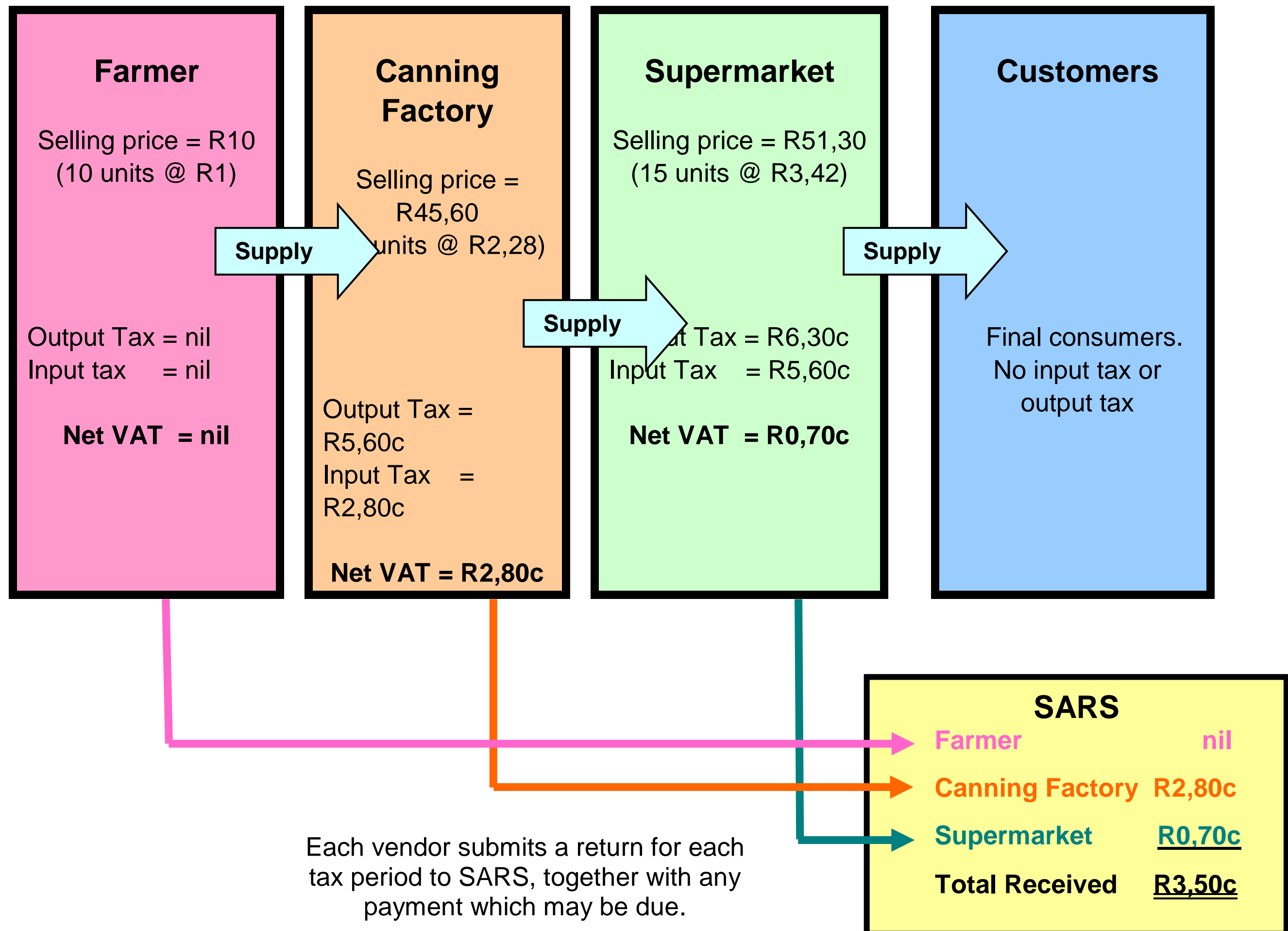
A VAT registered farmer sells 10 pineapples to a VAT registered canning factory for R1 each. No VAT is charged by the farmer to the factory as the supply of fresh fruit is zero-rated. For purposes of this example it is assumed that the farmer did not have any input tax to deduct, as all farming supplies purchased were subject to VAT at the zero rate. (*Refer to* ***Chapter 11****.*)

The canning factory also buys canning metal from another vendor for R22,80 (including 14% VAT). It manufactures 20 cans of pineapple pieces and sells them to a supermarket for R2,28 each (including 14% VAT). The selling price of each can of pineapples includes 28c VAT. The factory must therefore pay output tax of 28c on each can sold, which in turn, will be deducted as input tax by the supermarket.

The supermarket sells 15 of the 20 cans to its customers for R3,42 each (inclusive of 42c VAT). The supermarket must declare output tax of 42c on each can of pineapple pieces sold. Since the supermarket’s customers are the final consumers and are not registered for VAT, there is no input tax deducted on the 42c VAT charged.

The effect in this example is illustrated in the diagram below.

[4] Sections 190 and 191 of the TA Act deal with refunds.



1.3 TAX ADMINISTRATION ACT

The TA Act was promulgated into law on 4 July 2012 and commenced on 1 October 2012, except for those provisions relating to interest stipulated in the *Schedule to Proclamation No. 51* dated 14 September 2012 (as per GG 35687).

With the implementation of the TA Act, certain administrative provisions previously contained in the VAT Act were replaced by similar provisions contained in the TA Act but where an administrative provision applies only to one tax type then the administrative provision is contained in the individual tax Acts such as the VAT Act. A vendor must therefore adhere to the administrative requirements that are contained in the TA Act and the VAT Act.

The TA Act covers a broad range of aspects, which will be mentioned briefly throughout the guide where it concerns the specific content dealt with in a particular chapter. ***Chapter 18*** also deals with some of the more important aspects of the TA Act which generally apply to all taxes. Some of the duties of a vendor that are impacted by the TA Act are registration, record-keeping, payments made to SARS and the obligation to inform SARS of changes in registered particulars to ensure that SARS has the most current information.[5] These duties also apply to persons who have registered voluntarily as well as persons who should have registered for VAT, but who have not done so.

The administrative provisions mentioned in this guide must therefore be understood within the context of the TA Act and any public notices under that Act with regard to a tax administration issue.

5 For example, section 23 of the TA Act read with section 25 prescribes that vendors must communicate the change of an address, representative taxpayer and banking particulars.

Refer to ***Chapter 18*** and the Tax Administration webpage on the SARS website, where you can find more information on the TA Act, which includes, amongst others, the following documents:

- The Short Guide to TA Act, 2011; and
- Interpretation Note 68 (Issue 2) dated 7 February 2013 "Provisions of the Tax Administration Act that did not Commence on 1 October 2012 under Proclamation No. 51 in *Government Gazette* 35687".

CHAPTER 2

REGISTERING YOUR BUSINESS

2.1 WHEN DO I BECOME LIABLE TO REGISTER FOR VAT?

The TA Act, together with the VAT Act regulates the identification and registration of vendors. The TA Act prescribes the general obligations that a person must comply with when registering for a tax, while the VAT Act sets out when a person is required to register.

You will be liable for **compulsory VAT registration** if you are carrying on an enterprise (i.e. activities are carried on in South Africa or partly in South Africa, resulting in income being earned from selling goods or services supplied to another person) and make taxable supplies in the course of that enterprise, exceeding R1 million[6] in any consecutive period of 12 months, or will exceed that amount in terms of a contractual obligation in writing.[7] The definition to "enterprise" contains specific inclusions, for example, the activities of a welfare organisation and a foreign-donor funded project, and exclusions, for example, activities involving the making of exempt supplies.

Non-resident suppliers of certain electronic services set out in a Regulation[8] are also required to register for VAT in respect of taxable supplies of electronic services if the total value of the taxable supplies exceeds R50 000.[9] With effect from 1 April 2015, electronic services for purposes of VAT registration include those transactions where at least two of the following circumstances are present:[10]

- The recipient of those electronic services is a South African resident;
- Payment to the non-resident supplier in respect of the supply of electronic services originates from a South African bank account;
- The recipient has an address in South Africa to which the tax invoice for the electronic services supplied by the non-resident will be delivered.

Persons that are liable to register for VAT must complete a form VAT101 (Application for Registration) which must be submitted to the local SARS office not later than 21 business days from the date of liability. For non-resident suppliers of electronic services the completed form must be e-mailed together with the supporting documents to SARS at eCommerceRegistration@sars.gov.za.

A person who is registered, or who is obliged to register is referred to as a "vendor". (Note: it is the ***legal person*** and not the trading name of a business which is required to register. *Refer to **paragraph 2.7** for more details.*)

[6] The R1 million compulsory VAT registration threshold applies to the total value of taxable supplies (turnover) and not the net income (profit) that your business has made for the period.

[7] From 1 April 2014, the requirement of a reasonable expectation to exceed R1 million taxable supplies is replaced with the requirement that the threshold will be exceeded in terms of a contractual obligation in writing.

[8] The regulations were published in *Government Gazette* No. 37489 of 28 March 2014 as Government Notice No. R221.

[9] Paragraph (*b*)(vi) of the definition of "enterprise" read with section 23(1A).

[10] With effect from 1 April 2015. Before this amendment, non-resident suppliers of electronic services were liable for VAT registration if the R50 000 threshold was exceeded and supplies were either made to South African residents or payment in respect of such services originated from a South African bank account.

The term **"person"** includes the following:

- Individuals.
- Partnerships and bodies of persons.
- Private and public companies, share block companies and close corporations.
- Public authorities[11] and municipalities (previously called local authorities).
- Associations not for gain such as clubs and welfare organisations.
- Insolvent and deceased estates.
- Trust funds.
- Foreign donor funded projects.

The following are circumstances where you will **not** be required or allowed to register:

- Only exempt supplies are made (*refer to **Chapter 7** for examples*).
- Employees who earn a salary or wage from their employers (excluding independent contractors).
- The supplies are made for example, by a foreign branch located in another tax jurisdiction.
- Hobbies or any private recreational pursuits not conducted in the form of a business.
- Private occasional transactions. For example, the sale of domestic/household goods, personal effects or a private motor vehicle.

If your sales or fees earned from making taxable supplies are less than R50 000,[12] you can register for VAT voluntarily if you meet certain conditions.[13] This type of registration is referred to as a **voluntary registration.**[14] *Refer to **paragraph 2.5**.*

2.2 WHERE MUST I REGISTER?

The VAT101 application for registration must be submitted **in person** at the SARS office or Large Business Centre (LBC)[15] nearest to the place where your business is situated or carried on. This means that, in the case of a sole proprietor the individual concerned must submit the application in person, or in the case of any other person such as a partnership, company or trust fund, the relevant representative vendor must submit the application in person. Alternatively, a registered tax practitioner may appear in person on behalf of the applicant. A vendor that has several enterprises/branches/divisions which will operate under one VAT registration number, should register in the area where the main enterprise/branch/division is located.

2.3 WHAT DOCUMENTS MUST I SUBMIT WITH MY APPLICATION?

2.3.1 General requirements

It is very important that you submit the correct documents with your application to register; otherwise there may be a delay in obtaining your VAT registration number. *Refer to VAT-REG-02-G01 – Guide for Completion of VAT Registration Application Forms – External Guide and VAT-REG-01-G02 – VAT Registration Guide for Foreign Suppliers of Electronic Services on the SARS website for a comprehensive list of documents that must be submitted.*

[11] Public authorities are generally not registered as vendors. *Refer to **paragraph 7.8** for more information on this topic.*

[12] Note that where the supplies consist of "commercial accommodation", the threshold is R60 000 and not R50 000.

[13] The date of registration as a vendor in respect of a compulsory and voluntary registration application may be determined by the Commissioner. The circumstances applicable when a vendor has not met the R50 000 minimum threshold, will be set out in Regulations on voluntary registration. The Regulations are currently in draft.

[14] Certain types of vendors do not have to meet the R50 000 minimum threshold of taxable supplies for voluntary registration, for example, certain welfare organisations, foreign donor funded projects and municipalities.

[15] Taxpayers whose administration office is the LBC may submit VAT applications directly to the LBC. However, a SARS branch office will still process the application if it is submitted at the branch.

The TA Act provides for both a single tax account as well as for a single registration process for all tax types. The single registration process was implemented by SARS on 12 May 2014 through a legal entity registration as a first step to register, whereafter an entity can subscribe to the various taxes as required. *Refer to the SARS website for the latest information.*

SARS will not accept any faxed or photocopied applications for registration. Please also make sure that where a certified copy of a specific document is required (for example an ID document), that the actual certified true copy of the original is submitted with the registration application, and not merely a photocopy thereof. Posted applications will only be processed if applicants are geographically far from the branch office or due to any form of disability and the applicant cannot physically present the application.

Once you have been registered, you will receive a Notice of Registration.[16] You can also confirm if your registration has been processed by entering your details under “VAT vendor search” on the SARS website. *[Go to ⇨ www.sars.gov.za ⇨* ***eFiling*** *⇨ select* ***VAT Vendor Search*** *in the drop-down box on the left hand side of the screen].*

Allow at least 21 business days for your application to be processed. The Notice of Registration is issued to you on eFiling if you are a registered eFiler, or it will be sent to your email address, or posted to the postal address given on your registration application. Should you need a copy of the Notice of Registration, you can call the SARS national contact centre or visit a SARS branch office for assistance.

2.3.2 Foreign donor funded projects

The definition of “person” in section 1(1) includes a “foreign donor funded project” (FDFP). An FDFP means a project established as a result of an international donor funding agreement to supply goods or services to beneficiaries, to which the South African government is a party. These international agreements are referred to as Official Development Agreements (ODAs) and normally provide that the funds donated should only be used for specific, mutually agreed upon programmes and activities, and cannot be used to pay for any taxes imposed under South African Law.

Any VAT incurred for the purposes of a project administered in terms of an ODA which is binding on the Republic under section 231(3) of the Constitution and which also contains a requirement that the funds may not be used to pay any South African taxes, may be refunded. This includes expenses such as the acquisition of motor cars[17] and entertainment which are usually denied. The refund is effected by allowing the person who is appointed by the foreign donor as being responsible for administering the ODA and carrying out the project, to register an FDFP and to obtain a refund of the VAT incurred on the project deliverables.

An FDFP is a separate person for VAT purposes. Should the FDFP be administered by a public authority, it is not the public authority but the FDFP that qualifies to register for VAT and the input tax deductions are limited to the VAT incurred on goods or services acquired which are directly in connection with the implementation of the FDFP (including entertainment expenses). It does not entitle the public authority concerned to deduct input tax on its normal VAT inclusive capital and operating costs.

[16] With the implementation of the single registration process the VAT registration certificate (VAT103) was replaced with the new Notice of Registration which is a standard notice of registration across all tax types (except Customs and Excise).

[17] FDFPs are allowed to deduct input tax on the acquisition of a motor car which is applied in carrying out the objectives of the FDFP.

The FDFP may apply for VAT registration and forward it to the nearest SARS office, together with the following documents:

- Original certified copy of latest bank statement or ABSA bank eStamped statement or original letter from the bank.
- Original certified copy of passport / identity document of the representative person.
- Agreement between International Donor Fund and the RSA Government.

The VAT treatment of FDFPs can therefore be summarised briefly as follows:

(i) The FDFP is allowed to register for VAT on the basis that it is deemed to supply services to the foreign donor to the extent of the donor funding received to carry out the project;
(ii) The deemed services of the FDFP in (i) above are subject to VAT at the zero rate;[18]
(iii) VAT must still be charged, where applicable, by suppliers of goods and services actually acquired by the FDFP using donated funds in carrying out the project deliverables;
(iv) The FDFP will deduct input tax to the extent that the expenses in (iii) above relate to the project, provided that the relevant tax invoices are held etc.

2.3.3 Diesel refund applicants

Should you consume diesel in carrying on an enterprise involved in primary production activities such as agriculture, mining, fishing and coastal shipping, you can also register for the Diesel Refund Scheme which is currently administered through the VAT system. VAT registration is a pre-requisite for participation in the scheme, but make sure that you actually qualify for the Diesel Refund Scheme before registering, as any incorrect refunds claimed would have to be paid back to SARS, together with any interest and forfeiture, which may be applicable. A qualifying diesel user may register for the scheme at the local SARS office by completing form VAT101D and attaching it to the other documents required above for your VAT registration. *Refer to the SARS website under "Customs and Excise" ⇨ "Excise" ⇨ "Fuel Petroleum Products" ⇨ "Diesel Refund" for more information.*

Due to significant technical problems and administrative challenges experienced with the implementation of the diesel refund system, the government proposed in its 2015 *Budget Review* to delink diesel refunds from the VAT system with effect from 1 April 2016 in order to address these concerns. The system is currently under comprehensive review and SARS, together with the National Treasury, will hold consultations with affected industries in the process.

2.4 HOW DO I CALCULATE THE VALUE OF TAXABLE SUPPLIES?

The value of taxable supplies (turnover) is calculated on an ongoing basis. At the time of closing off your books for the month, you need to keep a running total of your turnover for the past 12 months. Should this total exceed R1 million in any particular month, you must register from the first day of the next month.[19] You also need to consider the next 12 months, because if you have a contractual obligation in writing to make supplies in excess of R1 million within that 12-month period, you will be liable to register at the commencement of any month where the total value of the taxable supplies will exceed R1 million in the period of 12 months counting from the commencement of the said month. You must register within 21 business days of so becoming liable to register.[20]

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[18] Section 8(5B) read with section 11(2)(*q*). Note that the zero rate in terms of these provisions does not extend to any actual supplies of goods or services acquired by the FDFP from local suppliers as contemplated in point (iii).

[19] In the case of non-resident suppliers of certain electronic services to South African residents, the supplier must register at the end of any month in which the threshold of R50 000 in that case has been exceeded.

[20] Section 22 of the TA Act.

Example 2 – Calculating the total value of taxable supplies for registration purposes

Mr Z trades as "ABC Construction". He tenders for a building contract of R5 million. Presently the fees earned from construction activities average R10 000 per month (R120 000 per consecutive 12-month period).

If ABC Construction is not awarded the contract, Mr Z has an option to register voluntarily, or elect not to register. However, if awarded the contract, Mr Z would immediately know that he is going to exceed the R1 million compulsory VAT registration threshold. In this case, Mr Z would be required to register and would have 21 business days in which to do this, calculated from the first day of the month in which the value of taxable supplies will exceed R1 million in a period of 12 months commencing on that month.

The table below gives a general indication of what to **include** and **exclude** when calculating the value of taxable supplies, to determine if you are liable for VAT registration.

Include	Exclude
• Sales/fees earned from goods and services supplied in the RSA	• Sales from stock or capital assets when closing down your business or substantially reducing (permanently) the scale of your business
• Sale of goods exported to an export country	• Sales from old plant, machinery or other capital assets when replacing them with new assets
• Services rendered outside the RSA	• Any exempt supplies
• Sales from all branches and divisions falling under that person inside the RSA	• Donations received by associations not for gain and welfare organisations
• Deemed supplies (*refer to **Chapter 6***)	• VAT

2.5 VOLUNTARY REGISTRATION

2.5.1 General

As mentioned in ***paragraph 2.1*** above, a person can apply for voluntary registration even though the total value of taxable supplies is less than R1 million. There is, however, a requirement that the value of taxable supplies made must have already exceeded the minimum threshold of R50 000 in the past 12-month period.[21] There are also certain other exceptional cases which are to be dealt with in Regulations[22], which prescribe other conditions which must be met if the applicant has not met the minimum threshold at the time of applying for voluntary registration.

Section 23(3)(b)(ii) – Under certain circumstances, a person may apply to register voluntarily even if the threshold of R50 000 in taxable supplies in a consecutive 12-month period has not yet been attained. Such registrations are subject to the conditions and exclusions to be dealt with in a Regulation which provides for a person to register voluntarily if the person –

- has made taxable supplies which do not exceed R50 000, or
- has not made any taxable supplies as yet,

[21] Section 23(3)(*b*)(i).

[22] Refers to regulations that may be made by the Minister under section 23(3)(*b*)(ii) or 23(3)(*d*), setting out conditions to be met for voluntary registration when the minimum threshold has not been met.

and the person can satisfy the Commissioner that it can reasonably be expected that taxable supplies in excess of R50 000 in the following 12-month period commencing from the date of registration will be made.

Section 23(3)(d) – In cases where the nature of the business activity is such that it is only possible to make taxable supplies after a certain period of time, the Commissioner must be satisfied that it is reasonable to conclude that the minimum threshold will be exceeded in a 12-month period. (For example, plantation farming and mining activities.)

Note that it may be advantageous for a person to register voluntarily where goods or services are supplied mainly to other vendors and where the customer concerned will be able to deduct the VAT charged as input tax. It will generally not be advantageous for a person to register voluntarily where –

- the main or only supplies consist of the supply of services and there are very few taxable expenses on which input tax can be deducted, for example, the enterprise's main expense is salaries and wages; or
- most of the supplies are made to final consumers who are not registered for VAT.

Remember that if you choose to register, you will have to carry out all the duties of a vendor. For example, you will have to charge VAT, submit returns, make VAT payments on time and keep proper records for at least five years. If you decide to register, remember that you can only charge VAT on taxable supplies. You may not charge VAT on supplies which are exempt from VAT or supplies which fall outside the scope of VAT. (These are supplies which are not in the course or furtherance of your "enterprise"). *Refer to **Chapter 7** for more details and for examples of exempt supplies.*

2.5.2 Turnover Tax for micro businesses

Turnover Tax was initially introduced as a simplified tax system for micro businesses as an alternative to the current income tax and VAT systems. Micro businesses that made taxable supplies in excess of the minimum threshold of R50 000 in a 12-month period (or R60 000 in the case of suppliers of "commercial accommodation") were previously not allowed to register voluntarily for VAT if registered for Turnover Tax. However, with effect from 1 March 2012 a qualifying micro business that is registered for Turnover Tax may also choose to register for VAT provided that all the conditions for voluntarily registration are met.[23]

*For more information, refer to **paragraph 2.8** as well as the SARS website where you can find the Guide for the Administration of Turnover Tax and the Guide for Micro Businesses.*

2.6 REFUSAL OF A VOLUNTARY REGISTRATION APPLICATION[24]

The Commissioner will not allow any person to register voluntarily for VAT if the applicant –

- has no fixed place of residence or business in RSA; or
- does not keep proper accounting records; or
- has not opened a banking account in the RSA; or
- has previously been registered as a vendor under VAT or General Sales Tax (GST) and failed to perform the duties of a vendor; or
- has not met the minimum threshold requirement of R50 000 in respect of taxable supplies made in a preceding period of 12 months.[25]

[23] The new rules for registration will not have any effect on the turnover tax system.
[24] Section 23(7). A person cannot register under the Regulation relating to section 23(3) if the registration was refused in terms of this provision.
[25] This requirement will not apply to voluntary registrations approved by the Commissioner in terms of the Regulations to be issued as referred to in section 23(3)(*b*) and (*d*).

2.7 SEPARATE REGISTRATION (BRANCHES, DIVISIONS AND SEPARATE ENTERPRISES)

A vendor may register separately any enterprises, branches or divisions carried on for VAT purposes. This means that it is possible for a vendor to have more than one VAT registration number if the enterprise is carried on in branches or divisions.[26] A separate form VAT102e must be completed for each enterprise/division/branch for which a separate registration is required. It is important to note that a person who operates several enterprises, or who operates an enterprise in branches or divisions cannot avoid the liability to register for VAT by considering the turnover of each branch or division individually. In such cases, the turnover of all the enterprises/divisions/branches must be added together to determine the total value of the supplies. Only associations not for gain (including welfare organisations) can apply to be excluded from this rule. There are ***two conditions*** under which separate registration can be granted for any separate enterprise, division or branch, namely:

- An **independent system of accounting** for each business must be maintained.
- The entity must be **capable of being separately identified** (that is, either by the nature of the activities or the geographic location).

The implication of separate registration is that each separately registered enterprise/division/branch is treated as a vendor in its own right. Each enterprise/division/branch will therefore be required to –

- retain the **same tax period** as the main branch (except farmers in certain cases);
- submit **separate returns and payments**;
- retain the **same accounting basis** as the parent vendor and keep its **own accounting records**; and
- remain registered until cancelled by the parent body or until the parent body's registration is cancelled.

In addition, any transfers of taxable goods or services between the separately registered enterprises/divisions or branches must be charged with VAT and accounted for on a VAT201 return covering that period. As with any other supply, the recipient will require a tax invoice before being able to deduct input tax.

Example 3 – Separate registrations and the liability to register

Mrs N is a sole proprietor and trades under the following three trading names:

N's Curry Den	**G's Florists**	**B's Shoe Retailers**
Turnover of R510 000	Turnover of R390 000	Turnover of R220 000

The combined turnover of the three businesses is R1 120 000. Since the type of supplies being made are not exempt (*refer to **Chapter 7** for examples of exempt supplies*), they will constitute **"taxable supplies"**.

The **"person"** carrying on all three businesses is Mrs N, a sole proprietor. Since she is liable for VAT registration, she is referred to as a **"vendor"** and must account for VAT at 14% on all the sales in each business from the date of registration as a vendor. Mrs N will only be issued with one VAT registration number, but she can apply for three separate VAT numbers if she meets the two conditions for separate registration, as mentioned in ***paragraph 2.7*** above. If SARS agrees to allocate separate VAT registration numbers, each separate business is deemed to be a **separate person** and VAT must be charged on supplies between the separate businesses, as well as to any other person.

[26] Section 23(5).

2.8 CANCELLATION OF REGISTRATION

A vendor **may** apply for cancellation of registration if the value of taxable supplies is less than the compulsory registration threshold of R1 million in any consecutive period of 12 months.

The Commissioner **will** also deregister[27] a vendor if –

- the enterprise closes down and will not commence again within the next 12 months; or
- the enterprise never actually commenced or will not commence within the next 12 months; or
- the person opts out of the VAT system and migrates to the Turnover Tax system.[28]

Whether you want to voluntarily deregister, or your circumstances have changed so that you are no longer liable or no longer eligible to be registered as a vendor, you should promptly inform the SARS office where you are registered in writing of your situation. Cancellation of registration normally takes effect from the last day of the tax period in which the vendor ceases trading. However, in the case of a voluntary deregistration, the Commissioner will decide the date of deregistration and the final tax period. Remember though, that SARS cannot completely deregister you until all outstanding liabilities or obligations incurred under the VAT Act have been settled or resolved. For example, you cannot be taken off the VAT register if you still owe SARS returns for past tax periods or if any VAT payments are outstanding.

The Commissioner may also decide to deregister a person who has successfully applied for voluntary registration and it subsequently appears that the requirements mentioned under ***paragraph 2.6*** above have not been met.[29]

Any of a vendor's separately registered enterprises/divisions/branches may also be cancelled if –

- the vendor applies in writing;
- the main registration is cancelled; or
- it appears to the Commissioner that the duties under the VAT Act or the TA Act have not been carried out properly.[30]

The effect of the cancellation of a branch registration is that all duties revert to the main branch. *Refer to **paragraph 6.4**: "Deemed Supplies"* for the VAT implications of cancelling any VAT registration number.

Vendors that want to deregister voluntarily have two options. The first option of ordinary deregistration is where the vendor has no intention to continue as a voluntary VAT registrant. In this case, the vendor may simply apply to be deregistered on the basis that the value of taxable supplies is less than R1 million in a 12-month period. In the second option, the vendor can apply to participate in the Turnover Tax system for micro businesses and may choose to deregister for VAT, as there is no longer an automatic deregistration from the VAT register.

Refer to the Turnover Tax webpage on the SARS website for more information.

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27 From 1 April 2014, the Commissioner has the discretion to deregister any vendor that fails to furnish a VAT return in respect of a tax period. (Refer to section 24(5)(*b*).)

28 Note, however, that from 1 March 2012, a person may choose to be registered for VAT as well as Turnover Tax.

29 From 1 April 2014, the Commissioner has a discretion to cancel the registration of a person that is voluntarily registered as a vendor under section 23(3)(*b*) if that person fails to make taxable supplies with a value of R50 000 in the first 12-month period after registration.

30 *Refer to Binding General Ruling No.17 (dated 27 March 2013) for more information on the cancellation of registration of separate enterprises, branches and divisions.*

CHAPTER 3

TAX PERIODS

3.1 WHICH TAX PERIODS ARE AVAILABLE?

You are required to submit returns and account for VAT to SARS according to the tax period allocated to you. Available tax periods cover one, two, four, six or 12 calendar months.[31] On acceptance of your registration by SARS, you will generally be allocated one of these categories. Tax periods end on the last day of a calendar month. You may, however apply to the SARS branch office in writing for your tax period to end on another fixed day or date, which is limited to 10 days before or after the end of the month (the 10-day rule). This must be approved in writing and can only be changed with the written approval of SARS. *Refer to **paragraph 3.3** and Binding General Ruling No. 19 (Issue 2) dated 10 March 2014 for more details on tax period cut-off dates.*

3.1.1 Two-monthly tax period (Category A or B)

This is the standard tax period, which is generally allocated at the time of registration. Under this category you are required to submit one return for every two calendar months.

- Category A is a two-month period ending on the last day of January, March, May, July, September and November.
- Category B is a two-month period ending on the last day of February, April, June, August, October and December.

3.1.2 Monthly tax period (Category C)

Under this category you are required to submit one return for each calendar month. You will be registered according to Category C when –

- your turnover exceeds or is likely to exceed **R30 million** in any consecutive 12-month period;[32]
- you have applied in writing for this category; or
- you have repeatedly failed to perform any obligations as a vendor.

You will cease to be registered under Category C if you apply in writing to be allocated to a different tax period and SARS is satisfied that you meet the requirements of the relevant category. Should your turnover exceed R30 million subsequent to your registration for VAT, you are required to notify SARS to amend your registration to a Category C tax period within 21 days of becoming liable to register for a Category C tax period. Failure to notify SARS may result in interest and penalties being levied. As from 1 May 2011 all vendors falling within Category C tax period must submit their returns in electronic format and make payments electronically on eFiling.

[31] The TA Act extended the concept of a tax period to include other taxable events (for example, those envisaged under sections 14, 29, and 30). The TA Act created a simpler and streamlined way of encapsulating all the filing and payment timeframes (that is, sections 14, 28, 29, 30, and any other “taxable event”) under the VAT Act. Refer to section 1 of the TA Act, read with section 27.

[32] A vendor that operates more than one business, or operates a business with different divisions, branches or separate enterprise activities must add the sales of all such separate components of the person’s enterprise together to determine the total turnover. This applies, whether or not permission has been granted to have separate VAT registration numbers for each component of the enterprise.

3.1.3 Six-monthly tax period (Category D)

Under this category you are required to submit one return for every six calendar months. This is a category solely for vendors –

- who are a micro business under the Income Tax Act;[33] or
- who carry on a farming enterprise and whose total turnover has not exceeded **R1,5 million** per consecutive period of 12 months and is not likely to exceed that amount in the next consecutive 12 months. Should the farming enterprise be carried on by a separately registered enterprise, branch or division of a vendor or an association not for gain, this category will be available only to that separate enterprise, branch or division, provided it is only that separate enterprise, branch or division that carries on a farming enterprise.

Your allocation under this category means that you are required to submit your returns for a six-month period usually ending on the last day of February and August. You may, however, apply to the local SARS office to alter the end of the period to another month. An individual's six-month period will be on the last day of February and August. A company or close corporation's financial year-end date will determine on which months its tax periods will end. (*Refer to **paragraph 3.2.3** for more details.)*

3.1.4 Annual tax period (Category E)

Under this category you are required to submit one return for 12 calendar months. This category is for vendors who want their tax periods to align with their "year of assessment" as defined in section 1(1) of the Income Tax Act. The vendor applying for registration under this category must comply with the following:

- The vendor must be a company or a trust fund.
- The supplies by the vendor applying for Category E must be made to a connected person in relation to that vendor and consist solely of –
  - the letting of fixed properties; or
  - the renting of movable goods; or
  - the administration or management of such companies.
- The connected person who receives the supply must be registered for VAT and must be entitled to deduct the full amount of input tax in respect of those supplies.
- The vendor must agree with the recipients that tax invoices are issued only once a year at the end of the year of assessment of the vendor making the supplies.

Only vendors with certain activity codes can apply to be registered on Category E tax period.

3.1.5 Four-monthly tax period (Category F)

Category F applies to small businesses. The four-monthly tax periods for each year are as follows:

- March to June to be submitted in July.
- July to October to be submitted in November.
- November to February to be submitted in March.

[33] Effective 1 March 2014, in respect of tax periods commencing on or after that date, a vendor who is a registered micro business and has made a written application in such a form as the Commissioner prescribed and has been approved, may qualify under Category D.

Category F tax periods are only available to vendors (including companies and close corporations) that –

- have a taxable turnover (that is, standard and zero-rated sales) which is less than R1,5 million in any consecutive period of 12 months, or which is not expected to exceed that amount during the period; and
- do not conduct their business under different VAT registered branches, even if the combined taxable turnover of those branches is less than R1,5 million in the 12-month period.

Note that Category F will no longer be available from 1 July 2015. Vendors currently registered under this category will be absorbed into the bi-monthly VAT categories, that is, either Category A or B.

3.2 ALLOCATION AND CHANGE OF TAX PERIODS

3.2.1 New registrations

The Commissioner will determine whether the vendor falls within Category A or Category B. If a tax period other than Categories A, B or C is required, the vendor needs to meet the requirements for that tax period and apply for it.

3.2.2 Vendors already registered for VAT

A request for a change of category can only be implemented with effect from a future date, and cannot be backdated, except in the following instances:

- If the wrong category has been captured in the registration process; or
- If the circumstances of the vendor have changed such that it is required for that vendor to be registered within another category. (For example, if the taxable supplies exceed R30 million in any consecutive period of 12 months, Category C is applicable).

3.2.3 Change of circumstances after registration

As mentioned in ***paragraph 3.2.1*** above, the Commissioner determines whether the vendor falls within Category A or Category B. Any change of category from two-monthly (A or B) to monthly (C) can generally only be effected from a future date.

A vendor that is not registered under Category C is required to inform SARS when the turnover exceeds or is likely to exceed R30 million in any consecutive period of 12 months. Similarly, a vendor that has been registered under Category D or F, must inform SARS that the conditions of the tax period concerned are no longer met when the total value of the taxable supplies for the past 12 months has exceeded R1,5 million or is likely to exceed R1,5 million in the next consecutive 12-month period.

The tax period will also be changed automatically by SARS to Category A or B (as appropriate in the relevant case) if the vendor concerned fails to inform SARS that the total value of the taxable supplies no longer meets the requirements for the tax period concerned. The tax period is also changed automatically by SARS to a category C if the total value of taxable supplies has exceeded R30 million in a consecutive 12-month period.

3.3 THE 10-DAY RULE

Whilst the tax period normally ends on the last day of the month, there is provision for vendors to adopt a date ending on a day other than the end of the month. A vendor that has an accounting date within 10 days before or after the end of the month in which the tax period ends, may use that date as the last day for the tax period. A vendor who wishes to apply this option must ***select a fixed day or date approved by the Commissioner before or after the end of the tax period and use it consistently for a minimum period of 12 months.***[34]

For example, a vendor may select the 27th day of a month (fixed date), or the last Friday in the month (fixed day but not a fixed date). The election by the vendor to use a cut-off date allowed under the 10-day rule does not affect the due date for submitting the return (which remains the 25th day after the end of the month covered by that tax period).

SARS has approved the following categories of fixed cut-off dates subject to the 10-day rule:

- A specific day of the week;
- A specific date of a calendar month; or
- A fixed day determined in accordance and consistent with the vendor's commercial accounting periods.

This approval has been given by the Commissioner by way of a binding general ruling contained in paragraph 5 of *Interpretation Note 52 (Issue 3) dated 10 March 2014 "Approval to End a Tax Period on a Day other than the Last Day of a Month" and Binding General Ruling No. 19 (Issue 2) dated 10 March 2014*. Vendors that comply with the requirements do not need to apply for a specific ruling.

[34] The "first day" of a tax period means the first day following the last day of the vendor's preceding tax period but can also be a fixed day as approved by the Commissioner in terms of the 10-day rule.

CHAPTER 4

ACCOUNTING BASIS

4.1 INTRODUCTION

One of the underlying principles of the South African VAT system is that it is an invoice-based tax. This means that vendors are generally required to account for VAT on the basis of invoices being issued or received. This method of accounting is referred to as the "invoice basis" or "accrual basis". However, certain vendors may qualify to use a different method referred to as the "payments basis" or "cash basis" of accounting. The differences between these two methods, as well as the requirements of each are discussed below.

4.2 INVOICE BASIS

Under this method of accounting vendors must generally account for the full amount of VAT included in the price of the goods or services supplied in the tax period in which the **time of supply** has occurred. This applies to the output tax liability on cash and credit sales as well as the input tax that may be deducted on cash and credit purchases.[35]

According to the ***general time of supply rule***, a supply occurs at the ***earlier of*** the following events:

- At the time that an invoice is issued.
- At the time any payment is received by the supplier.

Section 9 also contains special time of supply rules. The special time of supply rules take precedence over the general time of supply rule for purposes of accounting for output tax. Examples include rental agreements, fixed property, coin operated vending machines etc. *Refer to **Chapter 5** for more details.*

All vendors must account for VAT on the invoice (or accrual) basis unless application has been made and permission has been received from the Commissioner to use the payments basis of accounting. (Note however that fixed property transactions are accounted for to the extent of payment made towards the purchase price irrespective of whether a vendor is on the invoice or payments basis – *refer to **paragraph 4.5.2***).

Vendors must therefore account for the full amount of output tax on any supplies made in the tax period, even where payment has not yet been received from the recipient. Similarly, the full amount of input tax may be deducted on supplies received in the tax period, even where payment has not yet been made. A tax invoice must however be held by the vendor deducting the input tax. Furthermore, the vendor also needs to consider if the input tax on any particular supply is specifically denied before deducting it. Some of the advantages and disadvantages of the invoice basis of accounting are set out in the table below.

[35] Note that the input tax deduction is subject to the documentation requirements under section 16(2).

Advantages	Disadvantages
• Deduct VAT incurred on purchases before payment. • Fewer adjustments required when reconciling for income tax purposes. • Easy to calculate and implement accounting systems (based on invoices issued/received for sales and purchases).	• Account for VAT on sales before receiving payment from debtors. • Can lead to cash flow difficulties when vendor allows extended payment terms.

4.3 PAYMENTS BASIS

The payments basis (or cash basis) uses the same time of supply rule mentioned above, but the vendor only accounts for VAT on actual payments made and actual payments received in respect of taxable supplies during the period. The payments basis is therefore intended to help small businesses. (Note however those instances as discussed in ***paragraphs 4.5.1*** and ***4.5.3*** where the vendor is treated as being registered on the invoice basis).

The effect of the payments basis of accounting is that the date to account for VAT is delayed until payment has been made. This does not mean that the time of supply rules set out in section 9 are deferred. A vendor that accounts for VAT on the payment basis of accounting is still required to issue a tax invoice within 21 days of making a taxable supply to the recipient, but is only required to account for and pay any output tax due to SARS to the extent that payment has been received from the recipient. Similarly, any VAT charged to a vendor on goods or services acquired for taxable purposes will only be deductible to the extent that payment has been made by the vendor in respect of the taxable supply.

A vendor must apply in writing to SARS before being allowed to apply the payments basis, which, if approved, will only apply from a future tax period as specified by the Commissioner . A vendor who no longer qualifies for the payments basis must also notify SARS within 21 days of the end of the tax period concerned and use the invoice basis from the commencement of the tax period in which that vendor ceased to qualify for the payments basis.

The payments basis is only available to:

- Vendors who are **natural persons** (or partnerships consisting only of natural persons) whose total taxable supplies at the end of a tax period have **not exceeded R2,5 million** in the previous 12 months, and are not likely to exceed R2,5 million in the next 12 months. [36]
- **Public authorities, water boards, regional electricity distributors, certain municipal entities, municipalities, associations not for gain and welfare organisations –** regardless of the value of taxable supplies.
- Non-resident suppliers of certain electronic services that carry on an enterprise in the RSA if the total of their taxable supplies has exceeded R50 000.
- Certain vendors that have been allowed to register in accordance with the Regulations governing voluntary registration must account for VAT on the payment basis until the R50 000 threshold is met.[37]

[36] The government has indicated in the *2015 Budget Review* that there may be scope to increase the threshold and/or broaden the application to include incorporated businesses under the payments basis. An amendment to this effect may be proposed in the upcoming legislative cycle.

[37] These vendors are automatically registered on the payments basis without having to apply to SARS for a directive [Section 15(2B) read with section 23(3)(*b*)(ii)].

Juristic persons (for example, companies) and trust funds do not qualify for the payments basis unless they are the type of entity included in any of those listed below (for example, a section 21 company which is also a welfare organisation).

A few advantages and disadvantages of the payments basis of accounting are set out in the table below.

Advantages	Disadvantages
• Suitable for small businesses. • Facilitates cash flow. • Advantageous when the vendor allows lengthy periods of credit.	• Deduct VAT only after payments made to suppliers. • More difficult to implement accounting systems to manage, administer and calculate accurately (for example, reconciliation with income tax returns and adjustments).

Example 4 – Comparison of invoice basis vs payments basis of accounting

Assume the following sales and purchases figures (including VAT) for the tax period Jan to Feb 2015. Input tax and output tax is calculated by applying the tax fraction 14/114 to the relevant amounts – that is, amounts invoiced (invoice basis) and cash amounts (payments basis).

	Invoice basis	Payments basis
Output tax	**R**	**R**
Total sales R57 000 (cash received R11 400)	7 000	1 400
Input tax		
Total purchases R22 800 (paid full amount in cash)	2 800	2 800
VAT payable/ (refundable)	**4 200**	**(1 400)**

On the payments basis, output tax on sales is declared to the extent payment has been received and input tax on purchases deducted to the extent payment towards the purchase price has been made. Output tax of R1 400 would be declared and input tax of R2 800 deducted in the Jan-Feb 2015 VAT201 return.

4.4 CHANGE OF ACCOUNTING BASIS

A change of accounting basis may occur where the vendor voluntarily wants to adopt a more suitable system for the type of business concerned (provided the requirements are met). This could involve a change from the invoice to the payments basis, or vice versa, depending on the advantages and disadvantages for that particular business. The vendor can apply to change the basis of accounting by completing form VAT117.

Alternatively, SARS may require a vendor to change from the payments basis to the invoice basis because the vendor ceases to qualify for the payments basis. For example:

- A vendor who is an individual may have achieved business growth over time and managed to exceed R2,5 million, which is the threshold prescribed in the VAT Act. (However, should the increase in turnover be solely as a result of enterprise assets being sold because of a permanent reduction in the size of the business or due to the replacement of capital assets or due to abnormal circumstances of a temporary nature, the payments basis may be retained); or
- A vendor who is an individual may decide to conduct the business activities under a different legal entity such as a company, and so, be disqualified from utilising the payments basis of accounting. (This will also require a new registration to be processed and a new VAT registration number to be issued); or

- A vendor who was allowed to register for VAT voluntarily under section 23(3)(*b*)(ii) without making taxable supplies of R50 000 must migrate to the invoice basis once the R50 000 threshold is reached. The vendor may, however, remain on the payments basis provided that the conditions in section 15(2)(*b*) are met after reaching the threshold.[38]

Whatever the reason for changing the accounting basis, the vendor must submit a calculation and a list of debtors and creditors to the SARS office where the vendor is registered and make the necessary adjustment on the return for the period concerned. SARS will send the vendor a form VAT118 which will indicate the tax period from which the change will apply as well as how to do the required calculation.

Example 5 – Change in accounting basis adjustment

Mr S is a sole proprietor and trades under the name "S' Discount World". He is registered on the payments basis and noticed that the turnover for the previous 12 months has increased to R2,9 million. He now has to make the required adjustment in respect of debtors and creditors. SARS sends Mr S a form VAT118, which indicates that he must change to the invoice basis as from 1 August 2015.

On 31 July 2015, Mr S draws up the list, which reflects the balance of debtors to be R250 000 (including VAT) and the balance of creditors to be R215 000 (including VAT).The following calculation must now be performed:

	R
Debtors:	250 000
Less Creditors	215 000
Difference	35 000

VAT on the difference is:
R35 000 × 14 / 114 = R4 298,25
Mr S declares this amount in block 12 on his VAT return (output tax).

If the amount owing to creditors was greater than the amount owing by debtors, the difference would represent input tax. For example, if Mr S' creditors amounted to R300 000 and the debtors amounted to R200 000, the calculation would have been as follows:

	R
Debtors:	200 000
Less Creditors	300 000
Difference	(100 000)

VAT on the difference is:
RI00 000 × 14 / 114 = R12 280,70
which would be deducted in block 18 on the VAT return (input tax).

Note:
Remember to exclude any amounts included in debtors and creditors which do not include VAT at the standard rate (for example, debtors and creditors for exempt or zero-rated supplies) and creditors' non-permissible deductions.

4.5 SPECIAL CASES

The accounting basis will determine ***how much*** output tax must be paid or input tax may be deducted on a particular supply. There are, however, special provisions which treat certain supplies differently, irrespective of the accounting basis. These are set out in ***paragraphs 4.5.1 to 4.5.3*** below.

4.5.1 Instalment credit agreement (ICA)

Suppliers of taxable goods under an ICA must account for the full amount of output tax irrespective of the accounting basis on which they are registered. Similarly, the recipient will be able to deduct the full input tax if the goods were acquired for making taxable supplies (that is, these supplies are treated as if on the invoice basis) unless specifically denied.[39]

[38] Section 15(2B).
[39] From 1 January 2013, the definition of an ICA was extended to include any amount determined with reference to the time value of money and applies to all goods supplied after that date.

4.5.2 Fixed property supplied on or after 6 June 1996

Vendors making taxable supplies (sales) of fixed property must account for output tax only insofar as the consideration for the supply has been received, irrespective of the accounting basis on which they are registered. Similarly the recipient may only deduct input tax to the extent that payment of the consideration has been made (that is, these supplies are treated as if on the payments basis).

This rule does not apply where the purchaser is a vendor and a "connected person" in relation to the supplier, if the purchaser is able to deduct a full input tax credit on the supply.

4.5.3 Consideration more than R100 000

In the case of a supply made on or after 5 June 1997 for a consideration of R100 000 or more, vendors registered on the payments basis (other than municipalities and public authorities) must account for the full amount of output tax in the period in which the supply occurs. In other words, the supply is treated as if on the invoice basis. This rule does not apply to the sale of fixed property as there is a special rule for these supplies as discussed in ***paragraph 4.5.2*** above.

CHAPTER 5

TIME AND VALUE OF SUPPLY

5.1 INTRODUCTION

This chapter explains the time and value of supply rules which apply to certain supplies of goods or services. Not all of the time and value of supply rules have been included in this chapter, but only the ones which are the most common have been mentioned. These rules are important as vendors need to know how much VAT must be accounted for in a particular tax period, and in which tax period the VAT must be accounted for. This is based not only on the timing and valuation rules, but also the accounting basis (*refer to* ***Chapter 4***) and tax period (*refer to* ***Chapter 3***) which determines the due date for payment and the rendering of returns (*refer to* ***Chapter 9***).

For more details on the time of supply and value of supply, please refer to sections 9 and 10 of the VAT Act respectively. Note that some rules which impact on the time and value of certain transactions may also be found elsewhere in the Act. For example, some rules can be found in sections 8 and 18. In addition, in the case of taxable fringe benefits, the provisions of the Seventh Schedule to the Income Tax Act may apply. In a case where the taxable fringe benefit is the use of a motor vehicle, *VAT Regulation 2835* dated 22 November 1991 applies.

5.2 TIME OF SUPPLY

5.2.1 General rule

Generally, the time of supply is the earlier of the time an invoice is issued by the supplier (or the recipient) in respect of that supply, or the time any payment of consideration is received. However, specific time of supply rules apply to certain transactions. A few examples are dealt with in ***paragraphs 5.2.2 to 5.2.9*** below.

5.2.2 Connected persons

A supply of goods or services where the supplier and the recipient are connected persons, is deemed to take place as follows:

- Supply of goods to be removed – at the time of removal of the goods.
- Supply of goods not to be removed – at the time the goods are made available to the recipient.
- Supply of services – at the time the services are performed.

The general time of supply rules will apply when an invoice is issued or payment is received on or before the date that a return was submitted (covering the tax period in which the goods or services are deemed to be supplied as stated above), or the last day for submitting a return for that tax period.

Example 6 – Time of supply for connected persons

Farmer A is a vendor registered under Category B. He rents a harvesting machine to his son during the peak season from January to March. His son collected the machine on 10 January 2015. Farmer A submits his return for February on 25 March 2015. If no payment was received, and no invoice was issued by 25 March 2015, the time of supply will be at the time that the goods were removed, as Farmer A and his son are connected persons. Farmer A will, therefore, have to account for the supply in his February 2015 return. If Farmer A issues an invoice for the rental on or before 25 March 2015, the normal time of supply rules apply, in which case, Farmer A will declare the VAT on the supply in the return ending April 2015.

5.2.3 Progressive, successive and periodic supplies

A supply of goods or services is deemed to be successive if the goods are supplied under a rental agreement or provision is made for periodic payments, for example, in respect of services rendered, on a monthly basis. The time of supply is deemed to take place on the earlier of the date when payment is due or is received. Some examples include office and car rentals and ongoing contracts for maintenance, management or cleaning services.

In the case of goods and services supplied directly in the construction, repair, improvement, erection, manufacture, assembly or alteration of goods where the agreement provides for the consideration to become due and payable in instalments or periodically in relation to the progress made, the time of supply is the earliest of the date when payment is due or is received, or any invoice relating to the payment is issued. This time of supply rule also applies in any other case where goods are supplied periodically or progressively in terms of any agreement or law which provides for the consideration to be paid at intervals, based on the progressive or periodic nature of the supply. An example is an agreement whereby goods are to be supplied monthly over a stated period at an agreed price.[40]

Example 7 – Progressive supplies (construction)

J's Construction is registered for VAT under Category C tax period (monthly) and enters intto a contract to build 50 residential units for a total contract price of R6 500 000 (VAT inclusive). The agreement provides for monthly progress payments to be made over a period of 12 months. At the end of January 2015 and February 2015, the work certified as completed by the appointed Project Manager was 10% and 23% respectively. J's issued two tax invoices as follows:

Invoice 1357 – 31 January 2015 R650 000 (10% of R6 500 000)
Invoice 1358 – 28 February 2015 R845 000 (23% of R6 500 000 ***less*** R650 000 already invoiced)

As the goods are deemed to be supplied progressively, J's will not account for the full contract price at the time the agreement is entered into. J's will account for VAT of R79 824,56 (14 / 114 × R650 000) in his January 2015 return and R103 771,93 (14 / 114 × R845 000) in his February 2015 return.

[40] A corresponding special time of supply rule for services has been inserted with effect from 1 April 2014.

5.2.4 Instalment credit agreement (ICA)

The supply of goods under an ICA is deemed to take place at the earlier of the time the goods are delivered, or any payment of the consideration is received by the supplier in respect of the supply. Goods supplied under an ICA are not regarded as being supplied successively as discussed in ***paragraph 5.2.3*** above.[41]

5.2.5 Fixed property

Goods consisting of fixed property or any real right therein are deemed to be supplied upon registration of transfer of the property in a deeds registry, or the date upon which any payment is made in respect of the consideration (whichever occurs first). Note that a "deposit" is not considered to be "any payment" until the seller is able to apply that payment as consideration for the supply. Similarly, a payment that is held in a trust by an estate agent or attorney does not constitute payment made, as the seller cannot apply the amount against the outstanding debt at that time. *Also refer to the VAT 409 – Guide for Fixed Property and Construction.*

5.2.6 Fringe benefits

The cash equivalent of a fringe benefit under the Fourth Schedule to the Income Tax Act is required to be included in the remuneration of the employee who has received that benefit or advantage. The time of supply is the end of the month in which such benefit is required to be included as remuneration. In cases where the cash equivalent is not required to be included monthly or weekly in the amount of remuneration, the time of supply is the last day of assessment of the employee under the said Act.

5.2.7 Lay-by agreements

The supply of goods under a lay-by agreement is only deemed to take place when the goods are delivered. A lay-by agreement is one where the consideration for the supply is R10 000 or less and the supply is reserved by the payment of a deposit. In these types of transactions, delivery usually only takes place when the full purchase price, or agreed portion thereof, is paid. The supplier is therefore not liable to account for any VAT on the amount received as a deposit unless and until delivery has taken place.

Should a lay-by sale be cancelled or terminated for any reason, any deposit payment retained by the vendor or any amount of the consideration paid (or which is recoverable) is regarded as consideration for a taxable supply of services by the vendor. In such cases, the vendor must account for output tax on the total amount retained in the tax period during which the sale was cancelled or terminated.

5.2.8 Machines, meters and other devices

A special time of supply rule applies when supplies are made via machines, meters and other devices which accept payment by way of coins, tokens, paper money or cards. Examples include –

- vending machines such as those that dispense snacks, cool drinks and cigarettes;
- arcade video games;
- pool tables;
- parking meters; and
- public telephones.

[41] From 1 January 2013, the definition of an ICA was extended to include any amount determined with reference to the time value of money and applies to all goods supplied after that date.

The time of supply rule for the vendor making the supply is the time that the coins, tokens, paper money or cards are removed from the machine, meter or device. In the case of payment in any other form being accepted by the machine, meter or device (for example, debit or credit card), the time of supply is the time that the payment was received by the supplier. The time of supply for the recipient is when the coin, token, paper money or card is inserted into the machine, meter or device or when payment is tendered through other means.

5.2.9 Betting transactions

A betting transaction is when one person places a sum of money at risk with another person who accepts the money as a bet, based upon the outcome of a race, competition or other event or occurrence where the outcome is uncertain. The person accepting the bet is deemed to supply a service to the person placing the bet. A vendor accepting bets in the course or furtherance of an enterprise must account for output tax on the consideration received in respect of all betting transactions for which payment has actually been received in the tax period concerned. This rule applies whether the vendor accounts for VAT on the invoice or payments basis. *Refer to Interpretation Note 41 (Issue 3) dated 31 March 2014 "Application of the VAT Act to the Gambling Industry" for more information.*

5.3 VALUE OF SUPPLY

5.3.1 General rule

The consideration for a supply will normally be equal to the amount of money which is payable as the price charged for the supply. The consideration for a supply is represented by the value plus the VAT charged. In cases where the consideration is not in money, the consideration will be the open market value thereof. Note that the open market value includes the VAT element. Specific value of supply rules apply to certain transactions. Note that although section 10 of the VAT Act is titled "Value of supply", some of the subparagraphs in that section prescribe the ***consideration*** for the supply instead of the ***value*** of the supply. Some examples follow in ***paragraphs 5.3.2*** to ***5.3.8*** below.

5.3.2 Connected persons

The normal value of supply rules also apply to connected persons. However, in the case of a supply made for no consideration or for a consideration which is below the open market value, the consideration for the supply is equal to the open market value if the recipient would not have been entitled to a full input deduction on the goods or services acquired, had the open market value been charged on the supply.

5.3.3 ICA

The consideration in money is deemed to be the cash value of the supply. The cash value includes the cost of acquisition of the goods and VAT. In the case of a banker or financier, the cash value is normally the cost of the asset, for example the purchase price and any other costs borne by the banker. In the case of a dealer of such goods, the cash value is the price at which the goods are normally sold by the dealer and other related costs (such as installation, assembly, erection, *etcetera*) that form part of the amount financed under the ICA. The cash value does not include the cost of providing credit (that is, interest, finance charges or any amount determined with reference to the time value of money).

5.3.4 Commercial accommodation

The supply of commercial accommodation is a taxable supply. Commercial accommodation includes board or board and lodging supplied together with domestic goods or services (for example, meals, laundry services, the use of a telephone) in a house, flat, apartment, room, hotel, guest house etc. The total receipts for the supply of the commercial accommodation must exceed or be likely to exceed R60 000 for a period of 12 months before the activity will fall within the definition of an "enterprise" as defined. For example, a guest house which does not supply (or is not likely to supply) accommodation together with domestic goods and services in excess of the R60 000 threshold in a consecutive 12-month period, will not be able to register as a VAT vendor. Commercial accommodation excludes the letting or hiring of a dwelling which constitutes the place of residence of a natural person or the supply of employee housing, both of which are exempt supplies. *Refer to **Chapter 7** for more details.*

Should a person stay in an establishment which provides commercial accommodation for an unbroken period of more than 28 days, only 60% of the all-inclusive charge for the accommodation and the domestic goods and services is subject to VAT at the standard rate. The full amount charged is subject to VAT at the standard rate when a person stays for a period less than 28 days. Any domestic goods or services which are charged separately and are not included in the all-inclusive tariff for the accommodation, are also taxed in full at the standard rate. *Refer to the VAT 411 – Guide for Entertainment Accommodation and Catering for more information in this regard.*

5.3.5 Barter transactions

In barter transactions, goods or services are exchanged for other goods and/or services. Payment of the consideration may also be partly in money, and partly in goods and/or services exchanged. To the extent that payment of the consideration is made in money, the consideration for the supply will be the amount of money. To the extent that payment is not in money, the consideration is the open market value (OMV) of goods and/or services received.

Example 8 – Barter transaction

Farmer A and Farmer B are both VAT vendors. Farmer A supplies 10 cattle (OMV = R200 each) to Farmer B. In exchange, Farmer B supplies Farmer A with 1 horse (OMV = R1 000), and a cash payment of R1 000. The VAT effect is shown as follows:

Farmer A	R	Farmer B	R
***Output tax**: (On the cattle supplied)*		***Output tax**: (On the horse supplied)*	
Money received as payment	1 000	Money received as payment	Nil
OMV of horse received as payment	1 000	OMV of cattle received as payment	2 000
Total consideration received	2 000	Total consideration received	2 000
VAT (14 / 114 × R2 000)	**245,61**	VAT (14 / 114 × R2 000)	**245,61**
***Input Tax**: (On the horse acquired)*		***Input Tax**: (On the cattle acquired)*	
Input tax (14 / 114 × R1 000)	**R122,80**	Input tax (14 / 114 × R2 000)	
	R245,61		

Input tax is allowed on any taxable goods or services acquired to make taxable supplies. As cash ("money" as defined), is neither goods nor services, Farmer A is only entitled to deduct input tax on the OMV of the taxable goods acquired (that is, the horse). However, Farmer B acquired only goods and no cash.

5.3.6 Fringe benefits

The consideration in money is deemed to be the cash equivalent of the benefit granted to the employee as determined in the Seventh Schedule to the Income Tax Act. The consideration for a benefit that consists of a right to use a motor vehicle is determined in terms of *VAT Regulation 2835* dated 22 November 1991.

Example 9 – Motor vehicle supplied as a fringe benefit

Mr D's Wholesalers (a vendor registered under Category B tax period) purchases a "motor car" for R114 000 (including VAT of R14 000) on 1 March 2015. Mr D's Wholesalers is not entitled to deduct an input tax credit on the acquisition of the "motor car" as it is a prohibited deduction. An employee of Mr D's Wholesalers (who is paid monthly) is granted the right to use the motor car with effect from 1 March 2015, and Mr D's Wholesalers bears the full cost of maintaining the vehicle.

Mr D's Wholesalers must account for output tax on the supply of the fringe benefit as follows:

Step 1 Consideration in money = determined value of the motor car × 0,003 (0,3%)
= (R114 000 – R14 000) × 0,003 = R300

Step 2 The amount of output tax payable **per month** will be = R300 × 14 / 114 = **R36,84**

Step 3 The first tax period covers the months of March 2015 and April 2015 and output tax on the fringe benefit must be declared in Field 12 of the VAT201 return and paid on 25 May 2015 and for every tax period thereafter as follows:
R36,84 × 2 months = **R73,68**

Note that where the input tax on acquisition of the vehicle was allowed (for example, a bakkie) the consideration in money is calculated by applying a factor of 0,006 (0,6%) instead of 0,003 (0,3%).

In a case where the employee bears the full cost of the repairs and maintenance, and receives no compensation, the consideration as determined above must be reduced by the lesser of R85 or the consideration for the fringe benefit determined monthly.

5.3.7 Consideration only partly for a taxable supply

In cases where the consideration relates only partly to a taxable supply of goods or services, VAT is calculated only on that portion of the consideration which is properly attributable to the taxable supply. For example, when a tour operator charges a non-resident for a tour package in RSA, the VAT is calculated and paid, based on the consideration attributable to the individual component supplies, for example –

- international travel is subject to VAT at the zero rate;
- tour guide services are subject to VAT at the standard rate;
- hotel accommodation is subject to VAT at the standard rate; and
- airport shuttle passenger transport is exempt from VAT.

5.3.8 Betting transactions

A vendor that accepts a bet from any person (the punter) on the outcome of a race or on any other event is deemed to make a supply of services to the punter. The consideration for the supply of services to the punter is the amount received in respect of the bet. Output tax is calculated by applying the tax fraction (14/114) to the amount of the bet received. *Refer to Interpretation Note 41 (Issue 3) dated 31 March 2014 "Application of the VAT Act to the Gambling Industry" for more information*.

CHAPTER 6

TAXABLE SUPPLIES

6.1 INTRODUCTION

As mentioned in ***Chapter 1***, VAT is levied on the supply by any vendor of goods or services in the course or furtherance of any enterprise carried on. A person must register as a VAT vendor if the income from "taxable supplies" exceeds R1 million or will exceed that amount in terms of a contractual obligation in writing in any consecutive 12-month period or R50 000 in respect of non-resident suppliers of certain electronic services. (*Refer to* ***Chapter 2.***) A person may also register for VAT voluntarily under certain circumstances.[42] The term "taxable supplies" includes all supplies made by a vendor in the course or furtherance of an enterprise on which VAT should be levied at the standard rate or the zero rate. As exempt supplies are not taxable supplies, no output tax is levied and no input tax may be deducted on any expenses attributable to making those supplies. *For more information regarding exempt supplies and input tax, refer to* ***Chapters 7*** *and* ***8*** *respectively*.

A person is considered to be carrying on an "enterprise" if **all** of the following requirements are met:

- An ***enterprise or activity*** is carried on ***continuously or regularly*** by a ***person in the Republic*** or partly in the Republic.
- ***Goods*** or ***services*** are ***supplied*** to another ***person*** in the course or furtherance of the enterprise or activity.
- ***Consideration*** is payable for the goods or services supplied.

The term **"supply"** is widely defined in the VAT Act to include performance under any sale, rental agreement and instalment credit agreement (ICA). It also includes all other forms of supply, whether voluntary, compulsory or by operation of law, irrespective of where the supply is effected, and includes any derivative of the term.

6.2 STANDARD-RATED SUPPLIES

A standard-rated supply is a supply of goods or services which is subject to VAT at the rate of 14%. As explained in ***Chapter 1***, as a general rule, the supply of **all** goods and services are taxable at the standard rate, unless it is specifically zero-rated under section 11 (*refer to* ***paragraph 6.3***), or exempt under section 12 (*refer to* ***Chapter 7***).

The following are some examples of standard-rated supplies (the list is not exhaustive):

- Land and buildings (fixed property) – commercial or residential property bought from property developers, building materials, vacant land bought from a vendor etc.
- Professional services – construction/building, estate agents, consultants, architects, engineers, project managers, doctors, private hospital services, lawyers, plumbers, electricians and accountants.
- Household consumables and durable goods – most grocery items and foodstuffs such as meat, fish, white bread, snacks, most canned foods, cigarettes, perfume, medicines, cool drinks, cleaning materials, clothing, footwear, microwave ovens and other household consumables and appliances.
- Municipal goods and services such as the supply of electricity, water and refuse removal. *(Refer to the VAT 419 – Guide for Municipalities on the SARS website).*

[42] The relevant circumstances are set out in Regulations currently in draft.

- Accommodation, hospitality, tourism and entertainment – restaurant meals, hotel accommodation, liquor sales, arcade amusements, casino slot machines and gambling services, entrance fees to sporting events, theatre performances and film shows, guided tours, game drives and game hunting expeditions. *Refer to the VAT 411 – Guide for Entertainment Accommodation and Catering for more information in this regard.*
- Capital assets such as furniture, production machinery, installations, motor vehicles and equipment.
- Local transport of goods (all modes of transport) and the local transport of passengers by air or sea.
- Telephone, internet, computer and other telecommunication services.
- Rental of goods and commercial property such as office space.
- Motor vehicles, repair services, lubrication oils and spare parts.

6.3 ZERO-RATED SUPPLIES

Zero-rated supplies are taxable supplies on which VAT is levied at a rate of 0%. The application of the zero rate must be supported by documentary proof acceptable to the Commissioner. These requirements are set out in *Interpretation Note 30 (Issue 3) dated 5 May 2014 "The Supply of Movable Goods as Contemplated in Section 11(1)(a)(i) Read with Paragraph (a) of the Definition of "Exported" and the Corresponding Documentary Proof"* and *Interpretation Note 31 (Issue 3) dated 22 March 2013 "Documentary Proof Required for the Zero-Rating of Goods and Services"* respectively. *Refer also to **Chapter 12** for more detail on exports and the documentation required.*

Some examples of zero-rated supplies are briefly explained in ***paragraphs 6.3.1*** to ***6.3.11*** below:

6.3.1 Certain basic foodstuffs

Certain basic foodstuffs are zero-rated, provided it is not supplied for immediate consumption (that is, as a meal or refreshment) or added to a standard-rated supply. These include the following:

- brown bread
- brown bread flour (excluding wheaten bran)
- hens eggs (that is, not from ostriches, ducks etc.)
- dried beans
- maize meal
- pilchards in tins or cans
- milk, cultured milk, milk powder and dairy powder blend
- dried mealies and mealie rice
- samp
- vegetables[43] and fresh fruit
- lentils
- rice
- vegetable cooking oil (excluding olive oil)
- edible legumes and pulses of leguminous plants (that is, peas, beans, peanuts etc.)

The zero rate will **not apply** where –

- Zero-rated foodstuffs are prepared for immediate consumption, for example –
  - a glass of milk served in a restaurant;
  - a pre-packed salad with salad dressing purchased at a supermarket;
  - sandwiches and other take-away foods.
- A standard rated product or ingredient is supplied together with a zero-rated foodstuff, for example –
  - a punnet of vegetables seasoned with herbs and including a stick of butter;
  - a pack of rice or beans containing a sachet of flavouring;
  - a gift hamper consisting of a basket of fruit with chocolates and nuts;
  - peri-peri flavoured cooking oil.

[43] Refer to *Binding General Ruling No. 26 (dated 12 March 2015)* on the *SARS website* for more information.

6.3.2 Fuel levy goods

Most motor fuels are subject to taxes such as the General Fuel Levy, the Road Accident Fund Levy as well as excise duty. The VAT Act therefore provides that certain specified "fuel levy goods" are subject to the zero rate. These include crude oil and certain petrol and diesel based products (including biodiesel), which are used as fuel in internal combustion engines. Examples include fuels used in motor cars, trucks, buses, ships, fishing boats, railway locomotives, farming and production machinery.

Petroleum oils and crude oil which are refined for the production of fuel levy goods are also zero-rated; however, aviation kerosene, motor oil and oil lubricants are subject to the standard rate.

The sale of illuminating kerosene (paraffin) intended for use as fuel or for heating is subject to VAT at the zero rate. However, the zero rate only applies to illuminating kerosene which is "marked". Any "unmarked" illuminating paraffin or other forms of paraffin which are blended or mixed with any other products are subject to the standard rate of VAT.

6.3.3 Going concern

The sale of a business or part of a business which is capable of separate operation as a going concern qualifies for the zero rate if **all** of the following requirements are met at the time of entering into the agreement:

- Both parties must be VAT vendors (In the event that the purchaser is not yet registered at the time of concluding the agreement, it is advisable the agreement provides for the application of the zero rate, subject to the purchaser being a registered vendor with effect from the date the agreement is concluded. (Should this not occur, the seller should ensure that the contract makes provision to increase the consideration payable to cater for the imposition of VAT at the rate of 14%.)
- It must be clearly evident, and stated in the wording of the **written agreement** that –
  - the **enterprise** is sold as a going concern;[44]
  - the business is, or will be **an income-earning activity** on the date of transfer;
  - the whole business or a part of it which is capable of separate operation is disposed of to the purchaser, including **all the assets necessary for carrying on the enterprise** or part thereof; and
  - the consideration **includes VAT at the rate of 0%**.

The supply of the enterprise will be subject to VAT at the standard rate of 14% if any of the above requirements are not met.

[44] It is important to note that the **subject of the agreement** must be an "**enterprise" as a going concern**. In other words, the *merx* of the contract must be the business or enterprise, which includes all the necessary income earning business assets, client base etc. A contract for the sale of individual physical assets such as **fixed property** cannot be treated as a going concern under section 11(1)(*e*). For example, where a vendor sells the property from where its business is conducted, the subject of the supply is the fixed property and not the enterprise. In that case, VAT must be charged at the standard rate whether income is earned from that fixed property or not.

The following are some examples of cases which are not regarded as the disposal of an income-earning activity:

- The sale of a bakery business without the ovens.
- The sale and leaseback of a commercial building.
- The transfer of the bare dominium of an asset.
- The disposal of a business yet to commence.
- The disposal of a dormant business.

For more information on going concerns, refer to Interpretation Note 57 dated 31 March 2010 "Sale of an Enterprise or Part thereof as a Going Concern" and Chapter 9 of the VAT 409 – Guide for Fixed Property and Construction.

6.3.4 Farming goods

The supply of certain goods acquired and used for agricultural, pastoral or farming purposes may be zero-rated in certain circumstances. Some examples are animal feed, animal remedies, fertilizer, pesticide and plants and seeds in a form used for cultivation. However, the zero rating will be repealed with effect from a future date to be determined by the Minister by notice in the *Government Gazette*. The notice setting out the date of repeal will not be published earlier than 20 January 2016. *Refer to* ***Chapter 11*** *for more information.*

6.3.5 Goods temporarily imported for repairs

VAT is a tax on local consumption. The zero rate generally applies when goods or services are supplied for consumption outside of the RSA. The supply of services directly in connection with goods that are temporarily admitted into the RSA for processing, repair, cleaning or reconditioning is subject to VAT at the zero-rate. Any goods which are consumed or permanently affixed to those goods as a consequence of the services being rendered will also be zero-rated. This also applies to foreign-going ships or aircraft. In order for the zero-rating to apply, the vendor must be in possession of, amongst other documentary requirements, a copy of the SARS Customs Declaration evidencing the temporary import as well as the corresponding release notification.

Example 10 – Repair of a foreign-going aircraft

A foreign-going aircraft needs repairs to be carried out to its landing gear while stationed at the Cape Town International Airport. A local vendor is contracted to do the repairs. The services (labour) and spare parts (welding rods, gas, welding plates etc.) used in the repairs may be zero-rated. In order to apply the zero-rate, the vendor doing the repairs should obtain and retain, amongst other documentary requirements, the particulars of the foreign-going aircraft (i.e. the make, name, registration number and country of registration).

6.3.6 Exports

The direct export of goods may be zero-rated. In certain instances, the indirect export of goods may also qualify for the zero rate. In both cases certain documentary and other requirements must be met to support the application of the zero rate. *Refer to* ***Chapter 12*** *for more information on exports.*

6.3.7 International transport

The international transport of goods or passengers is zero-rated. This includes the cross-border transport of goods or passengers from a place outside the RSA into the RSA or *vice versa*. The transportation of goods or passengers between two places outside the RSA also qualifies for the zero rate.

In a case where the transport of goods is between two places in the RSA which is an integral part of the international transportation service, the local leg of the transport is zero-rated to the extent that the same supplier is contractually liable to the same recipient for both the local and international portions of the transportation service. This does not necessarily mean that the service must physically be performed by the same supplier. The supplier may choose to sub-contract the work to another vendor, but must remain contractually liable to the recipient for the relevant part of the transportation. Similarly, the local leg of a passenger flight that forms part of an international journey by air is zero-rated to the extent that it constitutes “international carriage”.

6.3.8 Land situated in an export country

Any service supplied directly in connection with land situated outside the RSA is zero-rated. For example, where a South African resident contracts with a South African vendor to build a house situated in Botswana, the zero rate will apply.

6.3.9 Services physically performed outside the Republic

The supply of services physically rendered or performed outside the RSA or in a customs controlled area qualifies for the zero rate.[45] This provision will apply to both residents and non-residents. For example, if a South African vendor renders a consulting service in Botswana for a client in that country, those services are subject to VAT at the zero rate.

6.3.10 Certain services supplied to non-residents

The supply of services to a non-resident who is not in the RSA at the time the services are rendered will qualify for the zero rate [section 11(2)(*ℓ*)]. Note that the standard rate will apply in cases where the services are supplied directly in connection with:

- Fixed property (land and improvements) situated in the Republic; or
- Movable property which is situated in the RSA at the time the services are rendered, except if –
  - the movable property is subsequently exported, provided the non-resident is not in the RSA when the service is rendered; or
  - the services supplied by the RSA vendor form part of a supply by the non-resident to the recipient vendor and the services are acquired wholly for taxable purposes by that recipient.

Refer to Interpretation Note 85 dated 27 March 2015 “The Master Currency Case” and Interpretation Note 81 dated 12 March 2015 “The Supply of Goods and Services by Professional Hunters and Taxidermists to Non-residents” for more information.

The supply of services in respect of a restraint of trade in the RSA is standard-rated.

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[45] *Refer to Interpretation Note 40 (Issue 2) dated 30 March 2012 “VAT Treatment of the Supply of Goods and/or Services to and/or from a Customs Controlled Area of an Industrial Development Zone” for more details in this regard.*

Example 11 – Services supplied by a vendor to a non-resident in respect of movable property

(a) Movable property subsequently exported

GR is an RSA vendor and a supplier of mining equipment. GR supplies a machine to *KM*, a Belgian company that is not an RSA resident and not a vendor in the RSA. *KM* will take delivery of the machine in the Democratic Republic of Congo (DRC), but before Gold Rock can export the machine, it has to be calibrated so that it can be used in the DRC. *KM* therefore acquires the services of CI (an RSA vendor) to calibrate the machine at the premises of GR before exportation. As the services supplied by CI will be made directly in connection with movable goods situated in the RSA, VAT would usually be charged at the standard rate. However, as the machine is subsequently exported to *KM*, the supply of services by CI (including any incidental goods incorporated into the machine, or consumed in the process of rendering the calibration services) will be subject to VAT at the zero rate.

(b) RSA vendor's supply is part of the non-resident's supply to a recipient vendor

K is a German resident which supplies extrusion machines to manufacturers in the plastics industry worldwide. It does not carry on an enterprise in RSA. B is a RSA vendor and a manufacturer of various plastic products. It purchases an extrusion machine from *K* on the understanding that *K* will also do the necessary installation work. *K* sub-contracts the installation work to IS (a RSA vendor) who will perform the necessary services on behalf of *K* at B's premises. As the supply of the service by IS forms part of the supply by *K* to B, the supply by Installation Services to *K* (who is not an RSA resident and not a vendor) is subject to VAT at the zero rate.

6.3.11 Municipal property rates

Any municipal property rates charged by a municipality are subject to the zero rate. However, the municipal rates charge must be separate and distinct from other charges levied for goods or services by that municipality. Therefore, where a municipality charges a "flat rate" which includes a charge for municipal rates, plus other charges for water, electricity, refuse removal, or other standard-rated goods or services supplied, the entire charge is subject to the standard rate.

6.4 DEEMED SUPPLIES

As a registered vendor, you may sometimes be required to declare an amount of output tax even though you have not actually supplied any goods or services. The VAT Act contains deeming provisions which both widen the range of transactions subject to VAT and clarify the instances where certain transactions will be deemed to be taxable or not. Deemed supplies will generally attract VAT at the standard rate. However, in some instances the zero rate will apply.

Examples of deemed supplies on which a vendor has to account for output tax at the **standard rate** include –

- trading stock taken out of the business for private use;
- certain fringe benefits provided to staff;
- assets retained upon ceasing to carry on an enterprise;
- short-term insurance claims that have been paid in connection with the enterprise (for example, insurance payout received for damaged or stolen stock);
- the receipt of payments from government by designated entities for the purposes of taxable supplies;
- betting and other gambling transactions;
- change in use adjustments (*Refer to* ***Chapter 15***).

Grants or subsidies received from government give rise to a deemed supply by the recipient to the public authority or municipality making the payment. The deemed supply is subject to VAT at the **zero rate** in the hands of the recipient that is not a “designated entity”,[46] provided that **the amount is not payment for the actual procurement of goods or services** by the public authority or municipality making the payment. Should the recipient be a “designated entity”, the deemed supply will be subject to VAT at the standard rate, unless the deemed supply is specifically zero-rated.[47] Amounts received for actual supplies to government will generally be taxable at the standard rate, unless specifically zero-rated or exempt from VAT.

For more information in this regard, refer to Interpretation Note 39 (Issue 2) dated 8 February 2013 “VAT Treatment of Public Authorities, Grants and Transfer Payments” and VAT 419 – Guide for Municipalities.

Example 12 – Insurance indemnity payment

P’s driver was involved in an accident on 25 March 2015 in which the delivery van was damaged. P’s insurance company issues him with a cheque for R57 000 on 1 June 2015 to compensate for the loss. As he is registered under Category B tax period, and the indemnity payment is deemed to be received in the course of his enterprise, P must account for output tax in his June 2015 return. The VAT is calculated on the amount received, therefore R57 000 × 14 / 114 = R7 000.

[46] A “designated entity” is defined in section 1(1).

[47] Refer to section 11(2)(*n*) in respect of welfare organisations and section 11(2)(*u*) for payments made in respect of the Skills Development Act No. 97 of 1998.

CHAPTER 7

EXEMPT SUPPLIES

7.1 INTRODUCTION

Exempt supplies are supplies of goods or services where VAT is not chargeable at either the standard rate or the zero rate and will not form part of taxable turnover. A person who only makes exempt supplies cannot register as a vendor or charge VAT on those supplies. This means that any VAT incurred to make exempt supplies may not be deducted as input tax.

Some examples of exempt supplies include –

- financial services (such as interest earned for the provision of credit, life insurance, the services of benefit funds such as medical schemes, provident, pension and retirement annuity funds);
- donated goods or services sold by non-profit bodies (such as religious and welfare organisations);
- residential accommodation in a dwelling (but not holiday accommodation);
- passenger transport in South Africa by taxi, bus or train;
- educational services provided by recognised educational institutions such as, primary and secondary schools, technical colleges, or universities which have been approved as public benefit organisations (PBOs) under section 30(3) of the Income Tax Act, or an organisation which has been approved by the Commissioner as being exempt under section 10(1)(*c*A)(i) of that Act;
- childcare services provided at crèches and after-school care centres; and
- services provided to members of body corporates, share block companies, retired persons housing schemes and home-owners associations which are met out of levy contributions by such members.

Note that generally the liability to register for VAT does not depend so much on the status of the organisation itself, but rather on the type of supplies made. Government departments and certain non-business public entities listed in the Public Finance Management Act, 1999 (the PFMA) are generally not liable to register for VAT and therefore any charges for supplies by these entities will not be taxable. As such, the supplies made by public authorities are “out of scope” rather than “exempt”, but the VAT effect is similar to the treatment of exempt supplies under section 12. This is discussed briefly in ***paragraph 7.8***.

7.2 LETTING AND SUB-LETTING OF DWELLINGS

VAT is not levied on the supply of a dwelling under a lease agreement. This rule also applies to employee housing supplied by an employer. A “dwelling” is basically defined as a building or a part of a building which is used, or intended to be used, as the residence of a natural person, and includes any fixtures and fittings enjoyed with the supply of the dwelling. The definition excludes the supply of “commercial accommodation”. *Refer to* ***paragraph 6.6.3***.

The exemption under section 12*(c)* applies, amongst others, where a number of residential dwelling units are let to a person who in turn sub-lets them to other persons, as long as the nature of the supply under both the main lease and the sub-leases constitutes the supply of a “dwelling” (or dwellings).

7.3 PASSENGER TRANSPORT (ROAD AND RAIL)

The supply of public transport by road or rail is exempt from VAT if the transportation –

- is between two places within the RSA;
- is of fare-paying passengers and their personal effects; and
- is supplied in the course of a transport business in a vehicle operated by the supplier of the transportation service or a person acting as the supplier's agent.

The following points should also be noted with regard to exempt passenger transportation:

- A charge or fee levied for a game-viewing drive does not fall within the ambit of this exemption.
- The transportation of goods does not fall within the exemption, except to the extent that it relates to the transportation of the personal effects and baggage accompanying the fare-paying passenger.
- Transportation of passengers by air and sea between two places with the RSA constitutes a standard-rated supply and does not fall within the exemption. The zero rate will apply instead of the exemption in the case of the supply of international transportation of goods or passengers. *Refer to* ***paragraph 6.3.7****.*

7.4 FIXED PROPERTY SITUATED OUTSIDE THE REPUBLIC

The supply of land (together with any improvements) situated outside the RSA by way of sale or letting is exempt from VAT.

7.5 EDUCATIONAL AND CHILDCARE SERVICES

The supply of educational services by the following entities is exempt from VAT:

- All State schools or schools registered under the **South African Schools Act, 1996** or a further education and training institution registered under the **Further Education and Training Act, 1998**.
- Universities, universities of technologies (previously known as technikons), colleges and other institutions providing higher education which are registered under the **Higher Education Act, 1997**.
- Institutions which are approved PBOs under section 30 of the Income Tax Act which supply any of the following –
  - adult basic education and training (ABET);
  - education and training of religious or social workers ;
  - education and training of persons with permanent physical or mental impairment; or
  - bridging courses to indigent persons to enable them to enter a higher education institution.

The services of crèches and after-school care centres are also exempt from VAT under section 12(*j*).

Example 13 – Crèche and after-school care

Mrs B runs a crèche and an after-school care centre. She charges R1 000 per month for each of the 120 children which are enrolled at the centre. Her monthly expenses amount to R57 000, of which R7 000 is VAT.

Annual Income (R1 000 × 120)	R120 000 × 12	= R1 440 000
Annual expenses (including VAT)	R57 000 × 12	= R 684 000

Mrs B will not register as a vendor even though her annual income is in excess of the R1 million threshold, because she is providing exempt services of caring for children in a crèche. As Mrs B may not register for VAT, the R7 000 VAT incurred cannot be deducted as input tax, and consequently, the amount will form part of the business costs of running the facility.

7.6 FINANCIAL SERVICES

Some examples of financial services which will normally be exempt are –

- the exchange of currency – for example, the rand value given for dollars is exempt, but any fee charged for the exchange service will be taxable at the standard rate;
- equity or participatory securities – for example, the sale of an interest in a close corporation, the creation and selling of company shares; and the sale of a share in a unit portfolio of a unit trust scheme;
- the provision of credit under an agreement – for example, the amount payable (that is, interest) for the provision of a home loan or an overdraft on a cheque account; and the finance charges (or any amount determined with reference to the time value of money[48]) on an instalment credit agreement (ICA);
- the provision of long term insurance policies – for example, life policies, sinking fund policies or disability policies; and
- the buying or selling of derivatives – for example, options, futures and interest-rate swaps.

All fees, commissions, merchant's discount and similar fee-based charges relating to financial services, are subject to VAT. Suppliers of financial services must apportion VAT, including notional input tax on goods or services acquired which cannot be directly attributed wholly for the purposes of consumption, use or supply in the course of making taxable supplies. *Refer to **paragraph 8.4** for more details.*

The supply of certain financial services to a non-resident who is not in the country at the time that the service is rendered, is subject to VAT at the zero rate and not exempt.

7.7 DONATED GOODS AND SERVICES

The supply by an association not for gain of any goods or services which it receives as a donation is an exempt supply. The exemption also applies in a case where the organisation sells goods which it has manufactured if at least 80% of the value of the supply consists of donated goods or services.

48 This is applicable in respect of goods supplied on or after 1 January 2013.

Associations not for gain and welfare organisations do not declare output tax on any donations received by them in the furtherance of their stated aims and objectives. However, the association or organisation will be liable for output tax if any so-called "donation" is conditional upon some form of reciprocity in the form of a supply of goods or services (identifiable direct valuable benefit) by the association or the organisation to –

- the "donor"; or
- a relative or other connected person in relation to the donor.

In such cases, the payment received is viewed as being consideration for a taxable supply made by the organisation.

For further information, refer to VAT 414 – Guide for Associations not for Gain and Welfare Organisations.

Example 14 – Supply of donated goods by an association not for gain

Mr C donates his old clothes to a church as well as some off-cuts of wood from his carpentry business (which will be made into chairs by the organisation). The clothes and chairs will be sold at the church's annual bazaar. The church is registered for VAT because, in addition to its religious and fundraising activities, it also conducts business activities which involves the purchase and sale of goods where the annual value of supplies exceeds the compulsory VAT registration threshold of R1 million.

The VAT implications of the supplies made at the annual church bazaar are as follows:

- Even though the church is registered for VAT, the sale of the clothes by the church will be an exempt supply. Therefore, no input tax may be deducted in making these supplies.
- The sale of the manufactured chairs will also be exempt if at least 80% of the value of the materials used in making the chairs consists of donated goods and services. Once again, no input tax may be deducted in respect of making or selling the chairs. However, if the value of the wood constituted 70% of the value and the other 30% of the value is made up of the cost of glue, nails, paint, fabric, rubber stoppers, transport and other taxable inputs, which were not donated to the church, the supply would be taxable at the standard rate (as the church is a vendor). In such a case, input tax could be deducted on the goods or services from vendors which were acquired in order to manufacture and sell the chairs, but not on the wood which was received as a donation.
- Any other goods which the church purchased for sale at the bazaar would be taxable at the standard rate, and any VAT incurred on the purchase of those goods or services may be deducted as input tax.
- A portion of the VAT incurred may be deducted, based on an approved apportionment method, when goods or services are acquired to make both taxable and exempt supplies at the bazaar.
- The activities associated with the church's religious activities, for example efforts to promote the faith and holding church services for its members, are not "enterprise" activities. They constitute non-taxable supplies made for no consideration and are outside the scope of VAT.

7.8 PUBLIC AUTHORITIES

As mentioned in ***paragraph 7.1***, when applying the "enterprise" test in respect of the supplies made by a "public authority", special rules apply. Government departments are generally not liable to register for VAT, unless they are specifically notified by the Minister of Finance (the Minister) to do so. This means that, as final consumers, the VAT incurred on capital and operating expenses is regarded as a cost to the department. National and provincial public entities listed in Parts A and C of Schedule 3 to the PFMA are treated on the same basis as departments, as they carry on activities which are either similar to those carried out by government departments and/or they are funded mainly by Government. As public authorities are not usually registered for VAT, they will not charge VAT on any goods or services supplied, except if the public authority concerned has been notified by the Minister that its supplies are to be treated as being carried on in the course or furtherance of an enterprise, and therefore the public authority is required to register for VAT if the threshold is exceeded.

A public authority will sometimes pay a grant to a vendor in which case the vendor will be deemed to supply a taxable service to the public authority making the payment. Deemed supplies which arise in respect of grants received by vendors are usually subject to VAT at the zero rate provided that the payments do not constitute consideration for any actual taxable supplies made to the public authority making the payment, or to any other person on behalf of that public authority.

For more information on grants and the general VAT treatment of public authorities, refer to VAT News 25 and 26 as well as Interpretation Note 39 (Issue 2) dated 8 February 2013 "VAT Treatment of Public Authorities, Grants and Transfer Payments".

CHAPTER 8

INPUT TAX AND OTHER DEDUCTIONS

8.1 WHAT WILL QUALIFY AS INPUT TAX ?

Generally, the VAT charged by a vendor to another vendor on any goods or services acquired for the business will qualify as input tax in the hands of the recipient vendor. It does not matter if the goods or services are acquired for the purposes of consumption or use by the business itself, or for the purposes of making a supply to another person. It is important that input tax is only deducted insofar as the supplies are used for the purposes of making **taxable supplies** in the course or furtherance of the **enterprise**.

No VAT may be deducted when goods or services are acquired for **private purposes, exempt supplies or other non-taxable purposes.** *Refer to **Chapter 7** for examples of exempt supplies or to section 12 for a complete list.*

To qualify as input tax, **three requirements** must be met, namely –

a) the goods or services supplied must be acquired by the vendor wholly or partly for consumption, use or supply in the course of making taxable supplies; and
b) VAT at the standard rate must have been charged on the taxable supply (except in the case of "second-hand goods"[49], or goods repossessed or surrendered under an ICA which have been acquired under a non-taxable supply[50]; and
c) the **appropriate documentation**[51] must be held by the vendor, as follows:
    - Standard-rated supplies – a valid tax invoice or document acceptable to the Commissioner.
    - Non-taxable supply of second-hand goods or goods repossessed or surrendered under an ICA – records must be maintained by the vendor deducting the input tax as per form VAT264[52] and section 20(8).
    - Importation of goods – a bill of entry or other prescribed customs documentation[53] which may be required in the circumstances, including the relevant proof of payment made to Customs.
    - Tax charged in respect of locally manufactured goods where the excise duty or environmental levy has not been included in the selling price – prescribed Customs documentation, and proof that the VAT has been paid to Customs.

The following are typical examples of expenses on which input tax may be deducted by a vendor for the purpose of making taxable supplies:

- Trading stock and raw materials.
- Manufacturing overheads.
- Water, electricity and telephone charges.
- Administrative overheads such as audit and accounting fees.
- Marketing and advertising expenditure.
- Fixed assets such as office furniture and computer equipment and fixed property.
- Delivery vehicles.

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49 Refers to second-hand goods as defined in section 1(1).

50 In the case of "second-hand goods", the amount of input tax is determinable to the extent payment towards the purchase price has been made (section 16(3)(a)(ii)).

51 Refer to *Interpretation Note 49 (Issue 2) dated 13 March 2013 "Documentary Proof Required to Substantiate a Vendor's Entitlement to 'Input Tax' or a Deduction as Contemplated in Section 16(2)".*

52 The VAT Act was amended from 20 January 2015 to make it clear that a declaration on the prescribed form (VAT 264) is a documentary requirement for purposes of deducting input tax in respect of second-hand goods acquired as well as goods repossessed or surrendered under an ICA.

53 Refer to ***Chapter 12*** for documents that must be retained.

- Rental charges for office space or for factory premises.
- Production machinery and maintenance expenses.
- Professional fees such as those charged by architects and engineers.
- Fees charged by VAT registered consultants and other independent contractors (but not salaries and wages of employees).

Apart from input tax, there are other specified deductions which a vendor is allowed to make in the calculation of its VAT liability or refund for a tax period. Examples are deductions in respect of –

- indemnity payments under a contract of insurance;
- amounts paid as a prize or winnings under betting transactions;
- change in use adjustments (*Refer to* ***Chapter 15***);

8.2 WHEN AND HOW DO I MAKE A DEDUCTION?

Input tax and other deductions are declared in Part B of the VAT201 return for the particular tax period. All input tax deductions (including second-hand goods acquired) and other deductions will be completed in fields 14, 14A, 15, 15A, 16, 17 and 18 of the VAT201 return. Fields 14 and 14A of the return where you will deduct the input tax relating to any capital purchases and capital goods imported, respectively. Fields 15 and 15A must be completed in respect of a deduction on any other goods or services used or consumed in the business in the course of making taxable supplies (including stock) and non-capital goods imported, respectively. Fields 16, 17 and 18 will be completed for input tax and other specified deductions, for example bad debts and adjustments. *Refer also to* ***Chapter 9***.

The correct tax period in which to make your deduction is determined by the time of supply rules as discussed in ***Chapter 5***. This will generally be the date that you made any payment for the supply, the date that the invoice was issued by the supplier (whichever occurs first), unless specific time of supply rules apply.

Your deductions are set-off against your output tax liability (completed in Part A) on the VAT201 return. The difference between these two amounts can either give rise to a refund, or a liability for that tax period. If your deductions exceed the total output tax liability on the VAT201 return (and any other amounts that you may owe SARS for past tax periods or other taxes), or if you have no output tax for that particular tax period, the excess will be refunded to you. Make sure that SARS has your correct banking details so that any refunds due to you can be paid safely and conveniently into your account without any unnecessary delays.

As mentioned above, it is very important that you ensure that you have the relevant tax invoice, debit note, credit note, bill of entry or other prescribed or acceptable documentary proof **before** making a deduction. A deduction is only allowed in the tax period that the required tax invoice, debit note, credit note, bill of entry or other prescribed or acceptable documentary proof is obtained. Further, to avoid forfeiting your claim, you must ensure that the deduction is made within a period of five years after the end of the tax period during which –

- a tax invoice for a standard rated supply should have been issued (that is, within 21 days from the time of supply);
- imported goods were entered for home consumption under the Customs and Excise Act;
- second-hand goods were acquired or goods were repossessed or surrendered in terms of an ICA;
- a vendor was furnished by its agent with a statement envisaged in section 54(3) in respect of the importation of goods on behalf of such vendor as principal. The statement must include certain details regarding the goods imported; or
- a vendor first became entitled to such deduction, in any other case.

8.3 WHAT AMOUNT CAN I DEDUCT ?

In ***paragraph 8.2*** above we dealt with ***when and how*** you make a deduction, but you also need to consider ***how much*** you can deduct in a particular tax period.

The following factors generally have an effect on the **amount** you may deduct:

- The **accounting basis** on which you are registered and any special rules applicable to the particular supply (*refer to **Chapter 4** for details*).
- Whether the specific inputs are **disallowed** or are **limited** in any way (*refer to **paragraphs 8.4** and **8.5** below*).
- The **extent** to which the supply will be **used for taxable supplies** (*refer to **paragraph 8.4** below*).

Note that the extent to which tax may be deducted as input tax depends on the purpose for which goods or services are acquired or imported. *Refer to **paragraph 8.4** below* in this regard.

The VAT Act allows vendors under certain circumstances to deduct input tax on second-hand goods acquired from non-vendors where no VAT is actually payable to the supplier, or where the goods are supplied by a vendor but do not form part of the vendor's enterprise. This is known as a **notional or deemed input tax deduction**.

The **conditions** under which a deemed or notional input tax deduction may be made:

- The goods must be "second-hand goods" as defined in the VAT Act.
- The supply may not be a taxable supply (for example, the goods are purchased from a non-vendor).
- The supplier must be a South African resident and the goods supplied must be situated in RSA.
- The purchaser must have made payment for the supply, or at least made part payment as an input tax deduction is only allowed to the extent that payment has been made.
- The goods must be acquired by the vendor wholly or partly for consumption, use or supply in the course of making taxable supplies.
- The prescribed records must be kept (*refer to **Chapter 18***).

The notional input tax is calculated by multiplying the tax fraction (presently 14/114) by the lesser of the consideration paid or the open market value (OMV). Where the OMV is less than the consideration paid, the OMV will be used to calculate the notional input tax deduction.

Example 15 – Limitation of notional input tax to the extent of payment of the consideration

A second-hand goods dealer buys a used fridge from a non-vendor for R600 for resale. He pays the person R400 immediately and the balance of R200 in the next tax period.

Input tax is calculated as follows:		R
Deduct in Tax period 1 – R400 × 14 / 114	=	49,12
Deduct in Tax period 2 – R200 × 14 / 114	=	24,56
Total	=	73,68

In the case of the supply of second-hand goods being "fixed property" which is not subject to VAT, the input tax is limited to the transfer duty payable[54] if the property was acquired on or before 9 January 2012. The input tax in such cases may only be deducted once the time of supply for VAT purposes has occurred, and only after the transfer duty has actually been paid to SARS. With effect from 10 January 2012 the law was amended so that the input tax in such cases is no longer limited to the transfer duty payable. A vendor's entitlement to deduct input tax therefore no longer depends on whether the transfer duty has been paid to SARS or not. However, it is still a requirement that before any input tax can be deducted, the time of supply for VAT purposes must have occurred. Furthermore, as with other second-hand goods, the input tax is limited to the extent that the consideration for the property has been paid to the seller.

Example 16 – Limitation of notional input tax to the amount of transfer duty payable

D CC, a property developing enterprise buys vacant land for R50 000 on 1 December 2010 from a non-vendor, on which it intends to develop houses. D CC pays the full purchase price on registration of the property into its name. Since the sale of the land is not a taxable supply for VAT purposes, D CC must pay transfer duty at the rate applicable at the time – in this case 8% of R50 000 = R4 000.

Therefore input tax = R50 000 × 14 / 114 = **R6 140,35, but limited to R4 000 (actual transfer duty paid).**

Note that D CC would **not** be entitled to deduct the input tax of R2 140,35 (that is, the difference between R6 140,35 and R4 000) which was previously denied as a result of the amendment to the law in this regard on 10 January 2012, as the property was acquired on 1 December 2010 which was **before** the law was amended. Had D CC acquired the land for enterprise purposes on or after 10 January 2012, the full amount of R6 140,35 would be deductible as input tax.

8.4 APPORTIONMENT

8.4.1 Introduction

Generally, the full amount of VAT on goods and services acquired or imported by a vendor for the purposes of making taxable supplies may be deducted as input tax. However, where goods or services are imported or purchased locally for taxable and other non-taxable purposes (mixed purposes), only a portion of the VAT or notional input tax in respect thereof (collectively referred to as VAT) may be deducted. Therefore, when goods and services are not acquired exclusively for taxable supplies, you will be required to determine the part that relates to taxable supplies and the VAT only qualifies as input tax to that extent.

8.4.2 Direct attribution vs apportionment

Before attempting to apportion an expense, the first step is to determine if the expense can be **directly attributed.** Direct attribution means that you will be required to **attribute** the VAT expense according to the intended purpose for which the goods or services acquired will be used.

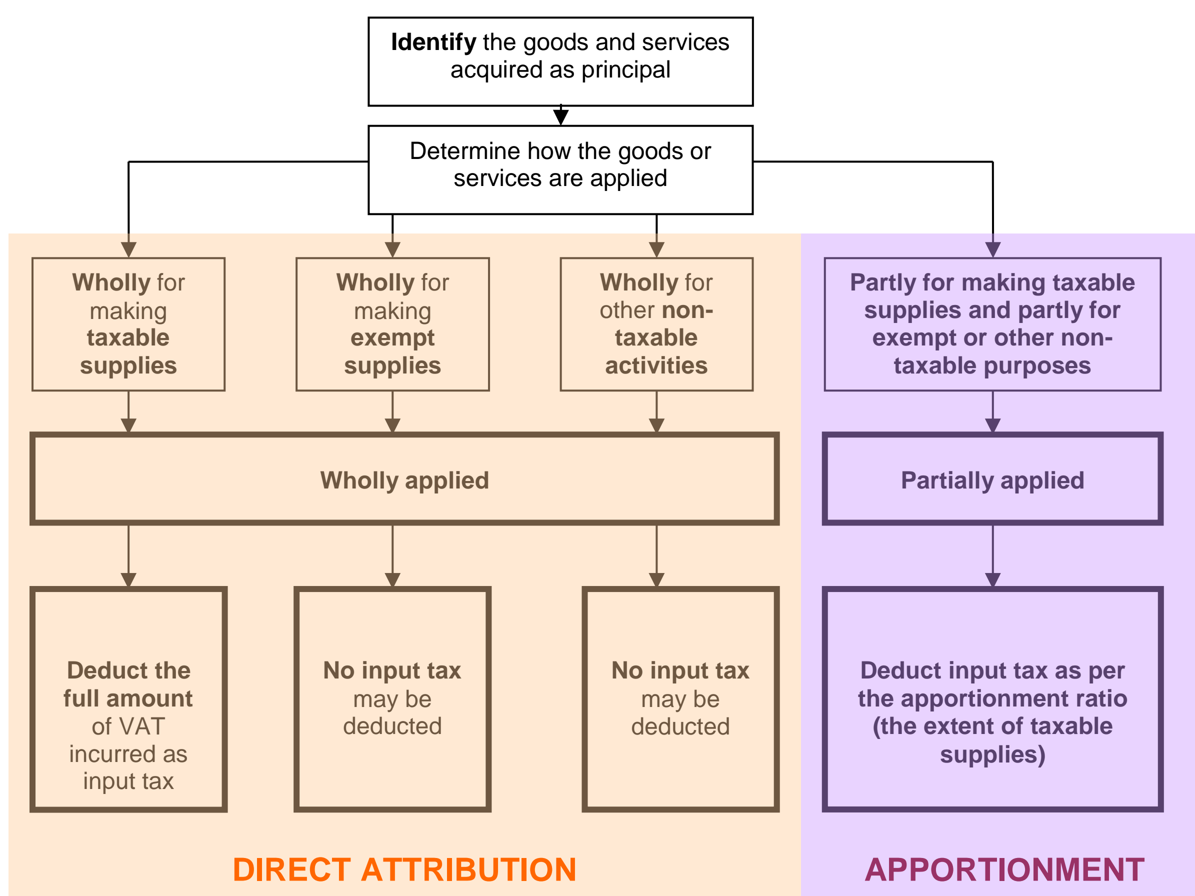
[54] In a case where the fixed property constituted shares in a share block company which was subject to stamp duty before the repeal of the Stamp Duties Act on 1 April 2009, the input tax would have been limited to the stamp duty payable.

Direct attribution means that permissible expenses[55] are incurred either:

- Wholly for making taxable supplies, in which case the VAT can be deducted in full; or
- Wholly for making exempt supplies or other non-taxable purposes, in which case no VAT on the expense can be deducted as input tax.

It is only when an expense has been incurred partly for the purpose of consumption, use or supply in the course of making taxable supplies and partly for exempt and other non-taxable purposes, that the VAT must be apportioned. Once it is clear that the expense must be apportioned, the next step is to calculate the proportion of VAT which may be deducted as input tax. This is referred to as the apportionment ratio and is expressed as a percentage. Although there may be a few exceptions, the most common expenses that need to be apportioned are the general overheads of the business. Other expenses are usually capable of being attributed wholly to either taxable or non-taxable purposes by applying the concept of direct attribution.

The diagram below illustrates the concepts of direct attribution and apportionment:



As shown above, where the acquisition of goods or services can be identified as being **exclusively or wholly** for a particular purpose, the VAT on those supplies can either be deducted in full (wholly for taxable supplies), or no VAT may be deducted as it does not qualify as input tax (wholly for exempt or other non-taxable purposes). In applying the concept of direct attribution, the manner in which expenses are incurred and the actual application of the goods or services in the business must be examined.

[55] VAT on certain expenses listed in section 17(2) may not be deducted, even if the expense is incurred for purposes of making taxable supplies.

This is a relatively simple exercise when it concerns a vendor that only makes taxable supplies, as the goods or services will usually be acquired exclusively for taxable supplies, and the VAT may be deducted in full. However, when goods or services are acquired by a vendor that conducts taxable and non-taxable activities (for example exempt and non-enterprise activities), the first step is to determine whether the expense is incurred wholly for taxable, exempt or other non-taxable purposes.

The process of applying direct attribution can be facilitated by the way in which an enterprise organises its different activities into divisions or business units. For example, when individual divisions or business units have control over their own budgets and expenditure decisions, and if they conduct exclusively taxable or exclusively exempt activities, it is much easier to apply direct attribution.

This concept is illustrated in **Examples 17** to **19** below.

Example 17 – Direct attribution: Taxable supplies

ABC Bank buys a building which costs R3 420 000 (including VAT). The building consists of units which are to be rented out to businesses as office space.

Although the bank makes both taxable and exempt supplies, the building was acquired exclusively for making taxable supplies (letting of property as offices). The expense is therefore **wholly attributable to making taxable supplies** and the bank can deduct the full amount of VAT charged as input tax (R3 420 000 × 14 / 114 = R420 000).

Example 18 – Direct attribution: Exempt supplies

J's Transport runs a fleet of buses which are used exclusively to provide public passenger transport. It imports a new bus for the exclusive purpose of its local passenger transport business and pays an amount of R32 000 VAT on the value of the bus on importation.

Since the supply of transport to fare-paying passengers in a bus is exempt, the VAT paid is **wholly attributable to making exempt supplies**. J's Transport can therefore not deduct any VAT paid on the importation of the bus as input tax.

Example 19 – Direct attribution vs. apportionment

Scenario
ABC Municipality rents a two-storey building under a single lease agreement which houses its public passenger transport and municipal rates divisions. The divisions occupy the ground floor and first floor of the building respectively. The divisions use the same software which has been implemented across all of the municipality's different divisions and it receives a single telephone account each month for telephone usage for the building address. The municipality does not maintain separate cost accounts for each division.

Implications for ABC Municipality
The public passenger transport division makes only exempt supplies and the municipal rates division makes only taxable supplies. Although the divisions are organised along the lines of wholly taxable and wholly non-taxable activities, ABC Municipality has not arranged its contracts or implemented accounting methods to specifically allocate costs incurred by each division.

Furthermore –

- the lease agreement does not provide for separate rental amounts for each division;
- the cost of the computer software relates to the organisation as a whole; and
- the account for the use of telephones is not billed to each division separately.

It follows that ABC Municipality would have to apportion all of its VAT incurred in relation to these expenses, since it cannot directly attribute the expenses wholly to taxable or wholly to exempt supplies.

8.4.3 Apportionment methodology

Once it has been established that the expense cannot be directly attributed wholly to taxable purposes or wholly to exempt or other non-taxable purposes, the second level of enquiry is to determine the portion of VAT which qualifies as input tax, based on the extent to which the intended use is for taxable purposes. The apportionment ratio must be determined by using an approved apportionment method so that only a fair and reasonable proportion of VAT is deducted as input tax.[56]

The only pre-approved method which may be used to apportion VAT incurred for mixed purposes without specific prior written approval from the Commissioner, is the turnover-based method. This method applies by default in the absence of a specific ruling obtained by the vendor to use another method as there is usually a fairly good correlation between the turnover of a business and the resources (or inputs) which are employed to produce that turnover. Where a specific ruling has been granted to the vendor, the vendor cannot go back to using the turnover-based method, where it is inappropriate, without requesting a further ruling.

Note, however, that in circumstances where the turnover-based method is inappropriate because it produces an absurd result, proves impossible to use, or does not yield a fair approximation of the extent of taxable application of the enterprise's VAT-inclusive expenses, the vendor must approach SARS to obtain consensus on an alternative method which yields a more accurate result.

In deciding whether the turnover-based method is appropriate, the vendor must apply a common-sense approach which would be applied by a reasonable person. The method must therefore achieve a "fair and reasonable" result which is a proper reflection of the manner in which the vendor's resources (business inputs) are applied for making taxable and non-taxable supplies respectively.

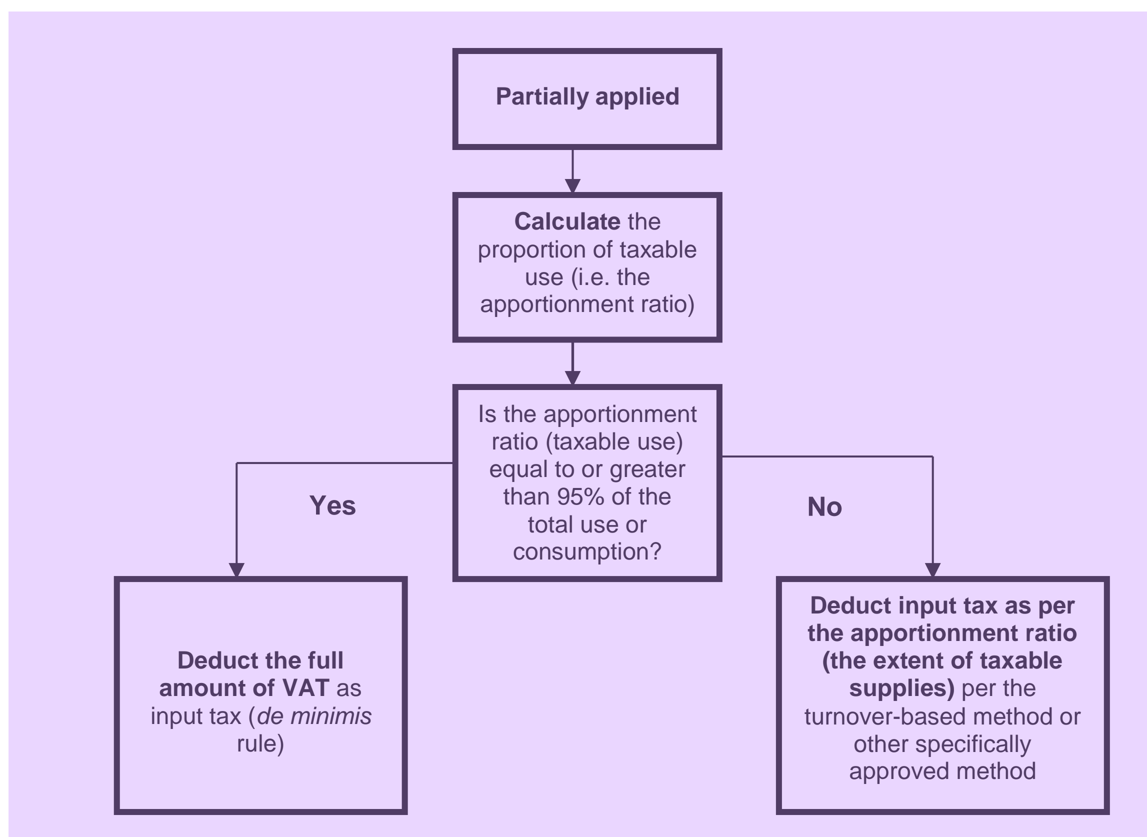
Although the term "fair and reasonable" will usually be perceived as a subjective concept, vendors applying the turnover-based method of apportionment should try to be objective and consider that the result must be perceived as "fair and reasonable" from SARS's perspective as well. The result must also be capable of being justified as appropriate in the vendor's circumstances. For example, where a company applies a method of apportionment and it undergoes a major restructuring, or the nature of the business changes so that the extent of taxable and non-taxable supplies are significantly different after that event, the vendor would be expected to approach SARS to confirm whether the current method is still appropriate. Alternatively, if it is clear from the outset that the apportionment method will not yield a fair and reasonable result after the changes, a ruling should be obtained to apply another method which results in more fair and reasonable proportion of VAT being deducted as input tax in the year that the changes occur, and in any subsequent years.

The apportionment percentage should not be excessive or extreme so that either a 0% or 100% result is achieved. If an extreme result is achieved, it is usually an indication that either the formula is inappropriate, or it is not being applied correctly. As an example to illustrate the point, it would generally be unreasonable to conclude that a vendor whose principal business is the financing of motor vehicle purchases under ICAs will achieve a *de minimis* apportionment percentage of 95% or more. Further, the vendor would have some difficulty in explaining why the method is "fair and reasonable" where the norm for vendors in that industry ranges, for example, between 50% and 60%.

With the implementation of the TA Act, the effective date of application of a change in an approved methodology will be within the year of assessment (where the vendor is a taxpayer) or within 12 months ending on the last day of February or the last day of the vendor's financial year (where the vendor is not a taxpayer), during which the application for the aforementioned method was made.[57]

[56] Refer to section 17(1) and Chapter 7 of the TA Act.
[57] Section 17(1) as amended.

Following on from the diagram on **page 46**, the second level of enquiry in establishing the apportionment percentage is illustrated in the diagram below.



The formula for the turnover-based method is as follows:

FORMULA: TURNOVER-BASED METHOD OF APPORTIONMENT[58]

Formula: $$y = \frac{a}{(a + b + c)} \times \frac{100}{1}$$

Where:
y = the apportionment ratio/percentage;
a = the value of all taxable supplies (including deemed taxable supplies) made during the period;
b = the value of all exempt supplies made during the period; and
c = the sum of any other amounts of income not included in "a" or "b" in the formula, which were received or which accrued during the period (whether in respect of a supply or not).

Notes:
1. The term "value" excludes any VAT component.
2. "c" in the formula will typically include items such as dividends and statutory fines (if any).
3. Exclude from the calculation the value of any capital goods or services supplied, unless supplied under a rental agreement/operating lease (that is, not a financial lease or instalment credit agreement).[59]
4. Exclude from the calculation the value of any goods or services supplied where input tax on those goods or services was specifically denied.

Continued overleaf …

[58] The formula in respect of the turnover-based method of apportionment constitutes a binding general ruling and is set out in *Binding General Ruling No.16 (Issue 2) dated 30 March 2015 (BGR 16)* issued in accordance with section 89 of the TA Act and is effective from 1 April 2015.

[59] Note that this exclusion will only apply where the vendor concerned does not usually supply capital items on a regular basis as a normal part of the business, unless such items are supplied under an ICA.

FORMULA: TURNOVER-BASED METHOD OF APPORTIONMENT

5. The apportionment percentage should be rounded off to two decimal places.
6. Where the formula yields an apportionment ratio/percentage of 95% or more, the full amount of VAT incurred on mixed expenses may be deducted (referred to as the *de minimis* rule).

Conditions:

The aforementioned method is subject to the following conditions:

1. The vendor may only use this method if it is fair and reasonable. Where the method is not fair and reasonable or inappropriate, the vendor must apply to SARS to use an alternative method.
2. Vendors using their previous year's turnover to determine the current year's apportionment ratio are required to do an adjustment (that is, the difference in the ratio when applying the current and previous years' turnover) within six months after the end of the financial year.

Example 20 – Application of the turnover-based method of apportionment

ABC Bank buys computer software for R456 000 (including VAT). The bank's apportionment ratio is 60% based on the turnover-based apportionment method. The software is used to administer the supplies of all the taxable and exempt divisions of the bank. The software is therefore used by the bank partly in the course of making taxable supplies and partly for making exempt supplies. In this case, 60% of the VAT incurred on the acquisition of the computer software (R33 600) may be deducted as input tax.

Calculation: [(R456 000 × 14 / 114) × 60%] = R56 000 × 60% = R33 600

Example 21 – Application of the *de minimis* rule

ABC Municipality buys computer software for R456 000 (including VAT). The apportionment ratio is determined to be 96% based on the turnover-based method of apportionment. The software is used to administer the supplies of all the taxable and exempt divisions of the municipality. The software is therefore used by the municipality partly in the course of making taxable supplies and partly for making exempt supplies. However, since the apportionment ratio is calculated as being 96%, the full amount of VAT may be deducted as input tax. This is because the *de minimis* rule (where the ratio is 95% or more) may be applied. As a result, the full amount of R56 000 VAT incurred on the acquisition of the computer software may be deducted as input tax.

Calculation: [R456 000 × 14 / 114] × 100% = R56 000

The turnover-based method is generally calculated using information extracted from the financial statements of the vendor's business. However, there could be a situation in which the financial statements do not specify the information that is required for the purposes of calculating the turnover-based method (that is, the income statement reflects an amount of income that is made up of both taxable and exempt supplies). Vendors should therefore ensure that if this is the case, adequate accounting records are maintained to establish the actual value of taxable supplies, exempt supplies and other non-taxable receipts.

In terms of the VAT Act, a vendor is required to determine the apportionment percentage in respect of every tax period. However, in practice, it is often difficult to accurately determine the apportionment percentage according to the turnover-based method in each and every tax period as required. It is therefore acceptable practice to calculate the estimated percentage using the turnover figures from the previous year's financial statements, and to apply that percentage for deducting input tax in each and every individual tax period for the current year.

An adjustment must then be made for any shortfall or overestimation in the percentage used for the calculation, when the audited financial statements for the current financial year are available, and the actual percentage can be calculated. It should, however, be noted that this is merely a practical administrative arrangement and does not have the effect of altering any legal provisions in the VAT Act. For example, it does not extend the five-year period in terms of which the deduction of input tax or the claiming of refunds are limited as provided in section 16(3) and Chapter 13 of the TA Act. **This adjustment should be done within a period of six months after the financial year-end.** If the audited financial statements have not been completed within that time, an adjustment should be made using the year-end trial balance figures. This would be followed by a final adjustment when the audited financial statements for that year are eventually finalised.

For new enterprises with no past financial statements, an estimate based on expected taxable turnover according to the enterprise's business plan or sales/marketing forecasts could be used for each and every tax period. As in the situation above, an adjustment would be required within six months of the financial year-end to account for any differences between the estimated apportionment percentage used, and the actual extent of taxable supplies as determined from the audited financial statements.

Example 22 – Apportionment using the turnover-based method – comprehensive example

Company J owns a small double-storey building on the outskirts of a large city. The building is used for mixed purposes in that it has 4 shops on the ground floor (taxable supplies) and 2 large residential apartments on the top floor (exempt supplies).

Shops are rented for R12 000 each (plus VAT @ 14%) and apartments for R8 000 each per month (no VAT). There are no separate meters for water and electricity and these expenses are paid by Company J in terms of the lease agreements. An extract from the company's annual financial statements for the 2014 financial year (tax year) indicates the following income and expenditure items:

INCOME STATEMENT OF COMPANY J
FOR THE YEAR ENDING 28 FEBRUARY 2014

Note 1: Amounts reflected on any financial statements should generally not include VAT.

	R	VAT expense indicator
Income		
Rental of apartments (exempt)	192 000	
Rental of shops (taxable)	576 000	
Dividends received (non-supply)	3 000	
Total income	**771 000**	
Expenses		
New geysers for apartments	5 000	*wholly exempt*
New glass for shop fronts	16 000	*wholly taxable*
Painting of entire building	120 000	*mixed*
Electricity	48 000	*mixed*
Water	63 000	*mixed*
Telephone	6 000	*mixed*
Insurance on building	66 000	*mixed*
Rates & taxes	100 000	*no VAT included*
Wages	35 000	*no VAT included*
Total expenses	**459 000**	
Net Profit	**312 000**	

Note 2 : Percentage taxable supplies per turnover-based method:

$$\frac{576\ 000}{771\ 000} \times \frac{100}{1} = \mathbf{75\%}$$

Note 3: "Mixed" VAT expenses

120 000	*Painting*
+ 48 000	*Electricity*
+ 63 000	*Water*
+ 6 000	*Telephone*
+ 66 000	*Insurance*
303 000	

Continued overleaf …

VAT ACCOUNT OF COMPANY J
RECONCILIATION FOR THE YEAR ENDING 28 FEBRUARY 2014

			R
Output tax			
Shop rental	576 000 × 14%	(Note 1)	**80 640**
Input tax			**(34 055)**
Glass – shop fronts 16 000 × 14%		(Note 1)	(2 240)
Total mixed expenses		(Note 3)	
303 000 × 14% = 42 420 × 75%		(Note 2)	(31 815)
Net VAT paid 2012		(Notes 4 and 5)	**46 585**

***Note 4:* Adjustments**

See Chapter 15 for details of the VAT implications and adjustments when the calculated apportionment percentage changes.

***Note 5*: Annual adjustment**

Assuming that the vendor used an apportionment percentage of 72% during the year for all tax periods (based on the 2013 financial statements), the vendor would be entitled to claim an input tax adjustment in block 18 of the VAT201 return for the shortfall of 3% calculated as follows: R42 420 × 3% = R1 272,60.

Similarly, had the 2013 financial statements indicated the percentage to be 80%, the vendor would be required to make an output tax adjustment in block 12 of the VAT201 return as follows: R42 420 × 5% = R2 121.

The adjustment in both scenarios above must be made within six months of the financial year-end.

8.5 DENIAL OF INPUT TAX

The VAT Act provides that input tax is denied on certain expenses even if the expenses are incurred in the course of conducting an enterprise. These include –

- goods or services acquired for purposes of entertainment;
- membership fees or subscriptions of clubs, associations or societies of a sporting, social or recreational nature;
- the acquisition of a motor car by a vendor (who is not a motor car dealer or car rental enterprise); and
- goods or services acquired by medical schemes or benefit funds for the purposes of health insurance or benefit cover.

The specific details as well as the exceptions are detailed below under separate headings.

8.5.1 Entertainment

Common examples of entertainment expenses are –

- Food and other ingredients purchased in order to provide meals to staff, clients and business associates. This includes year-end lunches and parties, hiring of venues for those functions, as well as expenses incurred for the provision of free meals at workplace canteens or complimentary staff refreshments (for example, tea, coffee and other beverages or snacks provided to staff);
- Business lunches, golf days, or other entertainment of customers and clients in restaurants, theatres, night clubs or sporting events;
- Goods and services acquired for providing employees with free meals. This would also apply to goods and services acquired for providing employees with subsidised meals if the direct and indirect costs of providing those benefits and facilities are not covered by the price charged. For example, catering services, furniture, equipment and utensils used in kitchens, canteens and dining rooms;

- Beverages, meals, entertainment shows, amusements or other hospitality supplied to customers and clients at product launches and promotional events; and
- Capital goods such as hospitality boxes, holiday houses, yachts and private aircraft.

Exceptions:

In the following circumstances, input tax relating to entertainment expenses incurred may be deducted:

- Vendors in the business of supplying entertainment – the entertainment must, however, be supplied at a charge that at least covers all the costs of supplying the entertainment or such charge must be equal to the open market value of the entertainment. This would include genuine client promotions where the entertainment is of the same sort as that normally provided (for example, two milkshakes for the price of one).
- Personal subsistence – only if the entertainment is acquired by the vendor and relates to a meal, refreshment or accommodation consumed or enjoyed by the vendor or his employee in carrying out the vendor's business, **in respect** of **any night** that the vendor or employee **must be away on business from his/her normal place of work and residence**. No input tax credit is allowed in respect of an allowance paid to the employee to cover such expenses.
- Meals or refreshments supplied by organisers of **seminars and similar events** where the cost is included in the price of the ticket or entrance fee.
- Entertainment provided by operators of **taxable passenger transport services** to passengers or crew during the journey in which such entertainment is supplied as part of the taxable transport service to passengers, or as part of the subsistence of crew.
- Sport or recreational facilities provided by municipalities.
- Expenses incurred by a welfare organisation in carrying on "welfare activities".

Refer to the VAT 411 – Guide for Entertainment, Accommodation and Catering which deals with this topic in detail.

8.5.2 Club subscriptions of a recreational nature

Input tax may not be deducted on VAT paid in respect of any membership fees to sporting, recreational and private clubs. For example, membership of a country club, soccer supporters club, amateur boxing club, holiday club, tea club, stokvel savings club etc. However, the VAT incurred on subscriptions to magazines and trade journals which are related in a direct manner to the nature of the enterprise carried on by the vendor may be deducted as input tax. The VAT on any fees or subscriptions to professional organisations paid by a vendor on behalf of its employees, may not be deducted as input tax. However, if the vendor is a sole proprietor, and such fees or subscriptions relate to the sole proprietor, and is consumed in the course of the sole proprietor's enterprise, the VAT incurred in this regard may be deducted as input tax.

8.5.3 Motor cars

The term "motor car" is defined in the VAT Act and includes vehicles which –

- have three or more wheels;
- are normally used on public roads; and
- are constructed or converted mainly or wholly for carrying passengers.

As a general rule, an input tax deduction may not be made by a vendor if a vehicle falling within the definition of a "motor car" is acquired, even if it is used in the course of making taxable supplies and regardless of the mode of acquisition. For example, the motor car could be acquired by way of outright purchase, importation, ICA, operating rental agreement or casual hire.

The subsequent sale of such motor car by the vendor is not seen as a supply in the course or furtherance of an enterprise,[60] and therefore the vendor is not required to account for output tax. This compensates for the disallowance of the input tax deduction on the acquisition of a "motor car".

Input tax may be deducted on the acquisition of any vehicle which does not fall within the definition of a "motor car", provided that it is used for taxable supplies.

The term **"motor car" <u>includes</u> the following vehicles** (that is, input tax will generally be denied):

- Double cab bakkies (LDVs).
- Ordinary sedan type passenger vehicles.
- Station wagons.
- Minibuses.
- Sport utility vehicles (SUVs).

The term **"motor car" <u>excludes</u> the following vehicles**:

- Goods transportation trucks.
- Single cab light and heavy delivery vehicles.
- Motor cycles.
- Caravans.
- Ambulances, game viewing vehicles and hearses.
- Vehicles capable of accommodating more than 16 persons (for example, a bus).
- Vehicles with an unladen mass of 3 500 kg or more.
- Special purpose vehicles constructed for purposes other than the carrying of passengers.
- Equipment such as bulldozers, graders, hysters, harvesters and tractors.

Hearses and game viewing vehicles are specifically excluded from the definition of "motor car", as these vehicles are generally not used for private purposes, but are applied exclusively in a particular type of business (that is, game viewing vehicles for game viewing, and hearses for the transport of deceased persons). Input tax on the acquisition of hearses and game viewing vehicles may be deducted where the vehicle is used exclusively for making taxable supplies. A vendor is also entitled to an input tax deduction on the acquisition of a motor car if it is acquired for the purpose of or permanently converted into a game viewing vehicle or hearse if that type of vehicle is required for use in the enterprise. (For example, an enterprise that supplies funeral or game viewing services.) In such cases the vendor will be liable for output tax on the subsequent supply (sale) of the vehicle.

The VAT incurred on repairs, maintenance and the general running costs of a motor car such as insurance, tyres, engine oil and servicing may, however, be deducted as input tax if the vehicle is used exclusively in the course of making taxable supplies. This could also include modification and installation costs incurred after the acquisition of the motor car[61] (for example, canopy modification or installation of a built in toolbox for a bakkie). Remember that

In these types of situations, the vendor's circumstances do not alter the fact that the double cab LDV still falls within the definition of "motor car" and that the input tax is still denied, even if it can be argued that the motor car is used for enterprise purposes. Only in the case of motor car dealers or car rental enterprises is an exception made regarding the ability to deduct input tax, as it is the nature of these enterprises to supply motor cars on a continuous or regular basis.

Refer to Interpretation Note 82 dated 25 March 2015 "Input Tax on Motor Cars" on the SARS website for more information.

[60] Section 8(14)(*a*).

[61] VAT incurred on modifications made prior to the supply of the motor car cannot be deducted as input tax as it is considered to form part of the original acquisition of the motor car.

8.5.4 Medical schemes and benefit funds

Normally medical and other benefit schemes are not registered for VAT insofar as they provide medical or related benefits to their members. Consequently, input tax may not be deducted by these schemes in connection with any supply of goods or services to members, or in respect of any payment or request for reimbursement of expenses incurred by members covered under the scheme in respect of medical and dental services.

8.6 PETTY CASH PAYMENTS

Vendors are not obliged to obtain tax invoices for purchases not exceeding R50. These are usually expenses which are paid from petty cash for small items such as postage stamps, stationery, parking etc. Even though it is often the case that no tax invoice is required for petty cash purposes, you will need to keep the till slip, cash slip or sales docket with details of the purchase in a petty cash book or similar record in order to deduct the input tax. Make sure that the receipt indicates the amount of VAT charged, or alternatively, a statement that the amount charged includes VAT at the standard rate, otherwise any deduction in this regard will be disallowed.

8.7 PRE-INCORPORATION EXPENSES

Pre-incorporation expenses are costs which are incurred by a person in registering and setting up the infrastructure of a legal entity such as a company before the entity can legally be viewed as having come into existence, that is, a company which is not yet registered with the Companies and Intellectual Property Commission (CIPC).[62]

A company that reimburses a person for the costs and purchases incurred before it was formed is deemed to be the recipient of the goods or services and to have paid any VAT component. Accordingly the company can deduct that VAT as input tax in the tax period during which the reimbursement is made.

This will only be allowed if the person –

- was reimbursed by the company for the **whole amount paid**; **and**
- acquired the goods or services for the purpose of an enterprise to be carried on by the company and has not used the goods or services for any other purpose.

Input tax may not be deducted by the company where –

- the supply of the goods or services by the person to the company is a taxable supply, or is a supply of second-hand goods (not being a taxable supply);
- the goods or services were acquired more than six months before the date of incorporation; or
- the company does not hold sufficient records.

8.8 ADJUSTMENTS

In the course of trading, it may be necessary for a vendor to make certain adjustments, for example, if bad debts are written off, or there is a change in the extent of taxable use of assets. These adjustments may affect the input tax or output tax. *Refer to **Chapter 15** for more details.*

[62] Previously known as the Companies and Intellectual Property Registration Office (CIPRO).

CHAPTER 9

CALCULATION AND SUBMISSION OF VAT

9.1 THE VAT201 RETURN

The VAT201 return is a **declaration** which must be completed and submitted to SARS at the end of every tax period if you are a vendor. The return reflects the VAT that you have charged on supplies (or situations in which you are otherwise liable to declare output tax), and the amounts that you believe you are entitled to deduct as input tax.[63] The difference between these amounts for a specific tax period could either result in you having to pay the difference to SARS, or you may be entitled to a refund of the difference. If you are registered for VAT, you must submit your return by the due date, even if there is no payment required for the tax period.

Vendors are encouraged to register for eFiling, as this is a free and convenient internet-based service which allows you to make submissions and electronic payments to SARS from your home or office.[64] Vendors who use eFiling have until the last working day of the month to make submissions and payments. Vendors who are registered on eFiling must request their VAT201 returns electronically on eFiling so that they can be made available on their eFiling profiles. A unique 19 digit Payment Reference Number (PRN) is pre-populated on the VAT201 by SARS and you must use this PRN when making your VAT payment to SARS. Each VAT201 return requested on eFiling from SARS will have its own unique PRN which will be used to track individual payments and queries for that tax period only.

Vendors who submit their returns manually are required to request the VAT201 return from the nearest SARS office in person, in writing, or telephonically via the SARS Contact Centre on 0800 00 7277. Vendors are advised to request their VAT201 returns at the beginning of the month in which the return is due for submission to ensure that these are received in enough time to meet the submission deadline. Note that SARS will not accept the following as valid returns:

- Old format VAT201 returns;
- Copies of VAT201 declarations printed from eFiling and used for manual submission;
- Manually submitted VAT201 returns by vendors falling within Category C tax period;[65] and
- Photocopied returns.

SARS may implement further changes regarding payments during 2015 as part of ongoing modernisation initiatives. Vendors are therefore advised to check the *SARS website* for the latest information.

9.2 HOW TO CALCULATE YOUR VAT

The basic steps in calculating your VAT liability or refund and completing your return are as follows:

STEP 1: Determine the VAT charged (output tax)

The amount of VAT that you account for is based on whether you are registered to account for VAT on the invoice or payments basis.

[63] For purposes of this Chapter, the term "input tax" is used for simplicity to refer to input tax and all other deducitons a vendor is entitled to in the calculation of his VAT liability or refund for a tax period. *(Refer to **paragraph 8.1** for more information.*)

[64] Registration for eFiling and the submission of VAT201 declarations via eFiling is compulsory for VAT registered non-resident suppliers of electronic services.

[65] From 1 May 2011 all vendors registered on Category C must file their declarations electronically.

- **Invoice basis** – Add all the sales invoices (cash and credit sales, including the VAT) issued by you in the tax period concerned in respect of taxable supplies, regardless of whether payment has been received or not. Also include the consideration for supplies not yet invoiced, where payment has already been made for the supply.
- **Payments basis** – Add all the actual payments (including the VAT) received by you in the tax period concerned, whether in respect of taxable supplies made during that tax period, or in a past tax period.

*Refer to **Chapter 4** for more details on the invoice and payments basis of accounting for VAT.*

Fields 1 to 12 are the fields which must be completed in respect of any output tax which you are required to account for in the relevant tax period.

Field 13 reflects the total amount of output tax and is the sum of fields 4, 4A, 9, 11 and 12.

STEP 2: Calculate your input tax

As is the case with regard to output tax in **Step 1** above, the amount of input tax that you can deduct is based on whether you are registered to account for VAT on the invoice or payments basis.

- **Invoice basis** – Add all the tax invoices (cash and credit purchases, including the VAT) for taxable supplies received by you in the tax period concerned, regardless of whether you have made payment to the supplier or not.
- **Payments basis** – Add all the actual payments that you have made in the tax period concerned to suppliers in respect of current or past taxable supplies received.

Remember also that whether you are registered on the invoice or payments basis of accounting, you cannot deduct input tax or any part thereof unless you are in possession of a valid tax invoice or other prescribed documents. For goods imported, you must be in possession of certain documentary evidence[66]. In addition, certain business inputs are subject to special rules and limitations, or may be specifically denied. Make separate lists for the VAT paid in respect of capital and other goods imported, as these amounts must be reflected separately on the return. *Refer to **Chapter 4** for more details on the invoice and payments basis of accounting for VAT. Refer also to **Chapter 8** for more details on what amounts qualify as deductible input tax.*

Fields 14 – 18 are the fields which must be completed in respect of any input tax which you believe you are entitled to deduct against the output tax liability in Field 13.

Field 19 reflects the total amount of input tax which you are entitled to deduct for the tax period concerned.

STEP 3: Pay the difference or claim your refund

Field 20 – Is the difference between your totals in fields 13 and 19. If the amount in field 13 is larger than the amount in field 19, the difference is VAT payable to SARS. If the amount in field 19 is larger than the amount in field 13, the difference is the VAT refundable to you.

Fields 21 – 33 are the fields where certain vendors will claim any eligible diesel purchases under the Customs and Excise Act (diesel refund) as a deduction against any liability for VAT. Most vendors will not complete this field as it only applies if you qualify and have registered for the diesel refund scheme.

66 *Refer to **paragraph 12.2.1** for details.*

Field 34 reflects the total amount of VAT payable/refundable and is calculated by adding fields 25, 29 and 33 together and subtracting the total from the value in field 20. If field 34 is less than zero, a refund is due to you and if it is larger than zero, you need to pay that amount as VAT which is due to SARS.

For more details on how to complete the individual fields on the return and to calculate your VAT, refer to the following documents on the *SARS website:*

- *Step-by-Step Guide for the Completion of the Value-Added Tax Vendor Declaration Form.*
- *Guide for Value-Added Tax via eFiling.*

9.3 SUBMITTING YOUR RETURN

Once you have completed the return, check it carefully as you can be held liable for penalties and interest if there are errors which lead to any shortfall in VAT paid. Sign the VAT return and send it with your cheque payment to the nearest SARS office.[67] Alternatively, you may make use of SARS eFiling service to file and pay your VAT electronically. This may be done by registering for the eFiling service on www.sarsefiling.co.za.

Your return must be submitted together with payment of the VAT on or before the 25th day of the following month after the end of your tax period. Alternatively, if you make use of eFiling, you must make payment and submit your return by the last business day of the month after the end of your tax period. For example, if your tax period ends on 31 March, you have until 25 April to submit the return and payment (or until 30 April if using eFiling or electronic funds transfer). Remember that if the due date for payment is on a Saturday, Sunday or public holiday, your return and payment must be submitted early enough to ensure so that it is received by SARS by no later than the last business day before that date. Assuming that the due date for payment is on a Sunday, your return must reach SARS by the Friday (or the previous business day if the Friday is also a public holiday). The date by which the return must be submitted to SARS is shown on the front of the return. *Refer to **paragraph 9.4** below for the various payment options.*

Section 28 prescribes the **due dates** for rendering VAT returns and making VAT payments. However, the Commissioner may also prescribe **the time** by which any payment made on any business day must be received, and if any payment is received after that time, it shall be deemed to have been made on the first business day following that day.[68] Refer, for example, to the arrangements regarding cheque payments discussed in ***paragraph 9.4.1*** below.

9.3.1 What if a mistake is made in the return?

Section 25(5) of the TA Act allows SARS to correct an undisputed error made in the VAT return. However, as the filing of a VAT return is considered to be an original assessment, an error on a VAT return can only be remedied by –

- the vendor requesting a reduced assessment which SARS may issue in the case of an undisputed error; or
- SARS issuing an additional assessment or reduced assessment to correct the error; or
- withdrawal of the assessment by SARS if it was issued to the incorrect taxpayer, the assessment relates to the incorrect tax period or if the assessment was issued as a result of an incorrect payment allocation.

67 The VAT201 indicates the address of the correct scanning centre to which your VAT return must be sent.
68 Section 28 provides that when a vendor submits a return electronically, the vendor is deemed to have made payment within the required period if full payment of the amount of tax is made by the last business day of the month during which that 25th day falls.

For more information on how to apply for a request for a correction, refer to the Request for Correction webpage on the SARS website. Furthermore, *refer to **Chapter 16** and the Short Guide to the TA Act, 2011 for more information on the various assessments*.

9.4 HOW TO PAY YOUR VAT

9.4.1 Payment at a SARS office

Only payments by cheque can be made at your nearest SARS office during office hours (8:30am – 15:30pm). For ease of processing, vendors and consultants should ensure that the VAT201 return indicates the full 19 digit PRN number in respect of all payments. Cheque payments must be made payable to the "South African Revenue Service" (written out in full) and be crossed "not negotiable/transferable". Do not under any circumstances send cash in the post.[69]

Should you prefer to pay your VAT by post, you must ensure that your payment will be received by SARS on or before the 25th of the month after the end of the tax period, or the last preceding business day before the 25th of that month as mentioned in ***paragraph 9.3*** above.

Alternatively, you can drop your cheque in the drop boxes at any of the SARS offices. For ease of processing, vendors making manual submissions should ensure that the VAT201 return is duly completed and signed, and that payment is included. From 1 May 2011, any payment and returns received via drop boxes at SARS offices are removed from the drop boxes by no later than 15:00. All payments and returns received by 15:00 are accounted for on the same day. If a cheque is received after 15:00, it is given the next day's date. Also, with effect from 1 June 2014, SARS no longer accepts cheque payments exceeding R50 000 for certain taxes including VAT.[70] Should you issue a cheque exceeding this amount, it will be returned to you and penalties and interest as a result of a late payment will be incurred. SARS does not accept cheques for Category C vendors as such vendors must file and pay electronically.

For more details refer to the GEN-PAYM-01-G01 – External Guide – South African Revenue Service – Payment Rules on the SARS website.

9.4.2 Payment by electronic funds transfer (EFT)

An electronic transfer of funds to SARS must reach SARS by the due date shown on the VAT201 return (usually the 25thof the month, unless if filed via eFiling which will allow you to submit the return and make payment by the last business day of the month). Please enquire from your bank whether "same day" transfers are made to SARS. If not, you must make the transfer earlier to ensure that it is in SARS's bank account by the 25th of the month after the end of the tax period, the last preceding business day before the 25th of that month as mentioned in ***paragraph 9.3*** above or the last business day of the month for eFilers. Penalties and interest will be imposed should electronic transfers be received in SARS's banking account after the due date. Should you have any further enquiries relating to these limits, please contact your bank.

[69] SARS no longer accepts payments by way of postal order, money order, debit orders or cash. Cash payment to SARS can be made at certain banks as indicated on the *SARS website.*

[70] With effect from 1 April 2014, Rule 120.12 of the Customs and Excise Act provides that cheques for the payment of VAT on importation may not exceed R50 000. Further, with effect from 1 June 2014, no cheques can be written or deposited for an amount greater than R50 000 towards the payment of VAT and certain taxes payable under the Income Tax Act (Before 1 June 2014 the amount was R100 000). In particular vendors cannot send a single cheque to SARS for an amount larger than R50 000 in the expectation that it will be split to cover various tax liabilities in excess of R50 000 in aggregate. In such cases, vendors must make use of alternative electronic payments methods.

Non-resident suppliers of electronic services may only use the EFT method to pay their VAT. Payment must be made using the SWIFT MT103 payment method. *Refer to VAT-REG-01-G02 – VAT Registration Guide for Foreign Suppliers of Electronic Services on the SARS website for more information.*

9.4.3 Payment by using eFiling

All SARS business customers are able to subscribe to SARS's eFiling service to submit specific returns and payments electronically via the internet at no charge. By subscribing to eFiling, vendors are able to receive, complete and submit VAT returns and make payments via secure internet based facilities 24-hours a day.

The type of payment service available on eFiling is the credit push.[71] The **credit push** refers to payment transactions that are initiated on eFiling and presented to the vendor's bank as a payment request, pending authorisation. Once a vendor has logged into the banking services and effected the payment, it becomes irrevocable.

For more information about the SARS eFiling service and how to register, refer to the *Guide for Value Added Tax via eFiling* on the SARS website, or log on to www.sarsefiling.co.za. If you have any queries you can contact the SARS Contact Centre on **0800 00 7277** between 08h00 – 17h00 on weekdays. The eFiling support centre can also be reached via fax on (011) 602 5312.

9.4.4 Payments at various banks

You may choose to pay your VAT at certain banks.[72] Please make sure that your payment is made on or before the due date reflected on the VAT return. In order for your payment to be successfully processed, the PRN as provided by SARS on the VAT201 return and the appropriate beneficiary account ID are required.[73]

Please note that you must still send your VAT201 return to SARS for capturing even if you have made payment at the bank or if you are submitting a nil return.

Example 23 – The VAT payment reference number

The following is an example of the VAT PRN for VAT No. 4880124452 for the tax period ending June 2015:

PRN : 4880124452VC2014068
Beneficiary ID: SARS-VAT

Note: The above information is also pre-printed on your VAT return.

You must ensure that payment will reach SARS by the due date shown on the VAT return in whichever way you choose to effect payment. The onus is on you to ensure that payments are received in SARS's bank account on the due date. If the due date falls on a Saturday, Sunday or public holiday (that is, not a business day), it must be received by SARS on the **last business day before that date** as mentioned in ***paragraph 9.3*** above. SARS has emphasised that payments received late as a result of these changes would lead to penalties and interest being imposed.

[71] From November 2013 the authorised debit pull function is no longer available on eFiling.
[72] Refer to the Payment webpage on the SARS website for more information on the relevant banks.
[73] For more details refer to the *Guide to the Payment Advice Notification Functionality on eFiling* on the SARS website.

Therefore, to avoid these amounts from being levied, kindly adhere to the time frames for the submission of VAT returns and payments tabled below.

Payment method	Returns	Payment
SARS Office (Cheques only, not exceeding R50 000)	25th or preceding business day	25th or preceding business day
Over the counter payments at certain banks directly into SARS' account	25th or preceding business day	25th or preceding business day
Manual submission of return and payment via Electronic Funds Transfers (internet banking)	25th or preceding business day	25th or preceding business day
eFiling of return and payment via either SARS eFiling or Electronic Funds Transfers (internet banking)	Last business day of the month	Last business day of the month

Note that electronic payments are processed on the last business day of the month but a manual return must still be submitted as normal by the 25th day of the month. In a case where no taxable supplies were made, or there is otherwise no tax payable for the relevant tax period, you must submit a nil return to SARS.

9.5 PAYMENT LIMITS (EFT / eFILING / BANK PAYMENTS)

The banks and the Payments Association of South Africa (PASA) have set payment limits on cheques, ATM transactions and electronic payments. The limits are **R500 000**, for credit payments through **EFT (electronic funds transfer)** and R50 000 for **cheques**. These measures are aimed at moving high-value payments to the South African Multiple Option Settlement system (SAMOS), operated through the South African Reserve Bank (SARB).

How these limits will affect you as a vendor:

- **EFT payments** in excess of R500 000 must be cleared with your banker.
- **eFiling transactions** will not be affected by these rules as no limits are imposed.

Should your existing payment method exceed any of these limits, you must approach your bank timeously in order to effect an electronic transfer of funds to ensure that the full VAT payment can be made by the due date. For more information on payment rules and acceptable payment methods, please refer to the document *GEN-PAYM-01-G01 – External Guide – South African Revenue Service – Payment Rule* which can be accessed on the SARS website.

9.6 MANAGING YOUR PAYMENT

The eFiling system provides for a VAT payment allocation function and a VAT Statement of Account (VATSA). The VAT payment allocation function enables vendors to allocate payments, to reallocate payments and to locate missing payments. These functions can be performed by vendors without requiring any intervention from SARS. Manual filers and those eFilers that require assistance, can approach SARS for assistance in making these allocation adjustments at any SARS branch.

The VATSA is similar to the Employer Statement of Account (EMPSA) and is issued by SARS upon request.[74] The VATSA contains information which will empower vendors to manage their VAT accounts by giving them insight into their transactions per tax period.

Vendors can request the VATSA through the following channels:

- Electronically via eFiling;
- By calling the SARS Contact Centre on 0800 00 SARS (7277); or
- By visiting a SARS Branch.

For more information, please *refer to the* SARS website.

[74] From 2 April 2013, VATSA are no longer sent automatically to vendors.

9.7 PENALTY AND INTEREST FOR LATE PAYMENT

*Refer to **Chapter 10** for more information on penalties and interest for late payment.*

9.8 REFUNDS

The TA Act provides that a vendor is entitled to a refund when an amount is refundable under the VAT Act and is reflected in the return or when a vendor is entitled to be refunded an amount that was erroneously paid in excess of an amount charged in an assessment. SARS should refund you within 21 business days of receiving your VAT return, subject to a few exceptional circumstances where SARS may withhold a refund.[75]

SARS may withhold a refund until –

- details of the vendor's bank account have been provided;
- a vendor has filed all outstanding returns in respect of VAT and/or any other taxes;
- SARS is satisfied that a refund claimed will be refunded by the vendor to another party where that vendor's output tax is borne by that other party[76]; or
- A verification, inspection or audit of the refund has been finalised, unless acceptable security has been provided.

If a vendor provides acceptable security, SARS may release a refund before verification, inspection or audit is finalised. A decision not to authorise a refund is subject to objection and appeal. *Refer to **Chapter 16** and the Short Guide to the TA Act, 2011 for more details*.

Should your return result in an amount to be refunded, SARS should refund you within 21 business days. Should the refund not be made within this time, interest at the prescribed rate is payable to you. However, the 21 business days interest-free period can be extended where the vendor does not provide relevant material as and when requested. Refunds will only be paid out to you if you do not owe any amounts of other taxes administered by the Commissioner. In such cases, debt equalisation will be applied to offset the amounts owing in respect of other taxes, and the balance (if any) will be refunded. *For more information on refunds and interest on refunds under the TA Act, refer to the SARS website*.

Only non-resident companies and resident companies that are part of the same group structure may request that VAT refunds be paid into a bank account of a nominated person. In the case of a "subsidiary company" or "holding company" as contemplated in the Companies Act, VAT refunds may be paid into the bank account of either the subsidiary company or holding company, on condition that SARS is indemnified against any loss which may occur. Due to concerns involving VAT refund fraud, the use of third party bank accounts will not be permitted in any other cases.

Should you wish to nominate or use the bank account of another vendor, you must supply the necessary authority from the account holder (for example, company resolution) and provide indemnity to SARS against possible losses of amounts paid into such accounts on form VAT119i. This form is available from SARS offices or the *SARS website*.

In order to reduce the risk of VAT fraud, SARS makes use of a sophisticated risk engine that applies objective risk criteria, including third party data to identify high risk VAT refund claims for further investigation and audit each month. Vendors selected for further verification of their refund claims are requested to submit documents in support of their declaration or to revise their declaration (submit a revised return where an error is suspected).

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[75] Note that generally, any refund contemplated in Chapter 13 of the TA Act must be claimed within a period of five years from the date the return had to be submitted. Chapter 13 of the TA Act must be read with section 44.

[76] Section 44(3)(*c*) read with Chapter 13 of the TA Act.

You can make use of the Refund Dashboard which is a function that will enable you to view the reasons why your refunds may not have been paid out and what actions may be required of you. Only refund statuses from March 2011 will be displayed on the Refund Dashboard. This function is available on eFiling for registered eFilers. Vendors who call the Contact Centre or go to a SARS branch to request information will be assisted by SARS agents who have access to the dashboard.

9.9 CHANGE OF BANK DETAILS

The fraudulent changes to vendors' bank details remain one of the biggest risks that SARS has to deal with. It is SARS's responsibility to protect vendors from any fraudulent transactions on their accounts emanating from within SARS. To prevent such risks, vendors should note that under no circumstances will SARS request a vendor's bank account details over the phone or accept bank account detail changes via telephone, facsimile, post, drop-box or e-mail.

In order for a request to change bank details to be considered, the vendor or the authorised representative vendor's details must always match the existing details on the SARS system and only changes through the following channels will be accepted:

- In person at any SARS branch. (This is the preferred channel.)
- Through the SARS eFiling channel if you are registered as an eFiler.

Vendors visiting a SARS branch to change bank account details, must please ensure that they have the documents required as set out in the *VAT-MTD05-G01 – Change of Banking Details for a Registered VAT Vendor – External Reference Guide*, which is available on the SARS website. *For more information, refer to the Change my Bank details on the SARS website.*

CHAPTER 10

PENALTIES AND INTEREST

10.1 INTRODUCTION

The rules regarding penalties and interest are mainly dealt with in the TA Act since its introduction in 2012, although the interest provisions have, to a large extent, not come into effect yet. The penalty contained in section 39 of the VAT Act is a percentage-based non-compliance penalty and is imposed in line with the procedure contained in section 213 of the TA Act. The percentage-based penalty is distinct from a fixed-amount penalty which is imposed when a vendor does not comply with an obligation that is contained in a *Public Notice*[77] issued by the Commissioner.[78] In addition, specific acts of non-compliance that give rise to prejudice can result in an understatement penalty imposed under the TA Act. (*Refer to* ***paragraph 10.2.2***.)

The administrative non-compliance penalty and the understatement penalty regime, together with criminal sanctions, provide a comprehensive framework to deter non-compliance. The purpose of the new penalty regime is to ensure the widest possible compliance of the tax Acts in a way that is impartial and consistent, and is proportional to the seriousness and duration of the incidence of non-compliance.

The new interest rules to be imposed by the TA Act will only come into effect once a public notice is issued by the Commissioner. *Refer to Interpretation Note 68 (Issue 2) dated 7 February 2013 "Provisions of the Tax Administration Act that did not Commence on 1 October 2012 under Proclamation No. 51 in Government Gazette 35687" for more information on the provisions that did not come into effect on 1 October 2012.*

This chapter provides a brief overview of the main changes that have been made in respect of penalties under the provisions of Chapters 15 and 16 of the TA Act and a brief introduction to the interest provisions envisaged under Chapter 12 of the TA Act.

10.2 PENALTIES

10.2.1 Administrative non-compliance penalties

An administrative non-compliance penalty means a penalty imposed by SARS in accordance with Chapter 15 of the TA Act, and excludes an understatement penalty. It comprises both fixed-amount and percentage-based penalties. A fixed-amount penalty is charged when an administrative obligation is not complied with, and the percentage-based penalty is generally imposed when certain amounts of tax are not paid.

Fixed-amount penalties

A fixed amount penalty is imposed when a vendor does not comply with a legally required obligation. Such penalties may only be imposed in respect of the non-compliance listed in a public notice that will be issued by the Commissioner and not every act of non-compliance under a tax Act.

[77] Section 210(2) of the TA Act.

[78] There are currently no such penalties for transgressions of the VAT Act included in any public notice as required under the TA Act.

Percentage-based penalties

A percentage-based penalty is imposed if SARS is satisfied that an amount of tax was not paid as and when required under the tax Act. In the case of VAT, SARS may impose a penalty equal to the percentage, as prescribed in the VAT Act, of the amount of unpaid tax. The procedure for the imposition and remittance of a percentage based penalty is regulated by the TA Act.[79]

The circumstances that trigger the imposition of the penalty remains in the VAT Act, for example, when a vendor fails to pay VAT within the period allowed for payment, a 10% penalty is imposed.[80]

10.2.2 Understatement penalty (USP)

The previously imposed "additional tax" of up to 200%, has been replaced by the USP. Any USP which is applicable will be included in an assessment issued by SARS and must be paid by the date specified in the notice of assessment.[81] USP may only be imposed if the fiscus is prejudiced by the vendor's conduct in reporting. The fiscus will be prejudiced if there is a shortfall, which is the difference between the correct amount of tax that should have been reported and the amount that was reported by the vendor in respect of a tax period. The prejudice must have been because a vendor –

- defaulted in rendering a return;
- filed a return but omitted an item from that return; or
- filed a return in which an incorrect statement was made.

For instance, if a vendor did not file a return but conducted an enterprise and should have filed VAT returns and paid VAT of R90 000, the shortfall is the difference between R90 000 and zero. The shortfall is, therefore, an expression of the prejudice to the fiscus. The USP table is then used to identify the highest applicable percentage to each shortfall in relation to each understatement in a return[82] that best describes the facts of the case and the vendor's behaviour in respect of each understatement of that return.

USP table

The TA Act provides for different rates of USP, based on the type of behaviour or the degree of culpability involved, as shown in the table below[83]:

1 Item	2 Behaviour	3 Standard case	4 If obstructive, or if it is a "repeat case"	5 Voluntary disclosure after notification of audit	6 Voluntary disclosure before notification of audit
(i)	Substantial understatement	10%	20%	5%	0%
(ii)	Reasonable care not taken in completing return	25%	50%	15%	0%
(iii)	No reasonable grounds for tax position taken	50%	75%	25%	0%
(iv)	Gross negligence	100%	125%	50%	5%
(v)	Intentional tax evasion	150%	200%	75%	10%

79 Sections 217 and 218 of the TA Act.

80 Section 213 of the TA Act now imposes the penalty and section 39 of the VAT Act prescribes the applicable percentage (currently 10%).

81 In terms of section 222(1) of the TA Act, in the event of an understatement by the vendor, tax must be payable for the relevant period together with the understatement penalty unless the understatement resulted from a *bona fide* inadvertent error.

82 Section 222(2) of the TA Act.

83 The table was amended with effect from 16 January 2014 to reduce some of the penalties under items (i) to (iii).

The amount of USP is determined by the amount resulting from applying the highest applicable understatement penalty percentage in accordance with the USP table to the shortfall in each tax period. In other words, if a vendor's behaviour involves both that no reasonable grounds exist for a tax position taken (item (iii) in the table) and gross negligence (item (iv) in the table), then gross negligence (item (iv)) will apply.

No USP will, however, be imposed if it the vendor can prove that the understatement was as a result of a *bona fide* inadvertent error.

The various behaviours will indicate the extent of the penalty that might be imposed. Once the behaviour has been determined, SARS must determine whether –

- the vendor made a voluntary disclosure before or after being notified of an audit,
- the vendor was obstructive when engaging with SARS officials;
- it is a repeat case; or
- the case is not defined by any of the above and is thus a standard case.

If none of these behaviours can be identified, USP could still be imposed if the prejudice to SARS is the greater of 5% of the tax properly chargeable or R1 million. This is referred to as a "substantial understatement".

Refer to the Short Guide to the TA Act, 2011 or more details on the various behaviours.

10.3 INTEREST

Chapter 12 of the TA Act provides that interest due or payable will be calculated on the daily balance owing and will be compounded monthly. This gives effect to the principle that interest is compensation for the loss of the use of money. The compounded method of calculating interest will only apply as and when the Commissioner publishes a notice announcing when the new interest calculation method will apply, as well as the tax to which this method of interest will apply.

Refer to the Short Guide to the TA Act, 2011 and Interpretation Note 68 (Issue 2) dated 7 February 2013 "Provisions of the Tax Administration Act that did not Commence on 1 October 2012 under Proclamation No. 51 in Government Gazette 35687" for more details on the new interest rules envisaged under the TA Act.

The current rules provide that interest at the prevailing rate, under section 80 of the Public Finance Management Act (PFMA), will be charged per month or part thereof on late payments of VAT. This is calculated from the first day of the month after the month in which payment was due, until and including the month in which the outstanding amount has actually been paid. Interest is also charged on any late payment of additional tax which has been levied upon assessment.

Example 24 – Calculation of interest

Mr P is required to submit his VAT return and payment of R3 000 in respect of the May 2014 tax period by 25 June 2014. He only submits this return and payment on 25 July 2014. The interest (per month) is calculated as follows:

0,750%[84] interest per month or part of a month = R22,50 (Interest payable for 1 month)

[84] This is 1/12th of the annual rate applicable at the time. The rate changes from time to time under section 80 of the PFMA. In this example, the rate at the time was 9% per annum. From 1 November 2014 the rate changed to 9.25%. (For the prevailing rate of interest on outstanding taxes refer to the table of interest rates on the *SARS Website*.)

10.4 REMISSION OF PENALTIES AND INTEREST

10.4.1 Remission of non-compliance penalty

A vendor may apply to SARS to remit both the fixed-amount[85] and a percentage-based penalty. The application must be made on the prescribed form and be delivered to SARS before the date the penalty must be paid.[86] If a vendor has not filed the remittance request before the date that the penalty must be paid, SARS may condone a late request for remission under specific circumstances. Payment of the penalty is automatically suspended from the day the request to remit is received by SARS until 21 business days after SARS notifies the vendor of the decision whether to remit the penalty or not.

SARS may remit a percentage-based administrative penalty if satisfied that the –

- amount involved is either less than R2 000, or the non-payment is a first incidence; and
- vendor has reasonable grounds explaining the non-compliance; and
- incidence of non-payment has been remedied.[87]

A "first incidence" means that no other penalty (fixed or percentage-based) must have been imposed in the period of 36 months preceding the one in respect of which the remission is concerned.[88]

A vendor may also qualify for the remission of a percentage-based penalty if exceptional circumstances exist for non-compliance. The exceptional circumstances must have made it impossible for the vendor to have complied with the obligation as prescribed in section 218 of the TA Act.

The circumstances are as follows:

- A natural or human-made disaster.
- A civil disturbance or disruption in services.
- The vendor suffers a serious illness or was involved in a serious accident.
- The vendor suffers a serious emotional or mental distress.
- Certain acts by SARS.
- The vendor suffers serious financial hardship.
- Any other circumstances of analogous seriousness.

Should SARS decide not to remit or reduce the administrative non-compliance penalty, the vendor may object to this decision under the Dispute Resolution provisions of the TA Act (*refer to* ***Chapter 16***). This is a qualification of the right to object and appeal process in that the objection and appeal lies against the decision not to remit the penalty and not against the penalty assessment.

SARS may remit administrative non-compliance penalties in respect of tax defaults voluntarily disclosed for which relief has been sought and granted under the voluntary disclosure programme (VDP). For the relief to be granted, the vendor must voluntarily disclose the default by submitting a valid VDP application in the prescribed form. Only if the outcome of the VDP application is positive will relief be granted to a vendor. The relief is based on a VDP agreement which successful applicants will be required to enter into with SARS.

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[85] There are currently no fixed-amount penalties imposed for the failure to comply with an obligation imposed in under the VAT Act.

[86] Section 215 of the TA Act sets out the procedure involved in the remittance of a penalty imposed under the TA Act.

[87] Section 217(3) of the TA Act, as amended by section 72 of the Tax Administration Amendment Act No. 21 of 2012.

[88] See the definition of "first incidence" in section 208 of the TA Act.

For more details on the voluntary disclosure programme refer to the following documents which can be accessed on the *SARS website*:

- *GEN-VDP-02-G01 – External Guide – Voluntary Disclosure Programme*
- *Voluntary Disclosure Programme webpage*

10.4.2 Remission of understatement penalty

Generally, SARS may not remit USP imposed for an understatement, except when the USP is imposed for a substantial understatement resulting from an **"arrangement"** referred to in **Chapter 34 of the TA Act** and SARS is satisfied that the vendor –

- made full disclosure of the "arrangement" that gave rise to the prejudice to SARS or the *fiscus* by no later than the date that the relevant return was due; and

was in possession of an opinion by an independent registered tax practitioner which was issued on or before the date that the relevant return was due[89], confirming that the vendor's position is more likely than not to be upheld if the matter proceeds to court.[90]

A decision by SARS not to **remit** the USP imposed in respect of a substantial understatement resulting from aforementioned **"arrangement"** is subject to objection and appeal.[91]

SARS may also **grant relief** in respect of a portion of the understatement penalties incurred in respect of tax defaults voluntarily disclosed for which relief has been sought and granted under the VDP. The relief is in the form of a reduced or zero percentage penalty as compared to the higher percentage applicable for similar behaviours had the vendor not voluntarily disclosed the tax defaults. *Refer to **paragraph 10.4.1** for more details on the VDP and **paragraph 10.2.2** for the reduced percentages.*

In all other cases, a vendor may object to the USP being imposed and to request a re-classification of the behaviour or for circumstances not previously considered to be taken into account by SARS. If the objection is allowed, this may result in a reduction of the USP imposed, or a decision that no USP should be imposed in a case where the understatement results from a *bona fide* inadvertent error. *Refer to the Short Guide to the TA Act, 2011 for more information.*

10.4.3 Remission of interest

The VAT Act makes provision for interest to be remitted or reduced in certain exceptional circumstances. The factors which are taken into account in determining if a remission of interest may be made are different from those which must be considered regarding the remission of a non-compliance penalty or USP as discussed in ***paragraphs 10.4.1 and 10.4.2***.

Before 1 April 2010, the factors which were considered in deciding whether interest could be remitted or not included those which indicated whether there was a loss to the *fiscus*, or if the vendor benefitted financially by not paying the VAT on time. With effect from 1 April 2010 the Commissioner's discretion to remit interest was limited so that it is now based on whether or not the payment of tax was made within time as a result of circumstances beyond the vendor's control. An example of this is when a vendor's payment instruction could not be carried out by the vendor's bank in time because of a failure in the banking system. *Refer to Interpretation Note 61 dated* 29 March 2011 *"Remission of Interest"* for an explanation of the law before and after 1 April 2010.

[89] Section 270(6B) of the TA Act regards this requirement as having been met for the purposes of considering the remission of the USP if the return was submitted before 1 October 2012.
[90] Section 223(3) of the TA Act.
[91] Section 224 of the TA Act.

Currently, if you wish to have your case for the remission of interest considered, a written request must be submitted to the SARS office at which you are registered once you have paid any tax which is due. Note that the remission of interest will only be considered where substantive reasons are given for a late payment. This means that properly motivated mitigating circumstances must be submitted for consideration together with any evidence which supports your case for the remission of interest. As all the relevant mitigating and aggravating factors must be considered by the Commissioner when making a decision in this regard, a failure to submit adequate reasons will mean that there will be no basis upon which the Commissioner will be able to exercise any discretion in the matter. The mitigating circumstances and evidence which you submit to support your case should therefore demonstrate to the Commissioner's satisfaction that the circumstances which lead to the late payment or non-payment of VAT were beyond your control.

Once the interest provisions under the TA Act become operational, a senior SARS official must be satisfied that the interest payable by a vendor was caused by circumstances beyond the vendor's control in considering an application to remit any interest charged. Only the following circumstances may be considered to be beyond the vendor's control:

- A natural or human made disaster.
- A civil disturbance or disruption in services.
- A serious illness or accident.

For more information on interest, refer to the Short Guide to the TA Act, 2011.

CHAPTER 11

FARMING

This chapter focuses on a few of the VAT implications which are unique to farming enterprises.

11.1 TAX PERIODS

It is a common misconception that all farmers may be, or are required to be registered on Category D (six-monthly or bi-annual tax period). This is not true as this category is only available to fairly small scale farming enterprises.

Vendors who qualify for the Category D tax period must meet the following criteria:

- The enterprise must consist **solely of agricultural, pastoral or farming activities.**
- The total turnover from all farming activities must **not exceed R1,5 million per consecutive period of 12 months.**

A vendor may also qualify for Category D if a separately registered branch or division of the enterprise consists solely of agricultural, pastoral or farming activities, provided that the vendor's other enterprises, branches or divisions do not also consist of those same activities. Generally, vendors will want their six-monthly tax periods to coincide with their provisional tax period. For this reason, vendors who are sole proprietors will be allocated a tax period which ends at the end of February and August. Other legal entities may choose to end its tax period on any two other months which are six months apart (for example, March and September).

Should the value of taxable supplies exceed R1,5 million in any consecutive period of 12 months, the Commissioner will allocate either a Category A or B tax period to the vendor (two-monthly tax period). If the value of taxable supplies exceeds R30 million per consecutive period of 12 months, the vendor will be obliged to pay over the VAT and submit monthly returns per Category C tax period. As from 1 May 2011 all vendors falling within a Category C tax period must submit their returns in electronic format and make payments electronically via eFiling. Section 25 of the VAT Act requires a vendor who is a farmer to notify SARS once the total value of taxable supplies exceeds R1,5 million in a 12-month period.

11.2 STANDARD RATED SUPPLIES

Besides the normal standard rated supplies from the sale of any enterprise stock or assets, farmers must remember also to charge VAT on any other income earned from taxable transactions which are associated with the farming enterprise or any other type of enterprise carried on, for example –

- the rental of buildings used as shops and storage facilities, or land let for grazing and growing crops;
- insurance payouts received for loss or damage experienced in the enterprise (excluding any asset on which input tax was denied, for example, the family motor car or yacht);
- the sale of livestock or goods sold from farm stalls;
- the exchange of goods or services with other farmers (barter transactions);
- the sale of property used in the farming enterprise, or any separate subdivision of the property. (*Refer to* ***paragraph 6.5*** *regarding going concerns.*); and
- the sale or trade-in of old farming equipment, trucks, tractors, trailers, farming implements, scrap metal, off-cuts, waste products etc.

Example 25 – Trading-in of old vehicles or equipment

Mr F, a farmer, decides to purchase a new tractor for R114 000 (incl. VAT). He trades in one of his old tractors and receives an amount of R22 000 which is set-off against the purchase price of the new tractor.

VAT201 return for Mr F		**R**
Output tax: old tractor sold (field 4A)	R22 000 × 14 / 114 =	2 701,75
Less: Input tax: new tractor purchased (field 14)	R114 000 × 14 / 114 =	(14 000,00)
Net VAT		**(11 298,25)**
		Refund

11.3 ZERO-RATED SUPPLIES

To assist farmers with their cash flow, many of the products which are produced or consumed in the course of conducting a farming enterprise are zero-rated, or exempt from VAT on importation. However, these concessions will be repealed from a date to be determined by the Minister and published by way of notice in the *Government Gazette*.

The reason for the withdrawal of these concessions is to prevent certain schemes, in terms of which, the zero rating under section 11(1)(*g*) was abused by some vendors to fraudulently generate input tax deductions.

The changes to the law from the effective date will affect farmers as follows:

- *Zero-rating* – The zero rating under section 11(1)(*g*) will no longer apply in respect of the purchase of agricultural, pastoral or other goods described in Part A to Schedule 2.
- *Exemption on importation* – The exemption from VAT in Paragraph 7 to Schedule 1 in regard to the importation of the goods mentioned in Part A to Schedule 2 will no longer apply.

Until the concessions discussed above are repealed, the goods listed in Part A of Schedule 2 may be purchased at the zero-rate or imported exempt from VAT, subject to the conditions prescribed in the said Schedule.

Some examples of these goods are –

- stock licks;
- fertiliser;
- seed;
- pesticide;
- remedies or medicines (but not in respect of other items charged such as syringes or vet's fees);
- animal, poultry, fish or game feed (this includes any vitamins, bone products or maize products); and
- plants – this includes trees, bulbs, roots, cuttings or similar plant products used for cultivation.

In order to be able to purchase the above goods at the zero rate, the following requirements must be met:

- The vendor must be in possession of a Notice of Registration or a VAT registration certificate (VAT103) indicating the vendor's entitlement to acquire the goods at the zero rate. [92] With the implementation of the single registration process, the VAT103 was replaced with the new Notice of Registration which is a standard notice of registration across all tax types (except Customs and Excise).
- The Notice of Registration or the VAT103 form must be presented to the supplier who will then keep a record of certain particulars appearing thereon to justify the application of the zero rate on supplies made to the purchaser as contemplated in Interpretation Note 31 (Issue 3) dated 22 March 2013.
- The VAT registration number of the purchaser must appear on the tax invoice.
- The goods supplied must be specified in Part A of Schedule 2 to the VAT Act.

If it is found by SARS that the above conditions have not been met, the supplies in question will be standard rated on assessment.

Note that **the zero rate will not apply** where –

- other goods or services not listed above are supplied to the agricultural industry, for example, it will not apply to the consultation fee charged by a vet to attend to a sick animal, nor would it apply to the goods or services acquired to install a new irrigation system on your farm; or
- the sale of the goods concerned is prohibited under section 7*bis* of the Fertilisers, Farm Feed Agricultural Remedies Act 36 of 1947, for example, the sale of a banned substance such as DDT.

Part B of Schedule 2 to the VAT Act lists the basic foodstuffs which are subject to the zero rate. Many of these products are sold by farming enterprises, for example, raw fruit and vegetables, maize, milk, eggs, beans, mealies etc. Please remember to show the total amount received in field 2 on your VAT return – failure to do so will result in unnecessary audits.

Farmers must supply their VAT registration numbers to co-operatives and abattoirs to which supplies are made so that the correct amount (including VAT) can be paid. Also remember that a farmer who receives a portion of its income from a harvest (crop sharing), must pay VAT at the standard rate on that portion of the proceeds unless the supplies are zero-rated items under Schedule 2 of the VAT Act as discussed above. *Refer to **Chapter 6** for more details regarding zero-rated supplies.*

11.4 INPUT TAX

Generally, input tax may be deducted on all expenses incurred in carrying on a farming enterprise where VAT has been paid, but the costs in respect of the following may not be deducted:

- The purchase or rental of double-cab vehicles (4x4s), SUVs, sedan and sports cars, station wagons or mini vans, regardless of the fact that they may be used entirely for farming operations.
- Rations provided to employees (including any other costs in regard to providing the meals).
- Employee housing as well as any costs in respect of your own residence, for example, telephone accounts, maintenance of your own home or the home of an employee, electricity and water etc.
- Zero-rated purchases such as fertilizers, petrol, diesel, pesticides etc.

*Refer to **Chapter 8** for more details in this regard.*

[92] The VAT 103 registration certificate included a clause no. 7 confirming that the main business is a farming, agricultural or pastoral enterprise and that the vendor may purchase certain farming inputs at the zero rate.

11.5 DIESEL REFUNDS

Farming is a qualifying activity under the Diesel Refund Scheme. Most farming enterprises would therefore qualify to be registered for the available refund. *Refer to **Chapter 2** regarding registration for the Diesel Refund Scheme.*

Note that refunds under the Diesel Refund Scheme are merely processed by utilising the VAT administrative system. The concession is actually granted to certain qualifying purchasers under the Customs and Excise Act. The diesel refunds are therefore offset against any VAT which may be payable for the tax period concerned, or alternatively, will increase any VAT refund if the input tax for the period exceeds the output tax liability.

It is important that all the relevant documentation is kept relating to diesel purchases as well as the various log book entries or other records which indicate the actual amounts of diesel drawn from stock for eligible and non-eligible use during the tax period. Farmers must also remember that a refund of the fuel levy included in the price of the diesel can only be claimed as a deduction against the output tax due on the VAT201 return to the extent that the diesel is actually used during the tax period for eligible purposes. Further, farmers are generally limited to 80% of the total claim as indicated by the relevant rates on the VAT201 form.

Any diesel refund which is found to be incorrectly deducted and paid would have to be paid back to SARS, together with any interest and/or forfeiture, which may be applicable.

Note that due to significant technical problems and administrative challenges experienced with the implementation of the diesel refund system, the government proposed in its 2015 *Budget Review* to delink diesel refunds from the VAT system with effect from 1 April 2016 in order to address these concerns. The system is currently under comprehensive review and SARS, together with the National Treasury, will hold consultations with affected industries in the process.

For more details about the scheme, refer to the Diesel Refund webpage on the SARS website.

CHAPTER 12

EXPORTS AND IMPORTS

12.1 EXPORTS

Generally, VAT is levied at the standard rate of 14% on a supply of movable goods or services. An exception to this general rule is where a vendor is allowed to levy VAT at the zero rate on the supply of movable goods which are exported by either the vendor (direct export) or a qualifying purchaser[93] in limited circumstances (indirect export).

A **direct export** is where the supplying vendor ("the supplier") consigns or delivers movable goods to a recipient at an address in an export country. The supplier is in control of the export and the zero rate of VAT will apply if the requirements stipulated in *Interpretation Note 30 (Issue 3) dated 5 May 2014 "The Supply of Movable Goods as Contemplated in Section 11(1)(a)(i) Read with Paragraph (a) of the Definition of "Exported" and the Corresponding Documentary Proof" (Interpretation Note 30)* have been met. *Also refer to* ***paragraph 12.1.1*** *for more details.*

An **indirect export** refers to a situation where goods are exported by the recipient (being a "qualifying purchaser") and that person removes or arranges for the removal and transport of movable goods to an address in an export country. Indirect exports are regulated by the export regulations published as Government Notice No. R316 on 2 May 2014 (in GG 37580) (the Export Regulations).[94] Indirect exports are in most instances subject to VAT at the standard rate. In such cases the qualifying purchaser may claim a refund from the VAT Refund Administrator (Pty) Ltd (the VRA)[95] as set out in the Export Regulations. There are, however, certain situations in which the vendor may elect to zero rate the supply of the movable goods, subject to certain requirements. *Refer to* ***paragraph 12.1.2*** *for more details*. For both direct and indirect exports, the movable goods must be exported through one of the **43 designated commercial ports** listed in the table below.

Land Border Posts		International Airports	Harbours	Railway Stations
Country	**Commercial port**			
Zimbabwe	• Beit Bridge	• Bloemfontein • Cape Town • King Shaka (Durban) • OR Tambo (Johannesburg) • Gateway (Polokwane) • Lanseria • Kruger Mpumalanga • Pilansberg • Port Elizabeth • Upington	• Cape Town • Durban • East London • Mossel Bay • Port Elizabeth • Port Ngqura • Richards Bay • Saldanha	• Germiston • Golela • Johannesburg • Maseru Bridge • Mafikeng • Upington
Mozambique	• Lebombo			
Namibia	• Vioolsdrift • Nakop/Narogas			
Botswana	• Ramatlabama • Skilpadshek • Groblers Bridge • Kopfontein			
Lesotho	• Caledonspoort • Ficksburg Bridge • Maseru Bridge • Van Rooyenshek • Qacha's Nek			
Swaziland	• Jeppes Reef • Mananga • Mahamba • Nerston • Golela • Oshoek			

[93] This includes a non-resident, a tourist, a foreign enterprise, a foreign diplomat, a person who acquires and sells goods on a flash title basis, certain international organisations or organisations which are similar to an association not for gain or a welfare organisation which are registered as such in an export country.

[94] Before 2 May 2014, indirect exports were regulated by the VAT Export Incentive Scheme which came into effect on 16 November 1998.

[95] A private company appointed by SARS on a tender basis to administer the VAT refund mechanism.

12.1.1 Direct Exports

In order to apply the zero rate, the supplier must either –

- physically deliver the goods to the recipient, the recipient's duly appointed agent or the recipient's customer at an address in an export country ("deliver"); or
- obtain the services of a cartage contractor who is contractually obliged to deliver the goods on behalf of the supplier to the recipient, the recipient's duly appointed agent or the recipient's customer at an address in an export country ("consign").

The cartage contractor is a person whose activities include the transportation of goods and includes couriers and freight forwarders. The cartage contractor must invoice the supplier, being the person who is liable for payment of the full costs of the delivery services rendered.

The zero rate will apply on condition that the following **documentary proof** has been obtained and retained:

- The supplier's copy of the zero-rated tax invoice;
- The recipient's order or contract between the supplier and the recipient;
- The transport documentation as required for the relevant mode of transport;
- Export documentation as prescribed under the Customs and Excise Act (for example, the SARS Customs Declaration); and
- Proof of payment in respect of the supply of the movable goods.

Proof that the movable goods have been received by the recipient in the export country is required where the supplier or the supplier's cartage contractor delivers the goods by road. In addition, if a cartage contractor conveys the goods to the export country on behalf of the supplier, proof that the supplier paid the transport costs, is required.

The time period within which the movable goods must be exported from the RSA and the time period within which the required documentary proof must be obtained are stipulated in *Interpretation Note 30*, which time periods have been aligned with the Export Regulations.

12.1.2 Indirect Exports

The Export Regulations set out the specific procedures applicable to the indirect export of goods. In the case of indirect exports, the supplier will charge VAT at the standard rate, unless the supplier has elected to apply the zero rate under Part Two of the Export Regulations. If the supplier has charged VAT at the standard rate, the qualifying purchaser may apply to the VRA for a VAT refund.

The Export Regulation is divided into **three main parts**:

- **Part One** deals with the procedures which must be followed by a qualifying purchaser when the supplier has charged VAT at the standard rate on the supply of movable goods which will be exported from the RSA by the qualifying purchaser or the qualifying purchaser's cartage contractor. The qualifying purchaser is subsequently entitled to a refund of tax from the VRA subject to certain limitations or conditions contained in Part One.
- **Part Two** deals with the procedures for the supplier who elects to supply movable goods at the zero rate and is split into two sections as follows:
  - **Section A** deals mainly with the procedures for goods that are initially delivered to one of the designated harbours or airports or are supplied by means of a pipeline or an electrical transmission line in the RSA before being exported; and
  - **Section B** deals mainly with the procedures for goods that are exported by road or rail through a designated commercial port.

- **Part Three** deals with the various time periods within which movable goods must be exported from the RSA, the party responsible for exporting the goods as well as the time periods within which the required documentary proof must be obtained by the supplier to substantiate the application of the zero rate.

Part One

This Part provides that a qualifying purchaser, its duly appointed agent, or cartage contractor may export the movable goods. When the movable goods are exported, the goods must first be declared to a customs official at that exit point, before submitting the claim for a refund of the VAT paid to the VRA. The tax invoice for goods that are not kept as hand luggage must be endorsed by the customs official and a VRA official if the VRA has a physical presence at the relevant designated commercial port.

In the case where the VRA is present at the designated commercial port through which the qualifying purchaser departs, the qualifying purchaser or its authorised representative must present himself or herself to the VRA in order to get a refund of the VAT paid. If the goods are exported through a designated commercial port where the VRA is not present, the qualifying purchaser must apply in writing to the VRA for a refund. The application, together with all the required documentation, must be received by the VRA within 90 days from the date of export. This also applies in the case where the qualifying purchaser's cartage contractor exports the goods.

The VRA may effect the refund of the VAT to the qualifying purchaser by way of various payment methods as contemplated in paragraph 6 of Part One of the Export Regulations. The method of payment depends on several factors.

Contact details for the VRA's Head Office are as follows:

Postal address	**E-mail addresses**	
The VAT Refund Administrator	General	: info@taxrefunds.co.za
PO Box 107	Botswana	: botswana@taxrefunds.co.za
OR Tambo (Johannesburg) International Airport	Swaziland	: swaziland@taxrefunds.co.za
South Africa	Namibia	: namibia@taxrefunds.co.za
1627	Other countries	: generalqueries@taxrefunds.co.za
Physical address	**Website**	: www.taxrefunds.co.za
Plot 206/1 High Road	**Telephone**	: + 27 11 979 0055
Pomona, Kempton Park, 1619	**Facsimile**	: + 27 11 396 1129

In summary, a **VAT refund** will only be considered where all of the following requirements are met:

- The purchaser must be a **qualifying purchaser**.
- The goods must be **exported within 90 days** from the date of the tax invoice subject to certain exceptions.[96]
- The VAT inclusive total of all movable goods **purchased during a particular visit to the RSA and exported at the end of that visit by the qualifying purchaser must exceed the minimum of R250 per qualifying purchaser**.
- The request for a refund, together with the relevant documentation, must be **received by the VRA within 90 days of date of export.**[97]
- The goods **must be exported through one of the 43 designated commercial ports** by the qualifying purchaser or the qualifying purchaser's cartage contractor.

[96] Refer to Part Three, regulation 15 of the Export Regulations for the exceptions.

[97] The Commissioner may extend the period within which an application for a refund must be submitted to the VRA in certain limited circumstances.

The qualifying purchaser must obtain the relevant documentary proof as contemplated in Part One of the Export Regulations in order to prove that the movable goods were exported by road, sea, air or rail.[98]

Part Two – Section A

This Part of the Export Regulations provides for a supplier to elect to supply movable goods to a qualifying purchaser at the zero rate where the goods are initially delivered to a harbour, an airport, or are supplied by means of a pipeline or electrical transmission line in the RSA before being exported.

A supplier who elects to apply the zero rate as provided for in Part Two – Section A of the Export Regulations must obtain the relevant documentary proof as contemplated in the said Part to substantiate the application of the zero rate.

The Export Regulations which replaced the VAT Export Incentive Scheme provide for further scenarios in which the zero rate may apply, which were previously not accommodated. These are explained briefly below.

A supplier may now elect to apply the zero rate when the movable goods are supplied on a flash title basis. The term "flash title" refers to a situation in which movable goods are supplied to a qualifying purchaser and that person immediately supplies the same goods to another qualifying purchaser.[99] Ownership of the goods therefore vests in the first qualifying purchaser only for a moment in time before being sold to another qualifying purchaser.

A supplier may now elect to apply the zero rate when movable goods are supplied to a qualifying purchaser but delivered to another vendor in the RSA for further work such as processing, repair, improvement, manufacture, assembly or alteration to be carried out in terms of a contract between the qualifying purchaser and the vendor concerned. The vendor that carries out the further work must ensure that the movable goods are delivered to a designated harbour or airport once the further work is completed, and that the relevant export documentation is obtained. In this case, the supplier must obtain and retain additional documents from the vendor responsible for carrying out the further work. Refer to Part Two – Section A of the Export Regulations for a list of the additional documentation required.

A supplier may now also elect to apply the zero rate on the supply of movable goods which are destined to be exported from the RSA and such goods are supplied to a qualifying purchaser or registered vendor and the goods are situated at the designated harbour or airport. The supplier must ensure that the movable goods are delivered to either the port authority, master of the ship, a container operator, the pilot of an aircraft, or are brought within the control area of the airport authority.

Part Two – Section B

This Part of the Export Regulations provide for a supplier to elect to supply movable goods to a qualifying purchaser at the zero rate where the goods are exported by road or rail subject to specific requirements that must be met by the relevant parties.

Indirect exports by road or rail were not accommodated under the previous VAT Export Incentive Scheme. However, the Export Regulations now provide for a situation in which movable goods are supplied by one or more vendors to a qualifying purchaser who will appoint an agent in the RSA to collect the goods from the various vendors.

[98] Refer to Part One, regulation 5 of the Export Regulations.

[99] A qualifying purchaser in respect of "flash title" transactions is defined in paragraph (*f*) of the definition of a qualifying purchaser.

After collection, the goods are stored and consolidated by the agent in a warehouse until the consolidated consignment of goods is exported to the qualifying purchaser in the export country.[100] In such a case, the various suppliers may elect to zero-rate the supply of such goods, provided amongst others that the qualifying purchaser is registered as an "exporter" under the Customs and Excise Act. The agent and the cartage contractor who are responsible for removing the goods, either inland or to the export country, must be licensed as removers of goods in bond as contemplated in the Customs and Excise Act.

In order to apply the zero-rate in respect of the supply of movable goods, the supplier and the agent must obtain and retain sufficient documentary proof as contemplated in Part Two – Section B of the Export Regulations.

Lastly, this Part makes provision for the supply of certain lubricating oils and greases to be zero-rated by the manufacturers thereof in the oil and gas industry where such goods are exported by road or rail by the qualifying purchaser or its cartage contractor. For the zero rate to apply to such a supply, the relevant documentary requirements must be met as set out in this Part.

Part Three

This Part deals with the time period within which movable goods must be exported from the RSA as well as the time period within which the required documentary proof must be obtained. Generally, goods must be exported within 90 days from the earlier of the time an invoice is issued or the time any payment of consideration is received by the supplier. The general rule is subject to certain exceptions, for example, when the goods must be manufactured or assembled, the goods have to be exported within 90 days from the date of completion of the process. *Refer to Part Three of the Export Regulations for further exceptions.*

As a general rule, documentary proof that the goods were exported must also be obtained within 90 days from the date that the goods are required to be exported. Provision is made for the Commissioner to extend the period within which the documentation must be obtained in certain exceptional and limited circumstances.

If the supplier is unable to obtain the required documentary proof within the prescribed period, the supplier must account for output tax in respect of the deemed standard-rated supply in block 12 of the VAT return in the tax period in which the prescribed period ends. If the supplier receives the documentation within a period of five years from the end of the tax period during which the original tax invoice for the supply should have been issued, the supplier may deduct the amount of output tax previously calculated as an adjustment in block 18, of the VAT return for the tax period in which this documentation is received, provided that certain requirements are met.[101]

The Export Regulations apply to supplies generally made on or after 2 May 2014. A special transitional rule is also included to provide for the challenges relating to progressive supplies. The Export Regulations will apply in the case of progressive supplies spanning 2 May 2014 when all of the following conditions are met:

- The goods are subject to processes contemplated in section 9(3)(*b*); and
- The invoice is issued or the payment is received before as well as after 2 May 2014; and
- Delivery of the goods takes place after 2 May 2014.

The application of the above rules means that if all invoices and payments in relation to the goods have occurred before 2 May 2014, the rules under the VAT Export Incentive Scheme will apply, even if the goods are delivered (exported) after 2 May 2014. The rules under the VAT Export Incentive Scheme will also apply if the goods are delivered before 2 May 2014 and any invoices are issued or payments are made in respect thereof after 2 May 2014.

[100] The goods must be exported within 90 days as contemplated in Part Three.
[101] Refer to Part Three of the Export Regulations.

For more information refer to the Export Regulations on the *SARS website* or the VRA pamphlet which is available at all of South Africa's International Airports or the VRA's website *www.taxrefunds.co.za*.

12.1.3 Second-hand goods

(a) Direct exports

In terms of the proviso to section 11(1), the zero rate cannot apply where second-hand goods are acquired by the supplier and subsequently exported after a notional input tax credit has been deducted on the acquisition thereof (*refer to* ***Chapter 8***). In such a case, the supplier must levy VAT equal to the notional input tax originally deducted on the acquisition of the goods now being exported. The VAT declared by the supplier is not refundable to the recipient whether the amount was included in the final price of the goods charged to the recipient or not. Note that where second-hand goods are acquired from a registered vendor under a taxable supply, notional input tax is not deducted, but rather, a normal input tax deduction supported by a tax invoice. In this case the normal rules apply and the subsequent export of those second-hand goods is subject to VAT at the zero rate.

(b) Indirect exports

VAT is levied at the standard rate on the indirect export of goods. When second-hand movable goods are exported and a notional input tax deduction has been made by the supplier on the acquisition of those goods, the VRA may not refund the amount of the notional input tax deduction to the qualifying purchaser. For example, when a non-resident purchases a second-hand motor vehicle from a motor car dealer in the RSA, that non-resident will only be able to claim a refund to the extent that the VAT charged exceeds the amount of notional input tax deducted by the motor car dealer.[102]

In the case of second-hand goods which were originally acquired from another registered vendor before being exported and a normal input tax deduction supported by a tax invoice was made, the full amount of VAT charged may be refunded (less the VRA's commission). The reason is that the supplier would not have deducted a notional input tax credit on the acquisition of those second-hand goods.

Example 26 – Second-hand goods – direct export

DEF, being an art gallery, buys a second-hand painting for R11 400 from a non-vendor and claims a notional input tax deduction of R1 400 (R11 400 × 14 / 114). DEF sells the painting to Mr M from Botswana for R15 786 and delivers it to Mr M's address in Botswana. The locally advertised price is R16 400 (including R2 014 VAT).

The calculation of the selling price is as follows:	**R**
Selling price excluding VAT	14 386
Add back notional input tax deducted	1 400
Selling price including VAT	15 786

VAT levied at the standard rate is equal to the amount of notional input tax deducted. The tax invoice issued to Mr M must either show that VAT of R1 400 has been charged or that the selling price includes VAT of R1 400.Mr M is not entitled to a refund of the R1 400 VAT charged.

[102] The Export Regulations require that the tax invoice complies with the requirements in section 20(4).

Example 27 – Second-hand goods – indirect export

Assume the same facts in Example 26, except that Mr M collects the painting in the RSA and exports it himself. (Price advertised: R16 400 including R2 014 VAT). To assist Mr M to obtain his refund from the VRA, at the time of export, the tax invoice should show the following:

	R
Selling Price excluding VAT	14 386
VAT @ 14%	2 014
Selling price including VAT	16 400

VAT Refund

Total VAT	2 014
Less notional input tax deducted	(1 400)
VAT refundable	614

The tax invoice must contain a full and proper description of the goods supplied (indicating, when applicable, that the goods are second-hand goods). A refund will not be authorised if these details are not clearly indicated on the face of the tax invoice. Only the VAT in excess of the notional input tax deducted can be refunded by the VRA, (that is, R614 less the VRA's commission), whereas the portion of the VAT equal to the notional input tax credit deducted (R1 400) is not refundable.

12.2 IMPORTATION OF GOODS

12.2.1 General

VAT is payable on the importation into the RSA of goods purchased from a supplier in another country, subject to certain exceptions. Goods may only be imported through one of the 43 designated commercial ports (as listed in ***paragraph 12.1***). The VAT paid to SARS Customs on goods imported by a vendor in the course of making taxable supplies may be deducted as input tax.

Vendors are entitled to deduct, as input tax, the VAT paid on the importation of goods acquired in the course of making taxable supplies, subject to certain requirements.

From 1 April 2015, sections 16(3)(*a*)(iii) and 16(3)(*b*)(ii) have been amended to the effect that the VAT payable on importation of goods may only be deducted during the tax period when the goods are released in terms of the Customs and Excise Act (CE Act). For purposes of section 16(2)(*d*) (i.e. a clearance of goods otherwise than through an agent), a vendor must be in possession of the following:

- An "EDI Customs Status 1 Release Message"
- A valid bill of entry (SARS Customs declaration form SAD 500 and/or any additional SAD document that might be required); and
- The receipt number relating to the payment of such tax, e.g. the receipt issued on eFiling.

In respect of goods imported on or after 1 April 2015 for purposes of section 16(2)(*d*A), an agent acting on behalf of a vendor for the importation of goods, must furnish the vendor with a statement within 21 days of the end of the calendar month during which the goods were imported, containing the following particulars:[103]

- The full and proper description of the goods;
- The quantity or volume of the goods;

[103] Refer to section 54(3)(*b*)(ii). In addition to furnishing such statement, the agent is required to maintain sufficient records to enable the name, address and VAT registration number of the vendor to be ascertained.

- The value of the goods; and
- The amount of tax paid and the receipt number relating to the payment of such tax, i.e. the receipt issued on eFiling for such payment.

The vendor must be in possession of this statement and also ensure that the agent is in possession of the bill of entry and release notification at the time the vendor submits the VAT return containing that deduction.

SARS Customs officers control the entry of goods into the country, and goods will not be released before they have been declared and any customs and/or excise duties (if any) and VAT has been paid thereon. Regular importers or their clearing agents can however enquire about obtaining access to a deferment facility at SARS Customs branch offices. This facility allows the importer a credit facility with SARS for a specified amount for the customs duty and VAT payable on the importation of goods into the RSA. (The facility is, however, not allowed for the payment of excise duty or fuel levy.) Application for this facility can be made by completing forms DA650 (registration particulars of applicant) and DA652 (agreement between the applicant and SARS). A bank guarantee or surety must also be lodged with SARS to secure any potential tax liability which may arise during the period that the deferred payment arrangement may be allowed. The amount of the security is based on the inherent risks of the business and type of goods to be imported.

12.2.2 Imports from countries other than Botswana, Lesotho, Namibia or Swaziland (the BLNS countries)

The BLNS countries together with the RSA form the Southern African Customs Union (SACU). VAT, customs duty and in some cases, excise duty is payable on goods imported from **outside the SACU region**, (that is, from non-BLNS countries), and is calculated as follows:

Purchase price of goods/Customs value (CV)
+ Customs duty (and Excise duty) if applicable (non-rebated duties)
+ 10% of the customs value
= Added Tax Value (ATV)[104]

ATV × 14% = VAT payable

Example 28 – Importation of goods

Mr C imports art from Uganda for which he pays R5 000. Upon being cleared for home consumption, VAT will be calculated as follows:

	R	
Purchase price/customs value	5 000	(CV)
+ Customs duty, for example, 25%	1 250	
+ 10% upliftment	500	
Value for importation & VAT purposes	6 750	(ATV)
VAT at 14%	**945**	

[104] The 10% upliftment is not an amount payable to SARS, but represents an amount in lieu of transport and insurance costs which is used for calculating the ATV. The 10% upliftment does not apply in the case of imports from BLNS countries.

12.2.3 Imports from the BLNS countries

Goods that are imported from **within the SACU region** (that is, from BLNS countries) are not subject to customs duties and the 10% upliftment in value is not applied if the goods have their origin in a BLNS country. However, VAT is still payable on the importation of the goods into the RSA at the standard rate (currently 14%) on the value for customs purposes, unless the goods are specifically exempt from VAT on importation. The ATV in the case of imports from BLNS countries will therefore not include any customs duties or the 10% upliftment in the customs value as shown in ***paragraph 12.2.2*** above.

12.2.4 Exemptions

No VAT is payable on the importation of certain goods. Some examples are –

- goods imported for diplomatic and other foreign representatives;
- goods imported by immigrants, tourists, returning residents and other passengers for personal use for example –
  - visitor's personal effects, sporting and recreational equipment which will be used during their stay in the RSA;
  - returning resident's personal effects, sporting and recreational equipment exported for use abroad and subsequently re-imported;
  - wine, cigarettes, perfume and certain other new or used goods, being gifts or items for personal use (within certain limits) imported as part of a passenger's baggage;
  - household furniture and other household effects imported by natural persons for own use on change of residence to the RSA;
- goods which are re-imported in certain circumstances;
- goods temporarily admitted for processing, repair, cleaning, reconditioning or for the manufacture of goods exclusively for export;
- goods temporarily admitted subject to exportation in the same state; and
- goods donated by a non-resident to an association not for gain, public authority or municipality which are not for resale, and which are imported for use exclusively for educational or welfare purposes; educational, medical or scientific research; or for issue to indigent persons at no charge.

A provisional payment or bond will normally be required to secure the amount of VAT payable on the importation of goods that are temporarily imported into the RSA or removed in transit through the RSA. This is to ensure that the risk of the goods remaining in the RSA without the payment of the applicable VAT is covered. When the goods leave the country, the provisional payment may be refunded, or the bond released.

12.3 IMPORTED SERVICES

VAT is levied at the standard rate on the supply of imported services, subject to any exemptions which may apply under section 14(5). The recipient of the imported services is responsible for the declaration and payment of the VAT. Such supplies are only subject to VAT if the definition of "imported services" is met.

12.3.1 What is an imported service?

An imported service is –

- a supply of services;
- made by a supplier who is not a resident of the RSA, or who carries on a business outside the RSA;
- to a recipient who is a resident of the RSA;
- to the extent that such services are utilized or consumed in RSA otherwise than in the course of making taxable supplies.

Should the value of any particular supply exceed R100, the recipient is required to pay VAT on importation to SARS if the services are acquired wholly or partly for non-taxable purposes.

A person acquiring electronic services from a non-resident is still required to declare VAT on imported services, unless the non-resident supplier is registered as a vendor under the VAT Act.

Refer to ***Example 30*** and ***Chapter 2*** for more information.

Examples of when a resident recipient has to account for VAT on imported services are where the recipient –

- is not a registered vendor;
- is a vendor, but the services are wholly or partly for making exempt supplies; or
- is a vendor, but the services are applied for private purposes.

Example 29 – Imported services definition

Mr A (a VAT vendor), manufactures ball valves and pays a technical license fee to a UK-based company. The service is accordingly supplied by a supplier who is not a resident of the RSA to a resident (Mr A). However, as the services are wholly consumed in the course of making taxable supplies (that is, manufacturing and selling ball valves), the services do not fall within the definition of "imported services". Consequently, VAT would not be payable by Mr A on the services supplied by the non-resident.

Example 30 – Imported services (digital products / electronic services)

Mrs B orders an electronic version of the latest "Harry Potter" novel from XYZ (an internet based business located in Belgium) and downloads the document on her personal computer. She pays €60 for the book by way of a credit card transaction. Therefore, as these "services" are supplied by a non-resident (XYZ, Belgium) to a recipient who is resident in the RSA (Mrs B) for non-taxable (private) purposes, VAT will be payable by Mrs B in this situation. Assuming that €60 was equivalent to R600 on the date of the importation and that XYZ was not liable for VAT registration in the RSA, the VAT payable on imported services would be calculated as follows:

VAT payable = R600 × 14% = **R84**

From 1 June 2014, a non-resident supplier that provides certain electronic services to a South African resident is required to register for VAT if certain conditions[105] are met and the total value of taxable supplies exceeds R50 000. In the event that the non-resident supplier of electronic services is registered as a vendor, the supplies concerned are not regarded as imported services which are taxable under section 7(1)(*c*). Instead, the non-resident supplier, being a vendor, will charge VAT under section 7(1)(*a*), as taxable supplies made in the course and furtherance of an enterprise carried on by that non-resident in the RSA.

[105] Refer to the regulations published in *Government Gazette* No. 37489 of 28 March 2014 as Government Notice No. R221 for a list of electronic services. Note that it has been announced in the Budget Review 2015 that the aforementioned regulation will be updated to expand the list of electronic services, and remove uncertainties.

12.3.2 When must VAT on imported services be paid?

In the case of vendors, the VAT on imported services must be declared in field 12 of the VAT201 return and paid together with any other VAT which may be due for the tax period concerned. Non-vendors must complete and submit form VAT215 together with the payment within 30 days of importing the services.[106]

12.3.3 Time of supply

The time of supply of imported services is the earlier of the time that an invoice is issued by the supplier or the recipient, or any payment is made by the recipient in respect of that supply.

12.3.4 Value of supply

The taxable value of the supply is the **greater of** the consideration or the open market value.

Example 31 – Value of imported service

Mrs S strikes it lucky one day by winning R1 000 000 on the Lotto. She decides to start her own spaza shop and registers for VAT in this regard. She also decides to spend some of her winnings on extending her small home by building on two extra rooms and a "granny cottage". She obtains several quotes from vendors in the RSA and discovers that it will cost her about R100 000 plus R14 000 VAT (R57 000 labour and R57 000 for materials) to carry out the alterations.

She decides that the cost is excessive and instead asks her brother A who has a construction business in Botswana (in which country he is resident) to carry out the job when he comes to visit over the weekends. Over a period of 6 months, Mrs S spends R43 000 (including VAT) on building materials which A uses to carry out the required work. Mrs S also pays A R25 000 at the end of the job for his time and effort.

In this case, building services are supplied by A (a non-resident) to Mrs S (a resident of the RSA). Even though Mrs S is a vendor, the services are imported by her for non-taxable (private) purposes and are not in any way connected with the taxable supplies made in the course or furtherance of her enterprise (the spaza shop). The services will therefore fall within the definition of "imported services" and VAT will be payable on the greater of:

- the amount of consideration payable to A, namely, R25 000; or
- the open market value of R50 000 (that is, R57 000 less R7 000 VAT).

Therefore, the VAT payable = R50 000 × 14% = **R7 000**

Notes:

1. If A was paid an additional amount to construct a building where the spaza shop enterprise is carried on, no VAT would be payable in this regard as Mrs S would have acquired those services for making taxable supplies.
2. Mrs S cannot deduct input tax on the VAT paid for the building materials as these goods are not acquired for making taxable supplies.

[106] With effect from 1 December 2012, the VAT on imported services can be paid *via* eFiling.

12.3.5 Exemptions

VAT is not payable on imported services where –

- the supply would be exempt from VAT or zero-rated if supplied in the RSA; or
- the supply of the service is subject to VAT at the standard rate (currently 14%); or
- a supply is of an educational service by an educational institution established in an export country which is regulated by an educational authority in that export country;
- the supply is of the services of a non-resident employee under an employment contract; or
- the value of the imported services does not exceed R100 per invoice.

Example 32 – Exempt imported services

Assume that Mrs S in **Example 31** was to enrol her eldest son, D in an MBA distance learning programme offered by the University of Wales at a cost of €10 000 (assuming that this is the equivalent of R120 000).

In this situation, educational services are supplied by the University of Wales (a non-resident) to the recipient D (a resident of the RSA). The services are imported for non-taxable (private) purposes and therefore fall within the definition of “imported services”. However, the VAT Act makes provision for an exemption in this situation as the same educational services, if provided by any university in the RSA, would have been exempt from VAT under section 12(*h*).

VAT is therefore not payable by the recipient (Mrs S or D) on the fees of R120 000 in this case.

CHAPTER 13

TAX INVOICES

13.1 INTRODUCTION

As discussed in ***Chapter 1***, South Africa operates a VAT system whereby the VAT charged by suppliers is subtracted from the VAT charged to customers in order to calculate the VAT payable or refundable. The most important document in such a system is the tax invoice. Without a proper tax invoice you cannot deduct input tax on purchases for your enterprise, and if you have clients who are vendors or if you sell goods to foreign tourists, they cannot claim back the VAT that you have charged them, or claim a refund of the VAT when taking the goods out of the country.

13.2 WHAT IS THE DIFFERENCE BETWEEN AN INVOICE AND A TAX INVOICE?

An **invoice** is a document notifying the purchaser of an obligation to make payment in respect of a transaction (not necessarily a taxable supply). The issuing of an invoice is one of the events which may trigger the time of supply for a transaction, which, if it is a taxable supply, will normally mean that there would be an obligation to declare output tax. Conversely, the fact that you may have an invoice from the supplier, does not mean that you will be entitled to deduct input tax thereon. On the other hand, a **tax invoice** is a document which is provided for in the VAT Act to enable the vendor to deduct input tax. It will therefore always relate to a taxable supply (whether wholly or partially). The VAT Act prescribes that a tax invoice must contain certain details about the taxable supply as well as the parties to the transaction. *Refer to **paragraph 13.3** below for details.*

In practice, some vendors combine the function of the two documents to avoid administrative duplications. However, vendors who prefer this method should ensure that their invoices comply with the requirements of a tax invoice, otherwise their customers will not be allowed to deduct the VAT charged as input tax.

13.3 WHAT ARE THE REQUIREMENTS FOR TAX INVOICES?

The following information must be reflected on a tax invoice for it to be considered valid:

Full Tax invoice **(Consideration of R5 000 or more)** **Section 20(4) of the VAT Act.**	**Abridged Tax invoice** **(Consideration less than R5 000)** **Section 20(5) of the VAT Act.**
• The words "**TAX INVOICE"** in a prominent place;	• The words "**TAX INVOICE"** in a prominent place;
• Name, address and VAT registration number of the supplier;[107]	• Name, address and VAT registration number of the supplier;
• Name, address and VAT registration number of recipient;	- - -
• Serial number and date of issue;	• Serial number and date of issue;
• Full and proper description of the goods and/or services;	• A description of the goods and/or services;
• Quantity or volume of goods or services supplied;	- - -
• Price and VAT (according to any of the 3 approved methods discussed overleaf).	• Price and VAT (according to any of the 3 approved methods discussed overleaf).

[107] *Refer to Binding General Ruling No. 21 dated 11 March 2014 "Addresses to be Reflected on a Tax Invoice, Credit and Debit Note".*

Approved methods for reflecting the consideration and VAT for taxable supplies.

Method 1 All individual amounts reflected.	**Method 2** Total consideration only and the VAT rate charged.	**Method 3** Total consideration and the VAT charged.
Price (excl. VAT) R500 VAT charged R 70 Total including VAT R570	The total consideration R570 VAT included @ 14%	The total consideration R570 VAT included R 70

EXAMPLE: FULL TAX INVOICE (CONSIDERATION MORE THAN R5 000)

The words "tax invoice" in a prominent place on the document.

Trading name, address and VAT registration number of the supplier

TAX INVOICE

Serialised tax invoice number

AC Motor Dealers CC
t/a Bushlands Motors
57 Bushy Lane
BUSHLANDS
VAT No.: 4111252081

Date of the tax invoice

Invoice no. 1958/13

Date : 15 February 2014

Name and address of the recipient

To : Mr Joe Soap
123 Gingerbread Road
Newlands
Cape Town

VAT registration number of the recipient (if registered) where the consideration exceeds R5 000

VAT No. 4740123987

Accurate description of the goods or services supplied

Date	Quantity	Description	VAT	R
15/02/2014	1	2006 BMW 318i (second-hand goods)	28 000,00	228 000,00
	1	Alarm System	420,00	3 420,00
			Total	231 420,00
			VAT included @ 14%	28 420,00

Quantity of goods or services supplied

Total selling price charged including VAT. The VAT must either be shown separately, or the tax invoice must contain a statement that the total consideration includes VAT @ 14%

EXAMPLE: ABRIDGED TAX INVOICE (CONSIDERATION LESS THAN R5 000)

TAX INVOICE

Vendor (Pty) Limited
Highfield Building
80 Club Avenue
Norwood
2192

Tax Invoice No: 2014/1235
VAT Registration No: 4321123450

Date: 15 February 2014

DATE	DESCRIPTION OF GOODS / SERVICES	R
15/02/2014	Widgets 300 × 200	300
	VAT @ 14%	42
	Total	**342**

The following important points should also be noted with regard to tax invoices:

- A vendor must issue a tax invoice to the recipient within 21 days of the supply having been made for which the consideration for the supply exceeds R50 (whether the recipient has requested this or not). This also applies when the vendor's agent issues the tax invoice on behalf of the vendor.[108]
- If the consideration in money for the supply is R50 or less, a tax invoice is not required. However, a document such as a till slip or sales docket indicating the VAT charged by the supplier will be required to verify the input tax deducted.
- An abridged tax invoice (*refer to the example above*) may be issued if the consideration for a taxable supply exceeds R50 but does not exceed R5 000.
- A tax invoice must be in South African currency, except for a zero-rated supply (for example, goods exported) or in the case of certain supplies of electronic services by non-resident suppliers. A full tax invoice (*refer to the example on the previous page*) must be issued in respect of zero-rated supplies, even if the consideration is less than R5 000. A full tax invoice must indicate the recipient's VAT registration number (if that person is a vendor).
- If a vendor fails to deduct input tax in respect of a particular tax period, it may be deducted in a later tax period, but limited to a period of five years from the end of the tax period during which the tax invoice should have been issued for the supply concerned.
- The details to be contained on tax invoices issued by non-resident suppliers of certain electronic services will be set out in a regulation. At the time of publishing this guide, the regulation had not yet been finalised.[109] However, in the interim, a binding general ruling has been published to set out, amongst others the information to be contained on a tax invoice, debit or credit note. *Refer to Binding General Ruling No. 28 dated 26 March 2015 on the SARS website for more information.*

13.4 TAX INVOICES PREPARED BY THE RECIPIENT (RECIPIENT-CREATED INVOICING)

In some instances the consideration for a supply is determined by the recipient of the goods/services rather than by the supplier. An example of this is where a farmer (the supplier) takes produce to a co-operative which will only be sold at a later stage, once the quality and quantity of the produce has been determined. Since the price that will eventually be obtained for the goods depends on factors outside the farmer's control (and often the co-operative merely acts as agent for the supplier), the farmer is not in a position to issue an invoice or tax invoice for the produce when it is delivered for sale.

[108] Section 54, as amended with effect from 1 April 2015.
[109] Section 20(5B).

In such cases, SARS may permit the co-operative (recipient) to issue the tax invoices and any debit and credit notes relating to supplies instead of the supplier. This is referred to as “recipient-created invoicing” or “self-invoicing”.

Paragraph 5 of *Interpretation Note 56 (Issue 2) dated 31 March 2014 “Recipient-Created Tax Invoices; Credit and Debit Notes”* (IN 56) contains a binding general ruling (BGR) which was reproduced in *Binding General Ruling No. 15 (Issue 2) dated 31 March 2014* (BGR 15) that essentially grants approval to recipient vendors to apply self-invoicing where the recipient determines the consideration for the supply of the goods or services and is in control of determining the quantity or quality of the supply, or is responsible for measuring or testing the goods sold by the supplier. The BGR provides that in such cases, the recipient, instead of the supplier, may issue any tax invoices, credit and debit notes for the supplies concerned. This is on condition that the parties to the transaction comply with the requirements set out in *IN 56* or *BGR 15*. Vendors that want to apply self-invoicing procedures, but are unable to comply with the requirements stipulated in *IN 56* or *BGR 15* will have to obtain written authorisation from SARS before they will be allowed to apply this method of invoicing.

Note that approval for self-invoicing procedures will not be granted if the purpose is merely to facilitate the obtaining of a tax invoice by the recipient. Approval will only be granted in the case of those industries and transactions where an effective self-invoicing system has traditionally been followed in the past.

The **written application** to apply self-invoicing must provide the following details –

- a description of the nature of the businesses respectively carried on by the supplier and the recipient;
- a full description of the transactions in respect of which self-invoicing is required;
- the existing invoicing procedures being followed for such transactions; and
- an undertaking by the recipient that they will comply with the administrative requirements with regard to tax invoices, debit notes or credit notes. The applicant must also obtain and retain the written agreement of each affected supplier in this regard (vendors) as well as their written confirmation that they will comply with the said administrative requirements.

13.5 TAX INVOICES FOR MIXED SUPPLIES

As mentioned in ***paragraph 13.3*** above, a full tax invoice must be issued in respect of a zero-rated supply. There may, however, be a situation where various supplies are made by the same supplier and where each supply is treated differently for VAT purposes. Should this occur, the tax invoice must clearly distinguish between the various supplies and indicate separately the applicable values, and the tax charged (if any) on each supply.

EXAMPLE: TAX INVOICE FOR MIXED SUPPLIES

TAX INVOICE **VAT No.: 4111252081**

TAX INVOICE NO. 2014/195 **Date:** *15 February 2014*

To: *Mr D. Touriste*
101 PlattelandWeg
Amsterdam
Netherlands
VAT No: *[n/a – non-resident]*

From: Scenic Tour Operators
57 Bushy Lane
Bushlands
1234

DATE	QTY	DESCRIPTION OF SERVICE/GOODS	VAT STATUS	R
15/02/2014	2	Airport shuttle @ R150 per trip	Exempt	300
	2	Tour guide fee @ R500	14%	1 000
	4 nights	Accommodation B & B @ R2 500	14%	10 000
	5	Paintings[110]	14%	5 000
	50 litres	Diesel – for rented 4x4 vehicle	0%	200
			VAT @14% on: R16 000[111]	2 240
			Total	18 740

13.6 SPECIAL CASES

Although the general rule is that a vendor must have a tax invoice before being allowed to deduct any input tax in relation to the supply, there are a few exceptions to the rule which are discussed in ***paragraphs 13.6.1 to 13.6.3*** below.

13.6.1 Second-hand goods

The VAT Act allows a vendor under certain circumstances to deduct input tax on the acquisition of second-hand goods. In order to substantiate the deduction, the vendor has to obtain and retain a declaration from the supplier of such goods confirming that such supply is not a taxable supply in addition to maintaining the following records:

- Name, address and ID no. of the supplier (ID no. of the representative person if it is a company or close corporation).
- Date of acquisition.
- Quantity or volume of goods.
- Description of the goods.
- Consideration for the supply.
- Proof of payment (including the date of payment)
- Declaration by the supplier stating that the supply is not a taxable supply.
- The vendor must verify the person's ID no. with the ID book or passport.
- For all supplies,[112] the vendor must obtain and retain a copy of the person's ID and, in the case of a company or CC, a business letterhead or similar document is also required which shows the name and registration number allocated by the Registrar of Companies.

[110] VAT charged @ 14% as the tourist will remove the goods from the RSA himself.
[111] VAT = R10 000 + R1 000+ R5 000 = R16 000 × 14% = R2 240.
[112] From 2 November 2010, the documentation set out in section 20(8) is required for any non-taxable acquisition of second-hand goods and/or goods repossessed or surrendered under an ICA.

IMPORTANT NOTE
Form *VAT264* has been designed specifically to assist vendors to comply with the law.
The form must therefore be completed and maintained as part of the vendor's records for VAT purposes for the prescribed record-keeping period.

13.6.2 Repossession or surrender of goods supplied under an Instalment Credit Agreement (ICA)

When goods previously supplied under an ICA are repossessed or the goods are surrendered by the debtor, it is impractical to require the debtor, to issue an invoice or tax invoice to the financier, therefore –

- if the **goods are repossessed from, or surrendered by, a vendor,** the person exercising the right of repossession (normally a bank or other financier who is also a vendor), is required to create and furnish a tax invoice to the debtor; and
- if the **goods are repossessed from, or surrendered by, a non-vendor,** the person exercising the right of repossession (vendor) is required to keep details as mentioned in ***paragraph 13.6.1*** above relating to second-hand goods (e.g. VAT264 declaration).

13.6.3 Other cases

A document such as a till slip or sales docket indicating the VAT charged by the supplier may be issued instead of a tax invoice where the purchase price is less than R50 and the total consideration is in money (discussed in ***paragraph 13.3*** above).

Should the Commissioner be satisfied that there will be sufficient records, and that it will be impractical for a tax invoice to be issued, permission may be granted **to the supplier**[113] that tax invoices are not required to be issued, or that the information on the tax invoice may vary from the standard requirements. Should a supplier be permitted by the Commissioner to issue such a varied document, the recipient of the supply will be permitted to use such document to deduct input tax. *Refer to Binding General Ruling No. 27 dated 26 March 2015 and Interpretation Note 83 dated 26 March 2015 "Application of Sections 20(7) and 21(5)" for more information.*

Should the tax invoice for taxable supplies made to the vendor be held by the vendor's agent, the vendor must be in possession of a statement furnished to him by the agent containing certain particulars about the supplies made to the vendor. An agent must furnish such statement within 21 days of the end of the calendar month during which the goods were supplied. Further, the agent is required to maintain sufficient records to enable the name, address and VAT registration number of the vendor to be ascertained.

A bill of entry[114] together with the proof of payment to Customs serves as the supporting documentation to deduct the VAT paid on any goods imported. Should the bill of entry be held by an agent, the vendor must be in possession of a statement furnished to him by the agent containing certain particulars about the imported goods.[115] An agent must furnish such statement within 21 days of the end of the calendar month during which the goods were imported. *Refer to **paragraph 12.2.1** for the necessary details that must be set out in the monthly statements issued by the agent*.

A vendor should be in possession of documentary proof that is acceptable to the Commissioner to substantiate any deduction in respect of which there is not a specific documentary requirement.[116]

[113] Section 20(7).
[114] A vendor or his agent will be required to be in possession of a release notification instead of a bill of entry with effect from the date on which the new Customs Control Act, 2014, comes into effect.
[115] With effect from 1 April 2015 [Section 16(2)(*d*A)].
[116] Section 16(2)(*f*). It must be noted that section 16(2)(*f*) cannot be used to override the specific documentary requirements of sections 16(2)(*a*) to (*e*).

13.7 ELECTRONIC TAX INVOICES AND RECORDS

The VAT Act includes specific requirements on the issuing of tax invoices, debit and credit notes, and the storage of these documents. Chapter 4 of the TA Act sets out the form, including electronic form, and period in which documents should be retained. The requirements to issue and retain documents are equally applicable to vendors that do "e-invoicing". Vendors do not need prior approval from the Commissioner to implement e-invoicing. However, it should be noted that generally the electronic transmission[117] and retention of documents is regulated by the Electronic Communications and Transactions Act No. 25 of 2002 (the ECT Act). SARS is not in a position to issue rulings or provide advice on whether any Electronic Data Interchange (EDI) systems or any other electronic communications meet the technical specifications of the ECT Act.[118] *Refer to **Chapter 18** for details regarding the retention of records*.

The record keeping of documents has specific requirements. Upon the commencement of the TA Act, the Commissioner issued *Public Notice No. 787: Electronic form of record keeping in terms of section 30(1)(b) of the TA Act, 2011*[119] which now regulates how records for tax purposes are to be retained in electronic form. SARS may, however, issue notices on whether a vendor complies with section 30 of the TA Act and a senior SARS official may authorise the retention of records in an alternative manner.

Vendors wishing to implement an electronic system must ensure that they do not replace their existing paper-based documentary systems before ensuring that they meet all the requirements.

[117] This refers to the issuing of documents in electronic format.

[118] As the National Department of Communications regulates the ECT Act, it is the competent authority to approach for advice in this regard. One of the matters where the Commissioner may reject an application for a ruling (refer to ***Chapter 17*** and Public Notice 103) is when it concerns the technical requirements pertaining to electronic invoicing.

[119] The Public Notice was published on 1 October 2012 in *Government Gazette* 35733 with immediate effect.

CHAPTER 14

DEBIT & CREDIT NOTES

14.1 INTRODUCTION

A **debit note** will normally be issued by the supplier when the tax invoice for the supply has already been issued and the previously agreed consideration is subsequently **increased.** Conversely, a **credit note** will normally be issued by the supplier when the tax invoice for the supply has already been issued and the previously agreed consideration is subsequently **reduced**. A **credit note** is also issued by the original supplier **when faulty goods are returned** by the customer. Debit and credit notes therefore provide a mechanism to support the necessary VAT adjustments required or allowed where an event has the effect of altering the original consideration agreed upon for a past taxable supply, after the tax invoice has already been issued, or the vendor has accounted for the supply on a VAT return.

14.2 WHEN MUST DEBIT AND CREDIT NOTES BE ISSUED?

The following are the circumstances under which it will be necessary to issue a debit note or credit note:

- A supply of goods or services is cancelled.
- The nature of the supply of goods or services has been fundamentally varied or altered.
- The previously agreed consideration for the supply of the goods or services is being altered by agreement with the recipient (including a discount).
- Part of, or all the goods or services supplied are returned to the supplier (including any returnable container returned to the supplier).
- The price on the tax invoice was either overstated or understated.[120]

This will, however, only be necessary if in respect of any of the above circumstances the supplier has either –

- issued a tax invoice and the tax charged is incorrect; or
- furnished a VAT return in which the incorrect amount of output tax was accounted for.

The debit or credit note must be issued, whether or not the supplier accounts for tax on an invoice or payments basis. The issue of a credit note is not required when a prompt payment (settlement) discount is the reason for the reduction in the consideration, provided the terms of that discount are clearly shown on the tax invoice.[121]

[120] This amendment is effective from 1 January 2013 and applies in respect of supplies made on or after that date.

[121] *Refer also to the Binding General Rulings (VAT) No. 5 dated 25 March 2011 and No. 6 (Issue 2) dated 19 June 2012.*

14.3 WHAT DETAILS MUST APPEAR ON DEBIT AND CREDIT NOTES?

The following details should appear on debit and credit notes:

- The words "debit note" or "credit note" (as the case may be) in a prominent place.
- The name, address and VAT registration number of the vendor.[122]
- The name and address of the recipient (unless the supplier originally issued an abridged tax invoice).
- The date on which the debit note or credit note is issued.
- The amount by which the value of the supply and the VAT charged has been altered (or where the tax invoice reflected only the total consideration and a statement regarding the rate of tax applied, the amount by which the consideration has been reduced must be reflected and either the difference in VAT or a statement that the adjustment includes an amount of tax and the rate of the tax included).
- A brief explanation of the circumstances giving rise to the debit or credit note.
- Sufficient information to identify the transaction to which the debit or credit note refers, for example, a reference to the original tax invoice number and the date on which it was issued.

Below is an example of a credit note and a debit note.

EXAMPLE: CREDIT NOTE

CREDIT NOTE

Vendor (Pty) Limited
Suite 4, 1st Floor
Highfield
80 Grant Avenue
Norwood
2192

VAT Registration no: 4321123450
Date : 6 November 2014

To:

Confused (Pty) Limited – VAT registration no: 4291163592
89 Horror Street
Johannesburg
2001

Tax invoice Reference	Description of goods	Reason for credit note	Incorrect amount	Correct amount	Net amount	VAT
No: 8962/4 – dd 8/10/14	30mm Widgets supplied @ R1 each	Charged for 400 units instead of 300	R400	R300	R100	R12,28

[122] *Refer also to Binding General Ruling (VAT) No. 21 dated 11 March 2014.*

EXAMPLE: DEBIT NOTE

DEBIT NOTE

Vendor (Pty) Limited
Suite 4, 1st Floor
Highfield
80 Grant Avenue
Norwood
2192

VAT Registration no: 4321123450
Date : 6 November 2014

To:

Confused (Pty) Limited – VAT registration no: 4291163592
89 Horror Street
Johannesburg
2001

Tax invoice Reference	Description of goods	Reason for debit note	Incorrect amount	Correct amount	Net amount	VAT
No: 8963/4 - dd 8/10/14	30mm Widgets supplied @ R1 each	Charged for only 200 units instead of 300	R200	R300	R100	R12,28

14.4 ADJUSTMENTS

The VAT Act makes provision for debit and credit notes to be issued in respect of a supply for which a tax invoice has been issued. Remember that the consideration for a supply can only be altered by means of a debit or credit note – it is not correct to merely issue another tax invoice. **Note also that it is illegal to issue more than one tax invoice per taxable supply**.

Debit and credit notes must be reflected on the VAT201 return as follows:

- ***Field 12*** – Output tax – debit notes issued and credit notes received.
- ***Field 18*** – Input tax – credit notes issued and debit notes received.

Credit notes issued may not be set off against the sales made to the same vendor, and similarly, debit notes may not be set off against purchases unless the debit or credit note concerned is issued in the same tax period in which the supply has taken place.

Note

Where it is discovered that the cash relating to a transaction has been stolen or misappropriated, this does not entitle the vendor to issue a credit note and deduct input tax thereon. The VAT Act does not provide for a deduction or adjustment in such cases.

*Refer to **Chapter 15** for more details on adjustments.*

CHAPTER 15

ADJUSTMENTS

15.1 INTRODUCTION

This chapter identifies those situations in which a vendor will be required to make adjustments to input tax or output tax. It explains when the adjustments should be made by the vendor and what the amounts of the adjustments should be.

Adjustments to **input tax or output tax** will arise in respect of taxable supplies, for example, where –

- an irrecoverable debt is written off by a vendor;
- a debit or credit note is issued or received by a vendor;
- early payment of an account gives rise to a prompt settlement discount;
- faulty goods received by the customer are returned to the supplier; and
- a change in the extent of taxable use or application of goods or services occurs.

15.2 IRRECOVERABLE DEBTS

A vendor who accounts for VAT on the invoice basis may deduct input tax in respect of debts which have become irrecoverable. In the exceptional case of a vendor who is registered on the payments basis and who has already accounted for a taxable supply which was paid with a cheque and the cheque is dishonoured, that vendor may also deduct input tax. The circumstances under which such a deduction may be claimed, requires firstly that there must have been a taxable supply for a consideration in money. Secondly, the vendor must already have accounted for the supply in a VAT return. Only then is that vendor entitled to make an input tax adjustment. The adjustment is calculated by applying the tax fraction (14/114) to the amount actually written off as input tax.

A debt will be considered as irrecoverable if **both** the following requirements have been complied with, namely:

- The vendor must have done all the necessary entries in the accounting system to record that the amount has been written off.
- The vendor must have ceased active recovery action on the debt **<u>or</u>** handed the debt over to an attorney or debt collector.

The vendor may then make an input tax deduction in the tax period in which **<u>both</u>** of the abovementioned requirements have been met. In the case where the vendor subsequently receives payment in respect of a debt written off as irrecoverable, the vendor must account for output tax on the payment in the tax period in which the payment is received.

15.3 DEBIT AND CREDIT NOTES

The circumstances in which debit and credit notes are required to be issued are dealt with in ***Chapter 14***. Credit notes are issued by a supplier for various reasons, after a tax invoice was issued and the consideration for the supply is therefore reduced (for example, when faulty goods are returned to a supplier). A vendor that issues a credit note is required to make an adjustment to input tax. The vendor receiving a credit note must make an adjustment to output tax. These adjustments must be accounted for in the VAT return for the tax period in which the increase in consideration occurs, that is, in the tax period in which the credit note is issued by the vendor. A vendor that issues a debit note is required to make an adjustment to output tax.

The vendor receiving a debit note must make an adjustment to input tax. These adjustments must be accounted for in the VAT return for the tax period in which the increase in consideration occurs, that is, in the tax period in which the debit note is issued by the vendor.

Remember that the rules discussed above apply to vendors in accordance with the principles upon which they account for VAT. For example, a vendor who is registered on the payments basis will only make the necessary adjustments when payment in respect of the debit or credit note is made or received, whereas vendors on the invoice basis account for the debit or credit note upon the issue or receipt of that document.

15.4 PROMPT SETTLEMENT DISCOUNTS

Should the terms of a prompt settlement discount be stated on a tax invoice, a credit note need not be issued if the consideration for the supply is reduced by reason of the stated discount offer being accepted. In a case where the conditions relating to the discount are only met in a subsequent tax period, the supplier must declare output tax on the full consideration excluding the discount. An input tax adjustment may then be claimed in field 18 of the VAT return for the tax period during which the conditions relating to the discount have been met. Alternatively, the vendor may reduce the output tax attributable for the tax period with the amount of the discount.

Similarly, the vendor receiving the settlement discount must account for output tax in field 12 of the VAT201 return, or reduce the total amount of input tax deducted in the VAT return for the tax period in which the settlement discount is allowed.

15.5 CHANGE IN USE OR APPLICATION

A vendor must make an adjustment to output or input tax (as the case may be), if the extent to which capital goods or services used by the vendor to make taxable supplies increases or decreases. This includes stock items or capital assets taken from the business for own use, or for exempt or other non-taxable purposes.

The definition "**adjusted cost**" was introduced into sections 1(1), 16(3)(*h*), 18(2), (4) and (5) for the purposes of calculating certain input and output tax adjustments required by, or allowed to, a vendor on any change of taxable use of assets. The effect is that any costs incurred in acquiring the assets which are not VAT inclusive (or deemed to include VAT) are excluded in the formula used to calculate the adjustment. Examples include finance charges (exempt) or labour charges by a non-vendor (no VAT chargeable), and salary and wages incurred in the manufacture, assembly, construction or production of those goods or services.

An adjustment to **output tax** will be required where –

- goods or services acquired for making taxable supplies are subsequently applied wholly for private, exempt or other non-taxable purposes; or
- there is a *decrease* of more than 10% in the extent of taxable use or application by the vendor of capital goods and services which have an adjusted cost of R40 000 or more.

An adjustment to **input tax** may be permitted where –

- goods or services applied wholly or partly for exempt or private purposes are subsequently applied wholly or partly for making taxable supplies; or
- there is an *increase* of more than 10% in the extent of taxable use or application by the vendor of the capital goods or services concerned.

15.5.1 Change in use from taxable to non-taxable purposes [section 18(1)]

If you bought or imported **any goods or services (including capital goods or services)** for your business and deducted input tax, and later, applied the goods or services for your own use, for exempt supplies, or for other non-taxable purposes, you will have to pay output tax on the open market value of those goods or services. The adjustment must be made at the time that the goods or services are applied wholly for non-taxable purposes. An output tax adjustment must also be made if you donate any stock or other enterprise assets on which input tax was previously deducted if you do not receive anything in return.

Example 33 – Change in use from taxable to private purposes

Ms H is a chartered accountant and has her own practice, and is registered for VAT under the Category B tax period. She bought a computer for the business in January 2011 for R5 700 (excluding finance charges, but including VAT) and accordingly deducted input tax of R700 in her February 2011 VAT return.

In December 2011, she decides to upgrade the office computer and takes the computer home for her children to use. The market value of the computer as at December 2009 is R2 280. Ms H must now account for output tax of R280 (R2 280 × 14 / 114) in field 12 of the December 2011 VAT return.

Property developers in particular have experienced difficulty in complying with this provision over the years as they are sometimes unable to sell certain of the residential properties developed in difficult economic times. As a result, there is often a tendency to let these properties temporarily as dwellings while continuing to market the properties for sale. Immediately upon letting the properties as dwellings, the property developers will be making exempt supplies (albeit temporarily) and will be required to account for output tax on the open market value of the properties concerned at the time when the change of use occurs.

Section 18B was therefore introduced with effect from 10 January 2012 to provide temporary relief for property developers when they temporarily change the use of properties held as stock for resale (taxable supplies) by letting them as dwellings (exempt supplies) to tenants. The relief period was initially granted until 31 December 2014, but has now been extended until 31 December 2017.

The relief is in the form of a suspension of the liability to declare output tax on the change in use adjustment in certain instances when dwellings are temporarily let to tenants (and therefore applied for exempt purposes) whilst they are still marketed for sale. Developers that experience difficulties in selling residential properties developed as trading stock are therefore allowed to temporarily rent those properties during the relief period without having to declare output tax on the adjustment which would otherwise have applied. The relief applies during the relief period in respect of dwellings temporarily let to tenants on or after 10 January 2012 and is only available as long as the developer continues to have the intention of selling the property.

Output tax is payable on the open market value of dwellings which have been subject to the relief under section 18B at the earlier of –

- the cut-off date of 1 January 2018; or
- the date that there is a permanent change of use or intention from taxable to non-taxable purposes relating to the properties concerned.

The relief does not apply in respect of residential properties held as trading stock which have been temporarily let before 10 January 2012.

15.5.2 Decrease in extent of taxable use of capital goods or services [section 18(2)]

An adjustment is required to a vendor's output tax in those circumstances where there is a **decrease of more than 10%** in the extent to which **capital goods or services** are used or applied in the course of making taxable supplies. The adjustment is made on an annual basis.

No adjustment is applicable where –

- the adjusted cost is less than R40 000 (excluding VAT); or
- the vendor is a *public authority or constitutional institution* and the capital goods or services were acquired before 1 April 2005; or
- the vendor is a *municipality* and the capital goods or services were acquired before 1 July 2006.

Example 34 – Decrease in extent of taxable use of capital goods or services

Ms C (a registered VAT vendor) owns a double-storey building situated in Cape Town. The building is used for mixed purposes in that it has 4 shops on the ground floor (taxable supplies) and 2 large residential apartments on the first floor (exempt supplies). Shops are rented for R12 000 each (excluding VAT) and apartments for R6 000 each per month. In March 2008, Ms C purchases a computer system for R114 000 (inclusive of VAT), which is intended for use in her business. At the time of purchasing the computer system, Ms C derives 80% of her income from taxable supplies (shop rentals) and 20% from exempt supplies (residential rentals). Ms C has elected to use the standard turnover-based method of apportionment and in the April 2008 tax period, she deducts input tax of R11 200 (14 / 114 × R114 000 × 80%) in respect of the computer system acquired.

At the end of February 2014, Ms C determines that the nature of her business has changed significantly and that her income from taxable supplies now comprises 60% and her income from exempt supplies comprises 40% of her total income. At the end of that month the computer system has an open market value of R92 340. The adjustment required to be made by Ms C to take account of the decrease in the extent of taxable use of the computer system is determined by the formula: **A × (B – C)**

Where:

A represents the lesser of:
(i) the adjusted cost of the computer system, namely, R114 000; or
(ii) the open market value of the computer system, namely, R92 340

B represents the extent of taxable use of the computer system at the time of the acquisition or in the prior 12-month period, namely, 80%

C represents the extent of the taxable use of the computer system during the current 12-month period, namely, 60%

Ms C's calculation will be R92 340 × (80% – 60%) or R92 340 × 20% = **R18 468.**

In order to calculate the output tax which must be accounted for, Ms C would apply the tax fraction to the amount determined by the formula, for example, 14 / 114 × R18 468 = **R2 268.**

Ms C must therefore declare an amount of R2 268 in VAT for the tax period ending February 2014 in her VAT201 return in field 12.

15.5.3 Change in use from non-taxable to taxable purposes [section 18(4)]

A vendor is entitled to make an input tax deduction where goods or services are held on or after 30 September 1991 for exempt, private or other non-taxable purposes and subsequently applied by the vendor for consumption, use or supply in the course of making taxable supplies. In order to qualify for this deduction, the subsequent taxable use or application of the goods or services must occur on or after 30 September 1991. The deduction will not apply in respect of any goods or services for which a deduction of input tax is denied or would have been denied if the goods or services were acquired after 30 September 1991. The amount of the deduction will depend on the extent of the intended use of the goods or services in relation to the total intended use. The vendor may deduct input tax in the tax period in which the goods or services are actually used for making taxable supplies. The amount of the adjustment is calculated by applying the tax fraction (14/114) to the lesser of the adjusted cost (including VAT), or the open market value of the relevant goods or services.

No adjustment is applicable where –

- the vendor is a *public authority or constitutional institution* and the goods or services were acquired before 1 April 2005; or
- the vendor is a *municipality* and the goods or services were acquired before 1 July 2006.

Example 35 – Change in use from private (non-taxable) to taxable purposes

A vendor purchases a single cab bakkie for private purposes on 1 March 2011. The bakkie costs R228 000 including VAT (excludes finance charges and any other charges incurred). The vendor then decides to use the bakkie exclusively in his business for delivery of goods to his/her customers with effect from 1 March 2015. At the time of introducing the bakkie into the business, it had an open market value of R205 200. Assuming the vendor is a Category B vendor, the vendor will in the April 2015 tax period, now be entitled to deduct, in addition to other input tax deductions, an amount of: 14 / 114 × R205 200 = **R25 200**

15.5.4 Increase in the extent of taxable use of capital goods or services [section 18(5)]

An input tax adjustment may be made by a vendor in circumstances where there is an **increase of more than 10%** in the extent to which **capital goods or services** are used or applied in the course of making taxable supplies. This adjustment is made on an annual basis.

No adjustment is applicable where –

- the adjusted cost is less than R40 000 (excluding VAT); or
- the vendor is a *public authority or constitutional institution* and the capital goods or services were acquired before 1 April 2005; or
- the vendor is a *municipality* and the capital goods or services were acquired before 1 July 2006.

Example 36 – Increase in extent of taxable use of capital goods or services

Ms C (registered VAT vendor) owns a double-storey building situated in Cape Town. The building is used for mixed purposes, in that it has 3 shops on the ground floor (taxable) and 4 residential apartments on the first floor (exempt). In March 2012, Ms C purchases a computer system for R114 000 (inclusive of VAT), which is intended for use in her business. At the time of purchasing the computer system, Ms C derives 60% of her income from taxable supplies (shop rentals) and 40% of her income from exempt supplies (residential rentals). Ms C has elected to use the standard turnover-based method of apportionment and in the April 2012 tax period, she deducts input tax of R8 400 (14/114 × R114 000 × 60%) in respect of the computer system acquired.

At the end of February 2014, Ms C determines that the nature of her business has changed significantly and that her income from taxable supplies now comprises 80% and her exempt income comprises 20% of her total income. At the end of that month the computer system has an open market value of R92 340.

As a result of the increase in the extent of taxable use, Ms C may claim an input tax adjustment as determined by the formula: **A × B × (C – D)**

Where:

A represents the tax fraction, that is, 14/114
B represents the lesser of:
(i) the adjusted cost of the computer system, namely, R114 000; or
(ii) the open market value of the computer system, namely, R92 340
C represents the extent of taxable use of the computer system during the current 12-month period (80%)
D represents the extent of the taxable use of the computer system at the time of acquisition or in the prior 12-month period (60%)

Ms C's calculation will be: 14 / 114 × R92 340 × (80% – 60%)
14 / 114 × R92 340 × 20% = **R2 268.**

Ms C may now deduct an additional R2 268 in the February 2014 VAT return under field 18.

15.5.5 Subsequent sale or disposal of goods or services partly applied for taxable supplies [sections 8(16)(*a*) and 16(3)(*h*)]

A vendor that acquires goods and services which are used partly for making taxable supplies and thereafter supplies those same goods or services in the course of the enterprise, is required to account for output tax on the full consideration for the supply. In order to eliminate double taxation, the vendor is entitled in these circumstances to deduct the portion of VAT that was originally disallowed on the acquisition of the goods or services.

Example 37 – Goods partially applied for taxable supplies subsequently sold

A vendor purchases a computer system costing R114 000 (including VAT) which is used 60% for exempt supplies and 40% for taxable supplies. The apportionment percentage was determined using the turnover-based method at the time of acquisition. The vendor correctly deducted input tax of R5 600 (that is, 14/114 × R114 000 × 40%).

Two years later, the vendor sells the computer system for R57 000 (including R7 000 VAT). The vendor is therefore required to account for output tax of R7 000 on this transaction. However, an input tax credit may be deducted in the same VAT return on the VAT previously disallowed (60% for exempt supplies), which is determined by the formula:

A × B × C

Where:

A represents the tax fraction, that is, 14/114

B represents the lesser of:

(i) the adjusted cost of the computer system, namely, R114 000; or

(ii) the open market value of the computer system, namely, R57 000

C represents the extent of the exempt use of the computer system before its sale by the vendor (that is, 60%)

The vendor's calculation of the deduction from his output tax will be:
14/114 × R57 000 × 60% **= R4 200**

The vendor will therefore account for VAT in field 4A of the VAT return as follows:

	R
Output tax on sale	7 000
Less: Input tax	(R4 200)
Output tax payable	**R2 800**

CHAPTER 16

ASSESSMENTS, OBJECTIONS AND APPEALS

16.1 ASSESSMENTS

16.1.1 Purpose of assessments

Assessments are predominantly regulated by the TA Act but the provisions should be read together with the VAT Act. An assessment is defined in the TA Act as the determination of the amount of a tax liability or refund either through a vendor's self-assessment or an assessment by SARS (administrative assessment). The TA Act introduces more generic terms to accommodate the modernisation initiative towards a full self-assessment system. *Refer to **Chapter 8** of the Short Guide on TA Act, 2011 for more details*.

16.1.2 Types of assessments

The TA Act provides for four types of assessments:

Original assessment: The concept of an original assessment, that is, the first assessment in respect of a tax period, is now defined to be a specific type of assessment. The TA Act provides that an original assessment exists in four circumstances, namely, where –

- a return is submitted as a self-assessment, which includes the vendor's calculations of tax payable or refundable, such return is regarded as the original assessment;
- no return is required but a tax payment must be made, the payment is regarded as the original assessment;
- a return is required and SARS determines the tax liability by way of an original assessment;
- a return is required and the vendor does not file a return, SARS will then assess the vendor by way of an original assessment.

Additional assessment: A new simplified concept, **prejudice to SARS or the fiscus**, is used as a basis for the issue of additional assessments. SARS must, therefore, issue an additional assessment if any assessment does not reflect the correct application of a tax Act to the prejudice of SARS or the fiscus. An additional assessment is a notification to a vendor to pay a tax liability which exceeds the tax liability in another assessment and will always be issued subsequent to an original assessment or a reduced assessment.

Reduced assessment: A reduced assessment can only be issued in two instances:

- Firstly, where there is a disputed assessment and a reduced assessment must be issued to give effect to the conclusion of the dispute, for example, an objection is allowed or a dispute is settled.
- Secondly, if there is an error in the assessment which is undisputed. The error can be on the part of SARS or the vendor. No objection or appeal is necessary to issue this type of assessment.

Jeopardy assessment: Jeopardy assessments, also known as protective assessments, may be issued in advance of the date on which the return is normally due in order to secure the early collection that would otherwise be in jeopardy, or where there is some danger of tax being lost by delay. A jeopardy assessment may, for instance, be issued before the date that a return is required where the vendor tries to place assets beyond the reach of SARS or where a tax debtor is about to leave the RSA and will leave behind a tax debt.

Assessment under section 31 of the VAT Act: SARS may still make a determination of an amount of tax payable under section 31 where, for example, a person who is not registered as a vendor, supplies goods or services and represents that tax is charged on the supply, or where a vendor charges an incorrect amount of tax on a supply. In these circumstances SARS may issue a notice of assessment under section 31 for the amount of tax determined to be payable.

16.1.3 Other aspects

The submission of a VAT return, is considered to be an original assessment under the TA Act. The date of assessment is the date when the VAT return is submitted to SARS. The date of assessment is important because it is the date used to work out the period after which SARS may not issue another assessment, including a reduced assessment to rectify an undisputed error in a return.

The TA Act furthermore prescribes the rules in relation to the following aspects that are applicable to assessments:

- Estimation of assessments.
- Notice of assessments.
- Withdrawal of assessments.
- Periods of limitation for the issuing of assessments.
- Finality of assessments.
- Correcting a mistake relating to an assessment.

Refer to the *Short Guide on TA Act, 2011 for more detailed information on assessments under the TA Act.*

16.2 DISPUTE RESOLUTION

16.2.1 Tax Administration

Vendors that are aggrieved by an assessment have a right to dispute it. Chapter 9 of the TA Act provides the legal framework for disputes, including VAT disputes. Chapter 9 must be read in addition to the rules issued under section 103 of the TA Act[123] governing the following:

- The procedures to lodge an objection and appeal against an assessment or decision that is subject to objection and appeal;[124]
- Alternative dispute resolution (ADR) procedures under which SARS and the person aggrieved by an assessment or decision may resolve a dispute;
- The conduct and hearing of an appeal before a tax board or tax court.

Transitional provisions related to disputes

Those disputes not finalised at the commencement date of the new rules are dealt with as if taken or instituted under the new rules under the TA Act.[125] For example, if a vendor has objected under the old rules and the objection has not been dealt with by SARS upon commencement of the new rules, the dispute must continue and be dealt with by SARS under the new rules.

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[123] New rules published in *Government Gazette* No. 37819 of 11 July 2014 as Government Notice No. 550 came into effect on 11 July 2014. Before 11 July 2014, the old rules issued under section 107A of the Income Tax Act applied. These old rules were governed by section 269 of the TA Act from 1 October 2012 when that act was introduced.

[124] Section 104(2) of the TA Act.

[125] Section 270 of the TA Act.

Burden of proof

The burden of proof generally lies with the vendor in view of the fact that the assessment is essentially based on facts within the particular knowledge of the vendor. However, the TA Act now provides that the burden of proof is on SARS to prove –

- that an assessment based on an estimate is reasonable; and
- the facts on which an understatement penalty was imposed.

It must also be noted that when the Commissioner authorises a jeopardy assessment, a vendor has the right to approach a High Court for review on the basis that the assessment is excessive or that there is no justification for the jeopardy assessment. In such a review application SARS bears the burden of proving that the making of the assessment was reasonable in the circumstances. This, however, is not a burden of proof in the context of objections and appeals.

16.2.2 What to do if you dispute your tax assessment

The dispute resolution process consists of the following aspects:

- Reasons for assessment.
- Objection to an assessment.
- Appeal against disallowance of an objection.
- Post-appeal stage (alternative dispute resolution).
- Pre-hearing formalities (Tax Court or Tax Board).

The obligation to pay a tax liability may be suspended for the duration of a dispute. This is dealt with in ***paragraph 16.4***.

16.2.3 Reasons for assessment

An assessment for taxes owed should be accompanied by adequate reasons which explain why the assessment has been raised. If the reasons are not adequate (or not included at all), you are entitled to request these reasons in writing within 30 business days from the date of the assessment.

16.2.4 Objection to an assessment

If you have received an assessment and you do not agree that it is correct, you may lodge an objection.[126] The objection **must** –

- be in a form prescribed by the Commissioner (ADR 1)[127] with the information requested in the form completed;
- specify in detail the grounds upon which the objection is made;
- specify an address where you will accept notice and delivery of SARS's decision in respect of the objection;
- be signed by you or your appointed representative; and
- be delivered to SARS at the address specified on the assessment, within 30 business days after the date of the assessment (or within 30 business days after the date that reasons for the assessment were furnished by the Commissioner, as the case may be). A vendor may apply for an extension of the period within which to lodge an objection.

[126] The "pay now, argue later" rule, the obligation to pay tax, which arises upon the issue of an assessment, is not automatically suspended by an objection or appeal. A separate request for the suspension of payment must be made to SARS.

[127] The prescribed form for electronic submissions by eFilers is the NOO (notice of objection).

An objection that does not comply with the requirements may result in the objection not being entertained, and SARS may inform you by notice within 30 days that it is not accepted as a valid objection. However, you may within 20 days of delivery of the aforementioned notice , submit an amended objection. SARS will accept the amended objection if it complies with the requirements for a valid objection.

An objection that is filed after the prescribed period cannot be considered unless a senior SARS official has condoned the late filing of an objection. A request for condonation must be made before or at the same time as the objection is filed and it must contain an explanation for the delay. *For further information, refer to Interpretation Note 15 (Issue 4) dated 20 November 2014 "Exercise of Discretion in Case of Late Objection or Appeal".*

In terms of the TA Act, a senior SARS official may condone an objection that is filed less than 21 business days late, if there are reasonable grounds for the delay. If an objection is filed more than 21 business days late, then there must be exceptional grounds for the late filing. No objection can be entertained if it is filed after three years have passed from the date of the assessment. If the basis of an objection is that of a change to a practice generally prevailing, then an objection must be filed strictly in time as there are no grounds on which SARS can condone the late filing of such an objection.

16.2.5 Request for further information

Within 30 days from the date of delivery of your objection, the Commissioner may request that you provide additional substantiating documents that are required in order to make a decision regarding your objection. A vendor must deliver the requested documents within 30 days from the date of delivery of the notice by the Commissioner requesting such additional information. Upon request, the Commissioner may extend the period within which you should provide the additional information by an additional 20 days.

16.2.6 Decision to allow, disallow or partially disallow the objection

The Commissioner must, within 60 days from the receipt of your objection, or within 45 days from the date that you have delivered the requested further information, take a decision regarding the grounds of the objection. The decision can be either to disallow the objection, or allow it in full, or in part. In the event that the objection is partially disallowed, it should be clear which part of the objection relating to the assessment is being disallowed.

16.2.7 Appeal against disallowance of an objection

If you are dissatisfied with the decision of SARS following the objection, you may appeal against that decision, in which case, you must deliver a notice of appeal to SARS within 30 business days from the date of receiving notice of SARS's decision in respect of the objection. A senior SARS official can condone a late appeal on the basis that there are reasonable grounds for the delay if the delay is less than 21 business days, but there must be exceptional circumstances if an appeal is filed more than 21 business days late. The Commissioner does not have a discretion to condone the late filing of an appeal if such filing is more than 45 business days late.[128]

[128] *For further information, refer to Interpretation Note 15 (Issue 4) dated 20 November 2014 "Exercise of discretion in case of late objection or appeal".*

The appeal **must** –

- be on the form prescribed by the Commissioner (ADR 2);[129]
- be signed by you or your authorised representative;
- indicate on which of the grounds specified in the objection you wish to appeal;
- indicate whether you wish to make use of the Alternative Dispute Resolution (ADR) procedures or rather appeal to the Special Board or Tax Court.

16.2.8 Post-appeal stage

You may request that your tax dispute with SARS be dealt with in one of the following ways:

- By Alternative Dispute Resolution (ADR), which is intended to be used where you and SARS agree to resolve a particular dispute outside of court.[130]
- By the Tax Board, which has jurisdiction in respect of those matters where the total amount in dispute does not exceed R500 000.
- By the Tax Court, even where the total amount in dispute is less than R500 000. For example, where there is a legal principle in dispute.

16.3 ALTERNATIVE DISPUTE RESOLUTION (ADR)

16.3.1 What is ADR?

ADR is a form of dispute resolution that is quicker and more informal than litigation, or adjudication through the courts. ADR is, however, a voluntary process and both parties have to agree to the process before it can apply to the resolution of a dispute. Should you wish to make use of the ADR process, you must indicate this in your notice of appeal. SARS will then inform you within 30 business days of receipt of the notice of appeal whether the matter is suitable for the ADR process, or not. The Commissioner may also initiate the ADR process by indicating to you within 30 business days from the receipt of the notice of appeal, that the matter is appropriate for ADR.

16.3.2 Who facilitates ADR?

You can have party to party ADR discussions with SARS or use a facilitator for the ADR proceedings. Should the parties agree to a facilitator, SARS will appoint a trained and experienced person to facilitate the ADR proceedings from a list of facilitators established by SARS. The person appointed may include a SARS official or any other person who is suitably qualified to carry out the duties.

16.3.3 What ensures that ADR happens in a fair manner?

The facilitator is bound by a Code of Conduct and must seek a fair, equitable, and legal resolution of the dispute. The process is also governed by a set of terms and conditions to which you agree.

[129] The prescribed form for electronic submissions by eFilers is the notice of appeal (NOA).
[130] Note that ADR is selected at appeal stage and is not available post-appeal.

16.3.4 The ADR process

The process of ADR is as follows:

- The ADR process is initiated either by you, or by SARS as mentioned in ***paragraph 16.3.1***.
- The facilitator will arrange an ADR meeting and notify all the parties. Where a facilitator has not been appointed, the parties must arrange the ADR meeting.[131]
- During the meeting both parties state their case and provide supporting documents.
- During the process, the facilitator (if one is appointed) will endeavour to resolve the dispute between the parties.
- The parties will either come to an agreement to settle the dispute, or decide on the way forward.

16.3.5 Who represents you during the ADR process?

You can represent yourself during the ADR (for example, the individual vendor, or the public officer in the case of a company). Alternatively, you may appoint another person to act on your behalf, for example, if you require the assistance of your lawyer or accountant during the proceedings. However, only in exceptional circumstances will you be permitted to be excused from the ADR proceedings, for example, if you are in prison, or in hospital.

16.3.6 Outcome of ADR

At the conclusion of the ADR process, the facilitator must record the terms of any agreement or settlement reached. If no agreement or settlement is reached, that fact must also be recorded. If an agreement or settlement is reached, it must be recorded and signed by you and a SARS representative. SARS will issue, where necessary, a revised assessment to give effect to the agreement reached. In the event of the ADR process being unsuccessful, the unresolved dispute may be referred to the Tax Board or the Tax Court by the appellant within 20 days of termination of the ADR proceedings, depending on the amount in dispute.

16.3.7 Rights and obligations of parties

- You should at all times disclose all relevant facts during the ADR process.
- The ADR proceedings may not be electronically recorded.
- Representations made during the course of the ADR meetings are made without prejudice and may not be used against you in any subsequent proceedings.

16.3.8 How long does the ADR take?

The ADR process must be concluded within 90 business days, or such further period that you and SARS may agree upon.

16.3.9 What are the benefits of ADR?

ADR is a less formal, more cost-effective and speedier method of dispute resolution.

16.4 THE “PAY NOW, ARGUE LATER” PRINCIPLE

The principle that a vendor is required to pay taxes that are the subject of a dispute with SARS (commonly known as the “pay now, argue later” principle) is a long-standing one that has been affirmed by the highest court in the country and is now governed by the TA Act.[132]

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[131] The meeting is conducted in an informal manner where both parties will state their case and provide evidence.

[132] Chapter 10 of the TA Act.

The obligation to pay tax is not automatically suspended by an objection or appeal but only upon specific request by the vendor. The suspension of payment of disputed tax is not an automatic right and a vendor must apply for the suspension, before a formal objection is lodged, in the form and manner prescribed by SARS.

The following are some of the factors which SARS may consider in deciding on a vendor's request to suspend payment of a disputed debt:

- The compliance history of the vendor.
- The risk of dissipation of assets of the enterprise during the period of suspension.
- Whether the vendor is able to provide adequate security for the payment of the amount involved.
- Whether payment of the amount involved would result in irreparable financial hardship to the vendor.
- Whether the objection or appeal is frivolous or vexatious.

Should the payment of tax which the vendor intended to dispute be suspended before the lodging of an objection and subsequently –

- no objection is lodged;
- an objection is disallowed and no appeal is lodged; or
- an appeal to the tax board or court is unsuccessful and no further appeal is noted,

the suspension is revoked with immediate effect from the date of the expiry of the relevant prescribed time period or any extension of the relevant time period under the TA Act.

There is an inherent risk that the provision could be misused to delay payment and therefore SARS may review and withdraw the suspension under specific circumstances. There may also be a suspension in the recovery proceedings by SARS during a suspension or revocation. *Refer to the Short Guide on TA Act, 2011 for more details.*

Should a vendor request the remittance of an administrative non-compliance penalty there is an automatic suspension of the duty to pay and SARS's right to collect, which will run from the day the application is submitted until 21 business days after a decision is taken not to remit the administrative penalty. As with an application for the suspension of a disputed liability the automatic suspension does not apply if there is a risk of a vendor not paying or if fraud was a factor in the underlying non-compliance.

A vendor who pays disputed tax and whose objection or appeal is upheld, is entitled to interest from the date of payment of the disputed amount until the date on which such amount is refunded.

For further information on dispute resolution refer to the following documents available on the SARS website:

- *Dispute Resolution Guide: Guide on the Rules Promulgated in Terms of Section 103 of the Tax Administration Act, 2011;*
- *Quick Guide on Alternative Dispute Resolution;*
- *What do you do if you dispute your tax assessment?*

CHAPTER 17

RULINGS

17.1 INTRODUCTION

Since the introduction of VAT in 1991, provision has been made for the Commissioner to issue rulings regarding the VAT treatment of supplies and importations. The issuing of rulings was intended mainly to provide certainty to vendors regarding the VAT implications of transactions conducted in the course of conducting an enterprise. In addition, it was intended to provide an assurance to the applicant that the ruling could be relied upon until withdrawn by the Commissioner, provided certain conditions were met.

The introduction of the Advance Tax Ruling (ATR) legislation in 2006 had the effect of withdrawing all rulings previously issued by the Commissioner.[133] Certain amendments had to be effected to the VAT Act to provide a legislative framework for the Commissioner to continue issuing binding rulings as well as a process to confirm rulings previously issued. Before the introduction of section 41B, decisions under section 41(*c*) were given by the Commissioner on various matters pertaining to VAT. Written decisions issued under section 41(*c*) were withdrawn with effect from 1 January 2007, and from that date, no written decision could be issued under sections 41(*a*), (*b*) or (*c*). With effect from 1 January 2007, VAT rulings (VAT class rulings effective 1 October 2007) were issued under section 41B read with section 76 of the Income Tax Act. The introduction of the TA Act resulted in all VAT class rulings and VAT rulings being issued under section 41B, read with Chapter 7 of the TA Act.[134]

A new process of dealing with applications for VAT class rulings and VAT rulings was introduced whereby applicants are required to submit a request to a centralised e-mail address.[135] This procedure is aimed at tracking all ruling requests from the date of receipt, to the date of issue, and to ensure that requests are dealt with. Details were published on the SARS website and in the January 2013 issue *of VAT Connect. Refer to the Quick Reference Guide on VAT Ruling Application Procedure and* ***paragraph 17.4*** *for details on how to apply for a ruling.*

17.2 TERMINOLOGY

The following terms are used in this Chapter:

Applicant: An "applicant" is the person who applies for a VAT class ruling or a VAT ruling (or on whose behalf an application is filed). If a representative such as a lawyer or accountant files an application on behalf of a third party, that third party is considered the applicant. Similarly, if a person files an application in his or her capacity as a representative taxpayer for another entity such as a company or trust, that other entity is considered the applicant.

Application: An "application" is a written request for a ruling. The application must be made on the VAT301 and submitted to VATRulings@sars.gov.za.

[133] Refer to *Binding General Ruling (VAT) No. 2* dated 1 January 2007 for more details in this regard.
[134] The reference to advance tax rulings has changed with the implementation of the TA Act and is now being referred to as an advance ruling.
[135] Refer to ***paragraph 17.4***.

Advance ruling: This term has the meaning as defined in section 75 of the TA Act. It is a written statement issued by the Commissioner regarding the interpretation or application of any tax type and is limited to a binding general ruling, a binding private ruling, or a binding class ruling under Chapter 7 of the TA Act. Section 41A, that dealt with Advance Tax Rulings on VAT matters was repealed with the implementation of the TA Act and these rulings are now also dealt with under Chapter 7 of the TA Act.[136]

Binding private ruling (BPR): A BPR is an advance ruling regarding the application of a tax type in respect of a proposed transaction in response to an application by one or more applicant.

Class: Means –

- shareholders, members, beneficiaries or the like in respect of a company, association, pension fund, trust or the like; or
- a group of persons that may be unrelated but are similarly affected by the application of a tax Act to a proposed transaction and agree to be represented by an applicant.

Non-binding private opinion: This is a written statement issued by the Commissioner in response to an enquiry by a person to provide informal guidance on the tax treatment of a particular set of facts and circumstances or transaction, but which does not have any binding effect on the Commissioner.

Public Notice 103:[137] This is a list of issues under section 80(2)[138] of the TA Act, in terms of which, the Commissioner may reject certain ruling applications. *Public Notice 103* is supplementary to the exclusions, refusals and rejections contained in section 80(1) of the TA Act.

Proposed transaction: Means a transaction that an applicant proposes to undertake, but has not agreed to undertake, other than by way of an agreement that is subject to a suspensive condition or is otherwise not binding.

VAT class ruling: Means a written statement issued by the Commissioner to a class of vendors or persons regarding the interpretation or application of the VAT Act.

VAT ruling: Means a written statement issued by the Commissioner to a person regarding the interpretation or application of the VAT Act.

17.3 WHO MAY APPLY FOR A RULING?

Any "person" as defined in section 1(1), who is, or intends to be, a party to a proposed, current or a past transaction may apply for a ruling in connection with that transaction. This includes any public authority, local authority, company, body of persons (corporate or unincorporated), trust fund, foreign donor funded project and the estate of any deceased or insolvent person. An applicant does not have to be a South African resident.

Should an agent, such as a lawyer or accountant file an application on behalf of a client, a Power of Attorney[139] or equivalent written statement must be submitted, in terms of which, the applicant (client) authorises the agent to file the application and act as the applicant's representative throughout the application and ruling process. A person may also file an application in his or her capacity as a representative taxpayer. An application may not be filed by or on behalf of a person who is not, or does not intend to be, a party to the proposed or past transaction in question.

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[136] These rulings can only be issued by the ATR section of the SARS Legal and Policy Division.

[137] This was previously known as the "no-rulings list."

[138] *Public Notice 103 dated 8 February 2013 (as per Government Gazette 36119)* was published with immediate effect and sets out additional considerations in term of section 80(2) in respect of which an application for a ruling may be rejected.

[139] Refer to the SARS website where a template of a Power of Attorney which can be used for this purpose is made available for the convenience of applicants.

An application for a binding private ruling may be made by one person who is a party to a proposed transaction, or by two or more parties to a proposed transaction as co-applicants. In a case where there is more than one applicant, each applicant must designate one of the applicants as the lead applicant to represent the others. A binding general ruling is issued and signed by a senior SARS official and is not based on an application for a ruling by an applicant, but is issued when clarity is required regarding the application of the law on a matter of general public interest.

SARS may reject a ruling application if it concerns an issue contemplated in *Public Notice 103*, or it may otherwise be excluded as envisaged in section 80(1) of the TA Act.[140] Some examples of these issues are as follows:

- The supplier of goods or services is not the applicant or a co-applicant in respect of a matter pertaining to the taxable nature of a supply of goods or services.
- SARS is requested to rule on the substance of a transaction and disregard the form.
- Transactions which in the opinion of the Commissioner could be subject to any specific or general anti-avoidance provisions in any of the acts administered by SARS.
- SARS is requested to rule on the technical requirements concerning electronic invoicing.

17.4 DIFFERENT TYPES OF RULINGS

17.4.1 Chapter 7 of the TA Act: Advance rulings

General – Section 41A has been repealed as all advance rulings are now regulated by Chapter 7 of the TA Act, which allows for advance rulings to be issued in respect of all tax types and tax Acts. This Chapter deals with the provisions governing the issuing of advance rulings which are categorised as binding general rulings, binding private rulings, binding class rulings and non-binding written opinions.

Making application – All applications for advance rulings must be filed using the ATR service available *via* the SARS eFiling system which may be accessed on the *SARS website* or *www.sarsefiling.co.za*.

Issuance of final ruling letter – Binding private rulings may only be issued by the ATR section of the SARS Legal and Policy Division.

Publication of rulings – In terms of the TA Act, all binding private rulings must be published by the Commissioner for general information purposes. However, the Commissioner is not obliged to publish a ruling where it is essentially the same as a ruling that has already been published. The letter is published in a form that does not reveal the identity of the applicant or the other parties to the proposed transaction.

Effect – Under the TA Act, a binding private ruling may have a "binding effect" upon the Commissioner, subject to certain requirements and limitations. A written statement can only be binding if it contains a statement identifying it as such in accordance with section 78(5)(*a*) of the TA Act.

Further details can be found under the Advance Tax Rulings webpage on the *SARS website* which contains various documents concerning ATR matters including, amongst others, the following:

- Comprehensive Guide to Advance Tax Rulings;
- ATR Process – Step by step;
- Example of a Binding Ruling Application;
- Published Binding Rulings; and
- Public Notice 103.

[140] SARS will issue advance rulings and VAT rulings only to compliant taxpayers. This means that the tax affairs of applicants for all taxes administered by the Commissioner must be in order before SARS will accept an application and issue a VAT ruling or advanced ruling.

17.4.2 Section 41B read with Chapter 7 of the TA Act: VAT rulings and VAT class rulings

General – Section 41B of the VAT Act provides, in addition to advance rulings under the ATR legislation, a legislative framework for the Commissioner to continue issuing binding VAT class rulings and VAT rulings as defined in that section. For VAT class rulings and VAT rulings, the applicant is not required to pay a fee as required under ATR. The Minister may, however, issue regulations in terms of which certain ruling applications will only be considered under the ATR provisions. *Public Notice 103*, as well as the exclusions, refusals and rejections contained in section 80(1) of the TA Act also applies to VAT class rulings and VAT rulings.

Making application – Any application for a VAT class ruling or a VAT ruling must be submitted to SARS using the following addresses, by e-mail to *VATRulings@sars.gov.za* or facsimile on +27 86 540 9390. The application should be made on the VAT301 form available on the *SARS website*.

The application must be accompanied by all the relevant information, such as:

- The applicant's name, VAT number (if applicable), address, contact details (for example, phone, fax, e-mail etc.), and if applicable, the contact details of the applicant's representative;
- A complete description of all the transaction(s) concerned, and the impact on the applicant's VAT liability (or on any connected person in relation to the applicant);
- A clear statement of the issue at hand, or the specific request which is to be ruled upon;
- The relevant statutory provisions and the applicant's interpretation of those provisions; and
- A statement to the effect that the issue upon which the ruling is sought, is not the subject of an audit, investigation, objection or appeals process, or a matter which is being considered by a Court, and in which the applicant (or any connected person in relation to the applicant) is involved.

Issuance of final ruling letter – Section 78(5) of the TA Act provides that a Senior SARS official must issue a VAT ruling. The authority to issue a ruling has been delegated to specific individuals employed within the Interpretation and Rulings Division. Any decision or communication from any other functional area within SARS is therefore not a binding ruling, but at most, a non-binding opinion. A ruling application submitted to any SARS branch office will not be considered and SARS will not provide a response in respect of the application. Decisions under section 72 can only be issued by the Interpretation and Rulings Division at SARS Head Office.

Effect – VAT class rulings and VAT rulings are binding where it is stated as such under section 41B of the VAT Act read with Chapter 7 of the TA Act. VAT class rulings or VAT rulings not containing a statement confirming its binding nature, will be regarded as a non-binding opinion.

For information on the requirements in applying for a VAT class ruling or a VAT ruling, refer to Quick Reference Guide on the VAT ruling application procedure on the SARS website, VAT News No. 32 (August 2008 issue) and Chapter 7 of the TA Act. Published binding general rulings are available on the SARS website.

17.4.3 VAT RULING OR A DECISION

An application for the Commissioner to make a decision should be distinguished from an application for a VAT Ruling. The main distinction is that a VAT Ruling relates to the interpretation of the VAT Act whereas a decision constitutes the exercising of a discretion by the Commissioner.[141] Unlike VAT Rulings, certain decisions are subject to objection and appeal as set out in section 32 of the VAT Act and section 104 of the TA Act. The difference between a VAT Ruling and a decision may be illustrated by the examples set out below:

[141] Refer to section 9 of the TA Act for more information.

Example 38 – Application for a VAT ruling

A vendor, supplying marketing services to a non-resident, wants to confirm whether VAT may be levied at the zero-rate under section 11(2)(*l*).

The question in this case is about the interpretation of the law with reference to a specific set of facts relating to the interpretation of section 11(2)(*l*) with regards to the marketing services. The vendor may therefore apply for a VAT Ruling.

Example 39 – Application for a decision

A vendor, registered on the invoice basis, makes a written application to be registered on the payments basis under section 15(2) by completing and submitting the prescribed form (Form VAT117).

The Commissioner is required to exercise his discretion in deciding whether or not the vendor may be registered on the payments basis in accordance with the discretionary power provided in section 15(2). The Commissioner will give effect to the decision by changing the accounting basis to the payments basis (should the vendor qualify to be registered on the payments basis) and notify the vendor accordingly. The application will therefore not constitute a request for a VAT Ruling.

CHAPTER 18

TAX ADMINISTRATION ACT

18.1 INTRODUCTION

The commencement of the TA Act on 1 October 2012 has brought about an enormous shift in the administration of all taxes in the RSA (*refer to* ***paragraph 1.3***). The main aspects affecting the administration of the VAT Act have been mentioned throughout the guide. A brief summary is provided below, which expands upon certain administrative matters which have not necessarily been dealt with in any of the other chapters, but which are necessary to mention as they impact on the general administration of the VAT Act.

18.2 INTERPRETATION

The following rules apply to the application of the TA Act:

- Firstly, the TA Act regulates the administration of all the tax Acts and a specific tax Act must then be read together with the TA Act.
- Secondly, if there is an administrative provision in a tax Act and the TA Act is silent in this regard, then the specific administrative provision in the tax Act must apply. If the tax Act is silent about an administrative process, or a right that a taxpayer has, or the power or the authority of SARS, then the provision in the TA Act must be used.
- Thirdly, if a tax Act uses a term that is defined in that tax Act, then that meaning must be applied. This rule also applies when there is an inconsistency between a term that is used in a tax Act and the TA Act, however, this rule will not apply if the context in which the term is used in the TA Act indicates that the TA Act meaning must be applied.

Refer to the Short Guide on TA Act, 2011 on the SARS website for more information is this regard.

18.3 PRACTICE GENERALLY PREVAILING

If SARS has a practice which is generally prevailing, a vendor has an expectation that SARS will follow that practice in similar circumstances for every vendor. Whether there is a practice generally prevailing also has an important impact on the time period within which an objection must be lodged, as well as when SARS may issue an additional assessment. The meaning of the term "practice generally prevailing" has been dealt with in numerous cases, but with sometimes conflicting outcomes.

Vendors are often unsure of the existence of a practice generally prevailing as a result of reliance on certain non-SARS publications, media releases, published articles, operational practices, procedures or guides. None of these necessarily reflect the application or interpretation of a tax Act that is binding on, and generally applied, by the whole of SARS. In order to give certainty to what this term means, it is now defined in the TA Act.[142] The only sources of SARS's binding practices will be official publications, that is, a binding general ruling, an interpretation note, a practice note or public notice issued by either a senior SARS official who is specifically designated as such by the Commissioner or by the Commissioner him/herself. This guide is not included in the meaning of "official publication" as discussed here.

[142] Section 5 of the TA Act.

The concept of “practice generally prevailing” is used in the TA Act in the context of both defining and limiting SARS’s power to issue an additional or reduced assessment and placing limitations upon vendors in claiming refunds. Where the grounds of objection are based on a change in the practice generally prevailing which applied on the date of the disputed assessment, the period for objection may not be extended.

The TA Act also deals with the situation in which a practice generally prevailing ceases to be one. For example, a legislative amendment or judgment handed down on a matter may have a material effect on the extent to which SARS can justify the continuation of that practice. In response, SARS must decide whether the practice has become obsolete or unnecessary, or that it should be changed in favour of a different practice.

18.4 REGISTRATION

Chapter 3 of the TA Act regulates the registration of vendors. The management of vendor registration involves three basic functions: the creation of a registration for a vendor, updating vendor details and the deregistration of vendors from SARS’s records. To encourage compliance with registration obligations, the TA Act seeks to provide a clear and comprehensive description of registration requirements. SARS further seeks to make the procedural requirements for registration as easy as possible. As part of modernisation initiatives, SARS implemented the single registration process for all tax types which came into effect on 12 May 2014. A change to the address, banking account, or representative (after registration) must be communicated to SARS within 21 business days of the change. *Refer to **Chapter 2** for more information in this regard.*

SARS will also take measures to ensure completeness of vendor registrations, that is, to ensure that vendors who fail to register or provide adequate information are detected.

18.5 RECORD-KEEPING

The TA Act[143] imposes a duty on a person to retain the records, books of account or documents needed to comply with a tax Act. Vendors are also required to keep additional specific records under section 55 of the VAT Act.

The duty to retain records does not only rest on vendors who are registered and who have filed a return, but is extended to include those who ought to, but have not filed a return, and those who would have been obliged to file a return if not for an exemption or threshold. Failure or neglect to retain proper records as required under the TA Act is a criminal offence.[144]

*Refer to **Chapter 13** for more information on the electronic retention of records and the Short Guide on the TA Act, 2011 for more information on record-keeping and the relevant periods applicable.*

18.6 VERIFICATIONS AND AUDITS

Verification is a less intensive process than an audit although it entails the evaluation of the accuracy of reporting relevant material. Relevant material that might be used will be the supporting documents relating to the input tax deducted or output tax declared. SARS officials trained in VAT will conduct the verification. You will be notified of the request to submit relevant material within a short period after submitting the actual return. The requested relevant material should be submitted to SARS in a manner specified in the request.

[143] Section 30 of the TA Act.
[144] Section 234(*e*) of the TA Act.

The relevant material is usually requested to be submitted via the eFiling channel, by post or by delivery at the nearest SARS office and you may select the format accessible to you to submit the material from the aforementioned options.[145] The scope of the verification is generally limited to a single VAT period and will probably be the latest period.

An audit is generally a detailed check on the correctness of VAT returns submitted and payments made by you. An audit will normally involve an examination of multiple periods, and relevant materials may be obtained from third parties as well as from the vendor. A SARS official will contact you as and when an audit needs to be conducted and a notification of the intention to conduct an audit will be issued.

The vendor selected for audit will either be requested to furnish relevant material required to conduct the audit (desk audit), or to prepare relevant material for an audit that will be conducted at a physical premises, which is normally the vendor's principal place of business (field audit).

During a field audit, a vendor is required to provide reasonable assistance to the SARS officials conducting the audit. The SARS officials conducting the field audit must be in possession of a SARS identity card and be authorised to conduct a field audit.

The TA Act provides that a vendor must be kept informed of the progress of an audit at regular intervals. The Commissioner has issued a Public Notice prescribing when reports need to be issued. At the conclusion of the audit, a notice is required to be issued explaining any proposed material adjustments to be made and the vendor has the right to respond to the notice within 21 business days. The time periods may be extended by consent and SARS may deviate from the process if strict compliance may impede the progress or outcome of an audit. An audit is conducted based on the risk profile of a vendor and the scope of the audit will be communicated in the first notification received from the auditor.

Chapter 5 of the TA Act provides that the basis upon which a person may be selected for an inspection, verification (for example through a "desk audit") or audit is now prescribed as on the basis of any consideration relevant for the proper administration of a tax Act, including a random or risk assessment basis. This is not the basis for criminal investigations, which although included under the administration of a tax Act in section 3 of the TA Act, are triggered by indications of an offence under the tax Acts. The TA Act also prescribes procedures that SARS has to follow both during and after an audit. For more detailed information, refer to the *Short Guide on the TA Act, 2011*.

18.7 ASSESSMENTS AND DISPUTE RESOLUTION

Chapter 8 of the TA Act contains all the provisions relating to assessments and deals with the types of assessments, what must be contained in an assessment and when the assessment may be issued. ***Chapter 16*** provides a brief overview of each type of assessment and the most important points to keep in mind.

Taxpayers that are aggrieved by an assessment have the right to dispute it. Chapter 9 of the TA Act provides the legal framework for these disputes across all tax types. Chapter 9 must be read in addition to the rules issued under section 103 of the TA Act.[146] For more information refer to the following:

- *Short Guide on the TA Act, 2011;*
- *Dispute Resolution Guide: Guide on the Rules Promulgated in Terms of Section 103 of the Tax Administration Act, 2011.*

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[145] Section 46 of the TA Act.

[146] New rules published in *Government Gazette* No. 37819 of 11 July 2014 as Government Notice No. 550 and came into effect on 11 July 2014. Prior to 11 July 2014 the old rules issued in terms of the Income Tax Act applied to dispute resolution matters.

18.8 PAYMENTS

The TA Act provides that tax is payable either on a date specified in a tax Act, or on a date specified by the Commissioner in a public notice.[147] The VAT Act specifies the date by when VAT must be paid, but in the event of SARS issuing an assessment, the vendor will be provided with a reasonable period to pay the amount due as per the assessment. The TA Act makes provision for an expedited due date for payment, or the ability to require for security to be submitted, where there is a risk of dissipation of assets to evade or frustrate the collection of tax. *Refer to **Chapter 9** as well as the Short Guide on the TA Act, 2011, for more information.*

18.9 PENALTIES AND INTEREST

The TA Act introduced two types of administrative penalties, namely, fixed-amount and percentage-based penalties which concern the non-compliance with administrative obligations. These penalties are included in Chapter 15 of the TA Act. The TA Act replaced additional tax with the understatement penalty and this is contained in Chapter 16 of the TA Act. *Refer to **Chapter 10** for more information.*

The TA Act will introduce new rules in relation to interest once a public notice is issued by the Commissioner in this regard. Until such time, the current rules will still apply. *Refer to **Chapter 10** for more details.*

Below is a summary of the impact of the TA Act in respect of the administration of the VAT Act to the extent it relates to the remittance of fixed-amount and percentage-based penalties:

- Section 39(7) of the VAT Act was deleted by the TA Act except to the extent that it relates to interest. Section 39(7)*(a)* of the VAT Act is therefore still applicable until the TA Act interest regime is promulgated for VAT interest.
- A penalty under subsections (1), (4) or (5) of section 39 of the VAT Act, is a percentage based penalty as contemplated in Chapter 15 of the TA Act – this is expressly cross-referenced in section 39(1), (4) and (5) of the VAT Act.
- In view of the fact that penalties imposed under section 39 of the VAT Act are a percentage based “penalty” referred to in Chapter 15 of the TA Act, the procedure for imposition (penalty assessment) and remittance prescribed in Chapter 15 applies to such penalty. Hence the deletion of section 39(7).
- This approach was followed in most of the tax Acts to provide for a procedure for the imposition of a percentage based penalty and generic grounds for remittance of such penalties (barring certain exceptions where the grounds for remittance are unique to the tax type).
- A percentage based penalty under section 39(1), (4) or (5) of the VAT Act may only be remitted on the grounds and in the circumstances set out in Part E of Chapter 15 of the TA Act.

18.10 REFUNDS

The provisions relating to refunds are now dealt with in Chapter 13 of the TA Act, read with section 44 of the VAT Act. The TA Act provides that a vendor is entitled to a refund when an amount is refundable under the VAT Act and is reflected in an assessment or when the vendor is entitled to be refunded an amount that was erroneously paid in excess of an amount payable in an assessment.

In the case of self-assessment, a refund must be claimed within a period of five years from the date the return had to be submitted or if no return had to be submitted, payment had to be made, in the case of a self-assessment tax such as VAT.

[147] Section 162 of the TA Act.

In the case of an assessment by SARS, the refund must be claimed within three years from the date of that assessment.

The TA Act also provides that where a vendor provides acceptable security, SARS must release a refund before a verification, inspection or audit is finalised. A decision not to authorise a refund is subject to objection and appeal. *Refer to **Chapter 9** and the Short Guide on the TA Act, 2011 for more information on refunds.*

GLOSSARY

Association not for gain

An "association not for gain" is essentially a religious institution or other society, association or organisation (including an educational institution of a public character) which is not carried on for profit and is required to use any property or income solely in the furtherance of its aims and objects. An association not for gain could also qualify as a "welfare organisation" if it conducts certain activities. The *VAT 414 – Guide for Associations not for Gain and Welfare Organisations* deals specifically with associations not for gain and welfare organisations.

Commercial accommodation

There are three types of commercial accommodation, namely:

- Lodging or board and lodging together with domestic goods and services in any house, flat, apartment, room, hotel, motel, inn, guesthouse residential establishment, holiday accommodation unit, chalet, tent, caravan, campsite, houseboat or similar establishment. This must be supplied regularly and systematically so that the income from the activity exceeds or is likely to exceed R60 000, calculated for a period of 12 months. This does not include the supply of a "dwelling" for letting/hiring [as this is an exempt supply under section 12(*c*)];
- Lodging or board and lodging in a home for the aged, children, physically or mentally handicapped persons; or
- Lodging or board and lodging in a hospice.

Should the accommodation be provided for more than 28 days, only 60% of the charge is subject to tax (including meals and other domestic goods and services included in the all-inclusive tariff).

Connected person

This term describes and identifies the relationships between different persons. The term is important because if persons are connected in terms of the definition, it may be necessary to apply special time and value of supply rules where the supplier may be required to charge VAT on the open market value of the supply, rather than on the amount of consideration received.

Examples include the following (amongst others):

- Natural persons who are related by blood or marriage.
- A company and any subsidiaries of that company.
- Any close corporation and its members.
- A natural person and a company where that natural person owns more than 10% of the shares or voting rights in that company.

Consideration

This is basically the total amount of money (incl. VAT) received for a supply. For barter transactions where the consideration is not in money, the consideration will be the open market value of goods or services (incl. VAT) received for making the taxable supply. Section 10 determines the value of supply or amount of the consideration for VAT purposes for different types of supplies.

Any act of forbearance whether voluntary or not for the inducement of a supply of goods or services will constitute consideration, but it excludes any donation made as an unconditional gift to an association not for gain. Also excluded is a "deposit" which is lodged to secure a future supply of goods and held in trust until the time of the supply. Since VAT is the difference between the selling price including the VAT and the value of the taxable supply, the following formulae can be derived:

VAT = consideration – value
or
Consideration = value + VAT

Domestic goods and services

This includes the following when they are supplied together with commercial accommodation:

- Cleaning and maintenance.
- Electricity, gas, air conditioning or heating.
- Use of a telephone, television set, radio or other similar article.
- Furniture and other fittings.
- Meals.
- Laundry.
- Nursing services.

(The list is not exhaustive – just a few examples)

When a person stays for longer than **28 days** in **any** hotel, guesthouse, inn, boarding house, retirement home, or similar establishment, **only 60% of an all-inclusive charge** for accommodation and domestic goods or services will be subject to VAT. [*Refer to section 10(10) for more information].*

However, should the charges for domestic goods and services not form part of the all-inclusive charge, these separately itemised charges will attract VAT at the standard rate on the full value.

Donation

This is where a payment (donation/unconditional gift) is voluntarily made to any association not for gain for the carrying on or the carrying out of the purposes of that association and in respect of which no identifiable direct valuable benefit arises or may arise in the form of a supply of goods or services to the person making that payment. The term also includes not only cash payments, but also the value of goods or services donated. This term is dealt with in more detail in the *VAT 414 – Guide for Associations not for Gain and Welfare Organisations.*

Dwelling

This is any building, premises, structure, or any other place or part thereof used predominantly as a place of residence or abode of any natural person (or which is intended for this purpose), including any fixtures and fittings belonging thereto and enjoyed therewith.

Enterprise

Any business activity in the broadest sense. It includes any activity carried on –

- continuously or regularly;
- by any person;
- in or partly in the RSA;
- in the course or furtherance of which goods or services are supplied for a consideration, that is, some form of payment;
- whether or not for profit.

Special inclusions

- Public authorities – certain government departments and provincial authorities.
- Municipalities – municipalities, Joint Services Board (JSB) and Regional Services Council (RSC).
- Welfare organisations and Foreign Donor Funded Projects.
- Share block companies.
- Non-residents supplying certain electronic services where at least two of the following circumstances apply: Services are supplied to a South African resident, payment originates from the RSA, or the recipient has an address (i.e. business, postal or residential) in the RSA.

Enterprise (contd)

The following activities are not "enterprise" activities and will therefore not attract VAT:

- Services rendered by an employee to an employer, for example, salary/wage/remuneration earners. This must however be distinguished from a private independent contractor who is not excluded.
- Supplies by a branch or main business permanently located outside the RSA (must be separately identifiable and maintain its own system of accounting).
- Private or recreational pursuits or hobbies (unless carried on like a business).
- Private occasional transactions, for example, occasional sale of domestic/household goods, personal effects or private motor vehicle.

Any exempt supplies (listed in s 12).

Entertainment

The term "entertainment" means the provision of any food, beverages, accommodation, entertainment, amusement, recreation or hospitality of any kind by a vendor whether directly or indirectly to anyone in connection with an enterprise carried on by that person. As a general rule expenses relating to entertainment may not be deducted as input tax. There are, however, some exceptions to the rule.

Examples of entertainment include the following:

- Staff refreshments such as tea, coffee and other beverages and snacks and other ingredients purchased in order to provide meals to staff, clients and business associates.
- Catering services acquired for staff canteens and dining rooms including own equipment, furniture and utensils used in kitchens, canteens and staff dining rooms.
- Christmas lunches and parties, including the hire of venues.
- Golf days for customers and clients.
- Beverages, meals and other hospitality and entertainment supplied to customers and clients at product launches and other promotional events.
- Entertainment of customers and clients in restaurants, theatres and night clubs.
- Capital goods such as hospitality boxes, holiday houses, yachts and private aircraft used for entertainment.

(The list is not exhaustive)

Exempt supply

An exempt supply is a supply on which no VAT may be charged (even if the supplier is registered for VAT). Persons making only exempt supplies may not register for VAT and may not recover input tax on purchases to make exempt supplies.
Section 12 contains a list of exempt supplies.

Examples:

- Certain Financial Services.
- Supplies by any "association not for gain" of certain donated goods or services.
- Rental of accommodation in any "dwelling" including employee housing.
- Certain educational services.
- Services of employee organisations, for example, trade unions.
- Certain services to members of a sectional title, share block or old age scheme funded out of levies. (Not applicable to timeshare schemes).
- Public road and railway transport of fare-paying passengers and their luggage.
- Childcare services in a crèche or after-school care centre.

Goods

The term "goods" includes –

- corporeal (tangible) movable things, goods in the ordinary sense (including any real right in those things);
- fixed property, land and buildings (including any real right in the property, for example, servitudes, mineral rights, notarial leases etc.);
- sectional title units (including timeshare);
- shares in a share block company;
- postage stamps;
- electricity; and
- second-hand goods.

The term "goods" excludes –

- money that is, notes, coins, cheques, bills of exchange etc. (except when sold as a collector's item);
- value cards, revenue stamps etc. which are used to pay taxes (except when sold as a collector's item); and
- any right under a mortgage bond.

Instalment Credit Agreement (ICA)

There are two types of ICAs, namely, an instalment sale agreement and a financial lease. These agreements are characterised by a suspensive condition as to the passing of ownership of the goods or services supplied. The agreement will normally provide for the payment of the purchase price including finance charges at a fixed or determinable charge and the recipient accepts the risks attached to those goods insofar as loss or damage is concerned. In the case of a finance lease, the term of the agreement must be at least 12 months. From 1 January 2013, the definition of an ICA was amended to include any amount determined with reference to the time value of money stipulated in the lease.

Input tax

This is the tax paid by the recipient to the supplier of goods or services. Input tax may only be deducted by the recipient vendor if the goods or services are acquired for making taxable supplies and if the vendor is in possession of a valid tax invoice for the supply. An apportionment of input tax must be made if goods or services are acquired only partly for making taxable supplies. In the case of an importation, the vendor must be in possession of a valid bill of entry and proof that the VAT has been paid to Customs.

In certain instances, input tax may also be deducted on non-taxable supplies of second-hand goods acquired by the vendor, but the vendor must retain a proper record of the details of the transaction on form VAT 264. Should the second-hand goods acquired constitute fixed property, the transfer of which requires registration in a Deeds Registry, input tax may only be deducted once the property has been registered in the name of the vendor claiming a deduction.

As a general rule, input tax may not be deducted on supplies of "entertainment", motor cars and club subscriptions. Input tax may also not be deducted where goods or services are acquired for the purpose of making exempt supplies, for private use or for other non-taxable activities.

Motor car "Motor car" is a defined term which includes vehicles which have three or more wheels, are normally used on public roads and which are constructed or converted wholly or mainly for carrying passengers. As a general rule input tax may not be deducted on the acquisition of a motor car, irrespective of the mode of acquisition or whether or not it is used for taxable supplies. Examples of passenger vehicles on which input tax cannot be deducted include ordinary motor cars, SUVs, double-cab bakkies (LDVs), microbuses etc. which are capable of carrying passengers.

The following vehicles do not qualify as a "motor car" as defined:

- Vehicles capable of accommodating more than 16 persons (for example, a bus).
- Specialised vehicles such as hysters, graders, tractors, mobile cranes, earthmoving vehicles etc. (seats only 1 person).
- Ambulances and caravans.
- Vehicles with an unladen mass of 3500 kg or more.
- Single cab bakkies (LDVs) /Trucks/ lorries/delivery vehicles.
- Hearses and game viewing vehicles.

Official publication This means a binding general ruling, interpretation note, practice note or public notice issued by a senior SARS official or the Commissioner. This is to distinguish SARS publications that are binding on SARS from those that are intended to be issued as guides or for information purposes only. For example, the guides which SARS issues from time-to-time do not fall within the meaning of "official publication". This is relevant for purposes of determining what constitutes a "practice generally prevailing".

Output tax The tax (VAT) charged by a vendor on a taxable supply of goods or services.

Person This term refers to the entity which is liable for VAT registration and includes the following:

- Sole proprietor, that is, a natural person.
- Company/close corporation.
- Partnership/joint venture.
- Deceased/insolvent estate.
- Trusts.
- Incorporated body of persons, for example, an entity established under its own enabling Act of Parliament.
- Unincorporated body of persons, for example, club, society or association with its own constitution.
- Foreign donor funded project.
- Municipalities/public authorities.

Public notice This means a notice issued by the Commissioner and published in the *Government Gazette*. The TA Act includes the regulations and public notices issued thereunder, which will have the status of subordinate legislation.

Relevant material The information gathering powers of SARS may only be used to obtain relevant material. Relevant material is information, documents, or things that are foreseeably relevant for tax risk assessment, assessing and collecting tax, or for determining compliance with a tax obligation.

SARS official SARS official is a defined term in the TA Act and means –

- the Commissioner,
- an employee of SARS; or
- a person contracted by SARS for purposes of the administration of a tax Act and who carries out the provisions of a tax Act under the control, direction or supervision of the Commissioner.

Second-hand goods Second-hand goods are goods (including fixed property) that have been previously owned and used. The term excludes certain things, for example, animals, gold, gold coins, goods containing gold and certain “old order” mining rights.

Services The term “services” is very broad and includes –

- the granting, assignment, cession, surrender of any right;
- the making available of any facility or advantage; and
- certain acts which are deemed to be services under section 8.

The term excludes –

- a supply of “goods” ;
- money; and
- any stamp, form or card which falls into the definition of “goods”.

Examples:

- Commercial services – electricians, plumbers, builders.
- Professional services – doctors, accountants, lawyers.
- Advertising agencies.
- Intellectual property rights – patents, trademarks, copy rights, know-how.
- Restraint of trade.
- Cover under an insurance contract.

Supply This definition is very wide and includes all forms of supply (including the expropriation of fixed property), irrespective of where the supply is effected, and any derivative of supply is construed accordingly.

Taxable event This means an occurrence which affects or may affect the liability of a person to tax, and is important to –

- determine the tax period for purposes of transaction based taxes, such as VAT; and
- the meaning of administration of a tax Act in the context of obtaining full information in relation to a taxable event.

Tax invoice

This is a special document which is required to be held by a vendor to deduct input tax. The term is dealt with in section 20 which prescribes that where the consideration is R5 000 or more, or is a zero-rated supply a full tax invoice must be issued with the following information reflected thereon:

- The words "TAX INVOICE" in a prominent place.
- Name, address and VAT registration number of the supplier.
- Name, address and VAT registration number of the recipient.
- Serial number and date of issue.
- Full and proper description of goods and/or services supplied.
- Quantity or volume of goods or services supplied.
- Price and VAT.

Where the amount (including VAT) is less than R5 000 an abridged tax invoice may be issued which has the same requirements as above, except that the name, address and VAT registration number of the recipient and the quantity or volume do not need to be specified.

In certain instances a tax invoice is not required to be issued and there are some special rules which apply in some cases. For example, the requirements for tax invoices in respect of electronic services supplied by non-residents are prescribed by regulation and contain less detail than normal tax invoices.

Tax period

There are five different tax periods as follows:

- Category A – two-monthly (ending at the end of every odd month). For example, Jan, Mar, May, July etc.
- Category B – two-monthly (ending at the end of every even month). For example, February, April, June etc.
- Category C – monthly (taxable supplies greater than R30 million in any consecutive period of 12 months).
- Category D – six-monthly (certain farmers and micro-businesses – taxable supplies less than R1,5 million in any consecutive period of 12 months).
- Category E – annually (only in exceptional circumstances for connected persons with only one transaction per consecutive period of 12 months).
- Category F – four-monthly (small businesses only – taxable supplies less than R1,5 million in any consecutive period of 12 months). This category will no longer be available from 1 July 2015. Vendors falling within this category will be absorbed into Category A or B tax periods.

Taxable supply

This is a supply (including a zero-rated supply) which is chargeable with tax under the VAT Act. A taxable supply does not include any exempt supply listed in section 12, even if supplied by a registered vendor.

There are two types of taxable supplies, namely:

- Those which attract the zero rate (listed in section 11).
- Those on which the standard rate of 14% must be charged.

Vendor

This includes any person who is registered or is required to be registered for VAT. However, where the Commissioner has determined the date from which a person is a vendor, a person shall be a vendor from that date.

Welfare organisation This is any public benefit organisation contemplated in paragraph (*a*) of the definition of "public benefit organisation" in section 30(1) of the Income Tax Act that has been approved by the Commissioner under section 30(3) of that Act which carries on a welfare activity determined by the Minister to be of a philanthropic or benevolent nature, under the following headings:

(a) Welfare and humanitarian.
(b) Health care.
(c) Land and housing.
(d) Education and development.
(e) Conservation, environment and animal welfare.

Welfare activities for VAT purposes are listed in the Regulation No. 112 in the *Government Gazette* 27235 issued on 11 February 2005. Welfare activities must be carried on by an approved PBO for income tax purposes before the organisation may qualify as a welfare organisation.

The *VAT 414 Guide* deals specifically with associations not for gain and welfare organisations.

Zero-rated supply A zero-rated supply is a taxable supply. These are all listed in section 11. The application of the zero rate is subject to the supplier retaining proper documentation justifying the application of this preferential rate of tax.

Examples of zero-rated ***goods****:*

- Goods exported to an address in an export country.
- Supply of an enterprise as a going concern.
- Gold supplied to banks.
- Certain supplies to farmers, for example, herbicides, animal feed etc. (*Refer to Schedule 2 Part A of VAT Act.*) The zero-rating will not be available from a date to be determined by the Minister.
- Fuel levy goods such as petrol, diesel and crude oil.
- Basic foodstuffs. For example, hen eggs, brown bread, fresh fruit/vegetables, tinned sardines etc. *(Refer to Schedule 2 Part B of VAT Act.)*
- Supply of gold coins, that is, Kruger rands.
- Illuminating kerosene used for heating or lighting (may not be a mixed substance).

Examples of zero-rated ***services****:*

- International transportation of passengers or goods either to the RSA from any other country, or from the RSA to any other country, or between two countries outside RSA.
- Services physically rendered outside RSA.
- Certain services supplied to a non-resident who is outside the RSA at the time the services are rendered.
- Patents and other intellectual property rights for use outside the RSA.
- Grants received from government departments and municipalities for the purposes of assisting vendors to make taxable supplies.

CONTACT DETAILS

The *SARS website* contains contact details of all SARS branch offices and border posts.

Contact details appearing on the website under "Contact Us" (other than branch offices and border posts) are reproduced below for your convenience.

SARS Head Office

Physical Address
South African Revenue Service
Lehae La SARS
299 Bronkhorst Street
Nieuw Muckleneuk
0181
Pretoria

Postal Address
Private Bag X923
Pretoria
0001
South Africa

SARS website
www.sars.gov.za

Telephone
(012) 422 4000

SARS Fraud and Anti-Corruption hotline
0800 00 28 70

SARS Large Business Centre (LBC) Head Office

Physical Address
Megawatt Park
Maxwell Drive
Sunninghill
Johannesburg

Postal Address
Private Bag X170
Rivonia
2128
South Africa

Telephone
(011) 602 3000

e-mail
LBC@sars.gov.za

For the contact details of regional LBC offices and each LBC sector go to "Contact Us" on SARS's website then go to "SARS Large Business Centre".

SARS Service Monitoring Office

Telephone
0860 12 12 16

Fax
(012) 670 6906

Website
www.sars.gov.za/ssmo

Postal Address
PO Box 11616
Hatfield
0028
South Africa

e-mail
ssmo@sars.gov.za

eFiling

Call Centre
0800 00 7277

Website
www.efiling.gov.za

National Call Centre / SARS Contact Centres

- You may contact SARS by phone, e-mail, fax or visiting a SARS Branch
- Call our SARS Contact Centre on 0800 00 7277
- International Callers may contact our Contact Centre on +27 11 602 2093
- E-mail or fax one of our dedicated four contact centres:

Area	Telephone	Fax	E-mail
Northern South Africa Vendors residing in Gauteng north (including Centurion and Pretoria), North West, Mpumalanga and Limpopo.	0800 00 7277	012 6706880	Contact.north@sars.gov.za
Central South Africa Vendors residing in Gauteng south (including Midrand, the Greater Johannesburg area, Kempton Park, Boksburg, Vereeniging and Springs), the Free State and Northern Cape.	0800 00 7277	010 2085005	Contact.central@sars.gov.za
Eastern South Africa Vendors residing in KZN and northern parts of the Eastern Cape (up to and including East London).	0800 00 7277	031 3286018	Contact.east@sars.gov.za
Southern South Africa Vendors residing in the Eastern Cape, south of East London and the Western Cape.	0800 00 7277	021 4138905	Contact.south@sars.gov.za

Practitioners Unit

Telephone / Call Centre
0800 00 72 77

Business hours
Weekdays 8:00 – 16:00 (except Wednesdays)
Wednesdays 9:00 – 16:00

E-mail
pcc.pavilion@sars.gov.za

Physical Address
Pavilion
217 Bronkhorst Street
Nieuw Muckleneuk
Pretoria

This facility is for Tax Practitioners already registered with SARS (Pretoria area only). Appointments can be made online by visiting: www.sars.gov.za, then go to the Tax Practitioners' web page.

VAT Rulings

Should there be any aspects relating to VAT on which a specific VAT ruling is required, you may submit a ruling application on a VAT301 to SARS by facsimile or e-mail. All applications must comply with section 79 of the TA Act [excluding section 79(4)(*f*), (*k*) and (6)].

Facsimile
+27 86 540 9390

E-mail
VATRulings@sars.gov.za