VAT 404

Guide for Vendors

Issue 15

Value-Added Tax

in | f | X | SARS.GOV.ZA

30 YEARS OF FREEDOM

SARS South African Revenue Service

10 Important principles

1. All prices charged, advertised or quoted by a vendor must include VAT at the applicable rate (currently 15% 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 to be in possession of documentary proof prescribed by or which is acceptable to the Commissioner to substantiate any input tax and/or other permissible deductions which you want to make. You must also keep records of all your documentary proof and other records of transactions for at least five years.

5. Goods exported to clients in an export country (any country outside of the Republic) may be charged with VAT at 0%. However, if delivery takes place in the Republic, you must charge VAT at the standard rate to your client, unless the goods are supplied under Sections A and B of Part Two of the Export Regulations which allow the zero rate to be applied, subject to certain requirements, at the discretion of the supplier. This discretion may only be applied 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 VAT is charged at the standard rate and your client is a vendor, your client may deduct the VAT charged as input tax. If your client is not a vendor, and the goods are subsequently removed from the Republic, a claim for a refund of the VAT may be submitted to the VAT Refund Administrator (the VRA), subject to certain requirements being met.

6. You may not register for VAT if you only make exempt supplies. If you are registered, because you make both taxable and non-taxable supplies, you may not deduct any VAT charged on goods or services acquired to make exempt supplies or for private use or other non-taxable purposes. Also, as a general rule, any VAT incurred to acquire a motor car or goods or services acquired for purposes of entertainment may not be deducted, 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 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 you file your returns electronically. Otherwise, approach your nearest SARS office for assistance.

9. You can pay your VAT electronically by using eFiling or by making an electronic funds transfer (EFT) through internet banking. 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 (VAT Act), unless the context indicates otherwise. 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 the *Glossary* in a simplified form for easy reference.

The information in this guide is based on the VAT Act and the TA Act as at the time of publishing and includes the latest amendments contained in the Taxation Laws Amendment Act, 17 of 2023, the Tax Administration Laws Amendment Act, 18 of 2023 and the Rates and Monetary Amounts and Amendment of Revenue Laws Act, 19 of 2023. These Acts were all promulgated on 22 December 2023 as per *Government Gazettes (GGs)* 49894, 49947 and 49948 respectively.

Some of the more important amendments that have been introduced since the previous issue of this guide are discussed briefly below.

The following amendments came into effect from 1 April 2023 unless otherwise stated:

- *Cross border leases of foreign owned parts* – In 2020 proviso (xiii) to the definition of "enterprise" was inserted to clarify that a non-resident lessor is not regarded as carrying on an enterprise in the Republic when foreign-owned ships, aircraft or rolling stock are leased for use in the Republic, subject to certain conditions being met. The scope of this proviso has now been extended to include the leasing of foreign-owned parts relating to such foreign-owned ships, aircraft or rolling stock if those parts are leased under a separate agreement. See the article "Non-resident lessors of ships, aircraft and rolling stock under a rental agreement" in VAT Connect (Issue 12) for more information on the requirements.
- *Flash title sales* – Before this amendment, non-resident entities that take ownership of goods in South Africa on a flash title basis and immediately on-sell such goods to other non-resident entities (customers) for export by the customers were regarded as carrying on an enterprise in South Africa. This approach was applied even if the non-resident had no intention to carry out any other commercial activity in South Africa. A new proviso (xiv) was therefore inserted into the definition of "enterprise" to exclude the activities of a "qualifying purchaser" (QP1) supplying goods to another "qualifying purchaser" under a "flash title" as defined in the Export Regulation published in *Government Gazette* (*GG*) 37580 of 2 May 2014 (the Export Regulation). QP1 must be a non-resident non-registered vendor, that acquires goods from a vendor and merely takes ownership of the goods in South Africa for a moment in time. The new dispensation is subject to QP1 complying with the documentary requirements prescribed in regulation 10 of the Export Regulation.

- *Repossessions and surrender* – Section 20(8) previously dealt with documentation in connection with second-hand goods, and repossessions and surrender of goods previously supplied under an instalment credit agreement. Section 20(8) has now been amended to apply only to the supply of second-hand goods. Section 20(8A) has been introduced to specifically deal with the documentary requirements for repossessions or surrender of goods under section 8(10). Consequential amendments have also been made to section 16(2)(*c*) to include the documentation referred to under section 20(8A). See the article "Documentary requirements for repossession and surrender of goods" in VAT Connect (Issue 16) for a further discussion on this amendment.
- *Temporary letting of dwellings by developers* – On 1 April 2022, new provisions in the form of sections 9(13), 10(29), 16(3)(*o*) and 18D were introduced to deal with dwelling units that have been developed for sale by a developer, and such dwellings are temporarily let for exempt residential use whilst the developer continues to pursue a taxable intention of selling the units. Further technical amendments have been made to provide clarity. The time of supply under section 9(13) is now triggered in the tax period in which the agreement for letting and hiring of the dwelling comes into effect or when the dwelling is occupied, whichever occurs first. Technical corrections were also made to section 16(2)(*f*) and section 16(3)(*o*). These amendments have retrospective effect, applicable from 1 April 2022. For further information on this topic see Binding General Ruling 64 "Temporary Application of New Dwellings for Exempt Supplies Simultaneously held by Developers for Taxable Purposes" (BGR 64) and the further amendments effective from 1 April 2024 discussed below.
- *Pooling arrangements* – A new subsection (3) was inserted into section 52 to allow for pooling arrangements in industries other than agriculture and property rental. This new provision is intended to deal with the VAT treatment of pooling arrangements established as a manner of complying with the provisions of legislation, regulations or rules of a professional body. The provision only applies to persons that are subject to such legislation, regulations or rules of such professional body. There are also certain conditions that apply, for example, joint and several liability will be applicable. This provision can be applied, for example, to medical pools. In such a case, the medical pool may be deemed to be separate from its members and may be registered as a vendor. This allows the medical pool to account for the VAT of the members as opposed to registering each individual medical practitioner governed by Health Professions Council of South Africa that forms part of the pool.
- *Registration of foreign entities* – Section 23(2A) is a new provision aimed at alleviating the administrative difficulty for foreign entities required to register for VAT in South Africa. If one or more foreign entities forming part of the same "group of companies" as defined under section 1(1) of the Income Tax Act are required to register for VAT, section 23(2A) allows for a single branch VAT registration for all those separate entities. This firstly requires that one of the entities in the group must already be conducting an enterprise in South Africa and be registered as a vendor (main registered vendor). The main registered vendor may then register a separate branch or division for all the foreign entities. The primary purpose of the separate registration is to ensure that a distinction can be drawn between the supplies made by the main registered vendor and the other foreign entities. The main vendor must submit a VAT return to account for its own VAT and a separate VAT return must be submitted for the branch or division to account for the VAT of all the other entities. The normal VAT rules apply to supplies made between entities in the same group and if those supplies form part of their enterprise activities in the Republic, the VAT on such supplies must be accounted for in the VAT return submitted for the branch or division. There are certain conditions that apply, for instance, the branch will be treated as an enterprise separate from the main registered vendor and the Commissioner may cancel the branch registration under specified circumstances. Any of the non-resident group companies may, however, elect to register independently as a vendor in South Africa, and not form part of the branch registration under the new dispensation.

- *Swaziland name change* – Textual amendments have been made to section 13(1)(iii), section 13(2)(*b*), Schedule 1 to the VAT Act and Item 412 to reflect the name change of Swaziland to eSwatini.
- *Registration of foreign electronic service providers* – A new proviso was inserted into section 23(1A) with effect from 5 January 2023 to provide that a foreign electronic services provider is not required to register as a vendor if the total value of taxable supplies of R1 million in any consecutive 12-month period has been exceeded solely as a consequence of abnormal circumstances of a temporary nature. The amendment is aimed at achieving parity with the concession granted to local vendors.

The following amendments came into effect from 1 April 2024 unless otherwise stated:

- *Definition of "enterprise"* – A new proviso (xv) was inserted into the definition of "enterprise" in section 1(1) to provide that the activities of the Corporation for Deposit Insurance which was established under section 166AE of the Financial Sector Regulation 9 of Act, shall, to the extent that it makes supplies of deposit insurance as contemplated in section 166AF(1) of that Act, be deemed not to be the carrying on of an enterprise.

- *Financial services* – A textual amendment was made to update the definition of the term "derivative" in section 2(2)(iiiA) so that it now aligns to International Financial Reporting Standard 9 (IFRS 9) issued by the International Accounting Standards Board. This amendment has retrospective effect, applicable from 1 January 2024.

- *Short-term insurance* – The proviso's to section 8(8) have been reworded and individually numbered to deal with ongoing interpretation difficulties and practical application of the law in the insurance industry regarding the settlement of claims under a contract of insurance. In terms of the amendments, it is clarified that the deemed supply in section 8(8) only arises in respect of cash indemnity payments made to, or on behalf of, the insured party under a contract of insurance. A new section 8(8A) has also been introduced to deal exclusively with the effect of the reinstatement of the actual goods or services covered in the policy to the extent that the claim will not be settled by way of a cash payment as contemplated in section 8(8). Under section 8(8A) the third-party supplier that supplies the reinstated goods or services is deemed to make a supply to both the insurer and the insured to the extent that each party is liable to make a payment towards the consideration for that supply. If the third-party supplier is a vendor, then a tax invoice must be issued to both the insurer and the insured parties, to the extent that each party has paid, or is liable to pay a consideration for the goods or services to be reinstated. The effect is that the input tax deduction allowed to the insurer and the insured will be limited to the extent of the respective trade and excess payments made, as evidenced by way of the tax invoices. The amendments are aligned to current industry practice and BGR 14 "VAT Treatment of Specific Supplies in the Short-Term Insurance Industry" (BGR 14) published on 22 May 2024. The amendments come into effect from 1 January 2024.

- *Temporary letting of dwellings by developers* – On 1 April 2022 certain amendments to section 18D and related provisions (as discussed above) came into effect. (See BGR 64 for more details in this regard.) As a result of continued difficulties identified with the application of section 18D, it was necessary for further amendments to be made. The first amendment is to section 10(29), which now provides that the consideration for the deemed supply under section 18D(2) is equal to the adjusted cost to the vendor of the fixed property (including the value of the land) and not merely the adjusted cost of the construction, extension or improvements made. The second amendment was the deletion of section 18D(5)(*c*) as that provision does not find

application in any circumstances. The third amendment was the introduction of a new section 18D(6) to clarify that if the temporary letting period exceeds 12 months or the property is permanently applied for a non-taxable purpose, then an adjustment must be made under section 18(1) and not under section 18D(2). There is also a transitional rule in the proviso to section 18(6), which provides for a situation in which a written sale agreement is concluded during the temporary letting period of 12 months and the transfer of the property only occurs after the 12-month period has expired. In such a case, the output tax adjustment under section 18(1) will not apply when the 12-month period expires. Instead, the sale of the property will continue to be a taxable supply under section 7(1)(*a*) as per the sale agreement that was concluded during the period of temporary application of the dwelling for exempt supplies. The developer will, in that case, account for output tax on the sale of the dwelling at the time contemplated in section 9(3)(*d*). (That is, on date of registration of transfer of the property in the Deeds Registry or the date on which any payment in respect of the consideration for the supply is made, whichever is earlier.) BGR 64 was published on 22 May 2024 to incorporate these amendments. See **9.6.2** and the *VAT 409 – Guide for Fixed Property and Construction* for further information on this topic.

- *Credit notes – telecommunications industry* – A new provision has been inserted in the form of section 21(1)(*f*) to allow a VAT-registered and licensed telecommunications service provider to issue a credit note in certain circumstances where the nature of the supply has been fundamentally varied or altered subsequent to the issuing of a prepaid voucher under section 10(19) for future services to be rendered. In such a case the output tax on the full value of the telecommunications service must be declared at the time the voucher is issued. This amendment deals with the difficulty that arises when the telecommunications supplier accounts for VAT on the full consideration for the supply, but later, part or all of that customer's credit in respect of the unutilised portion of the service is used to pay a third-party on behalf of their customer for the supply of other goods or services. In such instances, the telecommunications supplier acts as an agent for their customer in allowing the credit to be used as payment to the third-party supplier. The telecommunications supplier may now issue a credit note under section 21 of the VAT Act as specified in BGR 72 and claim the corresponding input tax. The amendment addresses the inequity that arises as a result of the payment of output tax on that part of the telecommunications service that will never be supplied. See BGR 72 for further details on the particulars which must be contained in the credit note issued by the telecommunications company to the prepaid subscriber in terms of section 21(1)(*f*).

- *Documentary requirements for gold exports* – In the gold refining or smelting process, the gold of various depositors is co-mingled and each depositor's gold cannot be separately identified. As a result, after the refining process, and once the gold is sold or exported, depositors experience difficulty in obtaining the documentary evidence required under the Export Regulation, to substantiate the zero-rating of certain exports. In order to combat this difficulty, section 54(2C) was introduced to allow an agent (being a vendor) that supplies or exports gold on behalf of a principal (being a vendor) that meets the conditions in section 54(2C) to retain the required documentation instead of the principal. If the agent is not in possession of the required documentation, the agent will be liable to account for output tax at the standard rate on the supply of the gold. See BGR 69 for information on the documentation to be retained by the agent.

Lastly, the Domestic Reverse Charge Regulations relating to certain transactions involving gold and other "valuable metals" was published as Notice 2140 in *GG* 46512 dated 8 June 2022 (the DRC Regulations). Further amendments to the DRC Regulations were

promulgated on 10 May 2024 as published in *Government Gazette* 50642. The DRC Regulations, which came into effect from 1 August 2022, essentially provide that the recipient of the supply of valuable metal must account for the VAT on the supply instead of the supplier and that certain additional information to this effect must appear on any tax invoice issued in respect of a supply falling within the ambit of the DRC Regulations. The duties and responsibilities of the affected suppliers and recipients are prescribed in the DRC Regulations and further explained in the associated *Explanatory Memorandum*. The **SARS website** has been updated with further information which is available on the VAT Domestic Reverse Charge landing page, including Frequently Asked Questions (FAQs. See also VAT Connect 14.

The following amendments to the DRC Regulations came into effect from 1 April 2024 unless otherwise stated:

- *Definition of "residue"* – The definition has been amended to clarify that the term "residue" is specifically in relation to mining operations carried on by a holder of a mining right or a person contracted to the holder and does not include the general concept of residue.

- *Definition of "valuable metal"* – The definition has been amended to eliminate confusion and clarify that the goods which contain gold must be in certain prescribed forms, that is, jewellery, bars, coins, etc. The definition has also been expanded to align to the Precious Metals Act 37 of 2005 and includes goods in the form of sponge or powder containing gold.

- *De minimus rule* – the definition of "valuable metal" was amended to exclude the supply of valuable metal containing less than 1% of gold in gross weight and a supply of gold-plated jewellery where the gold is present as a minor constituent only. Therefore, the DRC Regulations will no longer apply to these supplies and the normal VAT rules will apply.

- *Responsibilities of the supplier and recipient* – As the recipients may not always be in a position to determine the gold content of the "valuable metal" supplied to them, regulations 2 and 3 have been amended to transfer the responsibility for declaring the percentage of the gold content in a "valuable metal" supplied, from the recipient to the supplier of the "valuable metal".

- *Effective date* – The effective date of the Regulations is 1 January 2024.

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 Entertainment, Accommodation and Catering* (VAT 411)
- *Guide for 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)
- *VAT Rulings Process Reference Guide*

- *VAT Reference Guide for Foreign Donor Funded Projects*
- *VAT Quick Reference Guide for Non-Executive Directors*
- *VAT Section 72 Decisions Process Reference Guide*
- *Pocket Guide on VAT Rate Increase on 1 April 2018*

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 does not consider the technical and legal detail that is often associated with taxation and should, therefore, not be used as a legal reference.

It is also not a binding general ruling (BGR) under section 89 of Chapter 7 of the TA Act nor a ruling under section 41B of the VAT Act unless otherwise indicated. Taxpayers requiring an advance tax ruling[1] or a VAT ruling[2] should visit the SARS website at **www.sars.gov.za**[3] for details of the application procedure.

All previous editions of the *VAT 404 – Guide for Vendors* are withdrawn with effect from 17 December 2024.

All guides, interpretation notes, rulings, forms, returns and tables referred to in this guide are the latest versions, unless indicated otherwise, available on the **SARS website** or via e-Filing at **www.sarsefiling.co.za** (guides only).

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 –

- visit the **SARS website;**
- contact the SARS National Service Centre (between 8am and 4.30pm South African time except on Wednesdays when the service centre can be called between 9am and 4.30pm) –
  - if calling locally, on 0800 00 7277; or
  - if calling from abroad, on +27 11 602 2093;
- have a virtual consultation with a SARS consultant by making an appointment via the **SARS website;**
- contact your own tax advisors;
- 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.**

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1 For further commentary, see the *Comprehensive Guide to Advance Tax Rulings*.

2 For further commentary, see the *VAT Rulings Process Reference Guide*.

3 Navigate to Legal Counsel ⇨ Legal Counsel Publications ⇨ Find a Guide, and select the category Tax Administration (for the guide relating to advanced tax rulings) **or** Value-Added Tax (VAT) (for the guide relating to VAT rulings.

Operational information contained in this guide is up to date as at 17 December 2024. However, always refer to the **SARS website** and any external guides specifically issued on such operational matters, which may be updated from time-to-time.

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

Leveraged Legal Products
SOUTH AFRICAN REVENUE SERVICE
17 December 2024

Contents

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 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 after deducting permissible VAT inputs and other deductions.[4] SARS is a government agency which administers the VAT Act and ensures that the tax is collected and that the VAT law is properly enforced.

The generally accepted essential characteristics of a VAT type tax are as follows:

- The tax applies generally to transactions related to goods or services.
- It is proportional to the price charged for the goods or 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 or services acquired (that is, the burden of the tax is on the final consumer).

VAT is only charged by persons who carry on an enterprise (that is vendors) on the taxable supplies made by them. Taxable supplies include supplies for which VAT is charged at either the standard rate or zero rate. See **Chapters 2** and **6** for more details on registration and taxable supplies, respectively.

1.2 How does VAT work?

The South African VAT is destination based, which means that consumption of goods or services in South Africa is taxed. 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 15%[5] on most supplies and importations, but there is a limited range of supplies of goods or 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. See **Chapters 6** and **12** for more details.

1.3 Who charges VAT?

Generally, vendors are required to charge VAT on all supplies of goods or services in South Africa, subject to certain exemptions and exceptions. A vendor is a person who is registered or is required to be registered for VAT. See **Chapter 2** for more details on registration as a vendor.

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4 See *Director of Public Prosecutions, Western Cape v Parker* (103/2014) [2014] ZASCA 223; 2015 (4) SA 28 (SCA).

5 The standard rate of VAT changed from 14% to 15% with effect from 1 April 2018.

Vendors have to perform certain duties and take on certain responsibilities. For example, vendors must ensure that VAT is collected on taxable transactions, returns are submitted and payments made on time, tax invoices are issued where required and that all prices advertised or quoted include VAT.

VAT is also payable on the importation of goods into South Africa, subject to certain exemptions and exceptions. The VAT on importation is payable by the importer, whether that person is a vendor or not. VAT is only payable on the importation of services by any person where those services are acquired for non-taxable purposes. See **Chapter 12** for more details on the importation of goods or services.

Special VAT rules apply to the supply of valuable metals between registered vendors. The Domestic Reverse Charge Regulations relating to certain transactions involving gold and other valuable metals was published as Notice 2140 in GG 46512 dated 8 June 2022 (the DRC Regulations) with further amendments promulgated on 10 May 2024 as published in *Government Gazette* 50642. The DRC Regulations essentially provides that the recipient of the supply of valuable metal must account for the VAT on the supply instead of the supplier. See Error! Reference source not found. for more details on supplies under the DRC.

1.4 Payment, recovery and refund of VAT

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) and other permissible deductions from the tax collected on the supplies made by the vendor (output tax). This is known as the invoice-based credit method of the consumption-type VAT. See **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 and other deductions are 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 of the first calendar month after the end of the tax period concerned). Vendors who are registered to submit their returns electronically have until the last business day of the said calendar month to submit their VAT201 together with the payment. See **Chapters 3** and **10** 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 also 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). See **Chapter 11** 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, when a vendor incurs more VAT on expenses than the VAT due on any taxable supplies made during the tax period, or when a 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.

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 understate 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. See **Chapters 10** and **16** for more details.

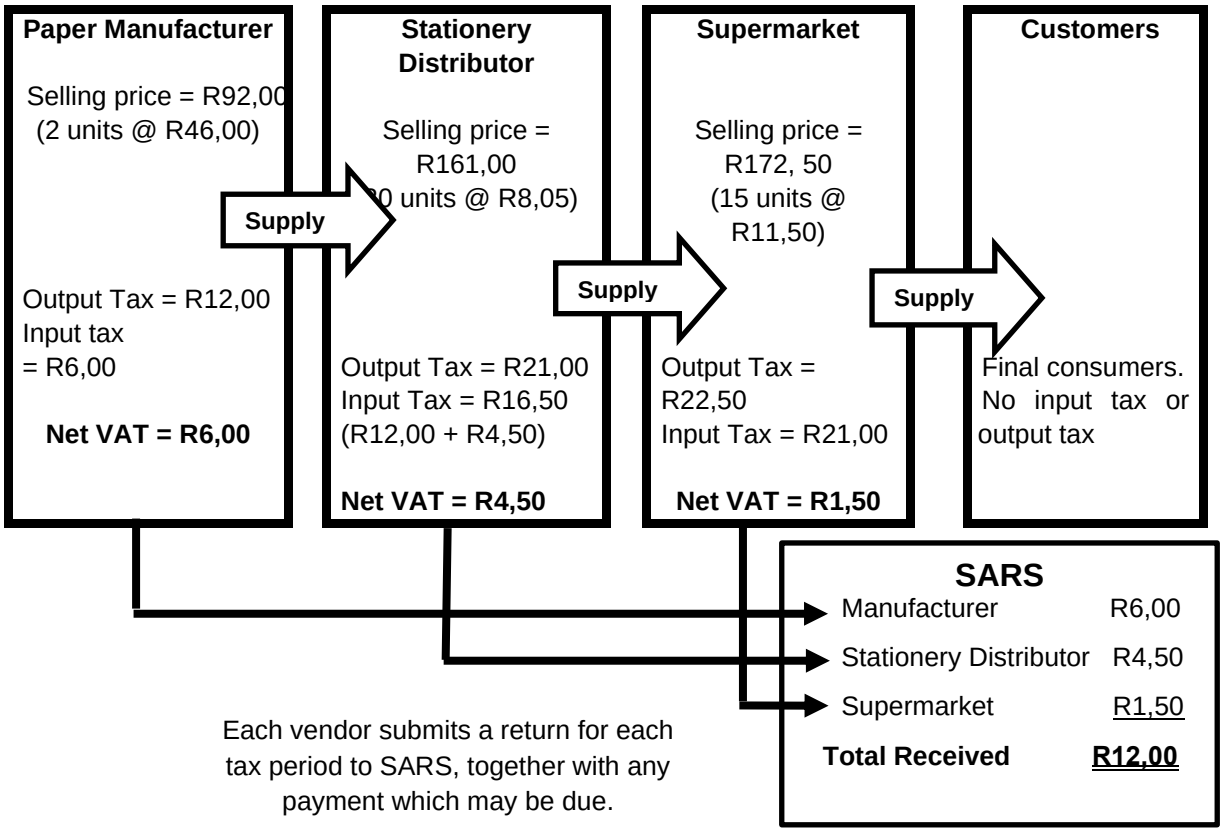
Example 1 – Mechanism of the VAT system

A VAT registered paper manufacturer sells 2 rolls of uncoated print paper sheets to a VAT registered stationery distributor for R92,00 (including VAT of R12,00). The paper manufacturer recycled waste paper for which it paid R46,00 (including VAT of R6,00) to a waste management company, to manufacture the paper rolls. The paper manufacturer must declare output tax of R12,00 (R92,00 × 15 / 115) for the 2 rolls of paper sold and may deduct the VAT incurred on purchase of the recycled waste paper as input tax (that is, R6,00).

The stationery distributor also buys packaging boxes from another vendor for R34,50 (inclusive of R4,50 VAT). It cuts the paper rolls into A4 size sheets and packages them into 20 boxes of 100 sheets per box of paper and sells them to a supermarket for R8,05 each. The selling price of each box of paper includes R1,05 VAT. The stationery distributor must therefore pay output tax of R1,05 on each box sold. The stationery distributor may deduct the VAT incurred on the purchase of the paper rolls and the packaging boxes as input tax (that is, R12.00 + R4,50 = **R16,50**).

The supermarket sells 15 of the 20 boxes to its customers for R11,50 each (inclusive of R1,50 VAT). The supermarket must declare output tax of R1,50 on each box of paper sold. The supermarket may deduct the VAT incurred on the purchase of the boxes of paper sheets as input tax (that is, R21,00). Since the supermarket's customers are the final consumers and are not registered for VAT, there is no input tax deducted by the customers on the R1,50 VAT charged.

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



1.5 Accounting for VAT

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. The payments basis of accounting is only available to specified qualifying vendors and is subject to prior approval being obtained from SARS. Special rules also apply as to how certain supplies are accounted for, regardless of the accounting basis which the vendor uses to account for VAT. See **Chapter 4** and **5** for more details.

1.6 Documentation

Tax invoices for supplies made, bills of entry for goods imported and the general maintenance of proper accounting records and documents are all very important aspects of how the 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, bill of entry or other prescribed documentation, and in some exceptional circumstances, a VAT ruling from SARS confirming that certain alternative documentation held by the vendor, may also serve as documentary evidence to substantiate an input tax deduction or any other deduction made by the vendor. See **Chapters 8, 9, 13** and **16** for more details.

1.7 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 Act 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 16*** also deals with some of the more important aspects of the TA Act which generally apply to all taxes and which are not specifically dealt with in any other chapter of this guide. 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. 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.

See 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*
- Interpretation Note 68 “Provisions of the Tax Administration Act that did not Commence on 1 October 2012 under Proclamation 51 in *GG* 35687”

Chapter 2
Registering for VAT

2.1 Enterprise

A person can only register for VAT if that person is carrying on an enterprise. “Enterprise” is defined in section 1(1) to include any activity carried on continuously or regularly by any person in South Africa or partly in South Africa, resulting in income being earned from the supply of goods or services (that is supplied for a “consideration”) to another person, whether for profit or not.

The following activities are specifically included in the definition of “enterprise”, notwithstanding the general criteria for being an enterprise as discussed above:

- Anything done in connection with the commencement or termination of an enterprise.
- The supply of goods or services by a public authority which the Minister is satisfied could be supplied by another person in carrying on a continuous business activity for purposes of earning income. In that case, the public authority is not considered to be carrying on an enterprise in respect of those supplies until it is notified by the Commissioner.
- The activities of a “welfare organisation” for VAT purposes.
- The activities of a share block company where such share block company has been registered on a voluntary basis.
- The activities of an implementing agency carried on in the course of implementing, operating, administering or managing a foreign donor funded project (FDFP).
- The supply of certain electronic services by non-resident suppliers.

The following are some situations that are not regarded as carrying on an enterprise in the Republic:

- If you only make exempt supplies (see **Chapter 7** for examples).
- If you are an employee earning a salary or wage from your employer (excluding an independent contractor). Note that a non-executive director of a company is considered to be an independent contractor and not an employee.[6]
- When the supplies are made, for example, by a foreign branch located in another tax jurisdiction (subject to certain requirements).
- 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.
- Supplying “commercial accommodation” in circumstances where the total value of those supplies made or reasonably expected to be made does not exceed R120 000 in any consecutive period of 12 months.

[6] See BGR 40 “Remuneration Paid to Non-Executive Directors, BGR 41 “VAT Treatment of Non-Executive Directors”, *Non-Executive Directors: FAQs on BGRs 40 and 41* and the *VAT Quick Reference Guide for Non-Executive Directors* for more information.

- A non-resident entity, not a registered vendor that takes ownership of goods in South Africa on a flash title basis and immediately on sells the goods to other non-resident customers that are also not registered vendors.
- A non-resident lessor leasing foreign-owned ships, aircraft, rolling stock (for example, locomotives and carriages) or parts directly in connection thereto (for example, aircraft engines) for use in the Republic, to a lessee which is a resident of the Republic.

Some specific examples of inclusions and exclusions are briefly discussed in **2.1.1** to **2.1.7** below.

2.1.1 Public authorities

The term "public authority" is defined in section 1(1) to include –

- all the national and provincial government departments listed in Schedules 1, 2 or 3 of the Public Service Act;[7]
- the entities (including subsidiaries and controlled entities thereof) listed in Parts A and C of Schedule 3 to the Public Finance Management Act[8] (PFMA); or
- certain public entities which should be regarded as public authorities for VAT purposes.

Public authorities exist to carry out the work of national and provincial government. The supplies made by public authorities are therefore not normally of the same type or nature found in the private sector, nor are they in competition with vendors in that sector. The supplies are therefore usually made in the context of carrying out a regulatory, administrative or stewardship function of government.

In order for the supplies made by public authorities to be treated as "enterprise" activities, the public authority concerned has to be notified in that regard by the Commissioner, acting on instruction from the Minister. The Minister, in turn, has to be satisfied that the supplies (or certain of them) are of the same kind or similar to taxable supplies already being made, or which might be made by vendors in the private sector.[9] Otherwise, the activities of public authorities are generally out-of-scope for VAT purposes and they will not be able to register for VAT. See Interpretation Note 39 "VAT Treatment of Public Authorities and Grants" for more information.

2.1.2 Activities of welfare organisations

Special provision is made in the VAT Act to regard welfare organisations as enterprises to the extent that they make supplies in the course of carrying out specific welfare activities, even if they do not charge a consideration for making those supplies.

To qualify as a welfare organisation for VAT purposes, the organisation must be an approved public benefit organisation (PBO) for income tax[10] purposes and must also carry on one or more of the welfare activities as determined by the Minister[11] for purposes of the VAT Act, under the following headings:

- Welfare and humanitarian

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7 Act 103 of 1994.
8 Act 1 of 1999.
9 Paragraph (*b*)(i) of the definition of "enterprise" in section 1(1).
10 For example, a PBO contemplated in section 30(1) of the Income Tax Act and approved by the Commissioner under section 30(3) of the said Act.
11 See the regulations issued under GN 112 in *GG* 27235 of 11 February 2005 (the welfare activities regulations).

- Health care
- Land and housing
- Education and development
- Conservation, environment and animal welfare

See the *VAT 414 – Guide for Associations not for Gain and Welfare Organisations,* Interpretation Note 39 "VAT Treatment of Public Authorities and Grants" and Interpretation Note 70 "Supplies Made for No Consideration" for more details on the VAT treatment of welfare organisations.

2.1.3 Share block companies

A "share block company" is defined as a company whose activities comprise of or include the operation of any scheme in terms of which a share in that scheme grants a right to or an interest in the use of immovable property.[12] The shareholders of the share block company acquire rights to occupy specified parts of the immovable property allocated to their shares in the company. For VAT purposes, a share in a share block company is considered to be fixed property which falls within the ambit of "goods" as defined. The sale of shares in a share block company is therefore a supply of goods and a supply of fixed property for VAT purposes.[13]

The definition of "enterprise" specifically includes the activities of any share block company (other than the exempt supply of services which are met out of levy contributions by members[14]) where that company applied for voluntary registration as a vendor and was registered as such by the Commissioner.[15] See the *VAT 412 – Guide for Share Block Schemes* for more details on the VAT treatment of share block companies.

2.1.4 Foreign donor funded project

A foreign donor funded project (FDFP) is 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 Assistance Agreements (ODAAs) and are binding on the Republic under section 231(3) of the Constitution of the Republic of South Africa (the Constitution). The ODAAs 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.

The definition of "enterprise" was amended to include reference to the activities of an implementing agency in respect of the FDFP activities rather than to regard the FDFP as a separate person conducting the activities, as was the case before the amendment.[16]

The definition "implementing agency" was also introduced. An implementing agency can include the government of the Republic, any institution or body established and appointed by a foreign government as contemplated in section 10(1)(*bA*)(ii) of the Income Tax Act to

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12 See the definition of "share block company" in section 1(1), read with the definition of "share block company" and "share block scheme" in section 1 of the Share Blocks Act 59 of 1980.

13 The definition of "goods" under section 1(1) includes "fixed property" as defined and "fixed property" includes a share in a share block company.

14 The services referred to in section 12(*f*)(ii).

15 Paragraph (*b*)(iii) of the definition of "enterprise" in section 1(1).

16 See amended paragraph (*b*)(v) of the definition of "enterprise" in section 1(1), which came into effect from 1 April 2020.

perform its functions in terms of the ODAA, or any person who has entered into a contract with either of these parties to implement, operate, administer or manage an FDFP.

As a consequence of these amendments, an FDFP is no longer included in the definition of "person" whilst the new definition of an FDFP requires approval of that project by the Minister of Finance.

To ensure that the implementing agency is separately identified relating to the activities of each FDFP, section 50(1) was amended to require the project to be registered as a separate entity from the main enterprise activities of the implementing agency. Section 50(2A) was introduced to require the implementing agency to register its activities in respect of each foreign donor funded project as a separate branch.

See the *VAT Reference Guide for Foreign Donor Funded Projects* for more information.

2.1.5 Electronic services supplied by non-residents

The definition of "enterprise" specifically includes the supply of certain electronic services by foreign e-commerce suppliers in respect of which at least any two of the following three circumstances apply:

- The recipient of those electronic services is a South African resident.
- Payment for such electronic services originates from a South African bank account.
- The recipient of such electronic services has an address (for example, residential, business or postal) in South Africa.

The original Electronic Services Regulation (ESR) came into effect on 1 June 2014, but the scope of services only covered a restricted list of electronic services. The list of electronic services is now set out in the updated ESR which came into effect on 1 April 2019.[17] The main features of the new rules on electronic services can be summarised as follows:

- The previous scope of "electronic services" under the original ESR was expanded to include **any** supplies of electronic services [subject to a few exceptions such as telecommunications services,[18] certain group company transactions and educational services, which are similar to those contemplated in the exemption under section 12(*h*)].
- The compulsory registration threshold for non-resident suppliers of electronic services was increased to R1 million (previously R50 000). Non-resident suppliers of electronic services can now also register voluntarily if they exceed the R50 000 threshold. An exception[19] has been introduced to the effect that a foreign electronic services provider is not required to register as a vendor if the total value of taxable supplies of R1 million in any consecutive 12-month period has been exceeded solely as a consequence of abnormal circumstances of a temporary nature.
- The definition of "enterprise" includes the activities of an "intermediary" if that person facilitates a supply of "electronic services" by a non-resident. "Facilitates" in this context means, for example, that the electronic services are advertised, sold or otherwise made available via an online marketplace or "platform" operated by the intermediary.

17 See GN 429 in *GG* 42316 of 18 March 2019.

18 The proposed amendment in the draft ESR dated 31 July 2020 includes a new definition for "telecommunications services" which provides a more detailed meaning.

19 Proviso to section 23(1A)

This rule applies in circumstances where the invoicing and collection of the payment for the supply is done by the intermediary.

- A new provision[20] was introduced to deem an intermediary to be the supplier of electronic services in certain instances. The effect is that the intermediary facilitating supplies of electronic services will be liable to charge and account to SARS for the VAT on the supply of electronic services if the non-resident principal is not registered for VAT in South Africa. An intermediary (whether resident or non-resident) will therefore be required to register and account for VAT if the value of their taxable supplies (including any deemed supplies) exceeds the new compulsory threshold of R1 million.

- Previously, non-resident electronic services suppliers were automatically registered on the payments basis. From 21 August 2020, non-resident electronic services suppliers can opt to be registered on the invoice basis. In addition, from 1 April 2021, intermediaries may apply to account for VAT on the payments basis.

For more detailed information on the implications of the updated ESR and consequential amendments, see the updated *Frequently Asked Questions (FAQs): Supplies of Electronic Services* on the **SARS website**.

2.1.6 Commercial accommodation

Paragraph (*a*) of "commercial accommodation" as defined in section 1(1) includes lodging or board and lodging which is systematically supplied, together with domestic goods or services. However, a dwelling supplied in terms of an agreement for the letting and hiring thereof is specifically excluded from qualifying as the supply of "commercial accommodation". The VAT Act defines a "dwelling" as any building, structure, premises or any other place which is mainly used as a residence of a natural person. Typically, commercial accommodation establishments are those which supply short-term business and leisure type accommodation as their core business activity.

The VAT Act defines "domestic goods or services" to include –

- cleaning and maintenance
- electricity, gas, air conditioning or heating
- a telephone, television set, radio or other similar article
- furniture and other fittings
- meals
- laundry
- nursing services
- water

The total annual receipts from the activity of supplying commercial accommodation[21] must exceed R120 000[22] or be reasonably expected to exceed that amount in a period of 12 months, for the activity to be an enterprise.[23]

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20 Section 54(2B).

21 Referred to in paragraph (*a*) of the definition.

22 The threshold was increased from R60 000 to R120 000 with effect from 1 April 2017.

23 Proviso (ix) to the definition of "enterprise" under section 1(1).

Lodging or board and lodging supplied in for example, a hospice or home for the aged, also constitutes "commercial accommodation". The R120 000 threshold, however, does not apply to these kinds of commercial accommodation, but instead the normal R50 000 threshold for voluntary registration applies.

See the *VAT 411 – Guide for Entertainment, Accommodation and Catering* for more details on the VAT treatment of commercial accommodation.

2.1.7 Cross border leasing of foreign-owned ships, aircraft and rolling stock

In instances where foreign-owned ships, aircraft, rolling stock or parts directly in connection thereto are leased for use in the Republic, there was some uncertainty as to whether the foreign lessor is conducting an "enterprise" in the Republic. As a result, foreign lessors would often seek clarity from SARS by applying for a ruling. In order to address this issue, the VAT Act was amended by the insertion of proviso (xiii) to the definition of "enterprise". The effect of this proviso is to clarify that from 1 April 2021, the supply by a non-resident of the right of use of ships, aircraft and rolling stock (for example, locomotives and carriages) in the specified circumstances will no longer be regarded as an "enterprise" conducted in the Republic by that person. From 1 April 2023, this proviso also includes the leasing of foreign-owned parts relating to such foreign-owned ships, aircraft or rolling stock if those parts are leased under a separate agreement and this proviso now applies.[24]

This exclusion from the definition of "enterprise" will apply, even though the goods are supplied for use in the Republic, but it is subject to the following conditions:

- The lessee (recipient) must be a resident of the Republic;
- The lessor (supplier) must be a non-resident and must not be a registered vendor in the Republic;
- The goods must be for use wholly or partly in the Republic; and
- The contracting parties must agree in writing that the recipient will –
  - enter the goods for home consumption and be liable to pay the VAT on importation; and
  - not be reimbursed by the lessor for such VAT payable upon importation.

As a result, if all of the above conditions are met, the foreign lessor will not be regarded as conducting an enterprise in the Republic and will not be liable to register for VAT. Refer also to *VAT Connect – Issue 12* (June 2021) and *VAT Connect – Issue 15* (December 2022) for more information in this regard, including reference to previous decisions issued under section 72 on such matters.

2.2 When does a person 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.

[24] Since the wording of section 72 was amended with effect from 21 July 2019, any application for a decision to allow a non-resident lessor not to register in respect of any lease concluded in respect of the assets concerned before 1 April 2021 under section 72, cannot be considered. Proviso (ix) to the definition of "enterprise" in section 1(1) now provides the necessary certainty on the "enterprise" question from 1 April 2021.

You will be liable for compulsory VAT registration if you are carrying on an enterprise[25] and make taxable supplies in the course or furtherance of that enterprise exceeding R1 million in any consecutive period of 12 months, or will exceed that amount in terms of a written contractual obligation. The R1 million compulsory VAT registration threshold[26] applies to the total value of taxable supplies (turnover) and not the net income (profit) that your business has made for the period.

A person who is registered, or who is obliged to register, is referred to as a "vendor". A person is referred to as a "vendor" from the date that person first became liable to register, subject to confirmation of such date by the Commissioner. In certain cases, the Commissioner may determine that a person will be regarded as a vendor from a date which is later than the date that the person first became liable to register, as may be considered equitable, after careful consideration of the circumstances of that person.[27]

The term "person"[28] includes the following:

- Individuals
- Partnerships and bodies of persons
- Private and public companies, share block companies and close corporations (CCs)
- Public authorities[29] and municipalities
- Associations not for gain such as clubs and welfare organisations
- Insolvent and deceased estates
- Trust funds

You can still register voluntarily for VAT if your sales or fees (turnover) earned from making taxable supplies are less than R1 million and you meet certain conditions. This type of registration is referred to as a "voluntary registration". See **2.3** for more details.

2.2.1 Suppliers of "valuable metal" under the domestic reverse charges

Vendors supplying "valuable metal" under the DRC vendor must re-validate its VAT registration with SARS within the earlier of 21 business days of the commencement date of the DRC Regulations (that is, within 21 business days of 1 July 2022) or the date that a supply subject to the domestic reverse charge are made. See Public Notice 2200 as published in *GG* 46598 dated 24 June 2022 for more details in this regard. Vendors that fail to comply with this requirement either wilfully or through neglect, will be guilty of an offence.

25 See **2.1** for more details on enterprise.

26 See **2.1.5**. Before 1 April 2019, the compulsory registration threshold for non-resident suppliers of electronic services was R50 000 and not R1 million.

27 Section 23(4)(*b*).

28 Certain changes with regard to the administration of FDFPs came into effect from 1 April 2020, including that, from the said date, an FDFP is no longer regarded as a "person" as defined.

29 Public authorities are generally not registered as vendors.

2.3 Voluntary registration

2.3.1 General

A person can apply for voluntary registration even though the total value of taxable supplies is less than R1 million. A person may apply for voluntary registration if that person –

- is a "municipality" or is carrying on the activities of a "welfare organisation" or a "share block company"; or
- is carrying on an enterprise and the value of taxable supplies made has exceeded the minimum threshold of R50 000 in the past 12 months;[30] or
- supplies commercial accommodation,[31] provided the minimum threshold of R120 000 is met (see **2.1.5** for more details on enterprises supplying commercial accommodation); or
- is carrying on an enterprise and the value of taxable supplies has not exceeded the R50 000 minimum threshold but can reasonably be expected to exceed that threshold within 12 months from the date of registration (see Government Notice (GN) 447 in *GG* 38836 of 29 May 2015;[32] or
- is continuously and regularly carrying on one of the activities set out in GN 446 in *GG* 38836 of 29 May 2015, in respect of which it will only be possible to make taxable supplies after a period of time due to the nature of the business;[33] or
- intends to carry on an enterprise acquired as a going concern, provided that the value of taxable supplies made by the supplier of the going concern exceeded R50 000 in the past 12 months.

The Commissioner will determine the effective date of registration once you have submitted your correctly completed registration application and have satisfied the requirements for voluntarily registration. It will generally not be advantageous for a person to register voluntarily where –

- there are very few taxable expenses on which input tax can be deducted for example, when the main enterprise 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"). See **Chapter 7** for more details and for examples of exempt supplies.

The various circumstances under which a person may be allowed to register voluntarily are discussed in detail below.

30 Section 23(3)(*b*)(i).
31 Paragraph (*a*) of the definition of "commercial accommodation" in section 1(1).
32 Section 23(3)(*b*)(ii).
33 See section 23(3)(*d*) and GN 446.

2.3.2 Municipalities

The definition of the term "municipality" in the VAT Act refers to the definition as contained in section 1 of the Income Tax Act, which in turn, makes reference to section 12(1) of the Local Government: Municipal Structures Act.[34] In effect, the term "municipality" means the category of municipalities as contemplated in section 155 of the Constitution, which deals with the establishment of municipalities. Municipalities have the right to administer certain local government activities in terms of the Constitution and are therefore involved in making many different types of supplies, for example, taxable, exempt and out-of-scope supplies.

A municipality, as contemplated in the Constitution, may apply to register voluntarily for VAT, although in most cases, they will be compulsory registrations. (See the *VAT 419 – Guide for Municipalities* for more details on the VAT treatment of municipalities).

2.3.3 Welfare organisations

A person may apply to register voluntarily if that person satisfies the Commissioner that the person is carrying on the activities of a welfare organisation for VAT purposes.

As discussed in **2.1.2,** a welfare organisation that carries on one or more of the qualifying welfare activities for VAT purposes is regarded as an enterprise. The minimum threshold of R50 000 for voluntary registration is therefore not applicable to the welfare activities of a welfare organisation.[35] This means that a welfare organisation is entitled to register for VAT purposes and to deduct VAT incurred on goods or services acquired in carrying out its welfare activities, even if it does not charge any consideration. A welfare organisation may also deduct input tax on entertainment expenses which are associated with its welfare activities. (Entertainment expenses are usually disallowed for other vendors.)[36]

Normal VAT rules will apply to the extent of any ordinary business activities carried on by the welfare organisation, in respect of which goods or services are supplied for a consideration. Those activities will be carried on under the same VAT registration number as for the welfare activities. Should it be specifically requested, separate VAT registration numbers may be issued for each of its separately identifiable branches, divisions or enterprises.

See the *VAT 414 – Guide for Associations not for Gain and Welfare Organisations, Interpretation Note 39* "VAT Treatment of Public Authorities and Grants" and *Interpretation Note 70 "*Supplies Made for No Consideration" for more details on the VAT treatment of welfare organisations.

2.3.4 Share block companies

See the *VAT 412 – Guide for Share Block Schemes* for more details on the VAT treatment of share block companies.

2.3.5 Supply of a going concern

You may apply for voluntary registration if you intend to carry on an enterprise from a future date if –

- that enterprise or part thereof which is capable of separate operation will be supplied to you as a going concern (see **6.3.3** and Interpretation Note 57 "Sale of an Enterprise or Part Thereof as a Going Concern" for more details on the supply of an enterprise as a going concern); and

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34 Act 117 of 1998.
35 Section 23(3)(*b*)(AA).
36 Section 17(2)(*a*)(vi).

- the value of the taxable supplies made from carrying on that enterprise (or part thereof) by the supplier of the going concern has exceeded R50 000 in the preceding 12-month period.

See *VAT-REG-02-G01 – Guide for Completion of VAT Registration Application Forms – External Guide* for supporting documents for the registration of an enterprise supplied as a going concern.

2.3.6 Taxable supplies expected to exceed R50 000

Under certain circumstances a person other than a "welfare organisation", "municipality" or "share block company" carrying on an enterprise may apply to register voluntarily if that person –

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

and can satisfy the Commissioner that the person can reasonably be expected to make taxable supplies in excess of R50 000 in the next 12 months period commencing from the date of registration.[37] The Commissioner will be satisfied that a person will make taxable supplies in excess of the said R50 000 as expected, where one or more of the following circumstances set out in GN 447 exist:

- If you have made taxable supplies for more than two months, and you have proof that the average value of taxable supplies in the preceding two months before date of application exceeded R4 200 per month.
- If you only made taxable supplies for one month before the date of application, then the value of taxable supplies for that month must have exceeded R4 200.
- You have a contractual obligation in writing to make taxable supplies in excess of R50 000 in the 12-month period following the date of registration.
- If you have acquired finance from certain specified credit providers, to fund the expenditure incurred or to be incurred for your enterprise and your total repayments in the 12 months following the date of application will exceed R50 000.
- You are able to provide proof of expenditure incurred or to be incurred or capital goods acquired in connection with the enterprise and proof of payment or an extended payment agreement as evidence that payment has already exceeded R50 000 or will exceed R50 000 within a 12-month period after the date of application.

2.3.7 Taxable supplies made only after a certain period of time

In certain cases a person may apply to register voluntarily if the Commissioner is satisfied that the nature of the business activity carried on by that person falls within one of the activities set out in GN 446, in respect of which it is only possible to make taxable supplies after a certain period of time.[38]

The activities and requirements concerned can be summarised as follows:

- Agriculture, farming, forestry and fisheries
- Mining of minerals, metal, oil, gas or natural gas resources (for example, both exploration and extraction)

[37] Section 23(3)(*b*)(ii).
[38] Section 23(3)(*d*).

- The building of ships, yachts, other floating vessels and aircrafts
- The manufacture or assembly of plant, machinery, motor vehicles and locomotives
- The construction of residential or commercial buildings for the taxable supply thereof
- Infrastructure development for purposes of carrying on an enterprise whereby the value of such development in terms of a contractual obligation exceeds R1 million and such development will take more than 12 months to complete
- The treatment of mining products to improve the properties thereof (that is beneficiation)

You must ensure that you are in possession of the relevant permit, licence or similar document required to conduct any of the activities listed above from the relevant regulatory authority (if required) when you apply for the voluntary registration. Alternatively, you must have proof that you have applied to the relevant authorities that are responsible for issuing the permit, licence or similar document.

2.3.8 Turnover tax for micro businesses

Turnover tax was initially introduced as a simplified tax system as an alternative to the current income tax and VAT systems. 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. For more information, see the *Tax Guide for Micro Businesses.*

2.3.9 Refusal of a voluntary registration application

The Commissioner must be satisfied that the person applying for voluntary registration meets the following requirements:

- Has a fixed place of residence or business
- Keeps proper accounting records
- Has opened a banking account in the RSA
- Has not previously been registered as a vendor under VAT or General Sales Tax (GST) and failed to perform the duties of a vendor

In the event that any of the above requirements are not met, the Commissioner may refuse the registration.[39]

2.4 How must the value of taxable supplies be calculated?

The value of taxable supplies (turnover) made in carrying on all your enterprises is taken into account to determine whether you are liable to register. 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 enterprise, branch or division individually, subject to certain exceptions (See **2.7** for more details on the exceptions). Therefore, at the time of closing off your books for the month, you need to keep a running total of the turnover in respect of all your enterprises for the past 12 months. Should this running total exceed R1 million in any particular month, you become liable to register from the first day of the next month.[40]

[39] Section 23(7).
[40] Section 23(1)(*a*).

You also need to consider the next 12 months, because if you have a contractual obligation in writing to make taxable supplies in excess of R1 million within a 12-month period, you will be liable to register at the commencement of the first month in which the said 12-month period begins.[41] You must apply for registration within 21 business days of becoming liable to register.[42] The same rules apply for a non-resident supplier of electronic services to South African residents. However, if that supplier of electronic services also facilitates the supplies of any other non-resident supplier of electronic services as "intermediary" on a platform, then the value of those facilitated supplies also counts towards the calculation of the R1 million compulsory VAT registration threshold. This rule only applies when those other suppliers are not registered for VAT in South Africa at the time of supply.

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

Facts:

Z trades as ABC Construction and tenders for a building contract of R5 million. The fees earned from construction activities were, on average, R120 000 per month for each of the past 12 months.

Result:

If ABC Construction is not awarded the contract, Z has an option to register voluntarily, or elect not to register. However, if awarded the contract, Z would immediately know that the R1 million compulsory VAT registration threshold is going to be exceeded. In this case, Z would be required to register within 21 business days, calculated from the first day of the month in which the value of taxable supplies will exceed R1 million in a 12-month period commencing from 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 or 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
• Deemed supplies (see **Chapter 6**)	• VAT

41 Section 23(1)(*b*).
42 Section 22 of the TA Act.

2.5 Where must a person register?

The application for registration must be made through one of the following channels:

- eFiling; or
- at a SARS branch, via virtual, audio or walk in appointment made via the **SARS website**.

Alternatively, an authorised registered tax practitioner may make the application on behalf of the applicant. (In such cases, the application must be accompanied by the power of attorney.) 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.

If you are a non-resident supplier of electronic services you must complete form VAT 101 and send it by email to **eCommerceRegistration@sars.gov.za** together with the supporting documents (see *VAT-REG-02-G02 – VAT Registration Guide for Foreign Suppliers of Electronic Services*). Once you have successfully registered then you must register as an eFiler, which will enable you to file returns electronically and make VAT payments from outside South Africa.

2.6 What documents must be submitted with an application?

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. See the *VAT-REG-02-G01 – Guide for Completion of VAT Registration Application Forms – External Guide* and *VAT-REG-02-G02 – VAT Registration Guide for Foreign Suppliers of Electronic Services* for a comprehensive list of documents that must be submitted.

SARS will not accept any faxed or photocopied applications for registration. The requirement for a “recent” document refers to a document that is not more than three months old from the date of application for registration. All interactions with SARS in this regard, including the submission of documents, should be done on the eFiling platform or *via* specific channels or email addresses provided for that purpose on the **SARS website**.

Once you have been registered, you will receive a Notice of Registration. The Notice of Registration can be requested and obtained on e-Filing by registered e-Filers. 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. Where no risk is identified SARS will issue the VAT number immediately. 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 Service Centre.

2.7 Separate activities

As discussed in **2.4**, the liability to register is determined by considering all the enterprises carried on by a person, irrespective of whether the enterprises are carried on in separate branches, divisions or enterprises operated by that person. The Commissioner registers all the enterprises of a person under a single VAT registration number. Under certain circumstances, the separate branches or divisions or enterprises of a person may, however,

be registered under separate VAT registration numbers or treated as separate persons. The particular circumstances are discussed below.

2.7.1 Branches, divisions and separate enterprises

A vendor may register separately any branches, divisions or enterprises carried on for VAT purposes.[43] 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. A separate form VAT102e must be completed for each enterprise/division/branch for which a separate registration is required.

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; and
- 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.[44]

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 the relevant VAT201 return covering that period.

Example 3 – Separate registrations and the liability to register

Facts:

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

Result:

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

[43] Section 50(1).

[44] However, see *Wenco International Mining Systems Ltd and Another v CSARS* (59922-2019) [2021] ZAGPPHC 70 (19 January 2021). This case dealt with the question of whether a non-resident person was carrying on an enterprise in the Republic or whether that activity was conducted by a separate "branch" in South Africa for VAT registration purposes. In the circumstances of this particular case, the non-resident person (a Canadian company) was found to be liable for VAT registration in regard to the supplies that it made in the Republic, rather than any separate "branch".

The "person" carrying on all three businesses is N, a sole proprietor. Therefore, the combined turnover of all the three business is considered in determining whether N is liable to register. Since N is liable for VAT registration, that is, the combined turnover exceeds R1 million, N is referred to as a "vendor" and must account for VAT at the standard rate on all the sales in each business from the date of liability to register as a vendor.

N will only be issued with one VAT registration number, but can apply for three separate VAT numbers if the conditions for separate registration are met. 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.

2.7.2 Association not for gain

An association not for gain which carries on its enterprise in branches or divisions, or carries on separate enterprises, may apply in writing for any of those branches, divisions or enterprises to be regarded as separate persons, and to register separately for VAT.[45]

Application for the registration of separate activities must be made in writing to SARS, and will only be allowed where the separate branch, division or enterprise –

- maintains an independent accounting system; and
- can be separately identified by the nature of its activities or its geographic location.

The practical implication is that an association not for gain can separately apply the compulsory and voluntary registration thresholds to each of its branches, divisions or enterprises in order to determine which of them must, or could be registered. The association not for gain could therefore end up registering and accounting for VAT only in respect of certain specific taxable activities, instead of all activities. (See the *VAT 414 – Guide for Associations not for Gain and Welfare Organisations* for more information in this regard.)

2.8 Application by persons not yet awarded a tender

If any person who is not already registered for VAT, intends submitting a tender for project work (whether it be in the private or public sector), that person will not be registered as a vendor in anticipation of being awarded the contract. Only once the tender outcome is final and the contract awarded to that person, will SARS consider an application for registration as a vendor. This will also be subject to the normal VAT registration requirements as set out earlier in this chapter being met.

The State Tender Board (Office of the Chief Procurement Officer) has been informed that the applications for VAT registration by persons who have not as yet been awarded a tender, will be denied due to the fact that the relevant provisions of the VAT Act would not yet have been met.

If a person has incorrectly been registered in anticipation of being awarded a tender and the tender is not awarded, the person would have to de-register. The registration therefore places an unnecessary administrative burden on SARS and the person concerned.

[45] Section 23(5).

2.9 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.[46]

The Commissioner will also deregister 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
- no longer complies with the requirements for voluntary registration.

The SARS office where you are registered should be informed promptly in writing of your situation whether you want to voluntarily deregister, your circumstances have changed so that you are no longer liable, or you are no longer eligible to be registered as a vendor.

Cancellation of registration normally takes effect from the last day of the tax period in which a vendor ceases trading. However, in the case of a voluntary deregistration, the Commissioner will decide the date of deregistration and the final tax period. In that regard, you must continue to charge and declare VAT on supplies made and make input tax and/or other deductions that you are entitled to, up to the last day of the final tax period as advised by SARS.

The Commissioner may also decide to deregister a person who has successfully applied for voluntary registration and it subsequently appears that any of the specific circumstances mentioned under **2.3.9**, in respect of which the Commissioner may refuse to allow a person to voluntarily register, are applicable to that person.[47] 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.[48]

Any of a vendor's separately registered enterprises/divisions/branches may also be cancelled[49] if –

- the vendor applies in writing;
- the main registration is cancelled (in which case, all of the branch registrations will be cancelled); or
- it appears to the Commissioner that the duties under the VAT Act or the TA Act have not been carried out properly.

The effect of the cancellation of a branch registration is that all duties revert to the main branch. See **6.2.1** and BGR 17 "Cancellation of Registration of Separate Enterprises, Branches and Divisions" for more information in this regard.

With effect from 1 April 2019, the compulsory registration threshold for foreign electronic services suppliers was increased from R50 000 to R1 million. These suppliers may apply to cancel their VAT registration if the value of electronic services supplied to South African recipients did not exceed R1 million the preceding 12-month period.[50]

46 Section 24(1) and (2).
47 Section 24(6).
48 See section 24(5)(*b*).
49 See section 50(3) and (4).
50 Section 23(1A).

A vendor that has no intention to continue as a voluntary VAT registrant may apply to be deregistered on the basis that the value of taxable supplies is less than R1 million in a 12-month period. A person, being a microbusiness (see **2.3.8**) with a turnover equal to or less than R1 million, may elect to remain registered for VAT and there is no longer an automatic deregistration from the VAT register. See the **SARS website** for more information.

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.

2.10 Diesel refund scheme

Should you consume diesel in carrying on an enterprise that performs own primary production activities in farming, forestry, mining or fishing, or certain other activities such as 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. A qualifying diesel refund user may register for the scheme at the local SARS office by completing form VAT101D.

Note that refunds under the Diesel Refund Scheme are merely processed by utilising the VAT administrative system. The concession is actually granted in respect of the general fuel levy and / or Road Accident Fund levy paid on eligible purchases of diesel used in qualifying activities 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, storage and usage, including the required storage logbooks and usage logbooks that substantiate the actual volumes of diesel stocks and its application for qualifying or non-qualifying activities during the tax period. Remember that a refund of the general fuel levy and / or Road Accident Fund 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 qualifying purposes.

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 any other amount that may be levied as a result of that non-compliance. It is therefore important to make sure that you actually qualify for the Diesel Refund Scheme before registering and that the eligible purchases of diesel were in fact used for qualifying purposes before making a diesel refund claim on your VAT return.

For more guidance on Diesel Refunds see section 75 and Note 6 to Part 3 of Schedule No. 6 to the Customs and Excise Act which is available on the **SARS website**.

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, six or twelve calendar months. 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. See **3.3** and BGR 19 “Approval to End a Tax Period on a Day Other Than the End of the Month” 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 period of 12 months. (Remember that if a person operates more than one business, or a business with different divisions, branches or separate enterprise activities, the sales of all the separate components of the enterprise must be added 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);
- 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 in any consecutive period of 12 months 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. Where SARS detects an increase in turnover to an amount exceeding R30 million, SARS will change the registration to Category C and inform the vendor accordingly.

Failure to notify SARS may result in interest and penalties being levied. All vendors falling within Category C tax period must submit their returns in electronic format and make payments electronically on eFiling.

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 for vendors –

- who are micro businesses under the Income Tax Act and have made a written application to be placed under Category D; or
- who solely carry on a farming, pastoral or agricultural 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; or
- who solely carry on a farming, pastoral or agricultural enterprise as a separate enterprise, branch or division of a vendor or an association not for gain as contemplated in **2.7.2** and whose total turnover has not exceeded R1,5 million in the past 12 months and is not likely to exceed that amount in the next 12 months. This category is only available to the specific separate enterprise, branch or division of a person that carries on a farming, pastoral or agricultural enterprise and does not apply to all taxable activities of that person.

If you have been allocated this category it means that you are required to submit your returns every six-months, 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.

3.1.4 Annual tax period (Category E)

Under this category you are required to submit one return every 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 must submit a written application in the prescribed form for registration under this category and 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.

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, should the vendor not fall within Category C, D or E. If a tax period other than Categories A or B is required, the vendor needs to meet the requirements for that tax period and apply for it.

3.2.2 Change of circumstances after registration

A request for a change of category can only be done at a SARS branch office, 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 (the vendor is required to submit proof that SARS made an error); 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).

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 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 12 months.

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 any consecutive period of 12 months.

3.3 The 10-day rule

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. The day or date can be before or after the end of the tax period but it must be used consistently for a minimum period of 12 months.[51]

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 (or the last business day in the case of eFiling users)[52] after the end of the month covered by that tax period).

SARS has approved the following categories[53] of fixed cut-off dates subject to the 10-day rule:

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

[51] 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 under the 10-day rule.

[52] See **10.3** for more information.

[53] See BGR 19 "Approval to End a Tax Period on a Day other than the Last Day of a Month" for more details.

In any other case, if the preferred cut-off dates do not fall within one of the categories listed in BGR 19, the vendor concerned may apply for a VAT ruling or VAT class ruling to determine another appropriate date on which the tax period(s) should end.[54]

[54] See **Chapter 15** for more details on how to apply for a VAT ruling.

Chapter 4
Accounting basis

4.1 Introduction

The South African VAT system generally requires vendors 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.[55]

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; or
- At the time any payment is received by the supplier.

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. In order to substantiate the deduction, the vendor must be in possession of prescribed documentation – see **Chapter 8**. Furthermore, the vendor also needs to consider if the input tax on any particular supply is specifically denied before making a deduction.

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, amongst others, rental agreements, fixed property, coin operated vending machines. See **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 – see **4.5.2**).

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

Some of the advantages and disadvantages of the invoice basis of accounting are set out in the table below:

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

Under the payments basis (or cash basis) 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 intended to help certain types of businesses. (Note however those instances as discussed in **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 payments 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. A person may be allowed to account on the payments basis from the date of registration. However, if the person previously accounted for VAT on the invoice basis, that person will only be allowed to account on the payments basis from a future tax period as specified by the Commissioner.

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.
- Public authorities, water boards, certain municipal entities, municipalities, associations not for gain and welfare organisations – regardless of the value of taxable supplies.
- Vendors who are non-resident suppliers of certain electronic services or intermediaries through which such supplies are made.[56] (See **2.1.5** for more details in this regard).

[56] See amended section 15(2)(*a*)(vii).

- Certain vendors that have been allowed to register voluntarily in accordance with section 23(3)(*b*)(ii) must account for VAT on the payments basis until the R50 000 threshold is met.[57]
- The South African Broadcasting Corporation as contemplated in section 8A of the Broadcasting Act 4 of 1999.[58]

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 above.

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

Advantages	Disadvantages
• Suitable for small businesses. • Advantageous when the vendor allows lengthy periods of credit. • Facilitates cash flow.	• May 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 January to February 2023. Input tax and output tax is calculated by applying the applicable tax fraction (15/115) 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 R46 000 (cash received R11 500)	6 000	1 500
Input tax		
Total purchases R23 000 (paid full amount in cash)	3 000	3 000
VAT payable / (refundable)	**3 000**	**(1 500)**

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 500 would be declared and input tax of R3 000 deducted in the Jan-Feb 2023 VAT201 return.

[57] 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)].

[58] With effect from 1 April 2016. See section 15(2)(*a*)(viii).

4.4 Change of accounting basis

A change of accounting basis may occur where the vendor applies to SARS and receives permission 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. A vendor may, in certain instances, elect to change the accounting basis by accessing the RAV form on efiling.[59]

A vendor that is registered on the payments basis may, at any time, submit a written application to SARS to use the invoice basis. SARS may also require a vendor to change from the payments basis to the invoice basis if that vendor ceases to qualify for the payments basis. For example:

- A vendor who is a natural person (or partnerships consisting only of natural persons) may have achieved business growth over time and managed to exceed R2,5 million threshold prescribed in the VAT Act. Such vendors cease to qualify for the payments basis at the end of the tax period in which the value of taxable supplies in any consecutive period of 12 months exceeded R2,5 million or if that threshold is likely to be exceeded in the next 12 months. (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 abnormal circumstances of a temporary nature, the payments basis may be retained).
- 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).
- A vendor that 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 it falls within one of the entities who qualify to be on the payments even after reaching the threshold.[60]

A vendor that is registered on the payments basis (other than a vendor that is obliged to use such basis due to voluntary registration under section 23(3)(*b*)(ii)) –

- is required to notify SARS in writing within a prescribed period of 21 days of ceasing to qualify for the payments basis; and
- must change to the invoice basis from the commencement of a future tax period as determined by the Commissioner where the vendor has applied in writing for such change or has notified SARS within the prescribed period of 21 days that it has ceased to qualify for the payments basis. The Commissioner may determine that the invoice basis should be used from any tax period, including a past tax period, where SARS is satisfied that the vendor has ceased to qualify for the payments basis and such vendor failed to notify SARS within the prescribed 21 days. (See **4.3** for qualifying vendors).

[59] SARS may also notify a vendor to change accounting basis from the payments basis to the invoice basis if the requirements for the payments basis are no longer met.

[60] Section 15(2B).

Whatever the reason for changing the accounting basis, the vendor must make the necessary changes to the registered particulars on eFiling and include the adjustment on the return for the period concerned. Vendors need to keep the calculation and a list of debtors and creditors as part of their records and submit same on eFiling (if requested) or to the SARS office where that vendor is registered.

Example 5 – Change in accounting basis adjustment

S is a sole proprietor and trades under the name "ABC". S is registered on the payments basis and noticed that the turnover for the previous 12 months has increased to R2,9 million (exceeding the R2.5 million threshold). S notified the Commissioner within 21 days that the criteria to qualify for the payments basis are no longer met and should change to the invoice basis as from 1 March 2023. S must now make the required adjustment in respect of debtors and creditors.

On 28 February 2023, S draws up the list, which reflects the balance of debtors to be R250 000 (including VAT at 15%) and the balance of creditors to be R215 000 (including VAT at 15%).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 × 15 / 115 = R4 565,22
S declares this amount in field 12 on the 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 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:
R100 000 × 15 / 115 = R13 043,48
which would be deducted in field 18 on the VAT return (input tax).

Notes:

1. 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 amounts payable to creditors which relate to non-permissible expenses.
2. There is no special rate-specific rule that deals with situations where the debtors and creditors balances include VAT charged at different standard rates of VAT. Therefore, if you need to make this calculation in such a situation, you will first have to identify the separate debtors and creditors balances that include the different standard rates of VAT and then apply the relevant tax fraction to each part. You cannot merely apply the tax fractions 14/114 or 15/115 (as the case may be) to the full VAT-inclusive balances, because it will not correspond to the actual VAT that you have charged to customers or that you have been charged by suppliers.

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 set out below.

4.5.1 Instalment credit agreement

Suppliers of taxable goods under an Instalment Credit Agreement (ICA) must account for the full amount of output tax in the tax period in which the goods are delivered or any payment of the consideration is received, whichever is the earlier, 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 unless specifically denied.

4.5.2 Fixed property

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), provided the time of supply has been triggered.

4.5.3 Consideration more than R100 000[61]

In the case of a supply for a consideration of R100 000 or more, vendors registered on the payments basis (other than public authorities, municipalities and certain municipal entities) 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 **4.5.2**.

4.5.4 Second-hand goods

In the case of the acquisition of second-hand goods under a non-taxable supply, vendors may only deduct the notional input tax to the extent that payment of the consideration for the supply has been made by the vendor, regardless of whether that vendor is registered on the invoice or the payments basis. See **8.3.4** for more details on second-hand goods acquired under a non-taxable supply.

4.5.5 Supplies affected by a change in the VAT rate

There are a number of factors that a vendor must take into account when calculating the correct input tax and output tax for a tax period when there has been a change in the VAT rate. For example, on 1 April 2018 the standard rate of VAT increased from 14% to 15%.

Vendors should be mindful of the time of supply rules for the different types of supplies made or received, as there may be rate-specific rules that apply. You will need to know these rules to establish whether you have charged the correct rate of VAT to your customers, or been charged the correct rate of VAT by your suppliers. This, in turn, will affect the completion of your VAT201 return. Although most of the consequences in this regard will be limited to the VAT201 returns immediately before or after 1 April 2018 (which is when the VAT rate increased), there are a few situations where the old standard rate of VAT will continue to apply for a number of months after the date that the VAT rate changed.

61 Section 15(2A), as amended with effect from 1 April 2017.

For more detailed information on the VAT rate increase see the *Frequently Asked Questions (FAQs): Increase in the VAT Rate* and the *Pocket Guide on the VAT Rate Increase on 1 April 2018* on the **SARS website**. These FAQs, in particular, explain in some detail how to deal with the different situations which you may face in this regard.

4.5.6 Supplies of valuable metal under the domestic reverse charge

The DRC Regulations applies to all registered vendors that buy and sell gold and goods containing gold in the specified forms as provided in the definition of "valuable metal" as defined in the DRC Regulations. Examples of affected vendors are mines, dealers in gold, wholesale and retail jewellers, and coin shops.

In the case of supplies of valuable metal between certain VAT registered vendors, the DRC prescribes special rules relating to accounting for the output tax and the claiming of input tax. Unlike conventional VAT rules, the DRC Regulations shifts the responsibility of accounting for VAT on the supply of valuable metal to the recipient instead of the supplier, subject to certain requirements set out below.

The supplier must issue a tax invoice and account for the VAT-exclusive value of the valuable metal in field 3 of the VAT201 return for the tax period in which the time of supply is triggered (generally the earlier of payment received or invoice issued). The recipient must account for output tax on the supply of valuable metal in field 12 of the VAT return, in the tax period in which the tax invoice is held or created by the recipient in respect of that supply (and not in the tax period in which the invoice is issued or payment is received by the supplier). In addition, the recipient will only be entitled to deduct input tax in respect of the supply of valuable metal, if the recipient has declared and paid the VAT in the recipients VAT201 return. The input tax must be claimed in field 18 of the VAT201 return.

The DRC will only apply if the following requirements are all met:

- The supplier is a registered vendor.
- The recipient is a registered vendor.
- The goods and ancillary goods or services supplied must fall within the meaning of "valuable metal" as defined in the DRC Regulations.[62] In short, the good supplied must contain gold, must be in the forms specified, and must not fall within one of the exclusions in the said definition.
- The supply is taxable at the standard rate, which is currently 15%. This means that any supply that is zero-rated, such as the export of a valuable metal or the supply of a Krugerrand coin, does not fall in the DRC.

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62 "**valuable metal**" means any goods in the form of jewellery, bars, blank coins, ingots, buttons, wire, plate, sponge, powder, granules, in a solution, sheet, tube, strip, rod, residue or similar forms, containing gold, including any ancillary goods or services but does not include supplies-

(*a*) of goods produced from raw materials by any "holder" as defined in section 1 of the Mineral and Petroleum Resources Development Act 28 of 2002, or by any person contracted to such "holder" to carry on mining operations in respect of the mine where the "holder" carries on mining operations; or

(*b*) Contemplated in section 11(1)(f), (k) or (m) of the Act;

(c) of valuable metal containing less than 1 per cent of gold in gross weight; or

(d) jewellery plated with gold where the gold is present as a minor constituent only."

The DRC Regulations also prescribes certain duties and responsibilities on the supplier and recipient which are further explained in the Explanatory Memorandum. More information on this topic is available in the Frequently Asked Questions (FAQs): Domestic Reverse Charge Regulations on the SARS website as well as the article “Domestic Reverse Charge Regulations” in VAT Connect 14.

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 those which are the most common. These rules determine when a transaction has occurred for VAT purposes and the value of a transaction on which VAT must be calculated and subsequently accounted for in a particular tax period. This is influenced not only by the timing and valuation rules, but also the accounting basis (see **Chapter 4**) and tax period (see **Chapter 3**) which determines the due date for payment and the rendering of returns (see **Chapter 10**).

For more details on the time of supply and value of supply, please see 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, the regulation issued under GN 2835[63] applies.

5.2 Time of supply

5.2.1 General rule

Generally, the time of supply is the earlier of the time an invoice[64] is issued by the supplier (or the recipient in certain instances), or the time any payment of consideration is received in respect of that supply. In this regard it must be noted that a “deposit” received that does not form part of the payment due (that is consideration payable) for a supply, will not trigger the time of supply, unless and until, it is applied as payment against the consideration.

Specific time of supply rules apply to certain transactions. A few examples are dealt with 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:

- If the goods supplied are to be removed – the time of supply occurs at the time the goods are removed.
- If the goods supplied are not removed – the time of supply occurs at the time the goods are made available to the recipient.
- If services are supplied – the time of supply occurs at the time the services are performed.

63 GN 2835 in *GG* 13651 of 22 November 1991.

64 This is any document notifying you of an obligation to make payment and is not necessarily a tax invoice.

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; or
- the consideration cannot be determined at the time the supply is deemed to be made to a connected person who is entitled to deduct input tax in full.[65]

Example 6 – Time of supply for connected persons

Facts:

Farmer A is a vendor registered under Category B. Farmer A rents a harvesting machine to a person who is connected to Farmer A (that is, Farmer B), during the peak season from January to March. Farmer B collected the machine from Farmer A on 10 January 2023. Farmer A submits the return for February on 25 March 2023.

Result:

If no payment was received, and no invoice was issued by 25 March 2023, the time of supply will be at the time that the goods were removed on 10 January 2023. Farmer A will, therefore, have to account for the supply in the February 2023 return. If Farmer A issues an invoice for the rental on or before 25 March 2023, the normal time of supply rules apply, in which case, Farmer A will declare the VAT on the supply in the return ending April 2023.

5.2.3 Progressive, successive and periodic supplies

A supply of goods or services is deemed to be successive if the goods or services 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 for each concessive 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 on-going contracts for maintenance, management or cleaning services.[66]

In the case of goods and services supplied directly in connection with 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.

65 The second proviso to section 9(2) which is effective from 1 April 2016.

66 Section 9(3)(*a*) and (*b*).

Example 7 – Progressive supplies (construction)

Facts:

J's Construction is registered for VAT under Category C tax period (monthly) and enters into 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 2023 and February 2023, the work certified as completed by the appointed Project Manager was 10% and 23% respectively. J's Construction issued two tax invoices as follows:

- Invoice 1357 – 31 January 2023 R650 000 (10% of R6 500 000)
- Invoice 1358 – 28 February 2023 R845 000 (23% of R6 500 000 *less* R650 000 already invoiced)

Result:

As the goods are deemed to be supplied progressively, J's Construction will not account for the full contract price at the time the agreement is entered into. J's Construction will account for VAT of R84 782,61 (15 / 115 × R650 000) in the January 2023 return and R110 217,39 (15 / 115 × R845 000) in the February 2023 return.

5.2.4 Instalment credit agreements

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. The goods supplied in terms of an ICA relates to corporeal movable goods and plant and machinery. Supplies made under an ICA are not regarded as being supplied successively as discussed in **5.2.3**.

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). This excludes a "deposit" as it 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 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. See the *VAT 409 – Guide for Fixed Property and Construction* for more details on the VAT treatment of fixed property.

5.2.6 Fringe benefits

The cash equivalent of a fringe benefit under the Seventh Schedule to the Income Tax Act is required to be included in the remuneration of the employee who has received that benefit or advantage for income tax purposes. The time of supply for VAT purposes is the end of the month in which such benefit is required to be included in the remuneration of the employee. 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

A lay-by agreement generally relates to a supply of goods or services 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 supply of goods under a lay-by agreement is only deemed to take place when the goods are delivered to the recipient. 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 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.

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; and
- parking meters.

The time of supply rule for the vendor making the supply (that is the supplier) 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, a 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 (such as swiping the debit/credit card).

5.2.9 Betting transactions

A betting transaction occurs 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 time of supply rule for the vendor making the supply (that is the supplier) is deemed to be supplied to the extent of the payment of any amount of the bet is made. 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. See Interpretation Note 41 “Application of the VAT Act to the Gambling Industry” and BGR 59 “Calculation of VAT for table games of chance” (relating to casinos) for more information.

5.2.10 Supplies made by a branch

In the case of an entity that conducts its activities through a single company which has both a South African establishment (SA Branch) and an offshore establishment, the enterprise carried on through the SA Branch is deemed to be carried on by a separate person from the offshore establishment. This rule applies if each enterprise is independent and can be separately identified with reference to their separate accounting records and location of the enterprise. Any goods or services supplied by the SA Branch to the offshore establishment will, in that case, be recognised for VAT purposes. The time of supply will be when the goods are consigned or physically delivered to the offshore establishment or when the services are rendered to the offshore establishment.

5.3 Value of supply

5.3.1 General rule

The value of a supply for VAT purposes is directly linked to the consideration received for the said supply. In this regard, 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 OMV thereof. The OMV 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 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 OMV, or for a consideration which cannot be determined at the time the supply is made, the consideration for the supply is equal to the OMV if the recipient would not have been entitled to a full input tax deduction on the goods or services acquired, had the OMV been charged in respect of that supply. This rule is not applicable where the supply concerned is a fringe benefit to an employee (not being a “connected person”) as there are other special rules which apply in those situations. See **5.3.6**.

5.3.3 Instalment credit agreements

The consideration in money is deemed to be the cash value of the supply. The cash value excludes any interest, finance charges and related admin fees but includes VAT and the sales amount for which the goods were sold. In the case of a banker or financier, the cash value includes the sales amount for which the goods were sold, 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) that form part of the capital amount financed under the ICA.

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 and services[67] (for example, meals, laundry services, the use of a telephone) in a house, flat, apartment, room, hotel, guest house etc.

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. See **2.1.6** for more details on commercial accommodation activities and **7.2** on the activities for the letting or hiring of a dwelling.

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 and 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. See the *VAT 411 – Guide for Entertainment Accommodation and Catering* for more information.

5.3.5 Barter transactions

In barter transactions, goods or services are exchanged for other goods 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 OMV of the goods or services received.

Example 8 – Barter transaction

Facts:

ABC Rugby Club has received a sponsorship contract from C Hardware Stores in terms of which they are provided with rugby kits to the value of R10 000 as well as R5 000 in cash. In exchange, ABC Rugby Club will provide advertising, publicity and exposure of the C Hardware Stores brand. Both ABC Rugby Club and C Hardware Stores are vendors.

ABC Rugby Club		**C Hardware Stores**	
	R		R
Output tax:		***Output tax:***	
(On the advertising and publicity supplied)		*(On the rugby kit supplied)*	
OMV of rugby kit received as payment	10 000	OMV of advertising and publicity	15 000
Cash received as payment	5 000		
Total consideration received	15 000	Total consideration received	15 000
VAT (15 / 115 × R15 000)	**1 957**	VAT (15 / 115 × R15 000)	**1 957**

[67] The term “domestic goods or services” has been extended to include water with effect from 1 April 2016.

Input Tax: *(On the rugby kit acquired)*		***Input tax*** *(On the advertising and publicity acquired)*	
Input tax (15 / 115 × R10 000)	**R1 304**	Input tax (15 / 115 × R15 000)	**R1 957**

Input tax is allowed on any taxable goods or services acquired to make taxable supplies. Money is not regarded as either goods or services for VAT purposes and ABC Rugby Club can only deduct input tax on the OMV of the rugby kit acquired. C Hardware Stores will be entitled to deduct input tax on the advertising and publicity services it received.

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 VAT on the fringe benefit must be calculated by the employer and must be reflected in the employer's VAT return, even if the employer does not recover the VAT from the employee enjoying the fringe benefit. Note that a benefit or advantage arising by virtue of an exempt or zero-rated supply, or granted in the course of making exempt supplies, or a supply of entertainment is not subject to tax.

The consideration for a benefit that consists of a right to use a motor vehicle is determined in terms of the regulation issued under GN2835.[68] For more information on the determination of the value of the fringe benefit, see Interpretation Note 82 "Input Tax on Motor Cars".

Example 9 – Motor vehicle supplied as a fringe benefit

Facts:

D's Wholesalers (a vendor registered under Category B tax period) purchases a "motor car" for R115 000 (including VAT of R15 000) on 1 March 2023. D's Wholesalers is not entitled to deduct input tax on the acquisition of the "motor car" as it is a prohibited deduction.

An employee of D's Wholesalers (who is paid monthly) is granted the right to use the motor car with effect from 1 March 2023, and D's Wholesalers bears the full cost of maintaining the vehicle.

Result:

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%) (see *VAT Regulation 2835* dated 22 November 1991)

= (R115 000 – R15 000) × 0,003 = **R300**

Step 2 The amount of output tax payable per month will be:

R300 × 15 / 115 = **R39,13**

[68] GN 2835 in *GG* 13651 of 22 November 1991.

Step 3 The first tax period covers the months of March 2023 and April 2023. Output tax on the fringe benefit for the tax period must be declared in Field 12 of the VAT201 return and paid on 25 May 2023. This must also be done for every tax period thereafter as follows:

R39,13 × 2 months = **R78,26**

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 in the form of an allowance or reimbursement from the vendor to the employee in respect of the such cost, the consideration in money so determined monthly must as determined above 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 –[69]

- 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 betting services to the punter. The consideration for the betting services is the total amount received in respect of the bet. Output tax is calculated by applying the tax fraction to the gross amount of the bet received.

For more information see Interpretation Note 84 “The Value-Added Tax Treatment of Bets”.

For betting transactions involving table games of chance in casinos, see BGR 59 “Calculation of VAT for table games of chance”.

[69] See Interpretation Note 42 “The Supply of Goods and Services by the Travel and Tourism Industry” for more information.

Chapter 6
Taxable supplies

6.1 Introduction

The term "supply" is widely defined in the VAT Act to include performance under any sale, rental agreement or 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. 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.[70] 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 exempt supplies. This chapter only addresses the VAT implications of taxable supplies. Exempt supplies are dealt with in **Chapter 7**.

6.2 Standard-rated supplies

A supply of goods or services by a vendor is normally subject to VAT at the standard rate (currently 15%). As explained in **Chapter 1**, as a general rule, all taxable supplies of goods and services are subject to VAT at the standard rate, unless they are specifically zero-rated under section 11 (see **6.3**), or exempt under section 12 (see **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 and so forth.
- 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 electricity, water and refuse removal. (See the *VAT 419 – Guide for Municipalities*).
- 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. See the *VAT 411 – Guide for Entertainment Accommodation and Catering* for more information.
- 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.

[70] See **Chapter 2** for more details on "enterprise".

- Motor vehicles, repair services, lubrication oils and spare parts.

6.2.1 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, or deemed not to be supplied in the course or furtherance of an enterprise. Deemed supplies will generally attract VAT at either the standard rate or zero rate.

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 – when a vendor deregisters as a vendor, certain goods or rights forming part of the enterprise's assets are deemed to be supplied in the course of the vendor's enterprise, immediately before the person ceased to be a vendor, irrespective of when those assets may have been acquired, subject to certain exceptions;
- short-term (non-life) insurance claims that have been paid in connection with the enterprise (for example, insurance payouts received for damaged or stolen stock) (see the *VAT 421 – Guide for Short-Term Insurance* and BGR 14 "VAT Treatment of Specific Supplies in the Short-Term Insurance Industry");
- the receipt of payments from government by designated entities for the purposes of taxable supplies (see the *VAT 414 – Guide for Associations not for Gain and Welfare Organisations*);
- betting and other gambling transactions (see Interpretation Note 41 "Application of the VAT Act to the Gambling Industry"); and
- change in use adjustments (see **Chapter 9**).

Example 10– Insurance indemnity payment (deemed supply)

Facts:

P is a vendor and P's delivery driver was involved in an accident on 5 January 2023 in which the delivery van was damaged. P subsequently makes a claim to P's insurer to make good the damages as per the policy contract. The insurer makes an electronic payment of R57 000 on 1 February 2023 to compensate for the loss.

Result:

As P is a vendor and registered under Category B tax period, and the delivery van was used in P's enterprise, the indemnity payment is deemed to be received in the course of P's enterprise. P must therefore account for output tax in the February 2023 return. The VAT is calculated as the tax fraction of the amount received, as follows:

R57 000 × 15 / 115 = R7 435.

Example 11 – Trading stock taken out of business for private use (deemed supply)

Facts:

AB, a vendor, owns a paint and décor store. During February 2023, AB decides to paint the exterior of a private residence used by AB using paint from AB's store.

Result:

Since AB uses paint from trading stock in order to paint the home, a supply is deemed to be made. AB must accordingly account for output tax on the OMV of the paint used as follows:

Output tax: R28 000 × 15 / 115 = R3 652.

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. Vendors making zero-rated supplies are still able to deduct input tax in full on the goods or services acquired in the making of the zero-rated supplies. The documentary requirements under section 11(3) and set out in Interpretation Note 30 "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 "Documentary Proof Required for the Zero-Rating of Goods or Services", respectively. See also **Chapter 12** for more detail on exports and the documentation required.

Some examples of zero-rated supplies are briefly explained below:

6.3.1 Basic foodstuffs

Certain basic foodstuffs listed as items in Part B to Schedule 2 read with section 11(1)(*j*) are zero-rated. These include the following:

• brown bread	• dried mealies and mealie rice
• brown bread flour (excluding wheaten bran)	• samp
• hens eggs[71]	• fresh vegetables and fruit[72]
• dried beans	• lentils
• maize meal[73]	• rice
• pilchards in tins or cans	• vegetable cooking oil (excluding olive oil)[74]
• milk, cultured milk, milk powder and dairy powder blend	• edible legumes and pulses of leguminous plants (that is, peas, beans, peanuts etc)

71 That is, not from ostriches, ducks etc.

72 See BGR 35 "The Value-Added Tax Treatment of the Supply and Importation of Potato Products and BGR 38 "The Value-Added Tax Treatment of the Supply and Importation of Vegetables and Fruit" for more information.

73 Certain specified graded maize products are listed in the Item. The list was expanded with effect from 1 April 2022 to include super fine maize meal.

74 See BGR 33 "The VAT Treatment of the Supply or Importation of Vegetable Oil" for more information.

The specific item descriptions in Schedule 2 contain more details about the requirements to be met and products concerned that fall within the scope of the zero-rating. Certain products are specifically mentioned as exclusions, and in some cases, the conditions under which the products are supplied, packaged or manufactured may prevent the zero-rate from being applicable.

For example, 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.

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 “marked” illuminating kerosene (paraffin) intended for use as fuel or for heating is subject to VAT at the zero rate. 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 supply of an enterprise or part of an enterprise which is capable of separate operation as a going concern qualifies for the zero rate if all of the requirements are met under section 11(1)(*e*). The supply of the enterprise will be subject to VAT at the standard rate if any of the requirements are not met.

In addition, it must be clearly evident, and agreed to in writing by the parties, that the enterprise is disposed of as a going concern. 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, amongst others, all the necessary income earning business assets and client base. 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.

An enterprise is considered to be supplied as a going concern if –

- the supplier and the recipient are both registered vendors;
- the supplier and the recipient agree in writing that such enterprise is supplied as a going concern;
- the sale agreement provides that the enterprise will be an income-earning activity on the date of transfer from the supplier thereof to the recipient;
- the assets which are necessary for carrying on such enterprise are disposed of by the supplier to the recipient; and
- the supplier and the recipient agree in writing that the consideration for the supply of the enterprise is inclusive of tax at the zero rate.

See *VAT-REG-02-G01 – Guide for Completion of VAT Registration Application Forms – External Guide* and Interpretation Note 57 "Sale of an Enterprise or Part Thereof as a Going Concern" for more details on the supply of an enterprise as a going concern.

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 disposal of a business yet to commence.
- The disposal of a dormant business.

The enterprise sold does not have to be profitable at the date of transfer but the enterprise activities must be able to continue after the sale of the enterprise. The inclusion of goodwill as an asset in the sale of the enterprise is generally indicative that a business is being sold as a going concern.

6.3.4 Services relating to intellectual property rights

Services supplied in connection with intellectual property rights for use outside the Republic are taxable supplies which are subject to VAT at the zero rate. Any ancillary services supplied together with these intellectual property rights may also be zero-rated. Should the intellectual property rights be used in the Republic, all services supplied in connection with such intellectual property rights must be standard rated.

6.3.5 Certain payments to welfare organisations made by public authorities and municipalities

To the extent that a welfare organisation receives a subsidy or grant payment from a public authority or municipality to enable it to carry on its welfare activities as listed in the Regulations,[75] that welfare organisation is deemed to supply services at the zero rate to the public authority or municipality. This excludes any payment for actual supplies made to the public authority or municipality, or payment for a specific supply made to a third person on behalf of that public authority or municipality. See **2.3.3** and Interpretation Note 39 "VAT Treatment of Public Authorities and Grants" for more information.[76]

[75] Refers to the regulations issued under GN 112 in *GG* 27235 of 11 February 2005.

[76] See also *CSARS v Marshall NO and Others* [2016] ZASCA 158; 2017 (1) SA 114 (SCA) and Interpretation Note 70 "Supplies made for No Consideration".

6.3.6 Foreign donor funded project

A vendor that is appointed as an "implementing agency" in respect of implementing, operating, administering or managing an FDFP in the Republic is deemed to supply a service to an international donor to the extent of donor funds received from the international donor. The supply of the said service is taxable at the rate of 0%. See **2.1.4** for more details on FDFPs.

6.3.7 Goods temporarily imported for repairs

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. See Interpretation Note 31 "Documentary Proof Required for the Zero-Rating of Goods or Services" for more information on the documentation required by a vendor in order to apply the zero-rating to the supply of goods and services

Example 12 – Repair of a foreign-going aircraft

Facts:

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.

Result:

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, the prescribed documentation for example, the particulars of the foreign-going aircraft (that is, the make, name, registration number and country of registration).

6.3.8 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 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" as defined in Article 1 of the Convention set out in the Schedule to the Carriage by Air Act 17 of 1946.[77]

[77] The VAT Act does not define the term "international carriage". For more details, see Interpretation Note 103 "The value-added tax treatment of supplies of international and ancillary transport services".

Example 13 – International transport services

Facts:

Passenger X purchases an air-ticket from Airline A (vendor) for the flight from Cape Town to London (England). Airline A contracts with Airline C (vendor) to fly Passenger X from Cape Town to Johannesburg, from where Airline A flies Passenger X to London.

What is the VAT treatment of the passenger flights?

Result:

Airline C is supplying a domestic passenger flight to Airline A and VAT at the standard rate must be levied. The zero rate is not applicable as Airline C is not contractually supplying the domestic leg of an international passenger flight.

Airline A is supplying an international transport service, which incorporates a domestic leg, to Passenger X, originating at a place in the RSA (Cape Town) and ending in an export country (London). Airline A must charge VAT at the zero rate under section 11(2)(*a*)(ii) and section 11(2)(*b*) respectively.

6.3.9 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.

6.3.10 Services physically performed outside the Republic

The supply of services physically rendered or performed outside the RSA, or to a customs controlled area enterprise or a special economic zone operator in a customs controlled area qualifies for the zero rate.[78] This provision applies 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.

6.3.11 Certain services supplied to non-residents

The supply of certain services to a non-resident may qualify for the zero rate under section 11(2)(*l*) provided certain conditions are met. However, the standard rate will apply in the following cases where the services are supplied directly –

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

[78] See Interpretation Note 40 "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.

It is also a condition of the zero-rating under section 11(2)(*l*) that the non-resident person (or any other person consuming the service) is not present in the RSA at the time the services are rendered.

The supply of services to non-residents must be tested against all the exclusions in sub-paragraphs (i) to (iii) of section 11(2)(*l*) in order to qualify for the zero-rating.

Example 14 – Services supplied by a vendor to a non-resident in respect of movable property

(a) Movable property subsequently exported

Facts:

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 GR 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.

Result:

The services supplied by CI will be made directly in connection with movable goods situated in the RSA. As a result, VAT would usually be charged at the standard rate. However, as the machine will subsequently be 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

Facts:

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 an 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 LBW (an RSA vendor) who will perform the necessary services on behalf of K at B's premises.

Result:

The supply of the service by LBW forms part of the supply by K to B and the supply by LBW to K (who is not an RSA resident nor a vendor) is therefore subject to VAT at the zero rate.

See Interpretation Note 85 "The Master Currency Case"[79] in which the Court confirms the Commissioner's interpretation of the zero-rating provisions in section 11(2)(*l*) and Interpretation Note 81 "The Supply of Goods and Services by Professional Hunters and Taxidermists to Non-residents" for more information.

[79] *Master Currency (Pty) Ltd v Commissioner for South African Revenue Service* 2014 (6) SA 66 (SCA).

6.3.12 Restraint of trade agreements

A restraint of trade agreement places an obligation on one of the parties to such agreement, to refrain from pursuing or exercising specific rights. The supply of services under a restraint of trade agreement concerning the exercise of those rights listed in paragraph (i) of section 11(2)(*m*)[80] for use outside of the Republic is zero-rated. The supply of services in respect of a restraint of trade of rights to be used in the RSA is standard-rated.

6.3.13 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.

6.3.14 Farming goods

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 the zero-rating will be repealed from a date to be determined by the Minister and published by way of a notice in the *GG*.

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 with 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 locally 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.

[80] Such as filing, assignment, licensing, including patents, designs, trade-marks.

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[81] indicating the vendor's entitlement to acquire the goods at the zero rate. 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 must be presented to the supplier (for example, co-operatives and abattoirs) 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.
- 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 SARS finds that the above conditions have not been met, the supplies in question will be subject to VAT at the standard rate.

Note that the zero-rating in respect of the agricultural products concerned 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;
- 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 dichlor-diphenyl-trichloroethane (DDT); or
- such products are purchased for purposes of resale.

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

Also remember that a farmer who receives 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 under any of the items in Schedule 2 to the VAT Act as discussed above.

[81] Only vendors that are registered as conducting a farming, agricultural or pastoral enterprise as their main activity qualify for this dispensation. It is a requirement that a statement must appear on the Notice of Registration indicating that certain farming inputs may be purchased at the zero rate, subject to certain conditions. The older versions of the Notice of Registration were known as the "VAT registration certificate" or "VAT 103" and contained a similar statement in clause no. 7 of the document.

Chapter 7
Exempt and out of scope supplies

7.1 Introduction

Exempt and out of scope supplies are supplies of goods or services where no VAT is levied and input tax may not be deducted on the VAT incurred to make these supplies. A business that only makes exempt supplies does not carry on an "enterprise" for VAT purposes (see **Chapter 2**) and is therefore unable to register as a vendor irrespective of the number or value of the supplies made.

Some examples of exempt supplies include –

- financial services (such as 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);
- the sale of goods manufactured by an association not for gain if at least 80% of the value of the supply consists of donated goods or services;
- residential accommodation in a dwelling (but not commercial 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, political parties, trade unions, housing schemes and home-owners associations which are supplied out of levy contributions by such members.

7.2 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 furnishings enjoyed with the supply of the dwelling. The definition excludes the supply of "commercial accommodation". See **2.1.6.**

The letting of land to the extent that the land is used or is to be used for the principal purpose of accommodation in a dwelling either erected or to be erected on such land is also exempt from VAT.

7.3 Passenger transport (road and rail)

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

- between two places within the RSA;
- of fare-paying passengers and their baggage or belongings; and

- supplied in the course of a transport business (taxi operators/bus and rail companies) 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 and VAT at the standard rate must be levied.
- The transportation of goods does not fall within the exemption, except to the extent that it relates to the transportation of the personal belongings 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 exemption is also not applicable in respect of car-rental businesses and the free transportation of employees.
- The exemption includes various types of commuter transport, for example, suburban and mainline trains, mainline and luxury bus travelling services as well as taxis.

7.4 Educational and childcare services

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

- All State schools, schools registered under the South African Schools Act,[82] and further education and training (FET) institutions registered under the Further Education and Training Act.[83]
- Universities, universities of technologies (previously known as technikons), colleges and other institutions providing higher education which are registered under the Higher Education Act.[84]
- Institutions which are approved PBOs under section 30(1)(*a*) of the Income Tax Act which supply –
    - 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 supply of the services of crèches and after-school care centres are also exempt from VAT under section 12(*j*). The supply of lodging or boarding and lodging in certain instances by institutions such as schools, universities, colleges or universities of technology is also exempt, provided amongst others; it is supplied for a consideration in the form of school fees, tuition fees or payment for lodging or board and lodging.

82 Act 84 of 1996.
83 Act 16 of 2006.
84 Act 101 of 1997.

Example 15 – Crèche and after-school care

Facts:

BB runs a crèche and an after-school care centre. BB charges R1 000 per month for each of the 120 children which are enrolled at the centre. BB's expenses amount to R57 435 per month, of which R7 435 is VAT.

Result:

Annual Income (R1 000 × 120)	R120 000 × 12	= R1 440 000
Annual expenses (including VAT)	R 57 435 × 12	= R 689 220

BB will not register as a vendor because BB is providing exempt services of caring for children in a crèche even though the annual income is in excess of the R1 million threshold. As BB may not register for VAT, the R7 435 VAT incurred per month cannot be deducted as input tax, and consequently, the amount will form part of the business costs of running the crèche and after-school facility.

7.5 Financial services

One of the most common examples of exempt financial services as contemplated in the Act is the provision of credit. Essentially, the provision of credit is where one person under an agreement provides money to another person who agrees to repay an amount in excess of the money borrowed. The provision of credit under an agreement includes for example, the provision of a home loan or an overdraft facility.

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

- the exchange of currency by issuing bank notes or coins or even debiting and crediting transaction or credit accounts. 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, participating in a collective investment scheme, the sale of an interest in a CC, shares in a public or private company;
- the provision of life insurance policies and superannuation benefits. For example, life assurance policies, retirement annuity fund and pension fund policies or disability policies. The management of a superannuation scheme is, however, standard rated;
- the buying or selling of derivatives and options. For example, options, futures and interest-rate swaps; and
- the buying and selling of cryptocurrency (this excludes other value-added or fee-based services associated with cryptocurrency transactions such as exchange services or digital wallet management services).

All fees, commissions, merchant's discount and similar fee-based charges relating to certain financial services, are subject to VAT. For example, a credit agreement may provide for the borrower to pay both interest and fees for the credit provided. In terms of the proviso to section 2(1), only the fee will attract VAT, whereas the interest will be regarded as consideration for the supply of an exempt financial service.[85]

[85] See for example *CSARS v Tourvest Financial Services (Pty) Ltd* (Case no 435/2020) [2021] ZASCA 61 (25 May 2021).

Since financial service providers make both taxable and exempt supplies it will be required to apportion any VAT incurred (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. See **8.4** for more details.

The supply of certain financial services to a non-resident, who is not in the Republic at the time the service is rendered, may in certain circumstances be subject to VAT at the zero rate and not exempt. For example, the interest received in respect of the provision of credit to a non-resident is subject to tax at the rate of 0% provided the non-resident is not in the Republic at the time that the financial service is rendered to the non-resident.[86]

7.6 Associations not for gain and welfare organisations

An association not for gain may only register if it meets the general registration requirements – see **2.7.2** for more information. 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.

For further information, see the *VAT 414 – Guide for Associations not for Gain and Welfare Organisations.*

Example 16 – Supply of donated goods by an association not for gain

Facts:

C donates old clothes to a church as well as some off-cuts of wood from C's 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.

Result:

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 is also 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.

[86] See section 11(2)(*l*) and *Master Currency (Pty) Ltd v Commissioner for South African Revenue Service* 2014 (6) SA 66 (SCA).

- 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.[87]

7.7 Out-of-scope supplies

Supplies that do not fall within the exemptions listed and that are generally outside the scope of VAT are referred to as "out-of-scope supplies". There is often a misconception that if a supply is not made in the furtherance of an enterprise activity the supply is by default exempt. However, supplies of goods or services not specifically exempted under section 12 of the Act, are regarded as being out-of-scope supplies and input tax may not be deducted on the VAT incurred to make out-of-scope supplies.

Some examples of out-of-scope supplies are:

- Goods or services supplied by public authorities that have not been notified to register as vendors (government departments and public entities listed in Parts A and C to Schedule 3 of the PFMA).
- The sale of private assets of a vendor, which are not associated with an enterprise, for example, where a property developer sells his private residence, the sale does not form part of his enterprise and no VAT must be charged on the sale of the property. Instead, the purchaser will have to pay transfer duty on acquisition of the property, subject to any exemptions or exceptions which may be applicable.
- Certain supplies that are not made for a consideration (see IN 70).

[87] See *KCM v Commissioner South African Revenue Services* [2009] ZATC 2 and Interpretation Note 70 "Supplies made for No Consideration".

Chapter 8
Input tax and other deductions

8.1 What will qualify as input tax or a deduction?

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. See **Chapter 7** for examples of exempt supplies.

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.

(b) VAT at the standard rate must have been charged on the taxable supply (except in the case of "second-hand goods,"[88] or goods repossessed or surrendered under an ICA which have been acquired under a non-taxable supply).

(c) The appropriate documentation must be held by the vendor, as follows:

  (i) Standard-rated supplies – a valid tax invoice, debit note or credit note or other prescribed documentation. Should such tax invoice, debit note or credit note be issued in the name of the vendor's agent, the vendor must be in possession of a statement received from such agent containing certain particulars.[89]

  (ii) Non-taxable supply of second-hand goods – records must be maintained by the vendor deducting the input tax as per form VAT264 and section 20(8).

  (iii) Goods repossessed or surrendered under an ICA – records must be maintained by the vendor deducting the input tax as per section 20(8A) and the further particulars prescribed in BGR 63.

  (iv) Importation of goods – a bill of entry or other prescribed customs documentation[90] which may be required in the circumstances, including the receipt for the payment of the VAT to Customs, that is, the receipt number on eFiling. Should such bill of entry or other prescribed documentation be held by the vendor's agent, the vendor must be in possession of a statement received from such agent containing, among other particulars, the receipt number for the payment of the VAT on importation issued on eFiling.[91]

  (v) 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.

88 Refers to "second-hand goods" as defined in section 1(1).
89 Sections 54(3)(*a*) and 16(2)(*e*). See **13.6.4** for the relevant particulars.
90 See **Chapter 12** for documents that must be retained.
91 Sections 54(3)(*b*) and 16(2)(*d*A). See **12.2.2** for more details on the relevant particulars.

Remember:

- In the case of "second-hand goods", the amount of input tax that is deductible is the tax fraction of the payment made towards the purchase price.
- The VAT Act was amended with effect from 1 April 2023, to clarify that the VAT264 declaration is only required for deducting input tax in respect of "second-hand goods". New requirements apply for deducting input tax in respect of goods repossessed or surrendered under an ICA has been prescribed under the new section (20)(8A). See **13.7.2**.

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

- Trading stock and raw materials
- Manufacturing overheads
- Water, electricity and telephone charges
- Administrative overheads such as audit and accounting fees
- Marketing and advertising expenditure
- Movable assets such as office furniture, computer equipment and fixed property
- Delivery vehicles
- 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.[92] You need to be in possession of documentary proof which is prescribed by the Commissioner in order to substantiate such specified deductions.[93] Examples are deductions in respect of –

- indemnity payments made to insured's by the insurer under a contract of insurance;
- amounts paid as a prize or winnings under betting transactions; or
- change in use adjustments (See **Chapter 9**).

[92] Refers to deductions set out in section 16(3)(*c*) to (*o*).

[93] Section 16(2)(*f*). The prescribed documentation is set out in Interpretation Note 92 "Documentary Proof Prescribed by the Commissioner".

A vendor may, under section 16(2)(*g*), apply for a VAT ruling[94] requesting the Commissioner to confirm that alternative documentary proof held by the vendor may be used to substantiate a deduction, should the vendor be unable to obtain the prescribed documentation under section 16(2)(*a*) to (*f*).[95] The request for the ruling must be made at least two months before the expiry of the 5-year period within which a deduction is allowed to be made by the vendor (see **8.3.5** in this regard). SARS will only issue the ruling if satisfied that –

- the vendor has taken all reasonable steps to obtain the prescribed documentary evidence and is now applying for the ruling as a last resort to resolve the issue;
- the inability of the vendor to obtain and maintain the prescribed documentation was due to circumstances beyond that vendor's control; and
- no other provision of the VAT Act allows for a deduction based on the particular document in the vendor's possession.

8.2 How is a deduction made?

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 are where you will deduct the input tax relating to any local capital purchases and imported capital goods, respectively. Fields 15 and 15A must be completed in respect of a deduction of 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. See also **Chapter 10**.

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.

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94 See **Chapter 15** for more information on how to apply for a VAT ruling. In a case where a company undergoes a name change, the tax invoice in the old name is not invalidated as a result of that change. The recipient vendor in that case should not apply for a ruling under section 16(2)(*g*), but instead, maintain the documentary proof of the name change from the Companies and Intellectual Property Commission. SARS should be informed immediately by way of a change in registered particulars and all suppliers should be informed to correct their records as soon as possible. This will ensure that all future tax invoices can be issued in the correct (new) company name and will reduce the risk of having input tax denied by SARS.

95 With effect from 19 January 2017.

8.3 When and what to deduct

8.3.1 General

The following factors generally have an effect on the amount of input tax and/or other specified deductions you are entitled to, as well as when you may make such a deduction:

- The accounting basis on which you are registered, that is whether you are on the invoice or payments basis, and any special rules applicable to the particular supply (see **Chapter 4** for details).
- Whether the specific inputs are disallowed or are limited in any way (see **8.5** below).
- The extent to which the goods or services acquired will be used for taxable purposes (see **8.4** below in this regard).

The correct tax period in which to make your input tax deduction is determined by the accounting basis, that is, whether you account for VAT on an invoice or payments basis as discussed in **Chapter 4**. The special provisions for other specified deductions provide guidance on when each specified deduction may be made.

Under the invoice basis of accounting you may deduct an amount of input tax in the tax period in which the supply has been made to you. Under the payments basis, the vendor may only deduct input tax to the extent of actual payment made during the tax period towards the purchase price of the goods or services acquired. See **Chapter 5** for time of supply rules in order to determine when a supply has been made to you.

8.3.2 Importation of goods

With effect from 1 April 2015, VAT levied on the importation of goods may be deducted provided the goods have been released by Customs. Therefore, the input tax deduction may only be made from the tax period in which the custom release notification is issued, which can be confirmed by the date on such notification. See **12.2.2** for the documentary proof required to be held in order to substantiate the input tax deduction.

8.3.3 Fixed property

VAT incurred on the acquisition of fixed property is deductible to the extent that payment towards the purchase price has been made during the tax period and the time of supply has been triggered. For further information, see *VAT 409 – Guide for Fixed Property and Construction* for more information on the VAT treatment of fixed property.

8.3.4 Supplies of valuable metal under the DRC

Input tax may only be deducted in respect of the supply of valuable metal, if the recipient has accounted for and paid the VAT in respect of such supply on a VAT201 return. If the documents are in order, the recipient may deduct the input tax in the same tax period in which the output tax is declared.

The declaration and payment of the VAT on the supply of valuable metal will form part of the recipient vendor's normal calculation of the tax payable or refundable on the VAT201 return. The VAT component paid on any supplies of valuable metal acquired that are subject to the domestic reverse charge under the DRC Regulations must be accounted for in Field 12 of VAT201 return. Any input tax on such acquisitions of valuable metal must be shown in Field 18 of the VAT201 return.

The recipient vendor must also issue a statement containing the prescribed details[96] in writing to the vendor that supplied the valuable metal within 21 days from the end of the calendar month during which the VAT on the supply of valuable metal has been accounted and paid for by the recipient vendor.

8.3.5 Second-hand goods

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 notional input tax deduction may be made are as follows:

- The goods must be "second-hand goods" as defined in section 1(1)
- 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 a notional 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 vendor must be in possession of the prescribed records as per section 20(8). (See **Chapter 13** for more details on the prescribed records)
- The notional input tax deduction on gold and goods containing gold may be allowed provided that the goods are sold in the same or substantially the same state as when the goods were acquired.[97]

The notional input tax is calculated by multiplying the tax fraction by the lesser of the consideration paid or the OMV. Where the OMV is less than the consideration paid, the OMV will be used to calculate the notional input tax deduction.

Example 17 – Limitation of notional input tax to the extent of payment of the consideration

Facts:

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.

Result:

Input tax is calculated as follows:		R
Deduct in tax period 1 – R400 × 15 / 115	=	52,17
Deduct in tax period 2 – R200 × 15 / 115	=	26,09
Total	=	78,26

[96] Regulation 3(*e*) of the DRC Regulations.

[97] See BGR 43 "Deduction of Input Tax in Respect of Second-Hand Gold".

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 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 (that is earlier of the date on which any payment is made or the date on which the fixed property is transferred to the recipient vendor by registration in the deeds registry), and only after the transfer duty has actually been paid to SARS. In the case of second-hand goods being "fixed property" acquired after 9 January 2012, the limitation of the input tax deduction to transfer duty payable does not apply. However, the input tax may only be deducted if the fixed property is transferred to the recipient vendor by registration in the Deeds Registry (where applicable) and to the extent that payment towards the purchase price for the property has been made to the seller.[98]

8.3.6 Period to make an input tax or other deduction

As mentioned above, it is very important to 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 relevant prescribed or acceptable documentary proof is obtained. Further, to avoid forfeiting your claim, you must ensure that the deduction is made in a tax period falling within a period of five years after the end of the tax period during which –[99]

- 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 (being the principal) was provided with a statement envisaged in section 54(3) by its agent in respect of the purchase of goods or services or the importation of goods on behalf of that vendor. (The statement must include certain details regarding the goods or services purchased or the goods imported.); or
- a vendor first became entitled to such deduction, in any other case.

If the deduction was not previously permitted in accordance with a practice generally prevailing, the deduction is limited to six months before the tax period in which the deduction [100]is made. See **16.3** for more details on "practice generally prevailing".

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98 See also BGR 57 "Whether the Term "Consideration" Includes an Amount of Transfer Duty for the Purposes of Calculating a Notional Input Tax Deduction on the Acquisition of Second-Hand Fixed Property". BGR 57 clarifies that the amount of "consideration" paid or payable for the property (being the amount upon which the notional input tax deduction is calculated) does not include any transfer duty.

99 Paragraph (i) of the proviso to section 16(3).

100 Paragraph (ii) of the proviso to section 16(3).

8.4 Apportionment

8.4.1 Introduction

Generally, the full amount of VAT on goods or 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 or services are not acquired exclusively for taxable supplies, you will be required to determine the part that relates to taxable supplies and deduct input tax only 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.

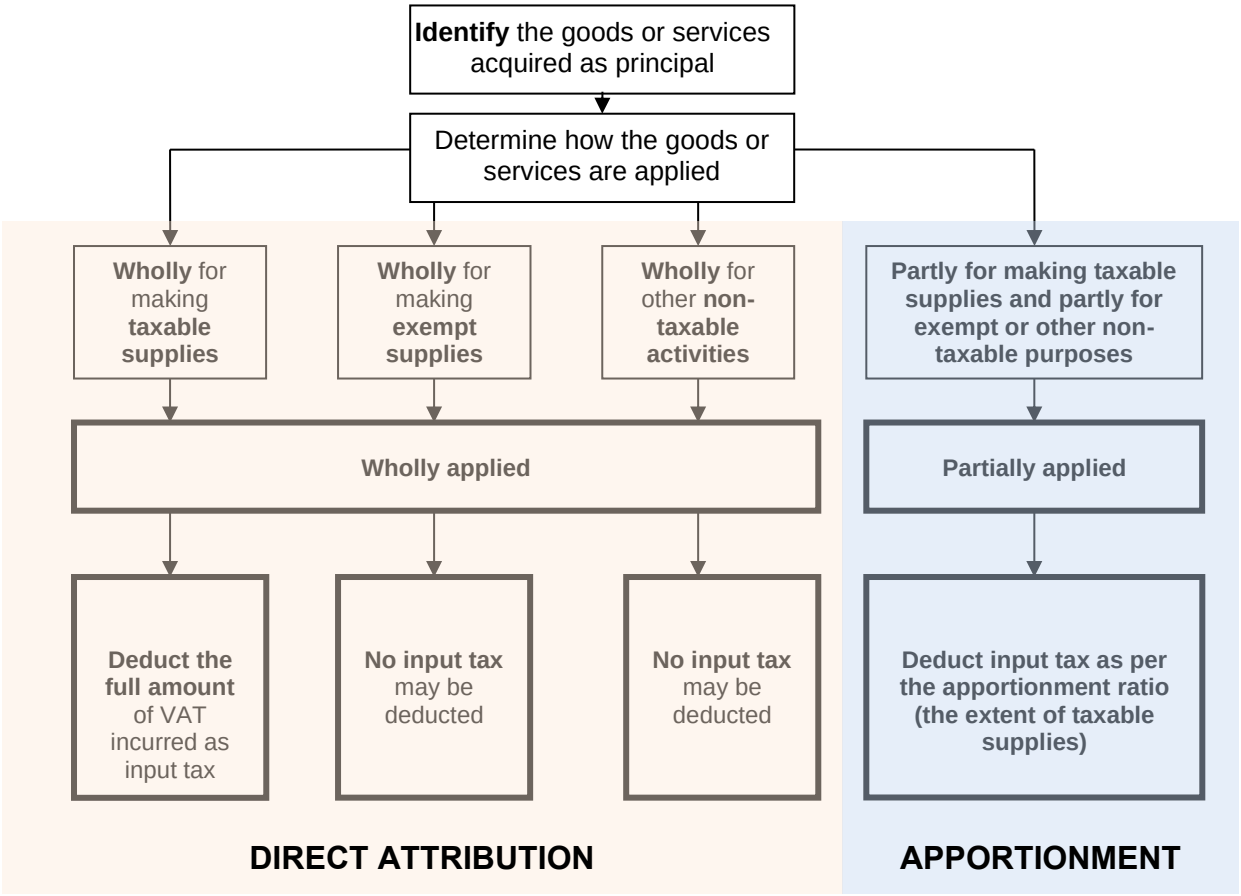
Direct attribution means that permissible expenses[101] are incurred either:

- 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.

[101] 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.

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.

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 concept of direct attribution is illustrated in **Examples 18** to **20** below.

Example 18 – Direct attribution: Taxable supplies

Facts:

ABC Bank buys a building which costs R3 335 000 (including VAT). The building consists of units which are to be rented out to businesses as office space.

Result:

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 335 000 × 15 / 115 = R435 000).

Example 19 – Direct attribution: Exempt supplies

Facts:

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.

Result:

Since the supply of public passenger 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 20 – Direct attribution vs. apportionment

Facts:

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.

What are the VAT implications for ABC Municipality?

Result:

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.[102]

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 may be applied in the absence of a specific ruling obtained by the vendor to use another method. However, 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 approval to use an alternative method which yields a more accurate result. Should a specific ruling that has been granted to the vendor turn out to be inappropriate, at a later stage, the vendor cannot make the choice to use the turnover-based method without requesting a further ruling from SARS to that effect.

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 the Commissioner'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 is required to approach the Commissioner to confirm whether the current method is still appropriate.

[102] See section 17(1) and Chapter 7 of the TA Act.

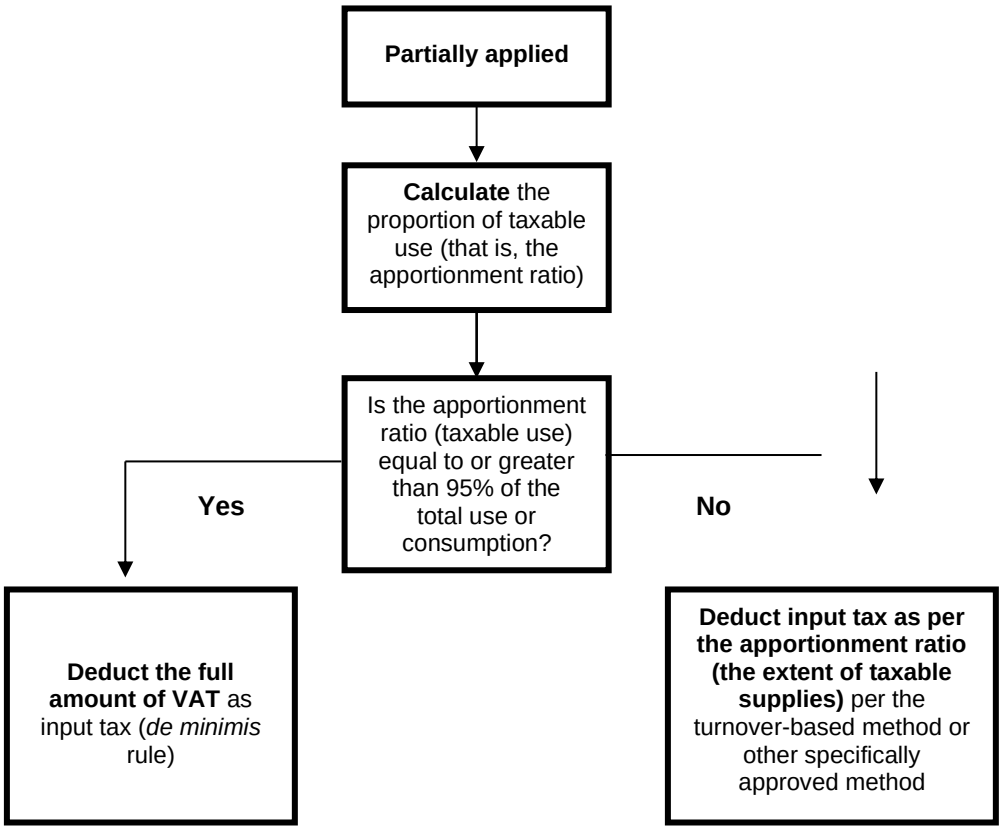
Alternatively, if it is clear from the outset that the apportionment method will not yield a fair and reasonable result after the changes, a ruling should be obtained to apply another method which results in a more fair and reasonable proportion of VAT being deducted as input tax in the year that the 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 may be an indication that either the formula is inappropriate, or it is not being applied correctly.

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.[103]

For confirmation of this principle and other aspects related to the application of the turnover-based method of apportionment as set out in BGR 16[104] "Standard Apportionment Method" (BGR 16), see the case of *Mukuru Africa (Pty) Ltd v Commissioner for the South African Revenue Service* (Case no 520/2020) [2021] ZASCA 116 (16 September 2021). In particular, this case is important with reference to the first note under the "conditions" regarding the applicability of that method in a situation where a vendor applies for a ruling for a special method of apportionment. The case made it clear that the effective date of the special method of apportionment may not be backdated beyond what the law allows, which is to the beginning of the financial year in which the ruling application was made.[105]

Following on from the diagram **under 8.4.2**, the second level of enquiry in establishing the apportionment percentage is illustrated in the diagram below.



[103] Proviso (iii) to section 17(1).
[104] An updated BGR 16 (Issue 3) has been published on the **SARS website**
[105] See section 17(1)(iii).

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

Formula: Turnover-based method of apportionment[106]

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 ICA).[107]
4. Exclude from the calculation the value of any goods or services supplied where input tax on those goods or services was specifically denied.
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 21 – Application of the turnover-based method of apportionment

Facts:

ABC Bank buys computer software for R460 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.

Result:

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 (R36 000) may be deducted as input tax.

Calculation: [(R460 000 × 15 / 115) × 60%] = R60 000 × 60% = R36 000

106 The formula is contained in BGR 16 "Standard Apportionment Method".

107 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.

Example 22 – Application of the *de minimis* rule

Facts:

ABC Properties buys computer software for R460 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 taxable and exempt supplies in respect of its leasing business.

Result:

The software is used by ABC properties 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: [R460 000 × 15 / 115] × 100% = R60 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. Therefore, vendors are allowed 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 a deduction of input tax may be made under section 16(3). 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 23 – 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 at 15%) 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 2023 financial year (tax year) on the following page indicates the relevant income and expenditure items, as well as the VAT reconciliation for the year.

INCOME STATEMENT OF COMPANY J
FOR THE YEAR ENDING 28 FEBRUARY 2023

	R
Income	
Rental of apartments (exempt)	192 000
Rental of shops (taxable)	576 000
Interest – late payments (exempt)	3 000
Total income	**771 000**
Expenses	
New geysers for apartments	5 000
New glass for shop fronts	16 000
Painting of entire building	120 000
Electricity	48 000
Water	63 000
Telephone	6 000
Insurance on building	66 000
Rates & taxes	100 000
Wages	35 000
Total expenses	**459 000**
Net Profit	**312 000**

Note 1*: Amounts reflected on any financial statements should generally not include VAT, unless it relates to an expense in respect of which the VAT charged is not recoverable by the vendor.*

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

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

VAT expense indicator

wholly exempt	
wholly taxable	
mixed	
mixed	
mixed	
mixed	
mixed	
0% (no VAT)	
no VAT included	

Note 3*: Total "Mixed" expenses*

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

VAT ACCOUNT OF COMPANY J
RECONCILIATION FOR THE YEAR ENDING 28 FEBRUARY 2023

			R
Output tax			
Shop rental	576 000 × 15%	(Note 1)	**86 400**
Input tax			**(36 488)**
Glass – shop fronts	16 000 × 15%	(Note 1)	(2 400)
Total mixed expenses		(Note 3)	
303 000 × 15% = 45 450 × 75%		(Note 2)	(34 088)
Net VAT paid 2019		(Notes 4 and 5)	**49 912**

Note 4: Adjustments
See **Chapter 9** 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 2022 financial statements), the vendor would be entitled to deduct an input tax adjustment in field 18 of the VAT201 return for the shortfall of 3% calculated as follows:

R45 450 (R303 000 x 15%) × 3% = **R1 363,50**.

Similarly, had the 2018 financial statements indicated the percentage to be 80%, the vendor would be required to make the following output tax adjustment in field 12 of the VAT201:

R45 450 (R303 000 x 15%) × 5% = **R2 272,50**.

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 (subject to certain exceptions mentioned in **8.5.1**);
- 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 (subject to exceptions for motor car dealers and car rental enterprises mentioned in **8.5.3**); 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 or services acquired for providing employees with free meals. This also applies to goods or 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 be supplied at a charge that at least covers all the costs of supplying the entertainment or such charge must be equal to the OMV of the entertainment. However, the entertainment does not have to be supplied at a charge that covers such costs or equates to such OMV in respect of genuine client promotions where the entertainment is of the same sort as that normally provided for a charge (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 the vendor's 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 or 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".
- Expenses incurred by an FDFP VAT branch for purposes of a project administered under an international donor funding agreement. See **Chapter 2** and the *VAT Reference Guide for Foreign Donor Funded Projects* for more details on FDFPs.
- Entertainment which is awarded as a prize in consequence of a bet received by the vendor on the outcome of a race or some other unpredictable event.
- Meals and refreshments provided to the crew on board a ship or vessel by a vendor that operate such ship or vessel at sea in the course of making taxable supplies (for example, fishing vessels, oil rigs).

See 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, and stokvel savings club. 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.

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.) It is only in the case of suppliers of motor cars (for example motor car dealers or car rental enterprises) that the deduction of input tax is allowed, as it is the nature of these enterprises to supply motor cars on a continuous or regular basis.

The subsequent sale by the vendor of a motor car in respect of which an input tax was denied is not seen as a supply in the course or furtherance of an enterprise,[108] 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" includes 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" excludes 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 so that it can be 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 (for example, canopy modification or installation of a built-in toolbox for a bakkie). However, VAT incurred on modifications made before the supply of the motor car cannot be deducted by the purchaser

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

as input tax if it forms part of the motor car as supplied. See Interpretation Note 82 “Input Tax on Motor Cars” for more information.

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. 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

VAT on expenses incurred by a person in connection with the incorporation of 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),[109] may in certain instances be deducted by the said company.

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.

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

Chapter 9
Adjustments

9.1 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;
- 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.

9.2 Irrecoverable debts

A vendor who accounts for VAT on the invoice basis may deduct input tax in respect of debts which have become irrecoverable.[110] The pre-requisites for making a deduction on irrecoverable debts is that firstly there must have been a taxable supply for a consideration in money. Secondly, the vendor must have already accounted for the supply in a VAT return. The adjustment is calculated by applying the tax fraction which applied at the time of supply to the amount actually written off. In a case where the vendor subsequently receives payment in respect of a debt written off as irrecoverable, the vendor must account for output tax on that payment in the tax period in which it is received.

A vendor may not make an input tax deduction in respect of a debt which has –

- become irrecoverable under an ICA if the goods supplied in terms of that agreement have been repossessed by or surrendered to the vendor;
- become irrecoverable if the vendor accounts for tax on the payments basis, except to the extent that the vendor was required to account for output tax on the invoice basis (that is in the case of supplies made for a consideration of R100 000 or more)[111] and a portion thereof has become irrecoverable;
- become irrecoverable in respect of a taxable supply of goods or services to another vendor if the vendor and the recipient vendor are wholly-owned members of the same "group of companies"[112] for income tax purposes, for as long both the vendors are wholly-owned members of the same "group of companies";
- been transferred at face value to another person on a non-recourse basis. Should the debt be transferred on a recourse basis, the vendor may deduct input tax in respect of the amount of debt transferred back to the vendor to the extent of the amount which has become irrecoverable; and

110 Section 22.
111 See **4.5.3** for more details.
112 Defined in section 1(1) of the Income Tax Act.

- become irrecoverable on the supply of valuable metal.[113]

A vendor must account for output tax to the extent that the purchase price for the goods or services has not yet been paid after 12 months from the end of the tax period in which such deduction was made. However, if the purchase price or a part thereof is only payable later under an agreement in writing, then the 12-month period will start running from the end of the month in which payment should have been made under that agreement.

In the case of a vendor that has been sequestrated, declared insolvent, entered into an arrangement under section 155 of the Companies Act[114] or cease to be a vendor within 12 months after the expiry of the tax period in which such deduction was made, the output tax adjustment must be made at the time of the occurrence of such sequestration, declaration of insolvency or arrangement or immediately before ceasing to be a vendor. The adjustment is calculated by multiplying the outstanding taxable amount by the tax fraction that applied at the time the input tax deduction was originally made.

The output tax adjustment does not apply if –

- the goods or services were acquired from another vendor that is a wholly-owned member of the same "group of companies" for income tax purposes as the acquiring vendor, for as long as both the vendors are wholly-owned members of the same "group of companies"; and
- such other vendor has not made an input tax deduction for an irrecoverable debt in respect of the outstanding amount.

A vendor who has made the output tax adjustment referred to above, may make an input tax deduction to the extent that any portion of the purchase price is paid at a later stage. The deduction is calculated based on the tax fraction applicable at the time the initial input tax deduction was made.

9.3 Debit- and credit notes

The circumstances in which debit- and credit notes are required to be issued are dealt with in **Chapter 13**. Credit notes must be issued by a supplier if a tax invoice was issued for the supply showing an incorrect amount of tax charged, as a result of specified events (for example, when faulty goods are returned to a supplier). A vendor that issues a credit note is required to make an adjustment either to input tax or output 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 decrease in consideration occurs, that is, in the tax period in which the credit note is issued.

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.

[113] Regulation 2(*d*) of the DRC Regulations
[114] Act 71 of 2000.

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.

9.4 Prompt settlement discounts

Should the terms of a prompt settlement discount be stated on a tax invoice, and 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. It is not necessary for the vendor to issue a credit note in this regard. 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 that 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.

9.5 Rounding differences

It has become common practice for vendors to round the total amount due on the sale of goods or services to the nearest circulated coin when returning change for cash transactions (rounding difference). In these instances the tax invoice reflects the total due with the VAT calculated thereon and the adjusted amount after the rounding difference is taken into account. The effect is that the supplier has charged a lesser consideration for goods or services than the advertised amount and a credit note should be issued. However, BGR 65 has been published in which the Commissioner directs that the supplier is not required to issue a credit note, subject to the certain conditions. To reduce over-declaration of output tax on standard-rated supplies, the supplier may make an adjustment to the output tax attributable for that tax period or deduct input tax and the supplier must retain the relevant records to substantiate the adjustment. One of the conditions contained in the BGR is that the tax invoice must clearly indicate that input tax can only be deducted on the adjusted amount in the case of a cash transaction. See BGR 65 for more information.

9.6 Change in use or application

9.6.1 General

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, or goods or services are applied wholly for a different to the intended purpose when acquired, manufactured, assembled, constructed or produced. This includes stock items or capital assets taken from the business for own use, or for exempt or other non-taxable purposes.

The term “adjusted cost” used in sections 1(1), 16(3)(*h*), 18(2), (4) and (5) is 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 or 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.

9.6.2 Change in use from taxable to non-taxable purposes

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 (that is wholly for another purpose),[115] you will have to pay output tax on the OMV 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 24 – Change in use from taxable to private purposes

Facts:

H practices as a chartered accountant, and is registered for VAT under the Category B tax period. H bought a computer for the business in January 2016 for R5 700 (including VAT @ 14%) under a cash sale. H derives all income from making taxable supplies and accordingly deducted input tax of R700 in the February 2016 VAT return.

In February 2019, H decides to upgrade the office computer and takes the computer home for use by H's children. The market value of the computer as at February 2019 is R2 300. Note that the time of supply for the adjustment is after the VAT rate increase from 14% to 15% on 1 April 2018, therefore the tax fraction 15/115 must be used to calculate VAT on the adjustment.

Result:

H must now account for output tax of R300 (R2 300 × 15 / 115) in field 12 of the February 2019 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 out temporarily as dwellings whilst 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 OMV of the properties concerned at the time when the change of use occurs.

[115] Section 18(1).

Section 18B was 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 was in the form of a suspension of the liability to declare output tax on the change in use adjustment in certain instances when trading stock in the form of newly developed dwellings were temporarily let to tenants (and therefore applied for exempt purposes) whilst being marketed for sale. Developers that experienced such difficulties were therefore allowed to temporarily let those properties during the relief period which commenced on 10 January 2012 and ceased on 1 January 2018.

Section 18B was a temporary measure with a limited lifespan, but a more permanent relief mechanism in the form of section 18D (together with associated provisions sections 9(13), 10(29) and 16(3)(*o*)) has now been introduced to deal with temporary letting. The terms "developer" and "temporarily applied" have also been defined in section 18D.

For a detailed explanation on the background to section 18D and the similarities and differences between sections 18B and 18D, see Binding General Ruling 64 "Temporary Application of New Dwellings for Exempt Supplies Simultaneously held by Developers for Taxable Purposes" (BGR 64).

Section 18D applies when developed dwelling units, held for sale by a developer,[116] are "temporarily applied" as defined,[117] as residential accommodation (exempt supplies) for the first time on or after 1 April 2022. The developer must make an output tax adjustment and declare output tax on the adjusted cost instead of the open market value (OMV) as would normally be the case under section 18(1) before these amendments.[118] The time of supply for the adjustment is the earlier of the date that the agreement for the letting and hiring of the accommodation in a dwelling comes into effect or date on which the dwelling is occupied.

If the dwelling is sold during the period that it is temporary applied for exempt supplies, the sale will be a taxable supply under section 7(1)(*a*). The developer may make an input tax deduction equal to the output tax that was previously declared when the temporary letting commenced.[119] The developer will similarly be entitled to deduct input tax upon expiry of the 12-month period (or lesser period if the temporary letting ceases completely at an earlier date).

However, if the letting of the property continues beyond the 12-month period allowed, or there is a permanent change in use to exempt supplies (or own use), section 18D will not apply. Instead section 18(1) will apply[120] and the developer must then make an output tax adjustment based on the OMV of the fixed property.[121] However, there is an exception to cater for the delay in transferring the property. From 1 April 2024, section 18(1) will not apply if a written sale agreement is concluded during the temporary letting period of 12 months and the transfer of the property occurs after the 12 months expires. Instead the sale will be a taxable supply under section 7(1)(*a*), and the developer must account for output tax on the date of registration

116 See definition of "developer" under section 18D(1)(*a*).
117 The "temporarily applied" letting period must not exceed a period of 12 months, whether as a fixed or continuous period, or in aggregate. (This rule applies per dwelling unit.)
118 As section 18B ceased to apply from 1 January 2018, any temporary letting of such newly developed dwelling units from the said date until the end of March 2022 would be subject to the adjustment under section 18(1) based on the OMV of the property.
119 Under section 16(3)(*o*)
120 Section 18(6)
121 Section 10(7).

of transfer of the property in the Deeds Registry or the date on which any payment in respect of the consideration for the supply is made, whichever is earlier.[122]

Any sale of the property by the developer, after the property has been subjected to an output tax adjustment under section 18(1), will not be a taxable supply under section 7(1)(*a*). Instead, the purchaser will be liable to pay transfer duty on the transaction.

For more information, see the *updated VAT 409 – Guide for Fixed Property and Construction for Vendors (Issue 3)* and BGR 48 "The Temporary Letting of Dwellings by Developers and the Expiry of Section 18B".

9.6.3 Decrease in extent of taxable use of capital goods or services[123]

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; or
- there is a transfer of any assets, liabilities, rights and obligations as a result of a municipal boundary change.[124]

Example 25 – Decrease in extent of taxable use of capital goods or services

Facts:

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 8 shops on the ground floor used for making taxable supplies and 4 large residential apartments on the first floor used for making exempt supplies. The building has been applied as such from commencement of the business in March 2021 when the building was acquired for R1 368 000 (inclusive of VAT). C elected to use the standard turnover-based method of apportionment and determined that 80% of the building's income is derived from taxable supplies and 20% from exempt supplies. Therefore, in the April 2021 tax period, C deducted input tax of R134 400 (14 / 114 × R1 368 000 × 80%) in respect of the building.

In March 2008, C further purchased a computer system for R54 000 (inclusive of VAT), intended for use in the business. At the time of purchasing the computer system, C still derived 80% of income from taxable supplies and 20% from exempt supplies. Therefore, in the April 2022 tax period, C deducted input tax of R5 305 (14 / 114 × R54 000 × 80%) in respect of the computer system acquired.

[122] Section 9(3)(d).
[123] Section 18(2).
[124] See BGR 39.

At the end of February 2023, C determines that the nature of her business has changed significantly and that the income now comprises of 60% taxable supplies and 40% exempt supplies. At the end of that month the adjusted cost and OMV of the building is R1 368 000 and R2 280 000, respectively, and the computer system has an OMV of R48 000.

Result:

Because the decrease in the extent of the taxable use of the capital goods or services exceeds 10%, C is required to make an adjustment to output tax on the last day of C's year of assessment (February 2023).[125] The adjustment required to be made by C to take account of the decrease in the extent of taxable use of the building and computer system is determined by the formula:

A × (B – C)

Where:

A represents the lesser of:

(i) the adjusted cost of the building and computer system, namely, R1 368 000 and R54 000, respectively; or

(ii) the OMV of the building and computer system, namely, R2 280 000 and R48 000, respectively

B represents the extent of taxable use of the building and computer system at the time of the acquisition or in the previous 12-month period, namely, 80%

C represents the extent of the taxable use of the building and computer system during the current 12-month period, namely, 60%

C's calculation will be:

Building : R1 368 000 × (80% – 60%) = R1 368 000 × 20% = **R273 600**.
Computer system : R48 000 × (80% – 60%) = R48 000 × 20% = **R9 600**.

In order to calculate the output tax which must be accounted for, C would apply the tax fraction to the amount determined by the formula, for example,

15 / 115 × (R273 600 + R9 600) = **R36 939**.

C must therefore declare the VAT amount of R36 939 in the tax period ending February 2019 in the VAT201 return in field 12.

Note that the time of supply for the adjustment is after the VAT rate increase from 14% to 15% on 1 April 2018, therefore the tax fraction 15/115 must be used to calculate VAT on the adjustment.

9.6.4 Change in use from non-taxable to taxable purposes

A vendor is entitled to make an input tax deduction where goods or services are held 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.[126] The deduction will not apply in respect of any goods or services for which a deduction of input tax is denied. 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

[125] Section 18(6).
[126] Section 18(4).

the goods or services are actually used for making taxable supplies. The amount of the adjustment is calculated by applying the tax fraction to the lesser of the adjusted cost (including VAT), or the OMV 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 26 – Change in use from private (non-taxable) to taxable purposes

Facts:

A vendor purchases a single cab bakkie for private purposes on 1 March 2011. The bakkie costs R228 000 including VAT at 14% (excluding finance charges and any other charges incurred). The vendor then decides to use the bakkie exclusively for the business of delivery of goods to customers with effect from 1 March 2023. At the time of introducing the bakkie into the business, it had an OMV of R205 200. The vendor is a category B vendor.

Result:

The vendor will be entitled to deduct, in addition to other input tax deductions, an amount of: 15 / 115 × R205 200 = **R26 765** in the April 2019 tax period.

9.6.5 Increase in the extent of taxable use of capital goods or services[127]

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 27 – Increase in extent of taxable use of capital goods or services

Facts:

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 used to make taxable supplies and 4 residential apartments on the first floor used to make exempt supplies. The building has been applied as such from the commencement of the business in March 2007 when the building was acquired for R1 368 000 (inclusive of VAT). C elected to use the standard turnover-based method of apportionment and determined that 60% of the business income is derived from taxable supplies and 40% from exempt supplies.

[127] Section 18(5).

Therefore, in the April 2007 tax period, C deducted input tax of R100 800 (14 / 114 × R1 368 000 × 60%) in respect of the building.

At the end of February 2023 (being the last day of her year of assessment), C determines that the nature of the business has changed significantly and that the income now comprises of 80% taxable supplies and 20% exempt supplies. At the end of that month the adjusted cost and OMV of the building is R1 368 000 and R2 280 000, respectively.

Result:

Because the increase in the extent of the taxable use of the capital goods or services exceeds 10%, C is entitled to an input tax adjustment in the tax period ending on February 2023. The adjustment required to be made by C to take account of the decrease in the extent of taxable use of the building is determined by the formula:

A × B × (C – D)

Where:

A represents the tax fraction;

B represents the lesser of:

(i) the adjusted cost of the building namely, R1 368 000; or

(ii) the OMV of the building namely, R2 280 000

C represents the extent of taxable use of the building during the current 12-month period (80%)

D represents the extent of the taxable use of the building at the time of acquisition or in the previous 12-month period (60%)

C's calculation will be:

Building: 15 / 115 × R1 368 000 × (80% – 60%) = **R35 687**.

C may deduct an additional R35 687 in the February 2023 VAT return under field 18.

Note that the time of supply for the adjustment is after the VAT rate increase from 14% to 15% on 1 April 2018, therefore the tax fraction 15/115 must be used to calculate VAT on the adjustment.

9.6.6 Subsequent sale or disposal of goods or services partly applied for taxable supplies[128]

A vendor that acquires goods or 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.

[128] Section 18(16)(*a*), read with section 16(3)(*h*).

Example 28 – Goods partially applied for taxable supplies subsequently sold

Fact:

A vendor purchases a computer system during May 2016 costing R57 000 (including R7 000 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 R2 800 (that is, 14 / 114 × R57 000 × 40%).

Two years later (15 May 2018), the vendor sells the computer system for R46 000 (including R6 000 VAT). The vendor is therefore required to account for output tax of R6 000 on this transaction. Since the time of supply for the adjustment was after 1 April 2018, the tax fraction 15/115 applies to calculate the VAT on the adjustment.

Result:

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, 15/115

B represents the lesser of:

(i) the adjusted cost of the computer system, namely, R54 000; or

(ii) the OMV of the computer system, namely, R46 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 the vendor's output tax will be:

15 / 115 × R46 000 × 60% **= R3 600**

The vendor will therefore account for VAT in field 4A of the VAT return as follows:

Output tax on sale	R6 000
Less: Input tax	(R3 600)
Output tax payable	**R2 400**

Chapter 10
Calculation of VAT and submission of returns

10.1 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.[129] 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. Vendors must submit their returns by the due date, even if there is no payment required for the tax period concerned.

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. Registration for eFiling and the submission of VAT201 declarations *via* eFiling is compulsory for VAT registered non-resident suppliers of electronic services. Vendors who use eFiling have until the last working day of the month to make submissions and payments *via* electronic means. 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 Service 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 –

- 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; and
- photocopied returns.

SARS may implement further changes regarding the VAT201 return or payments at any time as part of ongoing modernisation initiatives. Vendors are therefore advised to check the **SARS website** for the latest information. From December 2020, the VAT201 return on eFiling has been converted from Adobe Flex to HTML5 format for better user experience and compatibility. For more information, please refer to the updated Guide for completing the Value-Added Tax VAT201 Declaration. Additional information can also be sourced from the How To Download The New SARS eFiling Browser Guide.

[129] For purposes of this Chapter, the term “input tax” is used to refer to input tax and all other deductions to which a vendor is entitled in calculating the VAT liability or refund for a tax period. (See **8.1** for more information.)

10.2 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:

- Invoice basis – Add the consideration in respect of 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, in a past tax period or to be made in a future tax period.

See **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 the 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, amongst other things, whether you are registered to account for VAT on the invoice or payments basis.[130]

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

Remember the following:

- 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 documents prescribed by or which is acceptable to the Commissioner.
- 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.

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

See **Chapter 8** for more details on what amounts qualify as deductible input tax.

[130] Any claim for input tax or other deductions is limited to a period of five years (see the proviso to section 16(3).

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.

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.

See the *Step-by-Step Guide for the Completion of the Value-Added Tax Vendor Declaration Form* and the *Guide for Value-Added Tax via eFiling* for more details on how to complete the individual fields on the return and to calculate your VAT.

10.3 Submitting a 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. For ease of processing, vendors making manual submissions should ensure that the VAT201 return is duly completed and signed.

Section 28 prescribes the due dates for submitting VAT returns and making VAT payments. 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. Should the 25th day fall on a Saturday, Sunday or public holiday, then your submission must be made on the last working day before such 25th day. Alternatively, you have until the last business day of the month after the end of your tax period if you make use of eFiling to submit your return and make payment by electronic means (that is, payment submitted on eFiling or effected by electronic funds transfer (EFT) through internet banking).[131] 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 to submit your return and make payment electronically). The date by which the return must be submitted to SARS is shown on the front of the return. SARS has removed drop boxes for the submission of returns, in its drive to encourage taxpayers to use eFiling. See **10.4** for more details on the various payment options.

[131] Section 28.

10.3.1 What if a mistake is made in the return?

Section 25(5) of the TA Act allows SARS to request a person to submit an amended return for the correction of an undisputed error made in a return, before SARS issuing an original assessment. As the filing of a VAT return is considered to be an original assessment,[132] an error on a VAT return can therefore only be remedied by the vendor making a request for correction.

SARS may issue an additional assessment if satisfied that the VAT return does not reflect the correct application of the law to the disadvantage of SARS.[133] SARS may withdraw an assessment if it was –[134]

- issued to the incorrect taxpayer; or
- issued in respect of the incorrect tax period; or
- issued as a result of an incorrect payment allocation.

For more information on how to apply for a request for a correction, see the *Request for Correction* webpage. Furthermore, see **Chapter 14** and the *Short Guide to the Tax Administration Act, 2011* for more information on the various assessments.

10.4 How to pay your VAT

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. 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 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. See the *Short Guide on the Tax Administration Act, 2011,* for more information.

Payments have to be done electronically or over the counter at the branch of an approved bank. SARS branches or offices no longer accept manual forms of payment of the VAT. As South African banks no longer accept cheque payments with effect from 1 January 2021, SARS also ceased to accept cheque payments from that date. Cheques received by SARS will be returned to the vendor. Category C vendors must file VAT returns on eFiling and make VAT payments electronically on eFiling or by EFT. Please note that SARS branches will continue to assist vendors with the completion and submission or acceptance of VAT returns.

Do not under any circumstances send cash in the post. SARS does not accept payments via the post office, including by way of a postal order or money order. The options available to vendors to make payments are discussed in **10.4.1** to **10.4.3**.

For more details see the *GEN-PAYM-01-G01 – SARS Payment Rules – External Guide.*

[132] Section 91(2) of the TA Act.
[133] Section 92 of the TA Act.
[134] Section 98(1) of the TA Act.

10.4.1 Payment by EFT

An electronic transfer of funds must reach SARS by or before the due date shown on the VAT201 return (usually the 25th of 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 **10.3** 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.

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. See *VAT-REG-01-G02 – VAT Registration Guide for Foreign Suppliers of Electronic Services* for more information.

10.4.2 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. 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, see the *Guide for Value-Added Tax via eFiling*, or log on to **www.sarsefiling.co.za**. If you have any queries you can contact the SARS Service Centre on 0800 00 7277 between 08h00 – 17h00 on weekdays.

10.4.3 Payments at various banks

You may choose to pay your VAT at certain banks. Please make sure that your payment is made on or before the due date reflected on the VAT return.[135] 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.

You must ensure that payment will reach SARS by the due date shown on the VAT return. SARS has emphasised that payments received late as a result of these changes would lead to penalties and interest being imposed. Therefore, to avoid these amounts from being levied, kindly adhere to the time frames for the submission of VAT returns and payments tabled below:

[135] For more details see the *Guide to the Payment Advice Notification Functionality on eFiling and GEN-PAYM-01-G01 – SARS Payment Rules – External Guide.*

Payment method	Returns	Payment
Over the counter payments at certain banks directly into SARS's account	25th or preceding business day	25th or preceding business day
Manual submission[136] of return and payment via EFT (internet banking)	25th or preceding business day	25th or preceding business day
eFiling of return and payment via either SARS eFiling or EFT (internet banking)	Last business day of the month	Last business day of the month

Note that in the 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.

10.5 Payment limits (EFT / eFiling / bank payments)

The banks and the Payments Association of South Africa (PASA) have set payment limits on ATM transactions and electronic payments. 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). The limit for credit payments made via EFT is R5 000 000.

The following is how these limits will affect you as a vendor:

- EFT payments in excess of R5 000 000 must be cleared with your banker.
- With the exception of a few banks,[137] eFiling transactions will not be affected by these rules as no limits are imposed.

10.6 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 via the SARS Online Query System on the **SARS website**.

The VATSA is similar to the Employer Statement of Account (EMPSA) and is issued by SARS upon request. 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 Service Centre on 0800 00 SARS (7277)

[136] Although reference is made here to "manual" submissions, SARS no longer issues VAT201 returns and does not handle post or process physical VAT201 returns any longer. Manual submission refers to a situation where a vendor is not registered on eFiling and will have to call at a SARS branch office or service centre for assistance to complete the return online.

[137] There are some banks that can only process payments with a maximum limit of R5 000 000. For payments above that amount, arrangements will have to be specifically made with such banks. For more details see the *GEN-PAYM-01-G01 – SARS Payment Rules – External Guide*.

- By visiting a SARS service centre

For more information, please see the **SARS website**.

10.7 Refunds

The provisions relating to refunds are dealt with in sections 16(5) and 44 of the VAT Act, read with Chapter 13 of the TA Act. A vendor is entitled to a refund of a properly refundable amount (including any interest which may be due thereon),[138] under the VAT Act, as reflected in a correctly completed refund return or of an amount that was erroneously paid in excess of an amount due. The refund should be made by SARS within 21 business days of receiving your correctly completed VAT return. If the refund is not paid within the said period, interest will be paid to you at the prescribed rate. There are, however, a few exceptional circumstances where SARS may withhold a refund or suspend the 21 business day period without the payment of interest.

SARS may withhold a refund until –

- SARS is satisfied that a defect in, or incompleteness of a VAT return submitted by the vendor does not affect the amount to be refunded or such defect or incompleteness is rectified by the vendor;
- details of the vendor's bank account have been provided;
- a vendor has filed all outstanding VAT returns;
- 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;[139] 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.

SARS will pay you the refund if it is claimed in a VAT return that is submitted within a period of five years from the date that the submission of such VAT return became due, provided you do not owe any amounts relating to other taxes administered by the Commissioner. Should you owe amounts on other taxes, debt equalisation will be applied to offset the amounts owing in respect of other taxes, and the balance (if any) will be refunded. Please note that the set-off may be made between the main registration of a vendor and any of its branches, or between any of the branches and the main registration, or between any branches of the same legal entity.

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. The payment of an undue refund by SARS to a vendor is regarded as an outstanding tax debt due by the vendor from the date on which the refund amount was paid. Interest accrues and is payable by the vendor on the amount not properly payable to the vendor, from the date of payment of such amount by SARS.[140]

[138] Section 190(1) of the TA Act.
[139] Section 44(3)(*c*) read with Chapter 13 of the TA Act.
[140] Section 190(5) 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 the status of refunds from March 2011 will be displayed on the Refund Dashboard. This function is available on eFiling for registered eFilers. Vendors who call the Service Centre or go to a SARS Service Centre to request information will be assisted by SARS agents who have access to the dashboard.

A decision not to authorise a refund is subject to objection and appeal. See the *Short Guide on the Tax Administration Act, 2011* for more information on refunds.

10.8 Change of bank details

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**.

The fraudulent changes to vendors' bank details remain one of the biggest risks that SARS has to deal with. SARS has a responsibility to protect vendors from any fraudulent transactions on their accounts emanating from within SARS or by the actions of others that are interacting with the VAT system who purport to act on behalf of vendors. 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 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.
- Via email only in exceptional circumstances.

Vendors wanting to change bank account details, must please ensure that they have the documents required as set out in the *GEN-GEN-41-G01 – Change of Banking Details – External Guide*. Supporting documents for change of bank details can be submitted via eFiling or on the **SARS website**. For more information, see the *Change My Banking Details* page on the **SARS website**.

Chapter 11
Penalties and interest

11.1 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 for late payment 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[141] issued by the Commissioner. In addition, specific acts of non-compliance that give rise to prejudice can result in an understatement penalty imposed under the TA Act. (See **11.2.2**.)

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 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 interest rules to be imposed by the TA Act will only come into effect once a public notice is issued by the Commissioner. Until such time, the current rules will still apply. See Interpretation Note 68 "Provisions of the Tax Administration Act, 2011, 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 penalty provisions under Chapters 15 and 16 of the TA Act and the interest provisions envisaged under Chapter 12 of the TA Act.

11.2 Penalties

11.2.1 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[142] issued by the Commissioner and not every act of non-compliance under a tax Act.

[141] Section 210(2) of the TA Act.
[142] See the Public Notice 790 in *GG* 35733 of 1 October 2012.

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.[143]

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. Section 213 of the TA Act imposes the penalty and section 39 of the VAT Act prescribes the applicable percentage, which is currently 10%.

11.2.2 Understatement penalty

Any understatement penalty (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. USP may only be imposed if the *fiscus* is prejudiced by the vendor's conduct in reporting its VAT liability. The *fiscus* will be prejudiced if there is a shortfall, which is the difference between the correct amount of tax that should have been paid and the amount that was paid 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;
- filed a return in which an incorrect statement was made;
- failed to pay the correct amount of tax in instances where a return is not required;
- entered into an impermissible avoidance arrangement. (For VAT purposes, this would be any scheme or arrangement to which section 73 applies.)

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 that best describes the facts of the case and the vendor's behaviour in respect of each understatement of that return.

[143] Sections 217 and 218 of the TA Act.

USP table[144]

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:

1	2	3	4	5	6
Item	*Behaviour*	*Standard case*	*If obstructive, or if it is a 'repeat case'*	*Voluntary disclosure after notification of audit or criminal investigation*	*Voluntary disclosure before notification of audit or criminal investigation*
(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)	'Impermissible avoidance arrangement'	75%	100%	35%	0%
(v)	Gross negligence	100%	125%	50%	5%
(vi)	Intentional tax evasion	150%	200%	75%	10%

As mentioned above, the amount of USP is determined by 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 no reasonable grounds for a tax position taken (item (*iii*) in the table) and gross negligence (item (*v*) in the table), then the latter behaviour will apply in working out the amount of USP to be levied for the tax period concerned.

No USP will, however, be imposed if 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.

[144] See section 223 of the TA Act.

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".

See the *Short Guide to the Tax Administration Act, 2011* for more details on the various behaviours.

11.3 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.

See the *Short Guide to the Tax Administration Act, 2011* and Interpretation Note 68 "Provisions of the Tax Administration Act, 2011, that did not Commence on 1 October 2012 under Proclamation No. 51 in *Government Gazette* 35687" for more details on the interest rules envisaged under the TA Act.

The current rules provide that interest at the prescribed rate[145] will be charged per month or part thereof on late payments of VAT. The prescribed rate is linked to the rate determined under section 80 of the PFMA. Interest is calculated from the first day of the month after the month in which payment was due, until the outstanding amount is paid. Interest is also charged on any late payment of the USP which has been levied upon assessment.

Example 29 – Calculation of interest

Facts:

P is required to submit a VAT return and payment of R3 000 in respect of the March 2019 tax period by 25 April 2019. P only submits the return and payment on 25 May 2019.

Result:

The interest (per month) is calculated as follows:

R3 000 × 10,25%[146] interest per month or part of a month × 1 / 12 (Interest payable for 1 month)

= **R25,63**

[145] See the Interest Rates – Table 1 for the applicable rate.

[146] The rate changes from time-to-time under section 80 of the PFMA. In this example, the rate at the time was 10,25% per annum.

11.4 Remission of penalties and interest

11.4.1 Remission of non-compliance penalty

A vendor may apply to SARS to remit both the fixed-amount and percentage-based penalty before the date the penalty must be paid. With effect from 14 October 2016, a request for remission of the non-compliance penalty can only be made via two channels, namely, eFiling or by visiting a SARS branch. The request for remission must be submitted on the prescribed form (*RFR01 – Request for Remission*). 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.[147] 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.

For more details see *GEN-PEN-05-G02 – How to Submit a Dispute via eFiling – External Guide* and the "What if I Do Not Agree" page under "Client segments" on the **SARS website**.

SARS may remit a percentage-based administrative penalty if satisfied that all of the following conditions are met:

- The amount involved is either less than R2 000, or the non-payment is a first incidence
- The vendor has reasonable grounds explaining the non-compliance
- The incidence of non-payment has been remedied[148]

A "first incidence" means that no other penalty (fixed or percentage-based) must have been imposed within a period of 36 months preceding the one in respect of which the remission is concerned.[149]

A vendor may also qualify for the remission of a percentage-based penalty if exceptional circumstances exist for non-compliance. The exceptional circumstances as prescribed in section 218 of the TA Act must have made it impossible for the vendor to have complied with the obligation to pay on time. The circumstances regarded to be exceptional 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, such as capturing errors, processing delays
- 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 (see **Chapter 14**). 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.

147 Section 215 of the TA Act.
148 Section 217(3) of the TA Act.
149 See the definition of "first incidence" in section 208 of the TA Act.

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.

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

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

11.4.2 Remission of understatement penalty

SARS may grant relief in respect of a portion of the USP 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. See **11.2.2** for the reduced percentages.

In all other cases, a vendor may object to the USP being imposed and 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. See the *Short Guide to the Tax Administration Act*, *2011* for more information.

11.4.3 Remission of interest

The TA Act makes provision for interest to be remitted or reduced in certain exceptional circumstances.[150] 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 **11.4.1** and **11.4.2.**

The Commissioner's discretion to remit interest is limited to 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. See Interpretation Note 61 "Remission of Interest" for more information.[151]

With effect from 14 October 2016, a request for remission of interest may only be made *via* eFiling or at a SARS branch once you have paid any tax which is due in that regard. 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.

[150] Section 187(6) of the TA Act.

[151] See also section 39(7)(*a*) of the VAT Act which has not yet been repealed.

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.

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

The right to request the remission of interest cannot be open-ended, as finality has to be achieved within a reasonable period of time, which is at least before the matter becomes prescribed in law. Therefore, SARS may not remit interest payable by a vendor after a period of five years from the date that the interest first accrued.[152]

A request for remission is the only remedy available to a vendor to dispute interest on late payment of VAT. A vendor is not allowed to lodge an objection to dispute interest on late payment or a decision by SARS to disallow a request for remission. (See **Chapter 14** for more information on objections.)

For more information on interest, see the *Short Guide to the Tax Administration Act, 2011*.

[152] Section 187(8) of the TA Act. Inserted with effect from 8 January 2016.

Chapter 12
Exports and imports

12.1 Exports

A vendor may 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 in limited circumstances (indirect export) to any export country. A "qualifying purchaser" 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.

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 "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" have been met. Also see **12.1.1** for more details.

An indirect export refers to a situation where goods are exported by the recipient (being a "qualifying purchaser" as defined in the Export Regulations)[153] and that person removes or arranges for the removal and transport of movable goods to an address in an export country. Indirect exports are currently regulated by the Export Regulations. If an indirect export is subject to VAT at the standard rate, the qualifying purchaser may claim a refund from the VAT Refund Administrator (Pty) Ltd (the VRA)[154] as set out in the Export Regulations. Alternatively, the vendor may elect to zero-rate the supply of the movable goods, subject to certain requirements set out in the Export Regulations. See **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 on the following page.

[153] GN 316 in *GG* 37580 of 2 May 2014 (the Export Regulations).

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

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 (Gqeberha) Upington	Cape Town Durban East London Mossel Bay Port Elizabeth (Gqeberha) 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[155] (now known as eSwatini)	Jeppes Reef Mananga Mahamba Nerston Golela Oshoek			

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").

[155] Swaziland is now known as eSwatini but at the time of publishing this guide, it had not yet been amended in the VAT Act.

The cartage contractor is a person whose activities include the transportation of goods and includes couriers and freight forwarders. The transportation of goods does not have to be the main activity of the cartage contractor and the cartage contractor is also not required to be a registered vendor. 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).
- Proof of payment in respect of the supply of the movable goods.
- Where applicable: Proof of payment of the transport costs by the supplier where a cartage contractor was used to deliver the movable goods.
- Where the goods are transported by road or rail, proof that the goods were received by the recipient in the export country.

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. See *Part Three of the Export Regulations* discussed below.

12.1.2 Indirect exports

The Export Regulations set out the specific procedures applicable to goods exported indirectly. 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 Regulations generally apply to supplies 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*).
- The invoice is issued and/or the payment is received before and after 2 May 2014.
- 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 previous 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 any payments are made in respect thereof, after 2 May 2014.

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 the VAT 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 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 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. In this instance the vendor is obliged to levy VAT at the standard rate on the supply made to the qualifying purchaser and issue a tax invoice. The qualifying purchaser may then claim a refund of the VAT paid on the goods exported. 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.[156]

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 make the VAT refund to the qualifying purchaser by way of various payment methods as described in regulation 6 of the Export Regulations.[157] The method of payment depends on several factors. The following important facts regarding the VAT refund must be noted:

- For refunds of R300 or less, the VRA will issue the qualifying purchaser with payment in the currency of the RSA which can be used in the international departure lounge; alternatively, the refund may be effected by EFT.

[156] The VRA is only present at certain international airports in the Republic.

[157] Please note that due to cheques becoming obsolete with effect from 1 January 2021 the VRA will no longer be able to make payment by cheque.

- For refunds between R300 and R3 000, the VRA will issue the qualifying purchaser with a pre-paid debit card which can be used worldwide.
- Under certain circumstances and provided certain conditions are met, the qualifying purchaser may be issued with payment in dollars or pounds or the refund may be debited directly to the credit card of the qualifying purchaser.
- Qualifying purchasers from Botswana, Namibia and Swaziland (eSwatini) are not issued with this pre-paid debit card, but the refund will instead be transferred via EFT to the qualifying purchaser's designated bank account.
- All refunds due to a person as defined in the memorandum of understanding exporting goods from the Republic of South Africa and importing the goods into Lesotho and Swaziland (eSwatini) will be paid directly to the respective revenue authorities under the memorandum of understanding between South Africa and each of the countries concerned. The Commissioner needs to approve any refund in excess of R3 000.
- Goods consumed in the Republic cannot be refunded.

For further information on VAT refunds please see Part One of the Export Regulations or *VAT–CF-01-POL-G01: VAT Refunds in terms of VAT Export Regulation No. 316 – External Guide.*

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

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

In summary, a qualifying purchaser will be entitled to a VAT refund where all of the following requirements are met:

- The purchaser must be a qualifying purchaser as defined in the Export Regulations.
- The goods must be exported within 90 days from the date of the tax invoice subject to certain exceptions.[158]
- 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. The Commissioner may extend the period within which an application for a refund must be submitted to the VRA in certain

[158] See regulation 15 of the Export Regulations.

circumstances that are beyond the control of the applicant. These exceptional circumstances are set out in the Export Regulations.[159]

- The goods must be exported through one of the 43 designated commercial ports by the qualifying purchaser or the qualifying purchaser's cartage contractor or duly authorised agent.

The qualifying purchaser must obtain the relevant documentary proof as described in Part One of the Export Regulations in order to prove that the movable goods were exported by road, sea, air or rail within the required 90 days.[160]

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.

Highlighted below are a few examples of transactions where The Export Regulations are applicable.

Flash title transactions

A supplier may 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.[161] Ownership of the goods therefore vests in the first qualifying purchaser only for a moment before being sold to another qualifying purchaser.

Example 30 – Flash title transactions

BF supplies granite, which is delivered to BB on board a ship situated within the Coega Port in Port Elizabeth (Gqeberha) (free on board – also known as FOB). BB on-sells the granite to various customers, also subject to FOB delivery on board the same ship. BF as the title owner of the granite up to and until the granite is delivered and loaded onto the designated vessel, bears all of the associated costs and risks for the supply of the granite. Once the granite has been loaded onto the vessel (delivered under FOB) the title, costs and risk passes from BF to BB and immediately from BB to its various customers.

Result:

From the above scenario it is clear that the ownership of the goods supplied by BF to BB vests in BB for only a moment before the same goods are subsequently sold by BB to its various customers. Furthermore, the supply of the goods between BF to BB will be zero-rated as well as the supply of the goods between BB to the various customers.

[159] See regulation 6(6) of the Export Regulations.

[160] See regulation 5 of the Export Regulations.

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

Movable goods subject to further processing, repair, improvement etc

A supplier may 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 under 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. See *Part Two – Section A of the Export Regulations* for a list of the additional documentation required.

Other supplies

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

Example 31 – Other supplies

Facts:

ABC (Pty) Ltd sells movable goods on an FOB basis to a qualifying purchaser (XYZ Merchants Ltd) situated in China. The movable goods have already received the necessary customs clearance and are ready for export as the goods were delivered on board the named vessel at the Durban harbour.

Result:

ABC (Pty) Ltd may elect to levy VAT at the zero rate on the sale of the movable goods to XYZ Merchants Ltd on the basis that the supplier ensured that the goods were delivered to the vessel concerned which was situated at the Durban harbour (being a designated harbour) and from where the goods will be exported.

Part Two – Section B

Indirect exports by road or rail were not accommodated under the previous VAT Export Incentive Scheme. Part Two Section B 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.

After collection, the goods must be 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.[162] 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.

[162] The goods must be exported within 90 days as contemplated in Part Three.

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 in this case, the relevant documentary requirements as set out in this Part must be met.

Part Three

This Part sets out the time period within which movable goods must be exported from the Republic 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. See *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 proof of payment 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 supply in field 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 field 18 of the VAT return for the tax period in which this documentation is received, provided that certain requirements are met.[163]

For more information see 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

Direct exports

Under the proviso to section 11(1), the zero rate cannot apply where second-hand goods are acquired by the supplier and subsequently exported after notional input tax has been deducted on the acquisition thereof (see **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. Should the second-hand goods be acquired from a registered vendor under a taxable supply, a normal input tax deduction may be available to the recipient, provided the relevant documentary proof is obtained and retained. In this case the normal rules apply and the subsequent export of those second-hand goods may be subject to VAT at the zero-rate.

[163] See Part Three of the Export Regulations.

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.[164]

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 32 – Second-hand goods – direct export

Facts:

DEF, being an art gallery, buys a second-hand painting for R11 500 from a non-vendor and claims a notional input tax deduction of R1 500 (R11 500 × 15 / 115). DEF sells the painting to M from Botswana for R15 847,83 and delivers it to M's address in Botswana. The locally advertised price is R16 500 (including R2 152,17 VAT).

Result:

The calculation of the selling price is as follows:	R
Selling price excluding VAT (R16 500 × 100 / 115)	14 347,83
VAT (equal to the notional input tax deducted by DEF)	1 500,00
Selling price including VAT	15 847,83

VAT levied at the standard rate is equal to the amount of notional input tax deducted. The tax invoice issued to M must either show that VAT of R1 500 has been charged or that the selling price includes VAT of R1 500. M is not entitled to a refund of the R1 500 VAT charged.

Example 33 – Second-hand goods – indirect export

Facts:

Assume the same facts in **Example 32**, except that M buys the painting at the normal price advertised (R16 500 including R2 152,17 VAT) and that he collects the painting in the RSA and exports it in person.

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

Result:

To assist M to obtain a refund from the VRA, at the time of export, the tax invoice should show the following:

	R
Selling price including VAT @ 15%	16 500,00
VAT Refund	
Total VAT charged (R16 500 ×15 / 115)	2 152,17
Less notional input tax deducted	(1 500,00)
VAT refundable	652,17

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, R652,17 less the VRA's commission), whereas the portion of the VAT equal to the notional input tax credit deducted (R1 500) 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 exemptions. Goods may only be imported through one of the 43 designated commercial ports (as listed in **12.1**). The VAT on importation must be paid to SARS by the vendor importing the goods or services or the vendor's clearing agent. 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 by the vendor, subject to certain requirements.

12.2.2 Input tax on imported goods

From 1 April 2015, the VAT Act[165] has been amended to the effect that the VAT payable on importation of goods by a vendor may only be deducted during the tax period when the goods are released under the Customs and Excise Act.

For purposes of deducting the VAT paid on the importation of goods, the vendor making the deduction must be in possession of the following documentation:

- An "EDI Customs Status 1 Release Message".
- A valid bill of entry or other document prescribed by the Customs and Excise Act (for example, form SAD 500 and/or any additional SAD document that might be required).
- The receipt number for the payment of such tax, that is the receipt issued on eFiling.

In respect of goods imported on or after 1 April 2015 where the goods are imported by an agent acting on behalf of the vendor (being the principal), and the bill of entry or such other document prescribed by the Customs and Excise Act is held by the agent, the agent 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:[166]

- The full and proper description of the goods.

[165] See sections16(3)(*a*)(iii) and 16(3)(*b*)(ii).
[166] See section 54(3)(*b*).

- The quantity or volume of the goods.
- The value of the goods.
- The amount of tax paid and the receipt relating to the payment of such tax, that is the receipt number issued on eFiling for such payment.

The vendor must be in possession of the aforementioned statement at the time the VAT return containing the deduction is submitted to SARS. Furthermore, in addition to furnishing the statement, the agent must maintain sufficient records to enable the name, the address and VAT registration number of the vendor to be ascertained.

Deferment facility

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 have 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 may not be used 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.

12.2.3 Imports from countries other than Botswana, Lesotho, Namibia or Swaziland (eSwatini) (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:

Customs Duty Value (CV)
+ Customs duty (and Excise duty) if applicable (non-rebated duties)
+ 10% of the Customs Duty Value
= Added Tax Value (ATV)

ATV × 15% = VAT payable

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 (see **12.2.4**).

Example 34 – Importation of goods

Facts:

C imports a painting from Uganda and pays R5 000 for it. Customs duty is levied at 25%.

Result:

Upon being cleared for home consumption, VAT will be calculated as follows:

	R	
Purchase price/customs value	5 000	(CV)
+ Customs duty (@ 25% of CV)	1 250	
+ 10% upliftment (@ 10% of CV)	500	
Value for importation and VAT purposes	6 750	(ATV)
VAT at 15%	**1013**	

12.2.4 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 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 **12.2.3**.

12.2.5 Exclusions

No VAT is payable on the importation of certain goods. These exemptions are listed in Schedule 1 to the VAT Act. Some examples are –

- goods imported for diplomats 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;
- 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; and
- goods imported which are subsequently lost, destroyed or damaged through natural disasters or under such circumstances as the Commissioner deems exceptional.

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" (see **12.3.1**), subject to any exemptions which may apply under section 14(5) (see **12.3.5**). 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 utilised or consumed in RSA for non-taxable purposes.

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 required to declare VAT on imported services, unless the non-resident supplier is registered as a vendor in the RSA. If no VAT is charged and the supplier is not registered as a vendor, VAT on imported services is payable.

See **Example 36** 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 35 – Imported services definition

ABC (a VAT vendor), manufactures ball valves and pays a technical license fee to a company in the United Kingdom. The service is accordingly supplied by a supplier who is not a resident of the RSA to a resident (ABC). However, as the services are wholly consumed in the course of making taxable supplies (that is, manufacturing and selling ball valves), the services are not "imported services" as defined in the Act. VAT would not be payable by ABC on the services supplied by the non-resident.

Example 36 – Imported services vs enterprise (digital products / electronic services)

Facts:

BDE orders an electronic version of the latest cookbook from XYZ (an internet-based business located in Belgium) and downloads the cookbook onto an electronic tablet. BDE pays €60 for the book by way of a credit card transaction.

Result:

These "services" are supplied by a non-resident (XYZ in Belgium) to a recipient (BDE) who is resident in the RSA for non-taxable (private) purposes, therefore VAT will be payable by BDE 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 × 15% = R90

From 1 June 2014, a non-resident supplier that provides certain electronic services to a South African resident is required to register for VAT subject to certain requirements being met.[167] If the non-resident supplier of electronic services is required to be 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 or furtherance of an enterprise carried on by that non-resident in the RSA. The vendor can deduct the VAT paid as input tax if acquired for taxable purposes.

12.3.2 When and how 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 in accordance with the manner set out in **Chapter 10**. Non-vendors must complete and retain form VAT215 and ensure that payment is made via eFiling within 30 days of importing the services. Once the payment is successfully processed, eFiling will generate a receipt number which must be inserted in the relevant field on the VAT215 record. The VAT215 record and the invoices issued by the foreign supplier must be retained as relevant material by the recipient and must not be submitted to SARS for filing purposes.

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.

[167] See **2.1.5** for more details on the supply of electronic services by non-resident suppliers and liability to register and account for VAT.

12.3.4 Value of supply

The taxable value of the supply is the greater of the consideration or the OMV.

Example 37 – Value of imported services

Facts

Z is an RSA resident (individual) who is not registered for VAT. Z engages the services of X, a non-resident attorney carrying on a business in the UK, to provide a legal opinion on a matter pertaining to a family matter. The consideration charged by X for the legal services is £400 (equivalent to R8 000). Had Z obtained the same services in the RSA, the open market value thereof would have been R9 000.

Result:

Z acquired the services from a non-resident business wholly for non-taxable purposes (private purposes). The services will therefore fall within the definition of "imported services" and VAT will be payable on the **greater of** the following amounts:

- the consideration payable to X, namely, R8 000; or
- the OMV of R9 000.

Therefore, the VAT payable = R9 000 × 15% = **R1 350**

12.3.5 Exceptions

VAT is not payable on imported services where –

- the supply would be exempt from VAT or zero-rated if the supply was made in the RSA;
- the supply of the service is subject to VAT at the standard rate (currently 15%);
- 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 38 – Exempt imported services

Facts:

DFG enrols 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 R200 000).

Result:

In this situation, educational services are supplied by the University of Wales (a non-resident) to the recipient DFG (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 DFG on the fees of R200 000 (the equivalent value in rands) in this case.

Chapter 13
Tax invoices, debit- and credit notes

13.1 Introduction

The most important document in a VAT system is the tax invoice. Without a proper tax invoice or alternative documents approved by the Commissioner a vendor cannot deduct input tax on the purchases for the vendor's enterprise, If the vendor has clients who are not vendors or you are selling 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. The issuing of a tax invoice is an obligation on every vendor who makes taxable supplies in the course or furtherance of their enterprise and it is an integral part of the audit trail of a vendor and its activities. Failure to issue tax invoices is therefore a contravention of the Act and vendors will be guilty of an offence.[168] The TA Act requires all vendors to maintain records in their original form for example, tax invoices and for those records to be kept at a safe location. For more information on record keeping, see **16.5**.

The VAT Act identifies different transactions that each requires different types of tax invoices:

(a) If the consideration for the supply is more than R5 000 (including tax), a full tax invoice must be issued.

(b) If the consideration for the supply is less than R5 000 (including tax), an abridged tax invoice may be issued, except when that supply is a zero-rated supply.[169]

(c) If the consideration for the supply is less than R50, a tax invoice does not have to be issued.

(d) If the Commissioner is satisfied that it is impractical to issue a full tax invoice in respect of a particular transaction and that there are sufficient other records available, the Commissioner may direct that a tax invoice does not need to be issued or certain particulars need not be reflected on the tax invoice.[170]

(e) If a vendor makes a supply of valuable metal to a recipient which is a registered vendor and the DRC applies.

13.2 What is the difference between an invoice and a tax invoice?

The VAT Act prescribes that a tax invoice must contain certain details about the taxable supply as well as the parties to the transaction. See **13.3** below for details.

Commercial invoice	Tax Invoice
This can be any document, notifying the purchaser to make payment in respect of a transaction.	The normal document required by a vendor to deduct input tax.
Can be issued for a transaction concerning taxable and non-taxable supplies.	Issued in respect of a transaction for a taxable supply only.
It can trigger the time of supply for a transaction.	Must contain all of the details prescribed in the VAT Act.

168 Section 234 of the TA Act.

169 See the proviso to section 20(5).

170 See BGR 27 "Application of Sections 20(7) and 21(5)" and Interpretation Note 83 "Application of Sections 20(7) and 21(5)".

Commercial invoice	Tax Invoice
Under certain circumstances can support a deduction for input tax.[171]	Can be used to support a vendor's deduction for input tax.

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.

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" or "invoice" or "VAT invoice" may be reflected on the document; • Name, address and VAT registration number of the supplier;[172] • Name, address and VAT registration number of recipient; • Serial number and date of issue; • Full and proper 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 below).	• The words "tax invoice "or "invoice" or "VAT invoice" may be reflected on the document; • Name, address and VAT registration number of the supplier; • … • Serial number and date of issue; • Full and proper description of the goods and/or services; • … • Price and VAT (according to any of the 3 approved methods discussed below).

What are the correct methods of reflecting the consideration and VAT for taxable supplies on a tax invoice, debit note or credit note?

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 74 Total including VAT R574	The total consideration R570 VAT included @ 15%	The total consideration R570 VAT included R 74

[171] See section 16(2)(*g*) in this regard.

[172] See BGR 21 "Address to be Reflected on a Tax Invoice, Credit and Debit Note".

Example 39 – Full tax invoice (consideration more than R5 000)

RM Vehicles
t/a NZ Motors
RiversEdge Road
Mount Edgescombe
Movember Hills
VAT No.: 4111252081

Name, address and VAT registration number of the supplier.

Invoice No.: 2020/ 510

Serialised tax invoice number and date of the invoice.

DATE: 30 April 2020

TAX INVOICE

The words "tax invoice" or "VAT invoice" or "invoice" must appear on the document.

To : DC
456 Pale water Drive
Glen Fields
Johannesburg
VAT No. : 4740123987

Name, address and VAT registration number of the recipient.

Date	Quantity	Description	VAT	R
30/04/2020	1	2009 BMW motorbike (second-hand goods)	28 000,00	228 000,00
	1	Alarm System	420,00	3 420,00
			Total	**231 420,00**
			VAT included @ 15%	**30 185,00**

Proper description of the goods or services supplied.

Total selling price charged including VAT. The VAT amount must either be separately quoted or the tax invoice must contain a statement that the total consideration includes VAT @ 15%.

Quantity of goods or services supplied.

Example 40 – Abridged tax invoice (Consideration less than R5 000)

TAX INVOICE

BD (Pty) Ltd
Highfield Building
80 Club Avenue
Norwood
2192

Tax Invoice No: 2021/1235
VAT Registration No: 4321123450

Date: 15 February 2021

DATE	DESCRIPTION OF GOODS / SERVICES	R
15/02/2021	6 pack of soda × 200	3 000
	VAT @ 15%	450
	Total	**3 450**

13.4 Tax invoices prescribed under the DRC

The requirements under **13.3** applies to the supply of valuable metal subject to the DRC with some additional requirements and exceptions. The supplier is required to issue a tax invoice with the following additional information[173] clearly showing that:

- The supply is subject to the DRC.
- The VAT charged on the supply must not be included in the amount shown as due by the recipient, that is, no VAT charge must be shown on the tax invoice issued.
- A statement that the amount of VAT charged must be accounted for and paid (on behalf of the supplier) by the recipient.

These requirements also apply to recipients of a supply of valuable metal where the recipient of the supply, being a registered vendor, has been granted approval to issue recipient created tax invoices as discussed under **13.5**.

The recipient vendor must also issue a statement containing the prescribed details in writing to the vendor that supplied the valuable metal within 21 days from the end of the calendar month during which the VAT on the supply of valuable metal has been accounted and paid for by the recipient vendor. The statement must contain, amongst others, the following particulars:

- The tax invoice number.
- The value of the DRC supplies.
- Full and proper description of the valuable metal.
- Confirmation that the VAT charged by the supplier was accounted for and paid to SARS by reflecting the applicable tax period and payment reference number (this number is generated by SARS regardless of whether the return for the tax period results in a payment due by or a refund due to the recipient) issued by SARS.

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.[174]
- 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 confirm the output tax declared and verify the input tax deducted.
- 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.[175] A full tax invoice (see 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).

[173] Regulation 4 of the DRC Regulations
[174] Section 54, as amended with effect from 1 April 2015.
[175] See BGR 11 "Use of an Exchange Rate" for more information.

- A BGR has been published to set out, amongst others the information to be contained on a tax invoice, debit or credit note to be issued by electronic service suppliers. See GN 1594 in *GG* 45324 dated 10 December 2021 and BGR 28 "Electronic Services" for more information.
- The use of acceptable documentary proof instead of tax invoices is set out in BGR 36 "Circumstances Prescribed by the Commissioner for the Application of Section 16(2)(*g*)". See **8.1**.
- The further particulars required in relation to a deemed supply of goods repossessed or surrendered under an ICA is prescribed in BGR 63 "Further Particulars Prescribed by the Commissioner under Section 20(8A)(*c*)".
- In a case where a person's VAT registration is backdated and certain supplies were received before the registration date, the requirement for the VAT number of the recipient to be reflected on the tax invoice will not apply. As a result, the tax invoices received for any supplies made to that vendor before the date of registration may still be considered as valid proof for input tax documentary requirements.

13.5 Documents prepared by the recipient (self-invoicing)

13.5.1 Tax Invoices, credit notes and debit notes

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, the farmer is not in a position to issue an invoice or tax invoice for the produce when it is delivered for sale.

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".

13.5.2 Binding General Ruling 15

Binding General Ruling 15 "Recipient-Created Tax Invoices; Credit and Debit Notes" (BGR 15)[176] essentially grants approval to recipient vendors to apply what is commonly known as "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. BGR 15 provides that in such cases, the recipient may issue any tax invoices, credit and debit notes for the supplies concerned instead of the supplier. This is on condition that the parties to the transaction comply with the requirements set out in BGR 15.

Vendors that want to apply self-invoicing procedures but are unable to comply with the requirements stipulated in BGR 15 will have to obtain written authorisation from SARS before they will be allowed to apply this method of invoicing or creating credit and debit notes. See **Chapter 15**, for more information on ruling applications.

[176] Read with Interpretation Note 56 "Recipient-Created Tax Invoices, Credit and Debit Notes".

Note that approval for self-invoicing procedures will not be granted if the purpose is merely to facilitate the obtaining of a tax invoice, credit or debit note 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 contain –

- 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;
- details of 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 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.

The ruling application must also include any other documents as set out in the *VAT Rulings Process Reference Guide* which may be necessary to meet the requirements for a ruling application.

13.6 Tax invoices for mixed supplies

As mentioned in **13.3**, 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 41 below shows an example of a tax invoice for taxable and non-taxable (mixed) supplies.

Example 41 – Tax invoice for mixed supplies

TAX INVOICE **VAT No.: 4111252081**

TAX INVOICE NO. 2021/195 **Date:** *15 February 2021*

To: *DT*
101 Platteland Weg
Amsterdam
Netherlands
VAT No: *[n/a – non-resident]*

From: Scenic Tour Operators
57 Bushy Lane
Olivedale
1234

DATE	QTY	DESCRIPTION OF SERVICE/GOODS	VAT STATUS	R
15/02/2021	2	Airport shuttle @ R150 per trip	Exempt	300
	2	Tour guide fee @ R500	15%	1 000
	4 nights	Accommodation B & B @ R2 500	15%	10 000
	5	Paintings[177]	15%	5 000
	50 litres	Diesel – for rented 4x4 vehicle	0%	200
			VAT @ 15% on R16 000[178]	2 400
			Total	18 400

13.7 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 below.

13.7.1 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:

- A signed VAT264 declaration, which includes the following information:
  - Name, address and ID no. of the supplier (ID no. of the representative person if it is a company or CC)
  - Quantity or volume of goods
  - Full 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

[177] VAT charged @ 15% as the tourist will remove the goods from the RSA himself.
[178] VAT = R1 000+ R10 000 + R5 000 = R16 000 × 15% = R2 400.

- For all supplies, the vendor must obtain and retain a copy of the supplier's identity document/identity card in the case of a natural person 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. In the case of a vendor not being able to obtain the required documents, alternative documents may be obtained in certain circumstances.

Important Note

The **VAT264** declaration has been designed specifically to assist vendors to comply with the law. Changes have been made to the VAT264 declaration to facilitate easier and simpler completion.

The form must therefore be completed and maintained as part of the vendor's records for VAT purposes for the prescribed record-keeping period.

13.7.2 Repossession or surrender of goods supplied under an instalment credit agreement

It is impractical in circumstances where goods supplied under an ICA are subsequently repossessed or where such goods are surrendered by the debtor, 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
- are repossessed from, or surrendered by, a non-vendor, before 5 January 2023 the person exercising the right of repossession, namely the vendor, is required to obtain the particulars specified under section 20(8A).

Due to the hostile nature of repossession and surrender, the debtor is often reluctant to cooperate and there was difficulty in obtaining a signed VAT264 declaration from the debtor. In addition, because no actual payment occurred, no proof of payment existed. As a result, section 20(8A) was introduced deal specifically with documentary requirements in connection with the repossession and surrender of goods under an ICA.

The creditor is no longer required to obtaining a signed VAT264 declaration and must now instead obtain the following information in order to deduct notional input tax:

- The date on which the goods were repossessed or surrendered.
- The name of the supplier.
- A description of the goods.
- The consideration for the supply.
- Further particulars in the form and manner as the Commissioner may prescribe.

See BGR 63, which sets out the further particulars prescribed by the Commissioner under the new section 20(8A)(*c*).

For further information on this topic see the article "Documentary requirements for repossession and surrender of goods" in VAT Connect (Issue 16).

13.7.3 Tax invoices issued and received by a vendor who has purchased an enterprise

Under section 20(5A) a vendor acquiring an enterprise from another vendor and the selling vendor ceases its business operations as a result of the sale of the enterprise, the vendor acquiring the enterprise may issue and receive tax invoices in respect of the acquired enterprise and the tax invoice can reflect the details of the supplying vendor for a period of six months from the date of acquiring the enterprise.

13.7.4 Other cases

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[179] 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 alternative document, the recipient of the supply will be permitted to use that document to deduct input tax. See BGR 27 and Interpretation Note 83 “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 vendor seeking to substantiate a deduction of input tax or other deductions based on alternative documentary proof must, obtain a ruling from the Commissioner as well as show that the vendor has taken all reasonable steps to obtain the prescribed documents.[180] See **Chapter 8** for more information.

13.8 Debit- and credit notes

13.8.1 Introduction

Debit- and credit notes must be issued in certain instances. For example, a debit note will 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 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. Note that it is illegal to issue more than one tax invoice per taxable supply. Another tax invoice may therefore not be issued to alter the consideration in respect of an original tax invoice issued.

13.8.2 When must debit- and credit notes be issued?

The following events trigger the need for a vendor 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.

[179] Section 20(7).

[180] Section 16(2)(*g*). The Commissioner may now consider alternative documentary proof to substantiate a deduction in certain cases.

- The previously agreed consideration for the supply of the goods or services is 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. The supplier must make an adjustment in calculating the tax payable in the return for the tax period during which it has become apparent that the output tax is incorrect.

Should any of the above circumstances apply and the supplier has issued a tax invoice in which the tax charged is incorrect, a debit or credit note must be issued, whether or not the supplier accounts for tax on an invoice or payments basis.

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;[181]
- when rounding the total amount due on the sale of goods or services to the nearest circulated coin when returning change for cash transactions (rounding difference) and the adjusted amount is reflected on the tax invoice, subject to the certain conditions (see **9.5** and BGR 65 for more information; or
- when the reduction in the consideration is due to a rounding difference and the adjusted amount is reflected on the tax invoice. See BGR 65 for more information.

13.8.3 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).
- The name, address,[182] and VAT registration number of the vendor.
- 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.

[181] See also BGR 5 “Discounts, Rebates and Incentives in the Motor Industry” and BGR 6 “Discounts, Rebates and Incentives in the Fast Moving Consumable Goods Industry” for more information.
[182] See also BGR 21 for more information.

Example 42 – Credit Note

CREDIT NOTE

Vendor (Pty) Limited
Suite 4, 1st Floor
Highfield
80 Grant Avenue
Norwood
2192

VAT Registration no: 4321123450
Date : 6 November 2020

To:

ABC(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 8/10/20	30mm Widgets supplied @ R1 each	Charged for 400 units instead of 300	R400	R300	R100	R13,04

Example 43 – Debit Note

DEBIT NOTE

Vendor (Pty) Limited
Suite 4, 1st Floor
Highfield
80 Grant Avenue
Norwood
2192

VAT Registration no: 4321123450
Date : 6 November 2020

To:

ABC (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 8/10/20	30mm Widgets supplied @ R1 each	Charged for only 200 units instead of 300	R200	R300	R100	R13,04

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.

Note

If 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.

13.8.4 Debit- and credit notes prescribed under the DRC Regulations

The requirements under **13.8.3** applies to debit- and credit notes relating to the supply of valuable metal subject to the DRC with some additional requirements and exceptions. A debit- or credit note issued by a supplier of valuable metal under the DRC must contain the following additional information[183] clearly showing that **–**

- the supply is subject to the DRC;
- a statement that the increase in the VAT amount in the case of a debit note, that was previously accounted for and paid by the recipient must be accounted for and paid by such recipient; and
- a statement that the decrease in the VAT amount in the case of a credit note, that was previously accounted for and paid by the recipient must be accounted for and deducted by such recipient in its VAT return.

These requirements also apply to recipients of a supply of valuable metal where the recipient of the supply, being a registered vendor, has been granted approval to issue recipient created debit- and credit notes as discussed under **13.5**.

The increase or decrease in the value of the supply of valuable metal as a result of a debit- or credit note event, must be reported in Field 3 of the VAT201 return. In this regard, the normal time of supply rules under the VAT Act apply.

13.9 Electronic tax invoices, debit- and credit notes, and records

The VAT Act includes specific requirements on the issuing of tax invoices, debit- and credit notes, and the retention of these documents. **Chapter 4** of the TA Act sets out the details of the person who must keep records, the general records that must be kept, the form in which these records must be kept (including electronic form) and the period for which they 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[184] and retention of documents is regulated by the Electronic Communications and Transactions Act 25 of 2002 (ECT Act). See also sections 30 and 255 of the TA Act and the rules issued pursuant to these provisions.

[183] Regulation 5 to the DRC Regulations.
[184] This refers to the issuing of documents in electronic format.

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. 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 (see **Chapter 15** and Public Notice 103) is when it concerns the technical requirements pertaining to electronic invoicing. See **Chapter 16** for details regarding the retention of records.[185]

The record keeping of documents has specific requirements. Upon the commencement of the TA Act, the Commissioner issued Public Notice 787: Electronic form of record keeping under section 30(1)(*b*) of the Tax Administration Act, 2011[186] which regulates how records for tax purposes are to be retained in electronic form. In terms of this notice, a senior SARS official may authorise the retention of records in an alternative form or manner. This notice is, however, currently under review.

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.

[185] No opinions or rulings are issued on EDI systems and the like, see paragraph 2.13 of GN 103 in *GG* 36119 of 8 February 2013 “Additional considerations in terms of section 80(2) of the TA Act.

[186] The Public Notice was published on 1 October 2012 in *GG* 35733 with immediate effect.

Chapter 14
Assessments, objections and appeals

14.1 Assessments

14.1.1 Purpose of assessments

Assessments are predominantly regulated by the TA Act, but the applicable 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). See **Chapter 8** of the *Short Guide to the Tax Administration Act, 2011* for more details.

14.1.2 Types of assessments

The TA Act provides for four types of assessments:

(a) *Original assessment*: The concept of an original assessment, that is, the first assessment in respect of a tax period, is 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 is made, the payment is regarded as the original assessment;
- a return is submitted but does not include the vendor's calculation of tax payable or refundable and SARS determines the tax liability by way of an original assessment;
- a return is required and the vendor does not file a return, or no return is required and the vendor does not pay the tax required, SARS will then assess the vendor by way of an original assessment based on an estimate. The making of an estimated assessment does not detract from the obligation to submit a return, or the relevant material.[187]

(b) *Additional assessment*: SARS will 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 replaces the original or latest assessment and will always be issued subsequent to that assessment. No additional assessments may be made if the previous assessment was made in accordance with a practice generally prevailing at the time.[188]

[187] See section 95 of the of the TA Act for more information on estimated assessments, including the conditions to be met before an objection or appeal may be accepted in respect of such assessments. This is explained in the summary of amendments in the Preface to this document. See also the Memorandum on the Objects of the Tax Administration Laws Amendment Bill, 2021 for a detailed discussion on recent amendments to sections 95 and 99 of the TA Act.

[188] See section 99(1)(*d*)(i) of the TA Act.

(c) *Reduced assessment*: A reduced assessment can only be issued in the following three instances:

- An assessment is successfully disputed, a dispute is settled or a judgment is awarded and there is no right of further appeal. For example, an objection is allowed.
- An error in the assessment is undisputed and readily apparent. The error can be on the part of SARS or the vendor. No objection or appeal is necessary to issue this type of assessment.
- A senior SARS official is satisfied that the assessment was based on –
  - the failure by a third party or an employer to submit a return;
  - the incorrect return submitted by a third party or an employer;
  - a processing error by SARS; or
  - a return fraudulently submitted by a person who is not authorised by the vendor.

No reduced assessment may be made if the previous assessment was made in accordance with a practice generally prevailing at the time.[189]

(d) *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 collection of the tax that would otherwise be in jeopardy, or where there is some danger of tax being lost by the 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. When a review application has been made in the High Court in respect of a jeopardy assessment, SARS bears the burden of proving that the jeopardy assessment was reasonable in the circumstances.

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.

The difference between an assessment and a notice of assessment

An assessment is a determination of the amount of tax due or refundable either by way of self-assessment by the taxpayer or by way of an assessment raised by SARS. When SARS raises an assessment, a notice of assessment will be issued to the taxpayer concerned in which the applicable tax liability or tax refund is indicated, including all of the details prescribed under section 96 of the TA Act.

[189] See section 99(1)(*d*)(ii) of the TA Act.

14.1.3 Other aspects

The submission of a VAT return is considered to be an original self-assessment under the TA Act. The date of assessment is the date when the VAT return is submitted to SARS. If SARS reassesses a self-assessment, the date of assessment is the date on which the notice of the additional, reduced or jeopardy assessment is issued.

The date of assessment is important because it is the date used to work out –

- the period for record retention; and
- the date after which SARS may not issue another assessment (subject to certain exceptions).

See the *Short Guide to the Tax Administration Act, 2011* for more detailed information on assessments under the TA Act.

14.2 Dispute resolution

14.2.1 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[190] governing the following:

- The procedures to lodge an objection and appeal against an assessment or decision that is subject to objection and appeal.[191]
- 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.
- Application on notice before a Tax Court.
- Transitional rules.

The new dispute resolution rules (the new rules), effective from 10 March 2023 were promulgated in Notice 3146 (*GG* 48188), which also repealed the previous dispute resolution rules under GN 550 in *GG* 37819 of 11 July 2014.

Part G of the new rules contains transitional rules which provides that disputes not finalised at the commencement date of the new rules, that is, 10 March 2023, will generally be dealt with and finalised under the new rules.

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[192] provides that the burden of proof is on SARS to prove –

- that an assessment based on an estimate is reasonable; and

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190 The new dispute resolution rules (the new rules), effective from 10 March 2023 were promulgated in Notice 3146 (GG 48188), which also repealed the previous dispute resolution rules under GN 550 in *GG* 37819 of 11 July 2014.

191 Section 104(2) of the TA Act.

192 See section 102 of the TA Act.

- 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 the case of such a review application, SARS bears the burden of proving that the making of the assessment was reasonable in the circumstances.

14.2.2 What to do if you dispute your tax assessment

The dispute resolution process consists of the following aspects:

- Obtaining reasons for an assessment
- Objection to an assessment
- Appeal against disallowance of an objection
- ADR
- Hearing at the 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 **14.3.10**.

14.2.3 Reasons for assessment

An assessment for taxes owed should be accompanied by adequate grounds which explain why the assessment has been raised. If the statement of grounds 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.

14.2.4 Objection to an assessment or decision

You may lodge an objection if you have received an assessment and you do not agree that it is correct or your request for remission of a late payment penalty has been disallowed by SARS.[193] With effect from 14 October 2016, a vendor can lodge an objection only on eFiling or by visiting a SARS branch. In the case that a request for remission of a late payment penalty was manually submitted before the said date, the vendor must lodge the notice of objection at a SARS branch. You must ensure that you have the relevant material to support the grounds for objection when you visit the SARS branch.

The objection must –

- be in a form prescribed by the Commissioner (DISP01 – Notice of Objection form)[194] 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

[193] Under 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. See section 164 of the TA Act.

[194] With effect from 14 October 2016, the ADR 1 form is no longer accepted for lodging objections for VAT.

- be lodged within the prescribed period of 80 business days after the date of the assessment or decision or 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.

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 has elapsed cannot be considered unless a senior SARS official has condoned the late filing of the objection. A request for condonation must be made at the same time as the objection is filed on the form DISP01 and it must contain an explanation for the delay.

Under the TA Act, a senior SARS official may condone an objection that is filed up to 30 business days[195] late, if satisfied that there are reasonable grounds for the delay. If an objection is filed more than 30 business days late, then a senior SARS official must be satisfied that exceptional circumstances exist 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. For further information, see Interpretation Note 15 “Exercise of Discretion in Case of Late Objection or Appeal”.

14.2.5 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, and if reasonable grounds are submitted, the Commissioner may extend the period within which you should provide the additional information by an additional 20 days.

14.2.6 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.

14.2.7 Appeal against disallowance of an objection

If you are dissatisfied with the decision of SARS following the objection, you may appeal against that decision. With effect from 14 October 2016, a vendor can lodge a notice of appeal only on eFiling or by visiting a SARS branch. In the case that a notice of objection was lodged before the said date by completing an ADR 1, the vendor must lodge the notice of appeal at a SARS branch.

[195] Section 104(5)(*a*) of the TA Act was amended with effect from 19 January 2017 to extend this period from 21 business days to 30 business days.

The appeal must –

- be on the form prescribed by the Commissioner (DISP01 – Notice of Appeal form);[196]
- 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 ADR procedures or rather appeal to the Tax Board or Tax Court; and
- be lodged within the prescribed period of 30 business days of receiving notice of SARS's decision in respect of the objection.

An appeal that is filed after the prescribed period has elapsed cannot be considered unless a senior SARS official has condoned the late filing of the appeal. A request for condonation must be made at the time the appeal is filed on the form DISP01 and it must contain an explanation for the delay.

A senior SARS official may extend the period to lodge an appeal by up to –

- 21 business days if satisfied that reasonable grounds exist for the delay; or
- 45 business days if satisfied that exceptional circumstances exist for the delay.[197]

Should the senior SARS official not extend the time within which an appeal must be lodged, a taxpayer may object to this 'decision' in the same way as an objection may be made against an assessment.

14.2.8 After appeal has been noted

You may request that your tax dispute with SARS be dealt with in one of the following ways:

- By ADR, which is intended to be used where you and SARS agree to attempt to resolve a particular dispute outside of court.[198]
- By the Tax Board, which has jurisdiction in respect of those matters where the total amount in dispute does not exceed R1 million.[199]
- By the Tax Court, even where the total amount in dispute is less than R1 million. For example, where there is a legal principle in dispute.

14.2.9 The office of the Tax Ombud

The role of the Tax Ombud

The office of the Tax Ombud reviews and addresses any complaint by a taxpayer regarding a service matter or a procedural or administrative matter arising from the application of a Tax Act by SARS. It is an independent, informal and simple mechanism, affording taxpayers

[196] With effect from 14 October 2016, the ADR 2 form is no longer accepted for lodging appeals for VAT.

[197] For further information, see Interpretation Note 15 "Exercise of Discretion In Case of Late Objection and Appeal".

[198] Note that a willingness to participate in ADR is selected indicated by the taxpayer in the notice of appeal filed with SARS.

[199] The threshold amount for a matter to be referred to the Tax Board was increased from R500 000 to R1 million with effect from 1 January 2016. (See GN 1196 in *GG* 39490 of 17 December 2015).

the opportunity to resolve legitimate complaints regarding administration, poor service delivery or a failure by SARS to recognise the rights of the taxpayer concerned.

When may a taxpayer approach the Tax Ombud?

A taxpayer with a complaint against SARS with regard to the administration of the law must first exhaust all of the internal administrative complaints resolution processes which commence at the SARS branch level. If the taxpayer is still dissatisfied, the complaint can be escalated to the SARS Complaints Management Office (CMO) and once all of these remedies are exhausted, the taxpayer can approach the office of the Tax Ombud.

The decision of the Tax Ombud

After considering the complaint, the Tax Ombud can only make a recommendation on the resolution of the complaint and both the taxpayer and the relevant SARS department must be duly informed. This recommendation is not binding on SARS or the taxpayer.

The Tax Ombud cannot review the following matters:

- Matters relating to legislation or tax policy.
- SARS policy or practice generally prevailing, other than to the extent that it relates to a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS.
- A matter against which an objection and appeal under a tax Act can be lodged, except for an administrative matter relating to such objection and appeal.
- A decision of, or proceeding in or matter before the tax court.

For more information on the role of the Tax Ombud see the *Short Guide on Tax Administration Act, 2011*.

14.3 Alternative dispute resolution

14.3.1 What is alternative dispute resolution?

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 (NOA). SARS will then inform you within 30 business days of receipt of the NOA 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 NOA, that the matter is appropriate for ADR.

14.3.2 Who facilitates alternative dispute resolution?

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 an experienced person to facilitate the ADR proceedings. The person appointed may include a SARS official or any other person who is suitably qualified to carry out the duties.

14.3.3 What ensures that alternative dispute resolution 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.

14.3.4 The alternative dispute resolution process

The process of ADR is as follows:

- The ADR process is initiated either by you, or by SARS as mentioned in **14.3.1**.
- The facilitator will arrange an ADR meeting and notify all the parties. Where the parties have agreed not to appoint a facilitator, the parties themselves must arrange the ADR meeting.[200]
- 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.

14.3.5 Who represents you during the alternative dispute resolution 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.

14.3.6 Outcome of the alternative dispute resolution

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.

14.3.7 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.

14.3.8 How long does alternative dispute resolution take?

The ADR process must be concluded within 90 business days, or such further period that you and SARS may agree upon.

14.3.9 What are the benefits of alternative dispute resolution?

ADR is a less formal, more cost-effective and speedier method of dispute resolution.

[200] The meeting is conducted in an informal manner where both parties will state their case and provide evidence.

14.3.10 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.[201]

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:

- Whether the recovery of the disputed tax will be in jeopardy or there will be a risk of dissipation of assets.
- The compliance history of the vendor.
- Whether fraud is *prima facie* involved in the origin of the dispute.
- 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 not justified by the prejudice to SARS or the *fiscus* if the disputed tax is not paid or recovered.

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.

As there is an inherent risk that the provision could be misused to delay payment, 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. See the *Short Guide to the Tax Administration 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.

[201] Chapter 10 of the TA Act.

For further information on dispute resolution see the following documents available on the **SARS website**:

- *Dispute Resolution Guide: Guide on the Rules Promulgated under Section 103 of the TA Act, 2011* which was updated om 23 May 2023
- *Guide to Submit a Dispute via eFiling*
- *Quick Guide on Alternative Dispute Resolution*
- *What Do You Do if You Dispute Your Tax Assessment*

Chapter 15
Rulings

15.1 Introduction

Since the introduction of VAT in 1991, provision has been made for the Commissioner to issue rulings regarding, amongst others, 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 effected 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.[202] 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. 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.

The process for issuing a VAT ruling involves a number of steps, beginning with the submission of a VAT ruling application and ending with the issuing of a VAT ruling signed by a designated senior SARS official. For further information and guidelines on the VAT rulings process, including, amongst others, details on how to apply for a VAT ruling as well as the acceptable form and content of a VAT ruling application, see the updated *VAT Rulings Process Reference Guide* (Issue 4),[203] Applications for a decision under section 72 is a separate process and for information regarding this process see Binding General Ruling (BGR) 56 “Application for a Decision under Section 72”, and VAT Section 72 Decision Process Reference Guide on the **SARS website**.

15.2 Different types of rulings

Below is a summary of the different categories of rulings:

Type of Ruling	Description	Binding effect
Advance ruling	An advance ruling is issued under Chapter 7 of the TA Act may be any one of the following: • Binding general ruling (BGR) • Binding private ruling (BPR) • Binding class ruling (BCR)	The binding effect differs per type

[202] See BGR 2 “General Written Rulings and Written Decisions” for more details.
[203] Published on 16 August 2023

Type of Ruling	Description	Binding effect
Binding general ruling (BGR)	A written statement issued by a senior SARS official under section 89 regarding the interpretation or the application of a tax Act to the stated facts and circumstances	Binding on SARS and all qualifying taxpayers
Binding private ruling (BPR)	A written statement issued by SARS regarding the application of a tax Act to one or more parties to a 'proposed transaction', in respect of that 'transaction'	Binding on SARS and the applicant
Binding class ruling (BCR)	A written statement issued by SARS regarding the application of a tax Act to a specific 'class' of persons in respect of a 'proposed transaction'	Binding on SARS and the specific 'class' of persons
VAT class ruling	A written statement issued by the Commissioner upon an application submitted under section 41B of the VAT Act read with Chapter 7 of the TA Act to a class of vendors or persons regarding the interpretation or application of the VAT Act.	Binding on the Commissioner
VAT Ruling	A written statement issued by the Commissioner upon an application under section 41B of the VAT Act read with Chapter 7 of the TA Act regarding the interpretation or application of the VAT Act to a specific set of facts.	Binding on the Commissioner

15.3 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. The application must be accompanied by a Power of Attorney (POA) where an application is filed on behalf of the applicant (that is, by a person acting in a representative capacity). Only one applicant applies for a class ruling on behalf of the class. However, a list of the affected class members, including their VAT registration numbers (where applicable) is required.

Application: An "application" is a written request for a VAT ruling on a particular issue regarding the tax treatment of a particular transaction. The application must contain all of the details set out in section 79(4) [excluding sections 79(4)(*f*), (*k*), (6) and 81(1)(*b*).] of the TA Act together with the VAT301 form and be submitted by email to **VATRulings@sars.gov.za**. Should an agent, such as a lawyer or accountant, file an application on behalf of a client, a Power of Attorney[204] 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.

Co-applicant: This applies where there is more than one party involved in a transaction, and in relation to the requested ruling, the interpretation and application of the tax laws are different for the co-applicants.

Non-binding private opinion: A non-binding private opinion provides informal guidance on the VAT treatment of a particular set of facts and circumstances or transaction. A non-binding private opinion does not have "binding effect" upon SARS. A non-binding opinion is issued under the ATR rules and may therefore be rejected under certain circumstances.

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.

Sanitised template: A template to be completed and submitted by the applicant upon application for a ruling, to assist in streamlining the sanitisation and publication process. See the examples on the **SARS website** (uploaded below this guide).

Senior SARS official: A SARS official who has specific written authority from the Commissioner, or who is occupying a post designated by the Commissioner in writing, to exercise powers and duties required by the TA Act.

VAT301 form: An application form that accompanies the detailed VAT ruling application that is applied for under section 41B of the VAT Act. The VAT301 form is available on the SARS website.

15.4 VAT rulings

15.4.1 VAT rulings application process

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 Rulings, the applicant is not

[204] See the **SARS website** for a template of a Power of Attorney which applicants may use. See also the *VAT Rulings Process Reference Guide* for more information**.**

required to pay a fee as required under ATR. Public Notice 748, as well as the exclusions, refusals and rejections contained in section 80(1) of the TA Act also applies to VAT Rulings.

Making application – All applications for a VAT Ruling must be submitted to SARS by e-mail to **VATRulings@sars.gov.za** or fax number 0860 540 9390. Submissions received by any other means, for example, submissions dropped off at SARS branch offices or e-mailed to any SARS official, will not be accepted. The VAT ruling application must be accompanied by a VAT301 form and a signed Power of Attorney form where applicable. The POA and the VAT301 must be completed and signed (physical or electronic signature) by the relevant authorised persons and must also be signed by a witness. Once the application has been received, certain pre-acceptance and compliance requirements will be conducted to determine whether the application can be accepted and thereafter allocated to a senior SARS official.. A non-compliant application will be rejected if the applicant fails the pre-acceptance and compliance process, the application deals with a matter listed in section 80 of the TA Act including matters listed in Public Notice 748 or the taxpayer is unwilling or unable to provide any additional information requested. The time allocated per VAT Ruling depends on the complexity of the issue raised in the application. In addition to the VAT301 form and the Power of Attorney Form (where applicable) the application must be accompanied by all the relevant information, such as –[205]

- the applicant's name, VAT number (if applicable), postal address, contact details (for example, phone, or e-mail), and if applicable, the contact details of the applicant's representative;
- a full and accurate description of the transaction including the financial implications), and the impact the transaction might have on the applicant's VAT liability (or on any connected person in relation to the applicant or class member);
- any other transaction that was entered into before the application was filed or that the applicant may enter into after filing the application, if that other transaction may have a bearing on the tax consequences of the transaction, or may be considered to be part of a series of transactions involving the transaction;
- the reasons why the applicant believes the specific ruling(s) should be granted the relevant statutory provisions or issues, the applicant's interpretation of those provisions as well as an analysis of any relevant authorities that the applicant considered or is aware of, whether or not it supports the specific ruling(s) the applicant is seeking;
- a statement that none of the grounds for the rejection of the application under section 80 of the TA Act apply to the application;
- a statement confirming that the applicant(s) complied with any registration requirements under a tax Act with regard to any tax for which the applicant is liable, unless the application concerns a ruling to determine an applicant's liability to register under a tax Act;
- a statement confirming that all tax returns required to be rendered by the applicant under a tax Act have been rendered and tax has been paid or arrangements acceptable to SARS have been made for the submission of any outstanding returns or for the payment of any outstanding tax. In the case of a VAT class ruling application, the class representative should provide the aforementioned statement on behalf of the class. In the case of a VAT class ruling –
    - a description of the class members; and

[205] This is not an exhaustive list.

- the impact the transaction might have upon the tax liability of the applicant or class members or, if relevant, any connected person in relation to the applicant or class member.

Issuance of a VAT ruling – A VAT ruling will be issued once the relevant internal review processes have been finalised and it has been approved and signed off by the relevant senior SARS official. A draft VAT ruling is not provided to the applicant before issuing the VAT ruling. The authority to issue a VAT Ruling has been delegated to specific individuals employed within the Leveraged Legal Products: Indirect Taxes. Any decision or communication from any other functional area within SARS is therefore not a binding ruling. The VAT ruling will be sent to the address and e-mail address that had been provided in the VAT ruling application.

Publication of rulings – A ruling that is issued (whether positive or negative), may be published in a sanitised or redacted form that does not reveal the identity of the applicants. The ruling is published by consent of the applicant and is published for general information. From 1 August 2023, a sanitised template must be completed and submitted by the applicant upon application for a ruling, to assist in streamlining the sanitisation and publication process. Examples, with notes for completion, are available on the SARS website.

For information on the requirements on how to apply for a VAT Ruling, see the *VAT Rulings Process Reference Guide* and Chapter 7 of the TA Act*.* Published BGRs are available on the **SARS website***.*

15.4.2 Applications for apportionment rulings

A vendor that wants to use an alternative method of apportionment must apply using the existing VAT ruling application process, as per the *VAT Rulings Process Reference Guide*.

An application to use an alternative method of apportionment, must include the following information:

- A complete description of all the business activities, including whether or not income was received from such activities.
- Details of specific transactions that may impact SARS's decision-making process (for instance, where interest is earned from investment or lending activities, the interest rates applicable or alternatives to be used if necessary in specific circumstances).
- A list of all income streams, including the value thereof, and whether or not such income results from various business activities carried on by the business. Also indicate whether those income streams are treated as taxable, exempt or out-of-scope for VAT purposes.
- Any possible changes to the business activities or income streams in the past or near future that may have an impact on the apportionment ratio.
- Annual Financial Statements for the past three years.
- A list of all expenses (including the values thereof) that are –
    - directly attributed (that is, being applied wholly) to the making of taxable supplies;
    - directly attributed (that is, being applied wholly) to the making of exempt supplies or for other non-taxable purposes (including income received that does not result from a supply made);
    - subject to the requested apportionment method, that is, mixed expenses.

- A detailed explanation as to why –
  - apportionment is required, that is, why expenses are regarded as being for mixed purposes;
  - the standard turnover-based method in BGR 16 is considered not to be fair and reasonable in the circumstances, or why it is inappropriate;
  - the proposed alternative method or methods that are considered to be more fair and reasonable or appropriate taking into account the specific circumstances the enterprise.
- A clear indication as to the preferred apportionment method and a detailed analysis of every inclusion or exclusion in that method.
- The outcomes and analysis of at least two other apportionment methods considered (other than the one in BGR 16) or an explanation as to why any other methods of apportionment commonly used by vendors cannot be applied.
- Detailed calculations of the apportionment ratio for three consecutive years (from the latest information available) for the standard turnover-based method and the two alternative apportionment methods that have been considered. The calculation must clearly indicate how the numbers or values used in the calculations are determined.
- A statement in the ruling application as to whether input tax has been deducted in past tax periods using any method other than the one prescribed in BGR 16, and if so, from when that method was applied.
- A copy of any previous ruling issued within the past five years permitting the vendor to use an alternative method of apportionment.

It is important that all the information referred to above is submitted as part of an application to avoid unnecessary delays or the application not being accepted.

15.5 VAT ruling or a decision?

A request for the Commissioner to make a decision[206] should be distinguished from an application for a VAT Ruling. The main distinction is that a VAT Ruling pertains to the interpretation of the VAT Act whereas a decision constitutes the exercising of a discretion by the Commissioner.[207] Certain decisions are subject to objection and appeal as set out in section 32 and section 104 of the TA Act.

The difference between a VAT Ruling and a decision is illustrated in Examples 44 and 45 below:

Example 44 – Application for a VAT Ruling

Facts:

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*).

Does the request qualify as an application for a VAT ruling or a decision?

[206] See **15.4.4** relating to decisions under section 72.

[207] See section 9 of the TA Act for more information.

Result:

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 45 – Application for a decision

Facts:

A vendor, registered to account for VAT 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).

Does this request qualify as an application for a VAT ruling or decision?

Result:

The Commissioner is required to exercise a discretion in directing that 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 therefore qualifies as a request for a decision.

In certain instances, the law provides guidance, but does not allow for discretion to be exercised. In these instances, the matter cannot be dealt with either as a decision or a VAT ruling.

Example 46 – Application qualifies as neither a VAT Ruling nor a decision

Facts:

A vendor supplies holiday accommodation that includes daily transport by road to points of interest, for a single consideration. The vendor wants to confirm how to attribute the consideration charged partly to the making of the taxable supply (the accommodation) and partly to an exempt supply (the transport of fare-paying passengers) under section 10(22).

Does the request qualify as an application for a VAT ruling or a decision?

Result:

The request does not qualify as an application for either a VAT ruling nor a decision. This is on the basis that there is no discretion afforded to the Commissioner as to how to determine the different parts of the consideration as contemplated in section 10(22).

A VAT Ruling is only binding on the Commissioner and as such, it cannot become the subject of an objection or appeal, unless it concerns the refusal by the Commissioner to approve a special method of apportionment proposed by a vendor to calculate the input tax on expenses for both taxable and non-taxable purposes (mixed purposes) as contemplated in section 17(1), if for some reason, the method as prescribed in BGR 16 “Standard Apportionment Method” is not fair and reasonable in the circumstances.

In any other case, if SARS raises an assessment as a result of the interpretation of the law provided in any VAT Ruling, then the assessment itself may be the subject of the objection or appeal rather than the ruling itself. If an interpretation given in the ruling is to be challenged, then the ruling must be taken on review in the High Court.

15.5.1 Decisions under section 72

Since the inception of VAT in South Africa, the VAT Act contained provisions in section 72 that provide the Commissioner with the discretionary powers to make arrangements or decisions as to the manner in which the provisions of the VAT Act shall be applied, subject to certain requirements being met.

Challenges regarding the application of the mandatory wording of the other provisions of the VAT Act versus the discretionary wording of the provisions of section 72 arose. In order to address those concerns, section 72 was amended to align the wording with the construct and policy intent of the other provisions of the VAT Act. The amendments to section 72 were introduced by Act 34 of 2019 with effect from 21 July 2019.

The effect of the amendments to section 72 is to limit the extent of the Commissioner's discretion in making a decision under this section. This is done, for example, by clarifying the circumstances under which the provision can be invoked and by aligning the wording more generally with the construct and policy intent of the VAT Act as a whole, as well as any specific provisions in the VAT Act which might be applicable in the circumstances.

As a result of the amendments, no decision can be given under section 72 which –

- has the effect of reducing or increasing the liability for tax levied under the VAT Act; or
- is contrary to the construct and policy intent of the VAT Act as a whole or any specific provision thereof.

Certain provisions[208] relating to Advance Rulings were also introduced in the amended section 72 to align with the process of application and issuing of decisions under section 72.

These include, amongst others –

- to introduce a prescribed application fee of R2 500 in respect of any application for a decision under section 72 in accordance with section 81 of the TA Act read with VAT Notice 299;[209]
- the issuing, in accordance with section 90 of the TA Act, of procedures and guidelines in the form of BGRs for the implementation and operation of the process to obtain a decision under section 72.

In addition, under section 72(3) read with VAT Notice 300, the Commissioner may decline to make a decision in respect of the list of transactions set out in the said Public Notice.

The ATR eFiling system is used to facilitate the administrative process of receiving applications for a decision under section 72, including the levying and receipt of the required application fee. Subsequent to this initial process, the application will be considered and finalised by Leveraged Legal Products.

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[208] Sections 75, 81, 83, 84, 85, 86, 87, 89 and 90 of the TA Act.

[209] Public Notice 299 "Application and cost recovery fees for binding private rulings and binding class rulings under section 81 of the Act and section 72 of the Value-Added Tax Act, 1991" was published on 1 April 2021 in *GG* 44383 and came into effect from that date.

A section 72 decision that is issued (whether positive or negative), may be published in a sanitised or redacted form that does not reveal the identity of the applicants.

Refer to BGR 56: "Application for a decision under section 72" that prescribes the requirements and conditions relating to an application for a decision under section 72, as well as the updated *VAT Section 72 Decisions Process Reference Guide.*

As mentioned in *VAT Connect – Issue 10* (March 2020), the changes to the wording of section 72 only apply to new applications made on or after 21 July 2019. Therefore, any arrangement or decision made by the Commissioner before that date, remains valid until the earlier of the following dates:

- The stated expiry date of that decision (as contained in VAT Rulings, and BGRs;
- 31 December 2021; or
- The effective date of any amendment in the legislation that affects the previous arrangement or decision (refer for example to the article "Non-resident lessors of ships, aircraft and rolling stock under a rental agreement" in VAT Connect (Issue 12).

All decisions under section 72 that do not have a stated expiry date before 31 December 2021, also ceased to apply from the said date. This includes VAT Rulings and BGRs containing decisions under section 72 (Rulings).

The effect of the above is that affected vendors or classes of vendors will no longer be able to rely on these Rulings to the extent that they contain a decision under section 72. Refer to *VAT Connect – Issue 12* (June 2021) and *VAT Connect – Issue 13 (November 2021)* for further details regarding section 72 in general, as well as the specific implications of the expiration of existing section 72 decisions.

Chapter 16
Tax Administration Act

16.1 Introduction

A brief summary of the TA Act 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.

16.2 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, 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.
- Fourthly, if there is any inconsistency between a tax Act and the TA Act, the tax Act will prevail.

See the *Short Guide to the Tax Administration Act, 2011* for more information is this regard.

16.3 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. The meaning of the term "practice generally prevailing" has been dealt with in numerous cases, sometimes with conflicting outcomes. For this reason, vendors were often unsure of the existence of a practice generally prevailing as a result of reliance on certain non-SARS publications. In order to give certainty to the meaning of this term, it is now defined in the TA Act.[210]

The TA Act defines a practice set out in an official publication as a practice generally prevailing. Official publications are issued by either a senior SARS official who is specifically designated as such by the Commissioner or by the Commissioner him or herself and include –

- Binding General Rulings;
- Interpretation Notes;
- Practice Notes; or
- Public notices.

[210] Section 5 of the TA Act.

Any practice contained in a publication and documents which do not reflect the application or interpretation of a tax Act that is binding on, and generally applied by the whole of SARS is not a practice generally prevailing and can therefore not be relied upon by vendors. Examples of documents which do not constitute official publications include, but are not limited to –

- this guide or any other guide issued on a specific matter;
- media releases, published articles; and
- operational practices or procedures.

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. In essence, an assessment will always be viewed in accordance with the practice generally prevailing at the time of the assessment. This means that SARS cannot reassess (that is raise an additional or reduced assessment) if the practice generally prevailing is altered subsequent to the assessment. The practice generally prevailing at the time of assessment, applies.

The TA Act also deals with the situation in which a practice generally prevailing no longer applies. 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. However, should SARS appeal a judgment which materially changes a practice generally prevailing, that practice will remain valid and applicable until the final outcome of the appeal.

16.4 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. For more information refer to the **SARS website** on the single registration process.

A change to the address, banking account, or representative (after registration) of the vendor must be communicated to SARS within 21 business days of the change. See **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.

16.5 Record-keeping

The TA Act[211] imposes a duty on a person to retain the records, books of accounts 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[212] and may trigger administrative non-compliance penalties under Chapter 15 of the TA Act.

See **Chapter 13** for more information on the electronic retention of records and the *Short Guide on the Tax Administration Act, 2011* for more information on record-keeping and the relevant periods applicable.

16.5.1 Unannounced inspections

SARS officials are empowered under the TA Act to conduct an inspection at a vendor's place of business without prior notice. The object of these unannounced inspections is to determine whether a vendor is registered for tax purposes, to ascertain if the vendor keeps records as required, or to determine the identity of the person occupying the premises. This type of inspection can only be conducted in instances where a SARS official has a reasonable belief that a trade or enterprise is carried on, at the premises to be inspected. These SARS officials are not allowed to enter any domestic premises or dwelling which is not used for purposes of carrying on a trade or enterprise.

Further, all SARS officials involved in the administration of a tax Act must be issued with an identity card which he or she must produce when required to do so by a member of the public. This card is used to, when requested, demonstrate the authority of a SARS official to perform functions or duties. This ensures that SARS officials are not impersonated and that the public is satisfied that they are dealing with a SARS official and know the identity of that official.

16.6 Verifications and audits

Verifications

The process of verification is a less intensive process than an audit although it entails the evaluation of the accuracy of the vendor's records. Records that might be used to verify the details on a return include the supporting documents relating to the input tax deductions made or output tax declared, or any other records or documents which may be relevant in the circumstances (including information from third parties). SARS officials trained in VAT will conduct the verification. You will be notified of the request to submit supporting documents within a short period after submitting the actual return. The requested documents should be submitted to SARS in a manner specified in the request.

The supporting documents are usually requested to be uploaded *via* the eFiling channel, by post or by delivery at the nearest SARS office. You may select the format accessible to you to submit the documents from the aforementioned options. The scope of the verification is generally limited to a single VAT period and will probably be the latest period.

211 Section 30 of the TA Act.

212 Section 234(*e*) of the TA Act.

What is an audit?

An audit is generally a detailed check on the correctness of VAT returns submitted and payments made by you. It 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. 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.

What happens during the auditing process?

The TA Act provides that a vendor must be kept informed of the progress of an audit at regular intervals. The Commissioner has issued Public Notice 788[213] 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.

How are vendors selected for audits?

Chapter 5 of the TA Act provides the basis upon which a person may be selected for an inspection or verification which can be 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 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, see the *Short Guide to the Tax Administration Act, 2011*. Under certain conditions, vendors who have been subjected to audits or investigations may apply for relief under the voluntary disclosure programme. However, certain requirements must be met before such an application will be accepted.[214]

[213] *GG* 35733 dated 1 October 2012.

[214] For more information on these qualifications listed in section 226 of the TA Act.

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, excluding a "dwelling" supplied for letting or hiring thereof [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.
- Lodging or board and lodging in a hospice.

Connected person

The term includes but is not limited to: family relatives, partnerships, trust beneficiaries, branches of the same legal entity, companies with substantially the same shareholders. 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 OMV of the supply, rather than on the amount of consideration received. Other examples include the following (amongst others):

- Natural persons who are related by blood or marriage.
- A company and any subsidiaries of that company.
- Any CC 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 generally 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 OMV 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
- Water

(The list is not exhaustive.)

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. [See **5.3.4** for more information].

Should the charges for domestic goods and services not form part of the all-inclusive charge, these separately itemised supplies will attract VAT at the standard rate on the full value.

Donation

This is where a gratuitous payment (donation) 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 to another person, that is, some form of payment;
- whether or not for profit.

Special inclusions:

- Public authorities – certain government departments and provincial authorities
- Municipalities
- Welfare organisations and FDFPs[215]
- Share-block companies
- Non-residents supplying certain electronic services (this includes the activities of local and non-resident intermediaries) where at least two out of three of the following circumstances apply, namely: 1. The electronic services are supplied to a South African resident, 2. Payment originates from the RSA, or 3. The recipient has an address (that is business, postal or residential) in the RSA.

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 section 12)
- The supply of commercial accommodation[216] of a value of less than R120 000 per annum.

[215] The definition of "enterprise" was amended to include reference to the activities of an implementing agency in respect of the FDFP activities rather than to regard the FDFP as a "person".

[216] Paragraph (*a*) of commercial accommodation in section 1(1).

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.

Exempt supplies include:

- certain “financial services” as defined;
- supplies by any "association not for gain" of any donated goods or services or any other goods made or manufactured by such association if at least 80% of the value of the materials used in making or manufacturing such other goods consists of donated goods;
- 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; and
- 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);
- 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 (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 an instalment lease agreement. 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 an instalment lease agreement, the term of the agreement must be at least 12 months.

Input tax

This includes, amongst others, the tax paid by the recipient to the supplier of goods or services, the VAT paid on the importation of goods and includes notional input tax on second-hand goods. 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 the relevant documentary proof under section 16(2)(*a*) to (*e*). Under section 16(2)(*g*) a vendor may in certain circumstances deduct input tax based on alternative documentary evidence acceptable to the Commissioner in terms of a ruling issued by the Commissioner.

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, where the bill of entry or other documentation prescribed by the Customs and Excise Act reflect the vendor as the importer, the vendor must be in possession of such document together with the receipt for the payment of the VAT in relation to the importation of the goods and the EDI Customs Status 1 Release Message. Should the vendor not be in possession of the aforementioned documentation, it must in terms of section 54(3)(*b*) be in possession of the statement issued by the agent when deducting input tax under section 16(3)(*a*)(iii) or(*b*)(ii).

In the case of second-hand goods acquired by the vendor, the vendor must retain a proper record of the details of the transaction on **VAT264** Form. 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 and is limited to the extent that the consideration for the property has been paid.

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 that 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 (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. Guides which SARS issues from time-to-time for information purposes only do not fall within the meaning of "official publication".

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/CC
- 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, a club, society or association with its own constitution
- Municipalities
- Public Authorities

Public notice This means a notice issued by the Commissioner and published in the *GG*. The TA Act and VAT 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, and “old order” mining rights. Vendors trading in goods containing gold which are sold in substantially the same state as when those goods were acquired, may be entitled to a deduction of notional input tax in certain circumstances.

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.

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”, “VAT invoice” or “invoice”
- 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 cases, a tax invoice is not required to be issued and there are also some special rules which apply in other cases. For example, the requirements for tax invoices in respect of electronic services supplied by non-residents are prescribed in GN 1594 in *GG* 45324 dated 10 December 2021.

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
- Category B – two-monthly (ending at the end of every even month). For example, February, April, June
- 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)

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); and
- those on which the standard rate 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.

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.

Digital channels

E-mail

- For tax practitioners: **pcc@sars.gov.za**
- For taxpayers: **contactus@sars.gov.za**

When you send an email to the above mailboxes, you will receive an automated reply with a case number assigned. For ease of use, this number will be quoted in related correspondence on the progress of the case.

SARS Online Query System

Use our Digital Service offerings offered by the SARS Online Query System (SOQS). Go to ‘Contact Us’ on the SARS website sars.gov.za and click on “Send us a Query”.

Online appointments

Use our online booking system to request an online appointment or before going to a SARS branch. Go to ‘Contact Us’ on the SARS website sars.gov.za and click on “Make an appointment”.

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

Complaints Management Office

Telephone
0860 12 12 16

SARS Website
www.sars.gov.za

Office
Any SARS Branch

Service Centre
0800 00 7277

eFiling Website
www.sarsefiling.gov.za

SARS Service Centres

- You may contact SARS by phone, e-mail or visiting a SARS Service Centre. Before visiting a service centre, remember to “Make an Appointment”. Find the function under “Contact Us” on the **SARS website**.
- Call our SARS Service Centre on 0800 00 7277
- International Callers may contact our Service Centre on +27 11 602 2093

Practitioners

Telephone / Service Centre
0800 00 72 77

E-mail
pcc@sars.gov.za

Business hours
Weekdays 8:00 – 16:00 (except Wednesdays)
Wednesdays 9:00 – 16:00

Before visiting a branch, remember to “Make an Appointment”. Find the function under “Contact Us” on the **SARS website**.

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 e-mail to **VATRulings@sars.gov.za**. All applications must comply with section 79 of the TA Act [excluding section 79(4)(*f*), (*k*) and (6)].