

VAT NEWS

Keeping Vendors Informed

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AMENDMENTS TO THE VAT ACT

Amendments to the VAT Act have been proposed in the Revenue Laws Amendment Bill (No 33 of 2006) and the Revenue Laws Second Amendment Bill (No 34 of 2006).

This VAT News is mainly dedicated to these proposed VAT amendments. For more information on the amendments, visit the SARS website www.sars.gov.za/legislation.

RULINGS

Prior to the introduction of the Advanced Tax Rulings ("ATR") system the Commissioner had authority to issue binding rulings in respect of the application or interpretation of the VAT Act. These rulings could be categorised under general rulings, e.g. the general rulings database available on the SARS website and non-general rulings that were given to specific vendors and which pertained to specific transactions.

An amendment to the VAT Act allows the Commissioner to issue binding "VAT rulings" or "VAT class rulings". The proposed amendment furthermore ensures that the provisions applicable to ATR catered for in the Income Tax Act, will apply mutatis mutandis, with certain exceptions.

Binding General Ruling (VAT) No. 2 was issued on 1 January 2007 to provide guidance on the status of rulings issued prior to 1 January 2007 and the process of obtaining confirmation of the binding nature of such rulings. This ruling is available on the SARS website.

In brief, the ruling provides for the following:

General rulings – sections 41(a) and (b) of the VAT Act

Only general written rulings listed in the Rulings Register on the SARS website as well as those contained in Practice Notes, Interpretation Notes and the various issues of Vatnews will continue to be binding to the extent that these rulings are not withdrawn by the Commissioner.

In the event that notice is given by the Commissioner that a particular general written ruling or document that contains such a ruling is to be withdrawn, it is recommended that the person who relied on such ruling should apply for either a VAT ruling or a binding private ruling.

Non-general rulings – section 41(c) of the VAT Act

Non-general rulings will remain in force in respect of supplies that occurred before 1 January 2007.

With regard to written decisions issued by the Commissioner prior to 1 January 2007, in respect of supplies made or to be made on or after 1 January 2007, vendors who wish to retain the certainty that a binding ruling provides, must apply to the Commissioner for confirmation of the status of the decision.

These requests must be clearly marked as "VAT Rulings Confirmation Request". A copy of the original application and the ruling issued must be included in the request. Requests must be sent to the following centralised e-mail address or fax number:

Fax number: (012) 422 4443

E-mail: VATRulings@sars.gov.za

The period allowed for this process commenced on 1 January 2007 and ends on 30 June 2007. The expiry dates for lodging requests are as follows:

- Written decisions issued from 1 January 2004 to 31 December 2006: **30 April 2007**;
- Written decisions issued from 1 January 2002 to 31 December 2003: **31 May 2007**;
- Written decisions issued prior to 1 January 2002: **30 June 2007**;
- Written decisions issued to bodies or associations representing certain industries or a class of vendors: **31 May 2007**; and
- Section 72 rulings: **31 May 2007**.

Failure by a vendor to lodge such requests with the Commissioner within the prescribed periods will result in the previously issued written decision being regarded as a non-binding opinion. The effect hereof is that the Commissioner is not bound to interpret or apply the legislation as set out in the written decision in respect of supplies made after the expiry dates stipulated above.

Any ruling or written decision submitted for confirmation on or before 30 June 2007 will be regarded as a binding decision until such time that the Commissioner notifies the applicant of its status.

Section 72 rulings

All Section 72 rulings issued prior to 31 December 2006 are withdrawn with effect from 1 June 2007, unless the procedure for lodging a request as mentioned above has been complied with.

Rulings for which confirmation is not required

Rulings that were issued in terms of the following sections of the VAT Act need not be lodged with the Commissioner as these are regarded as binding and do not require confirmation (provided the requirements of section 41(c) have been complied with):

- Section 11(3) read with VAT Interpretation Note No. 30 of 30 March 2005: Extensions granted to obtain proof of payment up to a maximum period of 6 months from the date of the invoice;

- Section 27: Determination from the Commissioner in respect of the category of tax period;
- The second proviso to Section 27(6): Tax period ending on a day other than the last day of the month as approved by the Commissioner; and
- Section 55(4): A determination regarding the retention of records in a format other than hard copies.

For more detailed information regarding the ATR system, consult the SARS guide: "Advance Tax Rulings – A Quick Guide to Binding Private Rulings", which is available on the SARS website.

EXCESS CONSIDERATION

Sometimes a vendor receives payment which is more than the consideration charged on the invoice. Typically, this involves payments made by two different persons for the same supply. In many instances the overpayment is not refunded by the vendor, and after the general prescription period of 3 years, the vendor claims this amount as income.

The amendment is to ensure that the vendor accounts for VAT in respect of the amount of the excess consideration received on the last day of the tax period which ends 4 months after the excess amount has been received. If after 4 months the vendor refunds any part of the excess payment, the vendor is entitled to claim a deduction by applying the tax fraction (i.e. 14/114) to the amount refunded.

COMPENSATION FOR DISEASED ANIMALS

In terms of section 19 of the Animal Diseases Act, 1984, the owner of any animal which has been destroyed or disposed of due to any measure contained in such Act may apply for compensation from the State.

The compensation payment is not regarded as a grant, which is usually subject to VAT at the zero rate. Provision is now made in the VAT Act for the compensation payment to be subject to VAT at the zero rate.

ENTERTAINMENT PROVIDED TO NON-EMPLOYEES

Generally, a vendor is not entitled to any input tax in respect of the acquisition of entertainment. One of the exceptions to this general rule is where an employee of the vendor spends one night or more away from his or her usual place of residence and usual working-place.

Sometimes a vendor employs the services of other persons to further its business aims, e.g. to distribute goods on its behalf, and the vendor incurs entertainment expenses relating to a meal, refreshment or accommodation consumed by such a person. Previously, as such a person did not qualify as an employee of the vendor, the vendor was not entitled to input tax in respect of such expenses.

The amendment, however, unblocks this previously denied input tax where it relates to a self-employed natural person that carries on a trade independently of the vendor. Such self-employed natural person must spend one night or more away from his or her usual place of residence and working-place as a reason of his or her contractual duties with the vendor.

DEREGISTRATION - CREDITORS

Where a vendor has claimed input tax in respect of the supply of goods or services, and has not settled the account with the creditor at the time of the vendor's deregistration, the vendor is required to declare output tax by applying the tax fraction (14/114) to the unpaid amount. The intended effect is to recover the input tax previously claimed on taxable supplies to the extent that payment will not occur.

MISCELLANEOUS PROPOSED AMENDMENTS

The following amendments are also proposed:

- The definition of "municipality" will be amended to align with the definition in the Constitution.
- Municipal entities, Water Boards and Regional Electricity Distributors may account for VAT on the payments basis.
- To extend the term "foreign donor funded project" to include that the agreement must provide that the international donor funding must not be subject to VAT. Furthermore, the zero rating in respect of the receipt of funding will only be applicable if it is announced in the Gazette by the Minister of Finance.
- A welfare organisation must be an approved public benefit organization as contemplated in paragraph (a) of the definition of "public benefit organization" in section 30(1) the Income Tax Act.
- The minimum amount that will be refunded by SARS to a vendor has been increased from R25 to R100.
- Various amendments regarding the supply of goods or services by customs controlled area enterprises and IDZ operators. An interpretation note will be issued in due course.
- A vendor is not required to complete a VAT 264 form where the consideration for the supply is less than R50 (previously R20).

GUIDES CURRENTLY UNDER REVIEW

The following guides are in the process of being updated:

- Guide for Vendors (VAT 404)
- Construction and Fixed Property (VAT 409)
- Guide for Associations not for Gain and Welfare Organisations (VAT 414)

MUNICIPALITIES: APPORTIONMENT OF INPUT TAX

In terms of a proposed Regulation, municipalities are required to apportion their input tax claims in accordance with the turnover-based method, where applicable.

Should a municipality be of the opinion that the prescribed method of apportionment is unreasonable, a detailed submission in this regard should be submitted to policycomments@sars.gov.za.

All applications will be reviewed by the SARS Legal and Policy division in order to ensure uniformity in the application of the apportionment method.

CONTACTING SARS: Where vendors have queries relating to VAT, including where to fax their returns, they should contact their local SARS branch office. Additional information can be obtained on the SARS website at: www.sars.gov.za