

UPDATE ON GUIDES AND INTERPRETATION NOTES

Since the last issue of VAT News, the following Guides and Interpretation Notes have been finalised, updated or issued for public comment:

Guides

- VAT 404: Guide for Vendors (updated).
- VAT 414: Guide for Associations not for Gain and Welfare Organisations (updated).
- VAT 420: Guide for Motor Dealers (finalised/new).
- VAT 411: Guide for Entertainment, Accommodation and Catering (issued for public comment).

Draft Interpretation Notes issued for public comment

- Sections 8(7), 8(16), 11(1)(e) and 18A: Sale of an enterprise or part thereof as a going concern.
- Sections 8(25), 9, 10 and 18: Supply of goods or services by a vendor to another vendor where the provisions of section 42, 44, 45 or 47 of the Income Tax Act, 1962 are applicable.
- Section 27: Tax periods.
- Sections 20 and 21: Recipient-created tax invoices, debit or credit notes.
- Documentary proof required to substantiate a vendor's entitlement to apply the zero rate to the supply of goods or services in terms of section 11(3).
- Documentary proof required to claim input tax or any other deduction in terms of section 16(2).

These documents are all available on the SARS website www.sars.gov.za. Documents which were issued for public comment are now in the process of being finalised.

PROPOSED AMENDMENTS

The draft 2009 Amendment Bills, which give effect to the tax proposals announced in the 2009 Budget and outlined in the 2009 Budget Review, have been published for public comment and have formally been tabled in Parliament.

The following changes to the VAT Act (amongst others) have been proposed:

- To increase the voluntary VAT registration threshold for enterprises other than those supplying commercial accommodation from R20 000 to R50 000 with effect from 1 March 2010.
- To provide that false statements on any VAT forms, and not just returns, are considered an offence.
- To introduce enabling provisions to permit the use of biometric information to verify the identity of applicants for VAT registration.
- To introduce a transitional measure regarding the particulars to be contained in tax invoices and debit and credit notes in certain instances where the transaction involves the purchase of an entire business.
- To clarify certain aspects with regard to the payment of tax, penalty and interest in cases where an objection or appeal has been lodged.

- To introduce certain changes with regard to the imposition, calculation, and remission of interest. Part of the proposal is to allow the Commissioner to deal with certain matters by way of Regulation. The application of the law in this regard will be clarified further by way of an Interpretation Note.

The Bills are available on the websites of the National Treasury (www.treasury.gov.za) or SARS (www.sars.gov.za).

VAT DEREGISTRATION PROJECT

During January 2009, letters were sent to certain vendors in which they were advised of the Commissioner's intention to suspend their VAT registrations, and any further VAT refunds. The letters were sent to vendors that had a total value of taxable turnover of less than the minimum of R20 000 which is required to qualify for voluntary VAT registration and was based on the amounts reported on the VAT 201 returns over the previous 12-month period. The affected vendors were required to provide a motivation **by the deadline of 31 March 2009** as to why their VAT registrations should be re-activated rather than being cancelled.

The objective of this exercise was to clean up the VAT register so that inactive or incorrect registrations could be identified and deregistered.

This applies, for example, where –

- a person registered for VAT in error;
- a vendor fails to advise SARS of the closure of the enterprise;
- a person registers in anticipation of carrying on an enterprise which never actually commences; or
- a person manages to register or remain registered for VAT without meeting the minimum requirements.

The files of those vendors that did not make the necessary representations by the deadline will now be subject to the normal deregistration procedures, which may include an audit.

Note that vendors who do not meet the proposed new minimum threshold of R50 000 will also be required to deregister with effect from 1 March 2010 (the date that the proposed amendment comes into effect).

GENERAL RULINGS REGISTER

Notice was given in VAT News 33 that the rulings register will be withdrawn in a phased approach and that a new rulings register will be created. Notice was posted in July 2009 for the first batch of rulings, which were withdrawn with effect from 1 August 2009. A notice period of one month will apply for each batch of rulings which are posted for withdrawal.

Rulings which have been withdrawn in the last five years and those which are in the process of being withdrawn are available on the SARS website. The documents can be accessed by clicking on the link "Withdrawn Rulings Register" under "VAT Rulings" and "General Written Rulings" on the VAT webpage.

ENVIRONMENTAL LEVY ON ELECTRICITY

The environmental levy of 2 cents per kWh on electricity generated from non-renewable resources came into effect on 1 July 2009. VAT is calculated on the final price of the electricity supplied, including the amount of the levy.

CHANGE OF BANKING PARTICULARS

A vendor is required to notify SARS of any changes to the banking particulars of the business by completing and submitting form VAT 126. A new policy document AS-VAT-15 - Bank Detail Changes of Registered VAT Vendors – External Policy which prescribes the process and the requirements in this regard is now available on the SARS website www.sars.gov.za. Click on “All Publications” and look under “Value-Added Tax” to locate the document.

Some important points highlighted in this document are that –

- no VAT refunds (or any interest thereon) will be paid until the vendor has furnished the enterprise's correct and valid banking details in writing;
- the legal person/name of the holder of the bank account must be the same as the person who registered for VAT; and
- with effect from 1 April 2009, only certain vendors may use the bank account of a third party for purposes of obtaining a refund. (Refer also to VAT News 33.)

Any request to change banking details must be made by the responsible person, which in the case of a juristic person, is the representative vendor (e.g. public officer, trustee, curator, liquidator, executor etc). Also ensure that all the required supporting documentation is included in the application to avoid running the risk that the application may be rejected, which in turn, may delay the payment of any refunds. Supporting documentation includes not only the usual proof of identity of the representative vendor and details of the bank account, but also a recent copy of the municipal accounts of the business and of the individual acting as the representative vendor.

INTEREST ON REFUNDS

SARS must pay interest on any VAT refund which has not been paid to a vendor within 21 business days after the date on which the correctly completed return for the tax period is received. Interest is paid at the rate prescribed in terms of the Public Finance Management Act, 1999 and is calculated from the 22nd business day after the return was received by SARS to the date that the refund is actually paid.

However, the calculation of the 21 business-day period may be suspended, or the vendor will not be entitled to interest in certain situations such as the following:

- **Incomplete or defective returns.** If a refund return contains a material defect, error or omission which affects the refundable amount, the period of 21 business days is calculated from the date that the vendor rectifies the return satisfactorily, or information is provided to SARS to enable an assessment of the correct refundable amount to be made.

- **Outstanding returns.** Where a vendor has returns outstanding in respect of VAT, income tax or other taxes administered by SARS, the 21 business-day period is calculated only from the date on which SARS receives all of the outstanding returns.
- **Inaccessible records.** Where the SARS auditors are prevented from gaining access to the records of the vendor to verify the refundable amount, the calculation of the 21 business-day period is suspended from the date of dispatch of the written request for access to the records, until the date on which the access is granted.
- **Incorrect banking details.** No interest is paid for any period during which a refund is delayed from being paid into a vendor's bank account as a result of incorrect banking details provided to SARS. The same applies in respect of bank processing and other administrative errors which are outside of the control of SARS.
- **Set-off against outstanding taxes.** SARS may set-off a VAT refund (as well as any interest accrued thereon) against any outstanding VAT, income tax or other taxes administered by SARS. If the set-off occurs before the end of the 21 business-day period, no interest accrues to the vendor. Only once the set-off has taken place, may the balance of the refund or any interest thereon be paid to the vendor.
- **Third party bank accounts.** If a vendor is permitted to use the bank account of a third party, the 21-day interest free period commences from the date that the correctly completed VAT 119i indemnity form is received. (Refer to the article “CHANGE OF BANKING PARTICULARS” in this issue as well as VAT News 33 for more details.)

2010 FIFA WORLD CUP™

A new portal called “Tax & Customs Information 2010” has been introduced on the homepage of the SARS website www.sars.gov.za. The portal includes information on special measures which have been put in place regarding tax and customs matters for the 2009 Confederations Cup and the 2010 FIFA World Cup. These measures relate to guarantees provided by the government to FIFA that apply to qualifying persons or groups affiliated with FIFA and are set out in section 89 of Revenue Laws Amendment Act, No. 20 of 2006 and Schedules 1 and 2 of that Act.

Some of the information which you can find on the portal includes details of the SARS 2010 Team, VAT Guides for Part 2 and Part 3 Entities, Frequently Asked Questions (FAQs), and procedures relating to Customs rebate item 413 which provides that certain goods may be imported free of customs duties and VAT under certain circumstances.

The following contacts have been provided for enquiries relating to the 2010 FIFA World Cup:

VAT registrations and VAT refunds:

Valda Adams: Tel: 010 2081006 email: vadams@sars.gov.za

Ansie Botha: Tel: 010 2081038 email: acbotha@sars.gov.za

Customs:

Sean Padiachy: Tel: 012 4227214 email: spadiachy@sars.gov.za

General enquiries:

Brandley Ngcobo: Tel: 012 4226561 email: 2010@sars.gov.za

Call Centre 0800 00 72 77

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

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