



Legal & Policy

Value-Added Tax

VAT 413

Guide for Estates



South African Revenue Service

PREFACE

This guide concerns the application of the value-added tax (VAT) law in respect of deceased and insolvent estates in South Africa. This guide only refers to estate law to provide context for the VAT treatment of supplies and should therefore not be relied upon for legislative reference or guidance on the broader estate administration process. The information is general in nature and is made available on the understanding that SARS is not thereby engaged in rendering tax advice. Before relying on this guide in any estate matter, users should carefully evaluate this guide's currency, completeness and relevance for their purposes and consult the appropriate legislation relevant to their particular circumstances. Technical and legal terms have also been avoided wherever possible. For details about the general operation of VAT, refer to the *VAT 404 – Guide for Vendors* which is available on the South African Revenue Service (SARS) website.

All references to “the VAT Act” are to the Value-Added Tax Act No. 89 of 1991, and references to the terms “section” or “sections” are to sections of the VAT Act, unless the context indicates otherwise. The Tax Administration Act No. 28 of 2011, the Administration of Estates Act No. 66 of 1965 and the Insolvency Act No. 24 of 1936 are referred to as “the TA Act”, “the Estates Act” and the “Insolvency 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). The terms “Commissioner” and “Minister” refer to the Commissioner for SARS and the Minister of Finance respectively, unless otherwise indicated. The term “Master” refers to Master, Deputy Master or Assistant Master of the High Court who has jurisdiction in respect of the estate. A number of specific terms used throughout the guide are defined in the VAT Act. These terms and others are listed in the **Glossary** in a simplified form to make the guide more user-friendly.

The information in this guide is based on the VAT legislation (as amended) as at the time of publishing up to and including:

- The Taxation Laws Amendment Act No. 43 of 2014 which was promulgated on 20 January 2015 (as per GG 38405);
- The TA Act No. 28 of 2011 which was promulgated on 4 July 2012 (as per GG 35491); and
- The Tax Administration Laws Amendment Act No. 44 of 2014 which was promulgated on 20 January 2015 (as per GG 38406).

The information in this guide is issued for guidance only and does not constitute a binding general ruling as contemplated in Chapter 7 of the TA Act.

The previous edition of this guide has been withdrawn with effect from 27 March 2015.

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

- AS–VAT–08–Guide for Registration of VAT Vendors
- Trade Classification Guide (VAT 403)
- Guide for Vendors (VAT 404)
- Guide for Fixed Property and Construction (VAT 409)
- Guide for Entertainment Accommodation and Catering (VAT 411)
- Guide for Share Block Schemes (VAT 412)
- 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)

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 particular VAT issue, you may –

- visit the SARS website at www.sars.gov.za;
- contact the SARS National Call Centre –
 - if calling locally, on 0800 00 7277; or
 - if calling from abroad, on +27 11 602 2093 (only between 8am and 4pm South African time);
- submit a ruling application to SARS headed “Application for a VAT Class Ruling” or “Application for a VAT Ruling” by email to VATRulings@sars.gov.za or by facsimile on 086 540 9390.

Comments and/or suggestions regarding this guide may be emailed to: policycomments@sars.gov.za.

Prepared by
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South African Revenue Service
27 March 2015

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CHAPTER 1

INTRODUCTION

1.1 BACKGROUND

This guide deals with the VAT treatment of deceased and insolvent estates in South Africa. It is intended to provide guidance regarding the VAT implications in respect of deceased and insolvent estates of natural persons. This guide does not cover the liquidation or winding-up of companies and other legal persons. Any reference to the estate of an insolvent person in this guide will therefore refer to a **natural person**.

It is important to note that the administration of deceased and insolvent estates is regulated by the Estates Act and the Insolvency Act and the various procedures set out in those Acts are used in this guide to explain the VAT implications.

1.2 SCOPE OF TOPICS

From a VAT perspective, there is a significant overlap between the administration of deceased and insolvent estates. In order to avoid any repetitions, this guide is structured to address the VAT implications of the common issues, before dealing with specific topics relating to deceased and insolvent estates respectively.

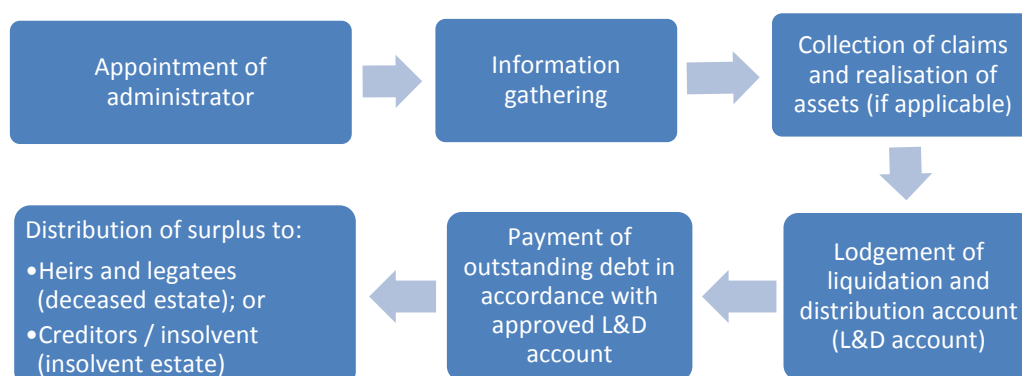
This guide will focus mainly on the following:

- The administrator's duties and obligations in terms of the VAT Act.
- Whether an estate is liable to account for VAT.
- The VAT treatment of various activities carried out in the winding-up of the estate.

This guide does not attempt to cover every possible type of transaction. As discussed below in **paragraph 1.3**, the approach is rather to cover the basic principles and explain the VAT consequences of the most common situations which arise when winding-up the affairs of a deceased or insolvent estate. The various legal formalities required by the Insolvency and Estate Acts will only be addressed to the extent that they have a VAT implication.

1.3 APPROACH OF THIS GUIDE

This guide is structured to follow the estate administration process, from the appointment of the administrator to the final distribution of the estate as shown below.



Chapter 1 – This chapter describes the scope of topics that will be covered in this guide, the approach adopted, and a brief introduction to tax administration matters whilst chapters 2 – 4 deal with generic aspects such as terminology, the duties of the administrator, and the general VAT treatment of supplies and related activities which are applicable to both deceased and insolvent estates. Chapters 5 and 6 deal with matters to the extent that they are specific to deceased and insolvent estates. Below is a brief description of the scope of each chapter:

Chapter 2 – Introduces the reader to the most important concepts, terms and definitions mentioned in this guide so that the VAT treatment of supplies which are explained in later chapters can be understood.

Chapter 3 – Provides a brief overview of the relationship between the estate and administrator, including important concepts relating specifically to administrators. This chapter also addresses the administrator's duties, obligations, personal liability and fees from a VAT perspective.

Chapter 4 – Explains the VAT treatment of the activities carried out by the administrator which is common to deceased and insolvent estates. This chapter includes the information gathering stage, collection of claims and the realisation of assets. During the information gathering stage, the administrator has to determine the extent of estate assets and liabilities. The administrator will also establish the various income streams and determine whether the estate is registered (or liable to be registered) for VAT purposes.

Chapter 5 – This chapter deals exclusively with *deceased estates* and describes the VAT treatment of distributions (bequests) to heirs and legatees, including special bequests such as usufructs and fideicommissa. Massing of estates and abatement¹ are also addressed.

Chapter 6 – This chapter deals exclusively with *insolvent estates* and explains the VAT treatment of specific activities that distinguish insolvent estates from deceased estates, including distributions to creditors, contributions towards the costs of the insolvent estate and rehabilitation.

1.4 TAX ADMINISTRATION

The TA Act was promulgated into law on 4 July 2012 and came into effect on 1 October 2012. However, certain provisions relating to interest stipulated in the Schedule to Proclamation 51 dated 14 September 2012 (as per *Government Gazette* 35687) and Schedule 1 to the TA Act will only become effective from a future date to be determined by the Minister of Finance.

The TA Act caused certain administrative provisions previously contained in the VAT Act to be replaced with similar provisions contained in the TA Act. There are, however, also instances where both the TA Act and the VAT Act apply in respect of certain administrative requirements, for example registration.

The TA Act covers a broad range of aspects which will be discussed briefly throughout this guide as and when the relevant topic arises. Some of the duties of a vendor that are impacted by the TA Act are registration, submission of returns, payments due to SARS and the obligation to inform the Commissioner of changes in the registered particulars.² This guide must therefore be read in the context of the TA Act and any public notices or proclamations issued in connection with any general tax administration matter.

¹ In property law, "abatement" refers to a situation where there is a decrease in the payment to creditors or legatees when the assets of the debtor or estate are insufficient to meet all payments in full.

² Section 23 of the TA Act read with section 25 of the VAT Act provides that vendors must communicate the change of an address, representative taxpayer and banking particulars.

Further information regarding the TA Act can be obtained from the TA Act webpage³ which includes:

- *the Short Guide to TA Act, 2011;*
- *Electronic form of record-keeping in terms of section 30(1)(b) in Government Gazette 35733 Notice No. 787; and*
- *Interpretation Note 68 (Issue 2) dated 7 February 2013: Provisions of the Tax Administration Act that did not commence on 1 October 2012 under Proclamation No. 51 in Government Gazette 35687.*

Legal interpretative queries on the TA Act can be submitted to TAAInfo@sars.gov.za.

³ www.sars.gov.za > SA's Tax System > Tax Administration.

CHAPTER 2

DEFINITIONS AND CONCEPTS

2.1 INTRODUCTION

This chapter introduces the most important concepts, terms and definitions mentioned in this guide which are relevant to understanding the VAT treatment of estates. Key points addressed in this chapter are the concepts “enterprise”, “connected persons” and “representative vendor”. Other terms which are not VAT specific, but which are commonly used when dealing with estates are also discussed, for example, the terms “administrator”, “estate” and “liquidation and distribution account”.

2.2 ENTERPRISE

The term “enterprise” is one of the most important concepts in the VAT Act, because –

- a person that does not conduct an enterprise cannot register for VAT; and
- only supplies made in the course or furtherance of carrying on an enterprise (referred to as taxable supplies) are subject to VAT.

An “enterprise” includes any activity carried on continuously or regularly by a person in (or partly in) South Africa whereby goods or services are supplied to another person for a consideration. For purposes of this guide, the most critical elements to discuss are the words “continuously” and “regularly”. “Continuously” is generally interpreted as meaning on-going, that is, the duration of the activity has neither ceased in a permanent sense, nor has it been interrupted in a substantial way. An activity can be regarded as “regular” if it is repeated at reasonably fixed intervals taking into consideration the type of supply and the time taken to complete the activities associated with making the supply.

The definition of “enterprise” specifically excludes, amongst others, activities that involve the making of exempt supplies. For example, the letting of a dwelling or the supply of land and improvements situated outside South Africa and any activity carried on by a natural person as a private or recreational pursuit or hobby.

An important point to note is that anything done as part of the commencement or termination of an enterprise is deemed to be done in the course or furtherance of that enterprise. For example, the sale of goods by the administrator in winding down the enterprise of a deceased person is conducted in the course or furtherance of the estate’s enterprise.

2.3 CONNECTED PERSONS

The term “connected persons” is important as supplies between certain persons falling within the ambit of the definition of “connected persons” in section 1(1) of the VAT Act will most likely occur in the course of winding up the estate of a person. As a result, the application of special time and value of supply rules may need to be considered by an administrator when determining the VAT treatment of certain supplies made in that process. (Refer to **paragraph 2.5** for further information.)

Some of the relationships between different types of persons as set out in the definition of “connected persons” which are important for the purpose of this guide are summarised below.

Natural persons

A natural person is considered to be a connected person in relation to –

- any relative⁴ of that natural person, or
- any trust fund⁵ in which the natural person or relative is, or may be a beneficiary.

The terms “natural person” and “relative” include the deceased or insolvent estate of that natural person or relative. A relative, in relation to any person, means:

- The spouse⁶ of that person;
- Anyone related to that person or his/her spouse within the third degree of consanguinity,⁷ or
- Any spouse of the relative.

Trust fund

A trust fund is considered to be a connected person in relation to any person who is, or who may be a beneficiary of the trust fund.

Partnerships and close corporations

A partnership or close corporation is considered to be a connected person in relation to –

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

A Company

A natural person and a company can also be connected where that natural person (or other person connected to that natural person) owns more than 10% of the shares or voting rights in that company.

2.4 PARTNERSHIPS

Although a partnership is not a separate legal entity, the definition of “person” in section 1(1) of the VAT Act specifically provides for bodies of persons (a term which includes partnerships) to be regarded as a person for VAT purposes. The term “partnership” is, however, not defined in either the VAT Act or the TA Act. For purposes of this guide, the common law⁸ understanding of the term will be applicable in that the following essentials are required to constitute a partnership:

- Each member must contribute or be bound to contribute something (appreciable or capable of being valued), for example money, goods, labour or skill;
- The relationship must be entered into for the common benefit of the parties;
- The object must be to gain some profit or advantage, either in proportion to each member's contribution or as otherwise agreed, and
- The object of the business must be lawful.

⁴ As defined in section 1(1) of the Income Tax Act No. 58 of 1962.

⁵ As defined in section 1(1) of the VAT Act.

⁶ A spouse includes partners in a marriage or recognised customary union and partners in a same-sex or heterosexual union which is intended to be permanent.

⁷ An adopted child and adoptive parents are regarded as relatives within the first degree of consanguinity.

⁸ *Pothier on Partnership*.

2.5 TIME AND VALUE OF SUPPLY

The time and value of supply rules⁹ are extremely important as it establishes the date that a supply occurs, and consequently, the tax period during which a vendor is–

- liable to declare the output tax; or
- entitled to deduct input tax (if the cost was incurred in the course or furtherance of the vendor's enterprise).

Generally, the time of supply is the earlier of the date an invoice is issued or any payment for the supply is received.

There are, however, special rules to cover specific supplies listed in the VAT Act. For example, the time of supply for fixed property is the earlier of the date that any payment of the consideration for the supply is made, or the date that the property is registered in the name of the purchaser in a deeds registry.¹⁰ Another example of a special time of supply rule which is important to discuss in the context of this guide is when the supplier and the recipient are connected persons. The supply of goods or services between connected persons is deemed¹¹ to take place as follows:

- Goods to be removed are deemed to be supplied at the time of removal.
- Goods which are not to be removed are deemed to be supplied at the time the goods are made available to the recipient.
- Services are deemed to be supplied at the time the services are performed.

This special deeming provision in respect of connected persons will, however, not be applicable where the connected supplier issues the invoice or receives payment for that supply on or before the day the supplier's VAT return is furnished (or is required to be furnished) for the tax period within which the supply was actually made.

The normal value of supply rules also apply to connected persons. However, when a supply is made between connected persons for no consideration, or for a consideration which is below the open market value, the consideration for the supply is deemed to be equal to the open market value if the recipient would not have been entitled to a full input tax deduction on the goods or services acquired, had the open market value been charged on the supply.¹²

VALUE + VAT = CONSIDERATION

therefore

CONSIDERATION – VAT = VALUE

⁹ Refer to sections 9 and 10 of the VAT Act respectively.

¹⁰ Notwithstanding the special time of supply rule, the supplier of the fixed property will only be required to account for output tax to the extent that payment for the supply has been received in the tax period concerned. Refer to paragraph 5.3 of the VAT409 Guide for Fixed Property and Construction.

¹¹ Section 9(2)(a) of the VAT Act.

¹² Section 10(4) of the VAT Act.

2.6 ACCOUNTING BASIS

The VAT Act distinguishes between the invoice and payments basis of accounting for VAT, which is commonly referred to as the accounting basis. The accounting basis determines when output tax and input tax must be accounted for, and should be read in conjunction with the time of supply rules. The general rule is that all vendors are required to account for VAT on the invoice basis.¹³ This means that a person has to declare output tax in the tax period during which the time of supply in respect of a supply occurs, regardless of whether payment for the supply has been made or received.

Similarly, the vendor may also deduct input tax once valid supporting documents (for example a tax invoice) are obtained even though payment has not been made.

Only certain persons are allowed to account for VAT on the payments basis. For example, natural persons whose value of taxable supplies does not exceed (or is not reasonably expected to exceed) R2.5 million in a 12-month period.¹⁴ In this instance, output tax is declared in the tax period in which payment in respect of the supply is received and input tax is deducted in the tax period within which payment is made. For further information, refer to Chapter 4 of the *VAT 404 – Guide for Vendors*.

2.7 REPRESENTATIVE VENDOR

A representative vendor (also known as the representative taxpayer¹⁵) represents the estate and has to ensure that the estate complies with the VAT and TA Acts. The following persons act in a representative capacity in respect of estates:

- An **executor** acts on behalf of deceased persons and their estates;
- A **trustee** acts on behalf of insolvent persons and their estates.

The executor or trustee is responsible for performing all the duties of the enterprise previously carried on by the deceased/insolvent person.¹⁶ The Commissioner has the same remedies against the property controlled by the executor or trustee, in a fiduciary capacity as the remedies previously available against the deceased/insolvent person.

2.8 OTHER TERMS

This guide refers to various generic terms used in the context of administering estates which are not VAT specific. The meaning attached to these terms in this guide is clarified below. For more information on other terms, refer to the **Glossary**.

2.8.1 Administrator

The administrator must be a natural person who is formally appointed by the Master of the High Court. In this guide the deceased/insolvent estate's representative vendor is referred to as the administrator.

2.8.2 Deceased/insolvent person

For purposes of this guide, the term "deceased/insolvent person" is used to refer to a natural person who is deceased or sequestered.

¹³ Section 15(1) of the VAT Act.

¹⁴ Section 15(2)(b) of the VAT Act.

¹⁵ Section 46 of the VAT Act read with section 153 of the TA Act.

¹⁶ Section 53 of the VAT Act.

The term “deceased/insolvent person” is used to distinguish between the activities and status of:

- The natural person before the date of death or sequestration; and
- The estate of that natural person on or after the date of death or sequestration which is administered by the administrator.

2.8.3 Estate

A deceased/insolvent person’s estate includes all property owned by the person (irrespective of whether that property is movable or immovable). For purposes of this guide, the term “estate” will be used with reference to both deceased and insolvent estates, unless the context requires specific reference to be made to either a deceased or insolvent estate. (Refer, for example, to **Chapters 5 and 6**.)

2.8.4 Liquidation and distribution account

The liquidation and distribution account (L&D account) refers to the account that the administrator is required to submit to the Master in accordance with the Estates and Insolvency Acts.

The L&D account generally consists of:

- Liquidation account;
- Plan of distribution of the proceeds of the property in the estate;
- Trading account (if the administrator continued to carry on the enterprise of the estate); and
- Contribution plan (if applicable).

The above documents are collectively known as the L&D account. It records the estate’s assets and liabilities, money received and paid, as well as distributions made.

2.8.5 Regulated fee

For purposes of this guide, the “regulated fee” refers to the fees payable to the administrator of an estate as contemplated in the Estates and Insolvency Acts. (Refer to **paragraph 3.3**)

2.8.6 Date of sequestration

The “date of sequestration”, is defined in section 1 of the TA Act, as –

- the date of voluntary surrender of an estate (if accepted by court); or
- the date of provisional sequestration where the court granted a final sequestration order.

CHAPTER 3

EXECUTORS AND TRUSTEES

3.1 INTRODUCTION

This chapter provides a brief overview of the relationship between the administrator and the estate of the deceased/insolvent person. Guidance is also given regarding the administrator's duties, obligations and potential personal liability before addressing the VAT treatment of regulated fees.

3.2 DUTIES AND OBLIGATIONS

The various tax acts impose numerous duties on vendors. These duties are equally applicable to an administrator acting as representative vendor for an estate which is a vendor. Failure to fulfil these duties, if found guilty, is a criminal offence.¹⁷

3.2.1 Duty to register for VAT

The administrator of an estate has a duty to register the estate as a vendor if the deceased/insolvent person was liable to register for VAT but failed to do so before date of death or sequestration.

3.2.2 Duty to issue tax invoices

The administrator is required to issue tax invoices in respect of taxable supplies of goods or services made by the estate. A full tax invoice must be issued if the consideration for a supply exceeds R5 000,¹⁸ whereas an abridged tax invoice must be issued when the consideration is less than R5 000. Refer to Chapter 13 of the *VAT 404 – Guide for Vendors* for further information regarding full and abridged tax invoices and debit/credit notes.

3.2.3 Duty to notify of change in status

The administrator has a duty¹⁹ to notify the Commissioner (in writing) of any change relating to the estate, such as the following:

- The name, address or nature of the principal enterprise or enterprises of the estate;
- Banking details;
- Electronic address used for communication with SARS;
- The composition of the members of a partnership; or
- The appointment or resignation of a representative vendor.

In addition, the administrator must notify the Commissioner when the estate ceases to satisfy the conditions for accounting for VAT on the payments basis.

¹⁷ Section 234 of the TA Act.

¹⁸ With effect from 20 December 2012, the full tax invoice threshold was increased from R3 000 to R5 000.

¹⁹ Section 25 of the VAT Act read with section 23 of the TA Act.

3.2.4 Duty to maintain and preserve records

The administrator is required to maintain and preserve the records of the estate in the form and manner required by section 55 of the VAT Act and sections 29 and 30 of the TA Act.

As a general rule, all records have to be maintained and preserved for a period of at least five years from the date the relevant return was submitted. This rule applies even if the Master has granted permission to the administrator of a VAT registered estate to destroy the records within a shorter period of time.

Refer also to Chapter 4 of the TA Act which deals with aspects relating to the accessibility of records, the language in which the records must be kept, disclosures in regard to certain reportable arrangements, and other related matters. The administrator also needs to adhere to the requirements of General Notice 788 published on 1 October 2013 in *Government Gazette* 35733 if records are retained electronically.

3.2.5 Duty to furnish information

The administrator has a duty to provide information as and when required by the Commissioner.²⁰

3.2.6 Duty to advertise or quote prices inclusive of VAT

The administrator is required to ensure that prices advertised for taxable goods or services to be supplied by the estate are inclusive of VAT.²¹ Failure to charge VAT on a taxable supply will result in the supply being deemed to have included VAT,²² resulting in a cost to the estate.

3.2.7 Duty to submit VAT returns and pay tax

VAT returns outstanding before date of death or sequestration

The administrator must complete and submit VAT returns outstanding in respect of the tax periods before the deceased/insolvent person died or was sequestrated. Failure to do so may result in the Commissioner issuing estimated assessments.

The administrator will be required to pay any shortfall (including any penalty²³ and interest²⁴) which may arise as a result of these estimated assessments. The administrator is entitled to object (in writing) to the assessments and such objection must be filed within 30 days from the date of the notice of assessment. The Commissioner may condone a late objection if reasonable grounds (mitigating circumstances) exist for the late filing of the objection.²⁵

For further information refer to chapters 9 and 10 of the *VAT 404 – Guide for Vendors*.

²⁰ Chapter 5 of the TA Act.

²¹ Section 65 of the VAT Act. Where both the VAT inclusive and VAT exclusive amounts are advertised or quoted, both prices have to be advertised or quoted with equal prominence and impact.

²² Section 64 of the VAT Act.

²³ Section 39 of the VAT Act read with Chapters 15 and 16A of the TA Act.

²⁴ Chapter 12 of the TA Act.

²⁵ Chapter 9 of the TA Act. For further information in dispute resolution refer to Chapter 16 of the *VAT 404 – Guide for Vendors* and the SARS website at www.sars.gov.za.

VAT returns due after date of death or sequestration

The administrator must also complete and submit VAT returns in respect of the estate for tax periods after the deceased/insolvent person's death or sequestration.

Calculating VAT

VAT due to SARS is calculated by deducting permissible input tax from output tax levied on supplies made by the estate. For further information, refer to Chapter 8 of the *VAT 404* and *Binding General Ruling (BGR) 16*.

Payment of VAT

The administrator has to submit a VAT201 return and pay any VAT due within 25 days after the end of the deceased/insolvent estate's tax period. However, if the estate's returns and payments are submitted electronically via SARS eFiling, the return and payment will only be due on the last business day of the month following the end of the tax period. If the return due date falls on a Saturday, Sunday or public holiday, the return and payment needs to be submitted on or before the last business day before that Saturday, Sunday or public holiday. Late payment will result in penalties and interest being levied. For further information regarding the submission and payment of VAT returns, refer to Chapter 9 of the *VAT 404 – Guide for Vendors*.

3.2.8 Duty to notify of cessation of enterprise

The administrator has to submit a completed VAT 123e form to the Commissioner within 21 days from the date the estate ceases to carry on an enterprise.²⁶ Failure to inform the Commissioner of this change is an offence.²⁷

3.2.9 Liabilities imposed by the VAT and TA Acts

The administrator is liable for the payment of any tax, penalties (including understatement penalty) and interest chargeable under the VAT and TA Act in respect of the estate.²⁸ Any amount of tax, penalty or interest is recoverable from the estate by the administrator if paid by the administrator on the estate's behalf whilst acting in the capacity of representative vendor. The administrator may also retain such amounts out of any moneys of the estate which may be obtained in the process of winding up that estate. The administrator can be held personally liable if distributions are made before the tax debt is settled.²⁹

3.3 EXECUTOR AND TRUSTEE FEES (REGULATED FEES)

Certain persons such as attorneys, accountants and financial institutions regularly act as administrators. In addition, surviving spouses, children, other relatives or friends of the deceased may also be appointed as executors. Persons appointed to act as administrators may receive payment in the form of executor's fees or trustee fees which are regulated by the Estates³⁰ and Insolvency³¹ Acts respectively. Such fees are generally based on the assets and income streams which formed part of the estate.

²⁶ Section 24(3) of the VAT Act read with section 23 of the TA Act. Even though the TA Act refers to 21 business days, the VAT Act supersedes it as a result of section 4(3) of the TA Act.

²⁷ Section 234(j) of the TA Act.

²⁸ Section 154 of the TA Act.

²⁹ Section 155 of the TA Act.

³⁰ Clause 8(1) of the Regulation issued in terms of section 103 of the Estates Act. [GN R473 in GG 3425 of 24 March 1972 (as amended)].

³¹ Tariff B read with section 63 of the Insolvency Act.

The VAT treatment of the administration services will depend on whether or not the administrator is a vendor. In addition, it must be established whether the particular services were rendered in the course or furtherance of the administrator's enterprise or not. Lastly, in a case where the administrator is a vendor, it is important to determine whether VAT should be added to the regulated fee³² or whether the prescribed percentage used to calculate that fee already includes VAT. The judgment in *Graham NO v Master of the Supreme Court* 1996 CLR 797 (D) does, however, provide some certainty on this matter in the findings at page 810. This case dealt with the calculation of the liquidator's fee in the context of section 67(3) of the VAT Act. The court confirmed that the applicant's calculation of its remuneration must be based on the proceeds of the sale of the property including VAT charged on the purchase price. In addition, the court also ordered that the applicants had to file an amended account which comply with the provisions of section 67(3) of the VAT Act.

Having regard to the principle established in *Graham NO v Master of the Supreme Court*, the consideration for the supply of administration services is determined as follows:

- If the proceeds from the sale of goods or services include VAT at 14%, the administrator may not add VAT to the regulated fee used to calculate the administration fee as the regulated fee is deemed to include VAT;
- If the administration fee is based on the proceeds of zero-rated or exempt goods or services supplied in the course of winding down the estate, the administrator is required to add VAT to the regulated fee.

Example 1 – Executor fees

Scenario

A is a vendor who died on 25 February 2015. As at the date of death, the estate held a dwelling valued at R1 million which, in terms of A's will, is to be distributed to his son. The executor of the estate also realised income as follows:

- R50 000 (including VAT) as a result of the sale of stock in the business;
- R100 000 (including VAT) as a result of the sale of capital assets of the business; and
- R10 000 personal income (non-taxable).

Question

Calculate the executor's fee and the VAT thereon, assuming that the executor is a vendor. (According to the Estate Act, the executor is entitled to remuneration of 3.5% on gross assets and 6% on income accrued after death.)

Solution

Step 1: Identify which assets and income streams can be directly attributed to A's enterprise and calculate the executor's fee

Fee based on:

- | | |
|--|--|
| • Sale of stock (income accrued after death) | = R50 000 × 6% = R3 000 (incl. VAT) |
| • Sale of capital business assets | = R100 000 × 3.5% = R3 500 (incl. VAT) |
| Executor fee (incl. VAT) | = R3 000 + R3 500 = R6 500 |
| Output tax | = R6 500 × 14 / 114 = R798.25 |

As the executor's fee is determined on amounts that include VAT at the rate of 14%, the executor's fee will be regarded as being inclusive of VAT.

Value of the administration services	R5 701.75
VAT @ 14% (14 / 114)	R 798.25
Consideration	R6 500.00

³² Refer to **paragraph 2.8.5** for meaning of regulated fee.

Example 1 – Executor fees (continued)

Step 2: Identify assets and income streams not linked to A's enterprise and calculate the executor's fee

Fee based on:

- Other personal income = R10 000 × 6% = R600 (excl. VAT)
 - Value of dwelling = R1 million × 3.5% = R35 000 (excl. VAT)
- Output tax = (R600 + R35 000) × 14% = R4 984
 Executor fee (incl. VAT) = R600 + R35 000 + R4 984 = R40 584

As the executor's fee is determined on amounts that exclude VAT at the rate of 14%, the executor's fee will be regarded as being exclusive of VAT.

Value of the administration services	R35 600.00
VAT @ 14% (14 / 100)	R 4 984.00
Consideration	R40 584.00

Step 3: Calculate the total executor's fee and output tax

- Total executor's fee = R47 084** (R6 500 + R40 584)
Total output tax = R5 782.25 (R798.25 + R4 984).

Example 2 – Trustee fees

Scenario

B is a vendor who was sequestrated on 15 January 2015. The estate realised the following amounts subsequent to B's sequestration as a result of the trustee winding up the estate:

- Business delivery vehicles sold for R100 000 (incl. VAT);
- Inventory on hand sold for R50 000 (incl. VAT);
- B's dwelling was sold for R1.5 million; and
- Personal savings account had a credit balance of R1 500.

Question

Calculate the trustee's fee and the VAT thereon, assuming that the trustee is a vendor.

The Insolvency Act allows the trustee to calculate the fee as follows:

- 10% of gross proceeds of movable property;
- 6% of sales by the trustee in carrying on the business of the insolvent;
- 3% of the gross proceeds of immovable property, and
- 1% of credit balances of the insolvent's saving account.

Solution

Step 1: Identify which assets and income streams can be directly attributed to B's enterprise and calculate related trustee fee

Fee based on:

- Delivery vehicles = R100 000 × 10% = R10 000 (incl. VAT)
 - Inventory = R50 000 × 6% = R3 000 (incl. VAT)
- Trustee fee (incl. VAT) = R10 000 + R3 000 = R13 000
 Output tax = R13 000 × 14 / 114 = R1 596.49

Example 2 – Trustee fees (continued)

As the trustee fee is determined on amounts that include VAT at the rate of 14%, the trustee fee will be regarded as being inclusive of VAT.

Value of the administration services	R 11 403.51
VAT @ 14%	R 1 596.49
Consideration	R 13 000.00

Step 2: Identify which assets and income streams were not linked to B's enterprise and calculate related regulated fee in respect thereof

Fee based on:

- Value of dwelling = R1 500 000 × 3% = R45 000
- Balance of savings account = R1 500 × 1% = R15

Output tax	= (R45 000 + R15) × 14% = R6 302.10
Fee consideration (incl. VAT)	= R45 000 + R15 + R6 302.10 = R51 317.10

As the trustee fee is determined on amounts that do not include VAT at the rate of 14%, the trustee fee will be regarded as being exclusive of VAT.

Value of the administration services	R45 015.00
VAT @ 14%	R 6 302.10
Consideration	R51 317.10

Step 3: Calculate the total trustee's fee and output tax

Total trustee's fee	= R64 317.10 (R13 000 + R51 317.10)
Total output tax	= R7 898.59 (R1 596.49 + R6 302.10).

CHAPTER 4

WINDING UP THE ESTATE

4.1 INTRODUCTION

The VAT consequences resulting from the death or sequestration of a natural person will vary from case to case. The purpose of this chapter is to identify which estates will be regarded as vendors and to provide guidance in respect of the VAT treatment of activities that are common to deceased and insolvent estates.

Once the administrator has established that the estate is a vendor, the VAT treatment of the various transactions needs to be considered. During the course of administering an estate the administrator will collect and pay claims, as well as realise (sell) and distribute estate assets whilst acting as the representative of the estate.

It is important to consider the estate's VAT status as soon as possible as the liability to register (if applicable) and account for VAT will have a direct effect on the administration of the estate.

When a person dies or is sequestrated, one of the following scenarios will apply:

- (a) The deceased/insolvent person was registered as a vendor at date of death/sequestration;
- (b) The deceased/insolvent person was not registered as a vendor at date of death/sequestration but was liable to be registered as a vendor while still alive/solvent;
- (c) The deceased/insolvent person was not registered nor liable to be registered as a vendor at date of death/sequestration, but the estate subsequently becomes liable for registration as a vendor; or
- (d) The deceased/insolvent person was neither registered nor liable to be registered as a vendor at the date of death/sequestration and the estate is not liable to register for VAT.

Varying VAT consequences arise in respect of scenarios (a), (b) and (c), whereas the administrator does not need to account for VAT in scenario (d).

4.2 VAT REGISTRATION

4.2.1 General registration requirements

A person is required to register for VAT if that person carries on an enterprise³³ whereby goods or services are supplied to another person for a value which exceeds the threshold of R1 million in a 12 month period. A person who has a written contractual commitment to make taxable supplies exceeding R1 million within the next 12 months is also required to register for VAT.³⁴

When determining whether the VAT registration threshold has been exceeded (or was likely to be exceeded), the value of supplies which are attributable to the following activities should be disregarded:

- Cessation of the enterprise or substantial and permanent reduction in size or scale thereof;
- Replacement of any plant or other capital asset used by the enterprise; and
- Abnormal circumstances of a temporary nature.

³³ For further information on "enterprise" refer to **paragraph 2.2**.

³⁴ Section 23(1)(b) of the VAT Act.

Example 3 – Determining the VAT registration liability of a deceased estate*Scenario*

During his lifetime C was the sole shareholder of a company called A (Pty) Ltd, which is registered as a vendor for VAT purposes. In his capacity as a director he earned a salary of R200 000 per annum.

During the 12 months preceding his death, C also earned dividends of R1 million from A (Pty) Ltd. Interest amounts of R500 and R3 000 respectively were also earned as a result of a loan made to A (Pty) Ltd and on a fixed deposit held at a financial institution. In addition to his private dwelling, C owned a townhouse from which he derived rental income of R60 000 per annum. The townhouse was let for use as a dwelling.

Question

Was C liable to be registered as a vendor?

Solution

Activities	Type of income	Comment
Services rendered as director	Salary	Not taxable
Investment in A (Pty) Ltd	Dividends	Not taxable
Loan to A (Ltd)	Interest	Exempt
Fixed deposit	Interest	Exempt
Letting of townhouse	Rental	Exempt

C was not registered as a vendor in his capacity as a natural person since none of the activities constituted the carrying on of an enterprise. The estate will therefore not be liable to register and account for VAT.

4.2.2 Deceased/insolvent person was a registered vendor at date of death/sequestration

The administrator can verify whether the deceased/insolvent person was registered for VAT via SARS eFiling.³⁵

4.2.3 Deceased/insolvent person was liable to register for VAT

In a case when the deceased/insolvent person was not registered for VAT, the administrator must determine whether or not that person was liable to be registered as a vendor before the date of death/sequestration. A person is liable to apply for registration within 21 business days from the date the value of the person's taxable supplies exceeded the compulsory VAT registration threshold of R1 million (or is expected to exceed that amount as a result of a written contractual obligation).³⁶

³⁵ www.sarsefiling.co.za/VatVendorSearchPageFrames.aspx.

³⁶ Section 22(2) of the TA Act. Failure to register as a vendor within this period is an offence in terms of section 234(a) of the TA Act.

The following steps should be followed to determine whether the deceased/insolvent person was liable to be registered as a vendor before the date of death/sequestration:

- **STEP 1** – Identify all activities of the deceased/insolvent person which gave rise to receipts and accruals and list all the person's income streams arising from those activities.
- **STEP 2** – Analyse the nature of the various income streams. Determine which income streams constitute consideration received in respect of taxable supplies of goods or services made in the course or furtherance of the person's enterprise, and which ones relate to private pursuits, exempt supplies, or other non-taxable activities (for example, hobbies, interest earned, rental of dwellings etc.).
- **STEP 3** – Apply the retrospective registration test³⁷ by calculating the total value of taxable supplies made during the 12 months ending on the last day of the calendar month preceding the date of death/sequestration. If the total value of taxable supplies in this period exceeded R1 million, the person was liable to be registered as a vendor on the last day of the calendar month preceding the date of death/sequestration. In this instance, a person is liable to register for VAT within 21 business days of exceeding the threshold.
- **STEP 4** – Apply the prospective registration test³⁸ by determining whether the person had a written contractual obligation to make taxable supplies exceeding R1 million within 12 months.³⁹ If the deceased/insolvent person's business enterprise will continue to meet these obligations, the estate would be required to register for VAT within 21 business days from entering into the agreement.

Example 4 – Determining the VAT registration liability of a deceased estate

Scenario

D worked at a hospital and received a monthly salary for services rendered. In addition, D derived income from a farm which he owned and was registered for VAT in his own name. The turnover from the farming operations exceeded R1 million per annum.

Question

Is D a vendor?

Solution

Activities	Type of income	Comment
Employment	Salary	Not taxable ⁴⁰
Farming	Farming income	Taxable

As the consideration for the goods and services supplied as part of the farming operations exceeded the registration threshold, D was therefore liable to register for VAT. D's salary does not constitute consideration for taxable supplies and are therefore disregarded when calculating the value of taxable supplies when considering the liability to register for VAT

On the basis that the deceased (D) was registered as a vendor, D's estate will also be a vendor.

³⁷ Section 23(1)(a) of the VAT Act.

³⁸ Section 23(1)(b) of the VAT Act.

³⁹ This 12 month period is reckoned from the beginning of the month during which the person performs the prospective registration test.

⁴⁰ Excluded from the definition of enterprise

Example 5 – Determining the VAT registration liability of an insolvent estate*Scenario*

E retired at the age of 65 and subsequently started a catering business, but did not register for VAT as E was of the view that E was not liable and did not want to register voluntarily. E receives a pension of R10 000 per month as well as income from the catering business. The average monthly turnover of the catering business was R30 000 per month. Due to the economic crisis in 2008, fewer orders were received and E was unable to pay creditors. E ceased trading and applied for voluntary sequestration which the court granted.

Question

Is E's estate a vendor?

Solution

Activities	Type of income	Comment
Retirement	Pension	Not taxable
Catering	Sales	Taxable

The activities of the catering business are an “enterprise” for VAT purpose. The taxable value of goods and services supplied in the course or furtherance of the catering operations does not exceed the registration threshold ($12 \times R30\ 000$ monthly average = R360 000). E would therefore not be liable to register for VAT.

If E registered voluntarily as a vendor before the date of sequestration, E's estate would also have been a vendor. In such a case, the administrator would have had to account for the VAT on any taxable supplies made in the course of winding up the taxable activities of the estate.

4.3 CONTINUATION OF TRADING ACTIVITIES

An executor may decide to temporarily continue with the deceased vendor's enterprise if it is in the best interests of the estate. In such a case, VAT must be levied on the price charged for any taxable supply of goods or services which forms part of the estate's enterprise and such amounts must be included in the estate's VAT returns. The executor may also deduct input tax in respect of costs incurred to make taxable supplies during the course of winding up the estate.

A trustee may only continue to carry on the insolvent estate's enterprise with the express approval of the majority of creditors or the Master.⁴¹

It is important to note that the transfer of goods or services from the deceased or insolvent person to that person's estate is not regarded as a supply as they are deemed to be one and the same person.⁴²

4.4 COLLECTION OF ESTATE CLAIMS**4.4.1 General**

The administrator may collect various claims which the deceased/insolvent person had against other persons. These claims may include life insurance policies, bank accounts, fixed deposits and trade debtors. Generally, the collection of these kinds of claims will not have VAT consequences for the estate. There are, however, some exceptions which are discussed in **paragraphs 4.4.2 and 4.4.3**.

⁴¹ Section 80 of the Insolvency Act.

⁴² Section 53(1)(b) of the VAT Act.

4.4.2 Collection of trade debtors

If the deceased/insolvent person was registered as a vendor on the payments basis, a potential⁴³ liability for output tax will exist in respect of all debtors of the deceased/insolvent person's enterprise which existed at the date of death or sequestration. In these instances, the estate will be liable to account for output tax on amounts collected from debtors to the extent that it relates to taxable supplies, for example, trade debtors. The applicable output tax is calculated by applying the tax fraction to the amount collected from the debtors.

The VAT exposure will be limited if the deceased/insolvent person was registered to account for VAT on the invoice basis. This is because the output tax on any taxable supplies made should have been accounted for at the time the supply was made, regardless of whether or not payment was received. Refer to **paragraph 2.5** for more information on time of supply.

Administrators should, however, take note of the time of supply and valuation rules contained in sections 9 and 10 of the VAT Act respectively when considering whether amounts collected may give rise to an output tax liability. Also, when debtors are unable to pay any taxable amounts due to the estate, the estate may be entitled to an input tax deduction if the debt is written off, provided –

- the deceased/insolvent person was registered on the invoice basis;
- output tax was previously declared in respect of that supply;
- the outstanding debt was written off as irrecoverable.⁴⁴

4.4.3 Short term insurance claims

A vendor is deemed to have made a taxable supply of services⁴⁵ to the insurer to the extent of any short-term insurance indemnity payment received in the course or furtherance of any enterprise carried on. This means that output tax must be declared on the receipt if it relates to a loss (including a loss of profit) incurred in the course of carrying on the enterprise. This will apply, for example, if an indemnity payment is received as a result of damage to fixed property and inventory of the enterprise caused by a fire at the deceased/insolvent person's business premises.

The collection of any claims in favour of the estate which arose from the deceased/insolvent person's private or personal activities will not give rise to output tax. An example is when the estate receives an indemnity payment resulting from the theft of the deceased/insolvent person's personal belongings. Similarly, the collection of any claims which arose from exempt supplies, for example the rental of dwellings, loans, bank deposits and proceeds from life insurance policies will not attract output tax.

4.5 REALISATION OF ASSETS

In order to determine the VAT consequences of realising (selling) the assets of an estate, the administrator should consider the purpose for which the assets were used. The estate's assets should be classified in terms of the following three categories:

- Assets used wholly for taxable purposes;
- Assets used wholly for non-taxable purposes; and
- Assets used partially for taxable and non-taxable purposes (mixed-use assets).

⁴³ The vendor registered on the payment basis will not be liable for VAT where the value of the supply exceeded R100 000 and output tax was accounted for on the invoice basis in accordance with section 15(2A).

⁴⁴ Section 22(1) read together with section 16(3)(a)(v) of the VAT Act.

⁴⁵ Section 8(8) of the VAT Act.

4.5.1 Goods and services used wholly for taxable purposes

A vendor must charge VAT at the standard rate (currently 14%) on all goods and services supplied in the course or furtherance of an enterprise, unless the supply is specifically zero-rated or exempted in terms of the VAT Act. The administrator must therefore account for VAT charged/output tax on the supply (sale or distribution) of goods which formed part of the deceased/insolvent person's enterprise. The rate of VAT applicable to the sale will be determined by the circumstances of the particular case. For example, the sale of an enterprise as a going concern may be zero-rated if the requirements of section 11(1)(e) are met. However, where the assets of the enterprise are to be sold individually to a number of different purchasers, the supply of these goods will attract VAT at the standard rate.

Repossession and surrendering of an asset⁴⁶ must be distinguished from a situation where the administrator requests the bank or financier to sell the asset on behalf of the estate. In the latter case, the bank/financier merely acts as the agent of the administrator of the estate. The proceeds from the sale of the asset forms part of the deceased or insolvent estate and the administrator needs to account for output tax in the estate's VAT return.

VAT must be charged irrespective of whether the sale is made by auction or by other means. The VAT so charged will constitute output tax in the hands of the estate and must be accounted for on the estate's VAT returns. There are, however, some exceptions where VAT need not be charged, for example, the supply of a motor car⁴⁷ will not be a taxable supply unless the deceased/insolvent person traded in motor cars or was otherwise entitled to deduct input tax on the acquisition of the motor car.⁴⁸ Similarly, in a case where the input tax on goods or services initially acquired for entertainment purposes was denied in terms of section 17(2)(a), and such goods or services are subsequently supplied to another person, the administrator is not required to charge VAT on the supply. This could include, for example, the sale of a refrigerator used in the deceased/insolvent person's office.

4.5.2 Goods and services used wholly for non-taxable purposes

Supplies of goods or services will fall within this category if the use or consumption thereof is attributed wholly to private, exempt or other non-taxable activities. Examples include the sale or disposal of the following:

- The person's dwelling, holiday home, time-share interests;
- Household furniture and appliances and assets acquired in pursuance of a hobby;
- Financial instruments and private investments such as life policies, participation mortgage bonds, shares in companies, interests in close corporations and nominee holdings;
- Trade and other debtors of the estate who account for VAT on the invoice basis; and
- Assets in respect of which an input tax deduction was denied under section 17(2) of the VAT Act (for example motor cars and entertainment assets).⁴⁹

The administrator should not account for any VAT in respect of goods and services which did not form part of the deceased/insolvent person's enterprise. However, the administrator may enter into an agreement with an auctioneer to treat non-taxable assets sold at auction as taxable. The sale will then be subject to VAT and the auctioneer will account for the VAT as if it were the auctioneer's own supply.⁵⁰ In this instance, the administrator should not account for VAT levied in respect of that supply, as this will be the responsibility of the auctioneer.

⁴⁶ Refer to **paragraph 6.3**.

⁴⁷ Section 8(14)(a) of the VAT Act.

⁴⁸ For **example** where the car was acquired for the purpose of giving the car away as a prize.

⁴⁹ Section 8(14)(a) of the VAT Act deems these goods to be supplied otherwise than in the course of the vendor's enterprise irrespective of whether the goods were actually used for enterprise purposes.

⁵⁰ Section **54(5)** of the VAT Act.

It should be noted that even though VAT is levied on the sale of goods, in this instance, the estate will not be entitled to deduct any input tax in respect of any selling costs incurred. This is because the estate did not use the goods to make taxable supplies and the goods did not form part of the estate's enterprise.

4.5.3 Goods and services used partially for taxable purposes

Supplies of goods or services will fall within this category if the use or consumption thereof cannot be attributed wholly to taxable or non-taxable purposes. This category therefore covers all goods and services which were used for **both** taxable and non-taxable purposes. Examples include the sale or disposal of the following:

- Farms on which farm dwellings or employee housing are built;
- Motor vehicles (other than motor cars) and any equipment used to make both taxable and exempt supplies; and
- Private dwellings which are used partly as the residence of the vendor and also as a place from where a taxable business is conducted.

The administrator has to account for output tax on behalf of the estate on the full selling price of goods falling within this category.⁵¹ The estate will, however, be entitled to deduct input tax which was previously denied upon acquiring the goods or services concerned.⁵² In instances where an input tax deduction was not permissible in terms of section 17(2), no output tax is chargeable when the asset is subsequently sold.

The deductible portion is calculated using the formula: $A \times B \times C$

where:

A = The tax fraction 14/114

B = The lesser of cost or open market value

C = The percentage that, immediately before the supply, the goods were used for non-taxable purposes.

Example 6 – Goods used partially to make taxable supplies

Scenario

F (a registered vendor) died on 10 January 2015. F conducted a florist business as a sole proprietor. At the date of death, F owned a personal computer which was used for both in the business and for private purposes. The personal computer had originally been acquired by F for R3 800. The computer was used 60% for making taxable supplies. The executor of F's estate, in the course of realising the enterprise assets, sells the personal computer for a total consideration of R2 850 (including VAT).

Question

What is the VAT implication of the above transaction?

⁵¹ Section 8(16) of the VAT Act.

⁵² Section 16(3)(h) of the VAT Act, provided the documentary requirements are met in terms of section 16(2) of the VAT Act read with Interpretation Note No. 49.

Example 6 – Goods used partially to make taxable supplies (continued)*Solution*

The executor must account for VAT on behalf of the estate as follows:

Output tax on sale of computer	= R2 850 × 14 / 114 = R350
VAT adjustment	= R2 850 × 14 / 114 × 40% = R140
Net VAT due	= R350 – R140 = R210

The adjustment is based on the lower of cost (R3 800) or open market value (R2 850) and takes into account the portion of input tax which was not previously deductible (100% - 60%).⁵³

There is, however, an exception for private residences acquired by the deceased/insolvent person before 30 September 1991 if the property is used partially for the purposes of an enterprise. (For example, an architect that uses a portion of his house as a studio.) In such a case, the sale of the fixed property by the administrator is deemed not to be in the course or furtherance of an enterprise and will not attract VAT, provided that -

- the property was used mainly as a private residence; and
- no input tax or adjustment to input tax was claimed as a deduction by the vendor.

The purchaser may, however, be liable for transfer duty in such a case (subject to any exemption which may be applicable).

This category also includes services which are attributable to both taxable and non-taxable supplies, for example administrator fees charged to wind up an estate consisting of private and enterprise assets. In this instance, the estate may deduct the VAT incurred on fees levied by the administrator to the extent that the fees relate to selling the enterprise assets.

4.6 PAYMENT OF ESTATE CLAIMS

4.6.1 General

The VAT treatment of claims against the estate will depend on a number of factors, including:

- The applicable accounting basis (invoice or payments);
- The nature of the claim against the estate; and
- The circumstances giving rise to the existence of the claim against the estate.

Every claim paid by the administrator should be tested against the guidelines set out in **paragraphs 4.7.2 to 4.7.3** below in order to determine whether there are any VAT consequences.

4.6.2 Accounting basis

It is unlikely that there will be further input tax deductions included in trade creditors where the deceased/insolvent person accounted for VAT on the invoice basis as the input tax should have been deducted when the tax invoice was received in respect of that supply. It may, however, happen that amounts of input tax had been overlooked or were not yet accounted for at the time of death/sequestration. In such cases, input tax must be deducted within a period of five years from the end of the tax period during which the supporting documents (for example, a tax invoice) was or should have been issued.⁵⁴

⁵³ Section 16(3)(h) of the VAT Act and paragraph 15.5.5 of the VAT404 – Guide for Vendors.

⁵⁴ Proviso to section 16(3) of the VAT Act.

Note that input tax previously deducted has to be added back if the relevant supplier invoice is not paid in full within 12 months. This 12 month period is calculated from the expiry of the tax period in which input tax was deducted, unless the vendor and supplier agreed in a written contract that payment is due in a later tax period, in which case the 12 month period is calculated from the date payment is contractually due.

Alternatively, the output tax adjustment must be made at the date that the person is sequestrated or ceases to be a vendor,⁵⁵ if such date occurs before the expiry of the said 12 month period (or such longer period as may have been agreed with the supplier).⁵⁶ For further information refer to **paragraph 6.2**.

The administrator may also incur costs in the winding up of the estate which may give rise to input tax deductions. In these instances, the estate may deduct input tax, provided the documentary requirements are met.⁵⁷

4.6.3 Nature of the claims

The estate may only deduct VAT in respect of goods or services acquired by the estate for the purpose of making taxable supplies.

The following are examples of claims which may arise from exempt supplies and the estate will therefore not be entitled to deduct input tax in respect thereof as no VAT would have been charged on these supplies:

- Loans of money made to the deceased/insolvent person, including loans secured by mortgage bonds⁵⁸;
- Life insurance policies (unpaid premiums), pension provident or retirement annuity fund contributions (unpaid contributions);
- Unpaid medical aid contributions;
- Outstanding rental in respect of the deceased/insolvent person's dwelling.⁵⁹

The estate will not be entitled to deduct input tax in respect of any claims arising from transactions with persons who are not registered vendors, as no VAT would have been charged and consequently no tax invoice would have been issued.

4.7 MARRIAGE IN COMMUNITY OF PROPERTY

For VAT purposes, spouses that are married in community of property are treated as an unincorporated body of persons, akin to a partnership. The joint estate created by marriage is treated as a person for VAT purposes, separate and distinct from the two spouses.

When one of the spouses dies or is sequestrated, the administrator takes control of the entire joint estate. The partnership will cease⁶⁰ as there will only be one member remaining. If the surviving spouse wants to continue trading as a vendor, that person must apply for a new VAT registration number, as the surviving spouse (being natural person) is a different "person" from the one that was previously registered (partnership/unincorporated body of persons).

⁵⁵ Proviso (ii) to section 22(3) of the VAT Act.

⁵⁶ Section 22(3) of the VAT Act.

⁵⁷ Section 16(2) of the VAT Act.

⁵⁸ Section 2(1)(f) read together with section 12(a) of the VAT Act.

⁵⁹ Section 12(c) of the VAT Act.

⁶⁰ Refer to **paragraphs 2.4 and 3.2.8**.

CHAPTER 5

DECEASED ESTATES: DISTRIBUTIONS TO HEIRS AND LEGATEES

5.1 INTRODUCTION

This chapter deals specifically with deceased estates and focuses on the VAT treatment of the various distributions commonly made by the executor. Before distributing the residual estate, the executor must obtain a release letter from the Master. The Master must be satisfied that all outstanding debts (including taxes) have been paid before permission is given to distribute the balance of the estate to the heirs and legatees (hereafter collectively referred to as beneficiaries). The executor will become personally liable for the outstanding tax if any assets of the estate are distributed to beneficiaries while the estate's tax remains unpaid.⁶¹

The distribution of any asset in the form of a bequest or legacy is a supply of goods or services, except in the case of a monetary distribution as "money" is specifically excluded from the definitions of "goods" and "services" in section 1(1). In order to ascertain the VAT consequences of distributions to heirs and legatees, the executor should classify the various assets of the estate, other than money, into one of the following categories:

- Assets which formed part of the deceased's enterprise;
- Assets which did not form part of the deceased's enterprise; or
- Assets which were used partially for purposes of the enterprise.

In addition to the correct classification of the estate assets, it is necessary to determine the relationship between the beneficiary and the deceased to establish whether the parties are regarded as "connected persons".⁶² From a VAT perspective, no distinction is made between heirs and legatees.

VAT is only levied in respect of goods and services supplied in the course or furtherance of the deceased's enterprise. Consequently, no VAT will be due in respect of assets which did not form part of the enterprise.

5.2 DISTRIBUTION OF ASSETS

The administrator has to adhere to the law of succession which determines what happens to a person's estate when the person dies. There are two types of succession, namely:

- Testamentary *succession* where a person drew up a will before the date of death; and
- *Intestate succession* where a person dies without a valid will.

The person drawing up the will (testator) may bequeath specific things to a specific person. In that case, the beneficiary is known as a "legatee". Alternatively, the entire estate, or a specified part thereof, or the free residue may be bequeathed to another person. In that case, the beneficiary is known as an "heir". If a person dies without a will, the administrator must follow the rules contained in the Intestate Succession Act No. 81 of 1987 to determine who will become an heir and benefit from the free residue in the deceased's estate.

⁶¹ Section 155 of the TA Act.

⁶² Refer to **paragraph 2.3**.

Before distributing the assets of the deceased estate, the executor has to determine whether the estate is able to pay all its debts. If not, the executor has to notify the estate's creditors as well as the Master that the estate is insolvent. Unless the majority of creditors instruct the executor within the period specified in the notice to surrender the estate, the executor may proceed to distribute the estate assets. In the case where the estate is surrendered to the creditors, it will be treated as an insolvent estate and the rules as described in **Chapter 6** will apply.⁶³

The estate is liable to account for VAT on the distribution of goods and services that formed part of the deceased's enterprise. Output tax is calculated by applying the relevant tax fraction to the consideration charged, which, in most cases, will be nil where assets are bequeathed to a legatee or heir without a bequest price. Consequently, even though VAT is levied, the VAT due to SARS may be nil. However, if the special value of supply rule for "connected persons" in section 10(4) applies, VAT must be accounted for on the open market value of the goods, notwithstanding the fact that no consideration was payable. (Refer to **paragraph 2.5** for further information.)

Example 7 – Distribution of assets

Scenario

G, a vendor, was the owner of Z Catering. G bequeathed a delivery vehicle (single cab bakkie) which was used in his business to his son (a student). The rest of the business assets were bequeathed to Z Catering's employees who are not related to G. All G's private assets were bequeathed to G's spouse. The open market values of the assets were as follows:

- Delivery vehicle – R25 000
- Other business assets – R50 000
- Private assets – R1.5 million

Question

What is the VAT effect on G's estate?

Solution

G's son is a connected person who will not be using the delivery vehicle to make taxable supplies, therefore section 10(4) applies and the estate is liable to account for VAT on the open market value of the vehicle.

Output tax due in respect of the vehicle is $R25\,000 \times 14 / 114^{64} = R3\,070.18$.

The employees of Z Catering are not connected persons in relation to G and therefore the general valuation rule applies. Consequently the value of these supplies is nil as the employees are not required to pay any consideration to acquire the assets. Output tax in respect of these assets is therefore nil.

G's private assets did not form part of G's enterprise and the distribution thereof to G's spouse is not subject to VAT.

⁶³ Section 34 of the Estates Act.

⁶⁴ In terms of section 3(1)(b) of the VAT Act, the open market value already includes VAT. The tax fraction must therefore be applied to the open market value to calculate the VAT portion.

5.3 SPECIAL BEQUESTS

The VAT treatment of distributions to beneficiaries can be quite complex given the variety of potential bequests. Some examples of special bequests are addressed in **paragraphs 5.3.1 to 5.3.9** below.

5.3.1 Property owned by the deceased and others in common

The undivided share of ownership in fixed property (being a real right in property), falls within the definitions of “goods” and “fixed property” in section 1(1) of the VAT Act. The distribution of an undivided share of land, a sectional title unit, a share block share or a time-share interest in immovable property therefore constitutes a taxable supply of fixed property for VAT purposes if the asset formed part of the deceased vendor’s enterprise.

Example 8 – Bequest of property held in common

Scenario

R and H are VAT registered cattle farmers who jointly own vacant land which each of them used in their individual enterprises to provide grazing for their cattle. R and H are not connected persons. R passed away and bequeathed the half share to H. The market value of the property is R2 million.

Question

What are the VAT implications of the distribution of R’s share in the property?

Solution

The vacant land formed part of R’s enterprise and the distribution thereof would thus constitute a taxable supply. H is not a connected person in relation to R and, as no consideration was paid by H to acquire the property, the resultant output tax is nil.

Example 9 – Bequest of property held in common – connected person

Scenario

Assume the same information in **Example 8**, except that R bequeaths the share in the property to his daughter T who is not registered for VAT. H will pay rental of R20 000 per month to T to continue using the land for grazing. T does not intend to apply for voluntary VAT registration as she is of the view that she will not be liable to register.

Question

What are the VAT implications of the distribution of R’s share in the property?

Solution

The vacant land formed part of R’s enterprise and the distribution thereof is a taxable supply. As R and his daughter are connected persons the applicability of section 10(4) needs to be considered. T is not a vendor and she does not wish to voluntarily register for VAT, therefore R’s estate is liable to account for output tax based on the open market value of R’s half-share of the jointly held property.

Output tax: $(R2\,000\,000 \times \frac{1}{2}) \times 14 / 114 = R122\,807$

5.3.2 Bequest price and contributions

Bequest price

The testator may stipulate that an heir/legatee has to pay a sum of money to the estate or other beneficiaries before the relevant bequest may be distributed. The bequest price will represent consideration for a supply of goods or services (depending on the nature of the bequest) irrespective of whether it is paid to the estate or directly to the other beneficiaries. Consequently, the executor will have to apply the tax fraction to the bequest price to calculate the VAT due if that asset formed part of the deceased's enterprise. If the beneficiary and the deceased estate are connected persons and the beneficiary is not entitled to a full input tax credit in respect of the acquisition of the goods or services, the output tax must be calculated based on the higher of the open market value or bequest price.

Example 10 – Bequest price

Scenario

G, a vendor, bequeaths a sugar plantation to his youngest son on condition that the son pays each of his 3 sisters an amount of R1.5 million. The open market value of the plantation is R10 million (incl. VAT). G died on 7 March 2015.

Question

What is the VAT effect on G's estate?

Solution

G was a vendor and the distribution of the farm constitutes a taxable supply. G's youngest son acquires the plantation by paying the bequest price of R4.5 million.

If the son is a registered vendor (or registers for VAT) and continues to use the plantation wholly for enterprise purposes, the consideration for the supply is R4.5 million. In general, a taxable supply made by a vendor would be subject to 14% VAT and the estate would therefore have to account for output tax of R552 632 ($R4.5m \times 14 / 114$).

If G's son does not register for VAT and the farm is not used for taxable purposes, the special value of supply rule in terms of section 10(4) will apply, as he is a connected person in relation to the estate. In this instance, VAT will be payable on the open market value of R10 million, and the estate will be liable to account for output tax of R1 228 070 ($14 / 114 \times R10$ million) in the tax period in which the supply is made.

Cash contribution

There may be instances where the cash resources of the estate are insufficient to cover estate debts. In these instances, the executor may have to sell an asset or various assets bequeathed to an heir or legatee. Instead of selling the asset, the executor may request a cash contribution to "free" the estate from debt in order to distribute it to the person named in the deceased's will. The contribution is voluntary and is not regarded as payment for any supply made by the estate. As the testator could not have anticipated the shortfall, the amount would not be stipulated in the will.

It may happen that only certain beneficiaries would provide a cash contribution, or all of the beneficiaries might have to contribute in order to proceed with the distribution of assets in terms of the will. In both instances, the estate is not liable to account for output tax as the cash contributions do not constitute consideration for a taxable supply.

Example 11 – Cash shortfall contribution*Scenario*

O was registered for VAT in respect of a florist business which O conducted before passing away. O bequeathed the delivery vehicle used in the business to R who is the manager of the florist business. R is not related to O. As there was insufficient cash to pay all the estate's liabilities, the executor informs R that the estate assets will be sold to cover the estate expenses and liabilities and that, if R wishes to inherit the delivery vehicle, R would be required to make a cash contribution equal to the outstanding debt of R3 000. R agreed to these terms and paid the contribution.

Question

What is the VAT effect on O's estate?

Solution

The cash contribution does not constitute consideration for the supply of the delivery vehicle and therefore the estate is not liable to account for VAT in respect thereof. The distribution to R does, however, constitute a taxable supply made for no consideration as contemplated in section 10(23). The value of the supply will therefore be nil in this case as R is not a connected person in relation to O.

5.3.3 Fideicommissum

A person may bequeath property to a person to hold it in trust for another person who may not be able to own the property. This kind of bequest is generally used in the agricultural sector where a farmer (testator) may bequeath a farm to his son (fiduciary) on condition the farm will be transferred to the farmer's grandson (fideicommissary) after the farmer's son's death. This kind of arrangement is known as a fideicommissum. The fiduciary effectively holds the property in trust for the fideicommissary. These relationships can be depicted as follows:



The fiduciary may not alienate (sell or otherwise dispose of) the asset in question but may use the property for own benefit. The VAT consequences of the distribution of any asset, subject to a fideicommissum, to a fiduciary are determined in accordance with the principles discussed in **paragraph 5.2**. The subsequent transfer of property to the fideicommissary does not give rise to VAT consequences in the estate of the testator as the VAT consequences would have arisen at the time the property was transferred to the fiduciary.

The VAT consequences of the distribution of a fiduciary asset to the fideicommissary are determined according to the general principles stated in **paragraph 5.2**. These VAT consequences would occur in the estate of the fiduciary. Assets subject to a fideicommissum can, however, constitute a going concern which may be zero-rated if the requirements of section 11(1)(e) read with IN 57 are met.

Example 12 – Fideicommissum*Scenario*

A is a registered vendor who bequeathed a farm to his son-in-law F on condition that, upon F's death, the farm will be bequeathed to N (F's eldest son). A died on 1 March 2015, at which time the farm was valued at R5.5 million (incl. VAT). F is also a registered vendor and will use the farm in the carrying on of his enterprise.

Question

What is the VAT effect on A's estate?

Solution

A and F are "connected persons" as F is the spouse of A's daughter. The special valuation rule in terms of section 10(4) will, however, not apply as F is a registered vendor who will use the farm wholly for enterprise purposes and would be able to deduct the full amount of input tax had the open market value been applicable in this case. The general valuation rules will therefore apply and the value of this supply would be nil as F did not pay any consideration for the farm.

5.3.4 Usufruct

A usufruct is a well-known instrument in the law of estates which provides the testator with the option of granting a personal servitude in the form of a limited real right in property to one person, whilst granting the *bare dominium* in the property to someone else. This limited real right encompasses the use of the property and the right to income from the property to which the usufruct applies. The use of the property is thus taken away from the owner of the *bare dominium* and given to the usufructuary. A usufructuary interest is usually granted for the lifetime of a person. It may, however, also be granted for a specific period or until the fulfilment of a specific condition. In the latter two cases the usufructuary interest will cease upon the death of the usufructuary, expiration of the fixed period of use or fulfilment of the specified condition.

A usufruct, due to its highly personal nature, cannot be transferred or inherited. Consequently, the usufruct expires with the death of the usufructuary and no supply in respect of the usufruct will take place upon the happening of that event.

The *bare dominium* owner will merely have the property rights restored to their full content by operation of law. This applies regardless of whether the usufructuary was a registered vendor or not. The reason is that the deceased usufructuary no longer possesses a right which can be supplied, and therefore no "goods" or "services" as defined in section 1(1) of the VAT Act, can be supplied.

The bequest of the usufructuary interest in an asset can qualify as the supply of a going concern⁶⁵ if the same enterprise can be carried on by the usufructuary after the bequest, provided the usufructuary is registered as a vendor for VAT purposes at the time of the supply.

In the case where the usufructuary and deceased were connected persons and the usufructuary will not be using the usufruct to make taxable supplies, the estate will have to account for output tax on the open market value⁶⁶ of the usufruct.

⁶⁵ Section 11(1)(e) of the VAT Act read with IN 57.

⁶⁶ Section 10(4) of the VAT Act read with section 62(1)(a) of the Income Tax Act No. 58 of 1962.

The open market value of the usufruct is calculated as follows:

- **STEP 1** – Determine the fair market value of the property in respect of which the usufruct is bequeathed at the date of the testator's death.
- **STEP 2** – Calculate the annual value of the property by multiplying the fair value by 12%.
- **STEP 3** – Determine whether the usufruct was granted for a specified fixed period or for the usufructuary's life. If granted for the life of the usufructuary, calculate the usufructuary's age at the next birthday. If the usufruct is granted for a specified fixed period, the value is capitalised over the remaining portion of the specified period.
- **STEP 4** – Determine the value of R1 capitalised at 12% per annum over the period determined in **STEP 3** above by reference to the life expectancy table A or fixed period table B read with section 29 of the Estate Duty Act No. 45 of 1955.⁶⁷ (Refer to Annexure A).
- **STEP 5** – Multiply the annual value determined in Step 2 by the present value determined in Step 4 to arrive at the value of the usufruct. (Refer to **Example 13**.)

5.3.5 Bare dominium

Bare dominium means that the owner of the property does not have the use thereof as the right of use vests with the usufructuary as a personal servitude. The transfer of a *bare dominium* constitutes a supply which is subject to VAT at the standard rate, unless the property did not form part of the deceased's enterprise, in which case the supply of the property will not be subject to VAT.

The *bare dominium* holder will generally not be entitled to deduct input tax in respect of the acquisition of the *bare dominium* as the *bare dominium* can usually not be used to make taxable supplies. Output tax must be paid on the open market value of the *bare dominium* of the property distributed to the beneficiary if that person and the deceased were connected persons in relation to each other.⁶⁸

The open market value of the supply must be determined in accordance with a method approved by the Commissioner. The Land Bank value may not be used. The value of the *bare dominium* must be calculated by deducting the value of the usufruct (refer to **paragraph 5.3.4** above) from the open market value of full ownership of the asset.

Example 13 – Valuation of usufruct and bare dominium

Scenario

H, a vendor, bequeathed the plot on which fruit was grown to F (a trusted employee) whilst bequeathing the usufruct to his wife (G). F is not a connected person in relation to the deceased. H and G did not live on the plot as it was used solely to grow fruit.

Open market value of fruit farm	R638 400 (incl. VAT)
Date of testator's death	25/02/2015
G's date of birth (person who receives the limited real right)	01/03/1965
G's age at the next birthday after date of acquisition	50

Question

Calculate the value of the usufruct and the *bare dominium* on the granting of a lifetime usufruct over the property in favour of G as well as the output tax due as a result of the bequest.

⁶⁷ GNR 1942 of 23 September 1977: Valuation of annuities or of fiduciary, usufructuary or other limited interests in property in the estates of deceased persons.

⁶⁸ Section 10(4) of the VAT Act.

Example 13 – Valuation of usufruct and *bare dominium* (continued)*Solution*Step 1: Open market value of the property

The open market value of the property given as R638 400 (incl. VAT).

The VAT exclusive value of the property is $R638\,400 \times 100 / 114 = \mathbf{R560\,000}$

Step 2: Annual value of the property

The annual value is determined by multiplying the fair value by 12%:

$$560\,000 \times 12\% = \mathbf{R67\,200}$$

Step 3: G's age as at her next birthday

The first step is to calculate G's age as at her next birthday. (This is calculated in relation to the date of the testator's death and not the date that the documents are submitted to SARS.) G's age at her next birthday is calculated by subtracting the year of birth from the year in which the transaction took place. In this case it is $2015 - 1965 = 50$. As the limited right holder will be 50 **after** the date of the transaction, 50 is the age as at her next birthday. (If the date of the birthday was before the date of the transaction, 1 year should be added to the answer to get to the age as at her **next** birthday.)

Step 4: Capitalised value of R1

Take G's calculated age as at her next birthday (50) to Table A: "Life Expectancy Tables"⁶⁹ because the rights are for the rest of G's lifetime. Since she is a female, the right hand column under the heading "Present value of R1 per annum for life" should be selected.

Age factor: **8.00026**

Step 5: Calculate the value of usufruct

The value of the usufruct is equal to the annual value of the property multiplied by G's age factor.

$$R67\,200 \times 8.00026 = \mathbf{R537\,617.47}$$

Output tax due by the estate if G is not a vendor or does not use the plot in the course of furtherance of her enterprise: $R537\,617.47 \times 14\% = R75\,266.45$

Step 6: Calculate the value of *bare dominium*

The value of the *bare dominium* is calculated by deducting the value of the usufruct from the fair value of the property, that is –

$$R560\,000 - R537\,617.47 = \mathbf{R22\,382.53}$$

F is not connected to H and no consideration was charged for the bare dominium, therefore no output tax is due.

⁶⁹ Life Expectancy Table: Section 29 of the Estates Act as promulgated in *Government Notice R1942* of 23 September 1977.

5.3.6 Usus and habitatio

A servitude of use (or *usus*) resembles a usufruct, but the holder's rights are more restricted. The holder of the right may occupy the property together with that person's family and visitors and may access the fruits of the land only for the purposes of satisfying the daily needs of the household. Generally, the holder of this right cannot dispose of the fruits nor grant a lease in respect of a building.

Habitatio grants the right to dwell in the house of another without detriment to the substance of the property. Unlike *usus*, it includes the right to grant a lease or sublease to others. *Usus* and *habitatatio* will generally fall outside the scope of VAT as the underlying asset is usually not used for enterprise purposes, but for personal use only.

5.3.7 Grazing rights

The right to grazing could constitute an enterprise asset for VAT purposes. The VAT consequences of the bequest of such a right are determined according to the general principles discussed in **paragraph 5.2**.

Example 14 – Grazing rights

Scenario

F, a VAT registered farmer, bequeathed grazing rights to E who is not related to F.

Question

Should F's estate account for output tax in respect of this bequest?

Solution

F's estate is not liable for output tax in respect of this bequest as no consideration was charged and E is not a connected person in relation to F. The value of the supply for VAT purposes is therefore nil as section 10(4) does not apply.

5.3.8 Abatement of legacies

The testator may specify in the will that a person (or group of persons) will inherit certain amounts of money or the residue of the estate after special bequests have been distributed. There may, however, be circumstances where there are insufficient funds to pay the estate's debts. In these circumstances, the legacies may be reduced (abated) in order to meet the estate's obligations. Generally, the abatement of a legacy would not have VAT consequences as it is regarded as a reduction of the distributable portion of the estate and not consideration for a taxable supply by the estate. Refer also to **paragraph 5.3.3**.

5.3.9 Massing of estates

Massing occurs when two or more persons combine or consolidate their separate estates (or their undivided half-shares of their joint estate where they are married in community of property) into a single massed estate. The will prescribes what must be done with this massed estate on the occurrence of a specific event which is usually the death of the first dying testator.

Massing between two spouses who were married in community of property generally does not give rise to VAT consequences since the joint estate of the spouses is treated as a separate person and massing in itself merely reinforces this concept.

The VAT consequences of any distributions by the massed estate, for example the supply of a usufructuary interest to the surviving spouse, are determined by the general principles discussed in **paragraphs 5.2 and 5.3.4.**

The VAT consequence of the supply by the estate of the first dying testator's property will also be determined by the general principles dealt with in **paragraph 5.2.** Any VAT consequences arising from supplies by the estate of the first dying testator must be accounted for in the VAT returns of the joint estate.

The survivor usually obtains a limited interest in respect of the property in the massed estate. This limited interest may take the form of a usufructuary or fiduciary interest or a vested right to income in a testamentary trust.

The VAT consequences will depend on a number of factors including:

- Whether or not the survivor is registered as a vendor for VAT purposes;
- Whether or not a particular asset forms part of the enterprise carried on by the survivor; and
- The nature of the limited interest which the survivor will obtain in the massed property.

It should be noted that any VAT consequences arising from the supply of the property of the survivor do not affect the estate of the testator directly, but would be accounted for separately in the hands of the survivor.

Transfer of the survivor's assets to a testamentary trust may have VAT consequences as the trust is regarded as a separate person for VAT purposes. The amount of VAT to be levied will be determined by the relationship of the beneficiaries of the trust to the survivor. Where the beneficiaries of the trust are relatives of the testator, the trust will be a connected person in relation to the survivor and the special valuation rules in section 10(4) may apply. (Refer to **paragraph 2.3.**)

CHAPTER 6

INSOLVENT ESTATES

6.1 INTRODUCTION

As this chapter deals exclusively with insolvent estates, a general discussion on insolvency principles and processes is provided in this paragraph. The principles and processes highlighted in this paragraph provide background and context to the specific topics dealt with in **paragraphs 6.2 to 6.7** that distinguish the VAT treatment of certain aspects of insolvent estates from deceased estates.

6.2 UNPAID DEBT

This paragraph deals exclusively with instances where the insolvent person fails to pay suppliers of goods or services.⁷⁰ A vendor has to account for output tax to the extent that input tax was previously deducted, but the supply was not paid for within the prescribed period of 12 months calculated from first day of the tax period immediately after the tax period during which the deduction was made. The output tax adjustment must be made in the first tax period after the expiry of the prescribed 12 month period.⁷¹ However, in the case of sequestration, the prescribed period ends on the date of sequestration irrespective of the period the debt was outstanding. The “date of sequestration” as defined in section 1 of the TA Act refers to the date of voluntary surrender of an estate (if accepted by court) or the date of provisional sequestration where the court granted a final sequestration order. Output tax in respect of these amounts must therefore be accounted for at the time of sequestration or declaration of insolvency.

An adjustment to input tax may be made by the estate if the outstanding amount is subsequently paid. The deduction is limited to the extent that the outstanding debt is paid. For example, if the estate pays 60% of the outstanding amount, the input tax adjustment is limited to 60% of the total VAT in respect that supply.

Example 15 – Unpaid debt

Scenario

D is a sole proprietor and a registered vendor. C Ltd sold certain products to D on credit for the business. On 15 May 2014, D acquired stock of R171 000 (including VAT) in respect of which D deducted input tax of R21 000. D did not make any payment in respect of the supply as D was technically insolvent and unable to pay her debts. C Ltd therefore applied for D to be sequestered and submitted a claim for R171 000. The court granted a sequestration order on 28 February 2015. After liquidating all of D’s assets, the trustee is able to pay R45 600 to C Ltd.

Question

What are the VAT implications of the above transaction?

Solution

Date of sequestration

D has to account for output tax on the portion of the consideration which has not been paid at the time of sequestration.

Output tax = R21 000 (R171 000 × 14 / 114)

⁷⁰ **Paragraph 6.2** does not deal with debts owed to the insolvent estate which have become irrecoverable. For a discussion on irrecoverable debts, refer to **paragraph 4.4**.

⁷¹ Section 22(3) of the VAT Act.

Example 15 – Unpaid debt (continued)**Date of first distribution**

D's insolvent estate may deduct the tax fraction of the amount paid to C Ltd.

$$\begin{aligned} \text{Deduction} &= \text{R}45\,600 \times 14 / 114 \\ &= \text{R}5\,600 \end{aligned}$$

C Ltd may claim a deduction in respect of the difference between the original price and the consideration recovered as an irrecoverable debt, provided the requirements of section 22(1) are met.

$$\begin{aligned} \text{Deduction} &= (\text{R}171\,000 - \text{R}45\,600) \times 14 / 114 \\ &= \text{R}125\,400 \times 14 / 114 \\ &= \text{R}15\,400 \end{aligned}$$

6.3 REPOSSESSIONS AND SURRENDER OF GOODS

Generally, a creditor is contractually entitled to repossess goods sold in terms of an instalment credit agreement if the debtor fails to pay the consideration due in accordance with the agreement. A vendor can also, in terms of the National Credit Act of 2005, choose to terminate an instalment credit agreement by surrendering the goods to the credit provider. The return of the goods in consequence of the repossession or surrendering thereof is deemed to be a supply of goods by the debtor to the person exercising the right to repossess the goods.⁷² This supply is deemed to be made in the course or furtherance of the debtor's enterprise, unless the goods did not form part of that person's enterprise assets. The supply is deemed to be made on the day the goods are repossessed or surrendered, unless the debtor may be reinstated, in which case, the supply will be deemed to be made on the day after the expiry of the reinstatement period.⁷³ The value of such supply is deemed to be the balance of the cash value which has not been recovered.⁷⁴

If the debtor is not a vendor, the deemed supply of the repossessed or surrendered goods is not a taxable supply and the debtor therefore does not have to account for output tax. The debtor is, however, required to issue a declaration to the reposessor (or person to whom the goods are surrendered) stating that the supply is not a taxable supply.⁷⁵

The effect of the sequestration of a debtor's estate is to stay the execution of any judgment given against the debtor prior to sequestration as soon as the sheriff becomes aware of the sequestration. In other words, the insolvent's property may no longer be repossessed or surrendered and sold as the trustee takes control of all the estate assets. The stay of execution is automatic unless the Court directs otherwise. This is quite important as sequestration destroys the preference which a creditor could obtain upon attachment of the insolvent's property. However, if the goods were sold, the full consideration should be paid to the trustee and accounted for in the L&D account and corresponding VAT return.

There may also be instances where the trustee requests the creditor to sell the goods on behalf of the estate. In this instance, the goods are neither repossessed nor surrendered. Once the goods are sold, the creditor has to pay the full consideration received to the estate. The estate would then be liable to account for output tax if the goods formed part of the insolvent person's enterprise.

⁷² Section 8(10) of the VAT Act.

⁷³ Section 9(8) of the VAT Act.

⁷⁴ Section 10(16) of the VAT Act.

⁷⁵ Section 20(8) of the VAT Act.

6.4 AUCTIONS

As part of the liquidation process, the trustee may auction the assets of the insolvent estate. If the estate is a vendor, the goods auctioned would constitute a taxable supply in respect of which the estate has to account for output tax. This would apply to the extent that the goods formed part of the insolvent's enterprise, but would exclude private assets and business assets used wholly for exempt supplies. The full consideration for the supply of goods should be accounted for in the L&D account. (Also refer to **paragraph 4.3.2**)

The trustee and auctioneer may however agree to treat goods that are not subject to VAT (for example private assets or assets of a person who is not registered for VAT) as being a taxable supply and levy VAT thereon. (Refer to **paragraph 4.5.2**)

The insolvent estate is not entitled to deduct VAT charged on auction fees to the extent that the auctioned goods did not form part of the insolvent vendor's enterprise. Consequently, if both private and enterprise goods were auctioned, the trustee will only be entitled to deduct a portion of the VAT levied on the fees. The deduction is limited to the extent that the fee relates to taxable supplies made in the course or furtherance of the enterprise of the insolvent estate.

Example 16 – Deductibility of auctioneer fees

Scenario

L is a sole proprietor and VAT vendor who carried on an enterprise as a supplier of courier services. L owed a lot of money to creditors. The debts were outstanding for a long period of time. The creditors eventually filed for L's sequestration. In the course of administering the insolvent estate, the trustee sold the following assets at an auction:

Asset	Selling price
Speedboat	R57 000 (incl. VAT)
Business delivery vehicle	R114 000 (incl. VAT)

The trustee of L's insolvent estate and the auctioneer agreed that all goods will be sold inclusive of VAT, regardless of whether they were private assets or assets of L's enterprise. The auctioneer's fee was R11 400.

Question

What are the VAT implications of the above transaction?

Solution

Auctioneer

The speedboat was a private asset which was not used in the course or furtherance of L's enterprise and would therefore not constitute a taxable supply by the insolvent estate. However, as the trustee and auctioneer agreed to have the supply treated as taxable, the supply of the speedboat is deemed to be made in the course or furtherance of the auctioneer's enterprise. The auctioneer must therefore account for output tax thereon, in addition to the output tax on the commission charged, as follows:

$$(57\,000 + 11\,400) \times 14 / 114 = \mathbf{R8\,400}.$$

L's insolvent estate

L's insolvent estate has to account for output tax on the sale of the delivery vehicle which was used in the enterprise as follows: $(114\,000 \times 14 / 114) = \mathbf{R14\,000}$

The insolvent estate is only entitled to deduct a portion of the VAT incurred on the auctioneer's fees to the extent the cost was incurred to make taxable supplies.

6.5 VOIDABLE DISPOSITIONS

In certain instances, a person may decide to sell some assets before being sequestrated. This action may favour some creditors at the expense of others. An administrator can, with the assistance of the court, set aside a distribution made by the insolvent person if it is voidable in terms of the Insolvency Act. "Disposition" is a voluntary action which includes a sale, lease, mortgage, pledge, delivery, payment, release, compromise, donation or any contract therefor, but does not include a disposition in compliance with an order of the court.

The court may set aside a disposition by the insolvent person if the person's liabilities exceeded assets at that time and the disposition was intended to benefit a creditor above other creditors. If the court sets aside the disposition, it may give rise to a VAT adjustment where VAT was previously accounted for on the transaction. The administrator would have to issue a credit note and account for the adjustment. Effectively, the whole transaction will need to be reversed as if it never happened.

Example 17 – Voidable disposition

Scenario

A is a sole proprietor and a registered vendor. B Ltd sold certain products to A on credit and A owed B Ltd R50 000. A realised that A's liabilities exceed assets and that creditors would file for A's sequestration. However, due to their long-standing business relationship, A decided to supply a delivery vehicle to B Ltd in return for a full settlement of monies owed to the company. The vehicle had an open market value of R50 000 at the time of supply.

A was subsequently sequestrated. Upon investigation into what happened to all the business assets, the trustee managed to prove that the transaction was a voidable disposition. This was because A knew that the liabilities exceeded assets and that A was going to be sequestrated, but despite this, A chose to provide an unfair benefit to B Ltd.

Question

What are the VAT implications of the above voidable disposition?

Solution

Sale of vehicle

At the time the vehicle was sold to B Ltd, A had to account for output tax of R6 140.35.
(R50 000 × 14 / 114)

Voiding of disposition

The trustee sets the transaction aside. The output tax previously accounted for would have to be reversed as the transaction is void. B Ltd would have to return the vehicle and the trustee would have to issue a credit note of R50 000 (including VAT of R6 140.35) to B Ltd to reverse the transaction in the books of account.

6.6 CREDITOR CONTRIBUTIONS AND DISTRIBUTIONS

A contribution becomes payable by all creditors who have proved claims against the estate if the free residue⁷⁶, if any, is insufficient to pay all the costs of sequestration.⁷⁷

Preferent creditors may also become liable to contribute if the proceeds from the sale of the secured asset are insufficient to meet the costs incurred by the estate in respect of that asset. These payments are not made in respect of the supply of goods and services and therefore have no VAT implication.

The trustee must immediately give notice in the *Government Gazette* when distributions are made in respect of confirmed accounts.⁷⁸ Even though the distribution in the form of money is not consideration for the supply of goods or services, it may give rise to VAT consequences in the following instances:

- When the estate accounts for VAT on the payments basis, it may recover input tax to the extent that the payment (or distribution) is made to creditors for goods/services previously received;
- When the estate accounts for VAT on the invoice basis and an output tax adjustment was made on unpaid debts outstanding for longer than 12 months as required under section 22(3),⁷⁹ the VAT portion of those amounts subsequently paid to creditors (including distributions) may be deducted as provided under section 22(4) of the VAT Act.

⁷⁶ Section 2 of the Insolvency Act.

⁷⁷ Section 106 of the Insolvency Act.

⁷⁸ Section 113 of the Insolvency Act.

⁷⁹ **Refer to paragraph 6.2.**

ANNEXURE A

LIFE EXPECTANCY TABLES: SECTION 29 OF THE ESTATE DUTY ACT NO. 45 OF 1955

(GOVERNMENT NOTICE R1942 OF 23 SEPTEMBER 1977)

GNR 1942 of 23 September 1977: Valuation of annuities or of fiduciary, usufructuary or other limited interests in property in the estates of deceased persons (R)

NOTE:—These regulations were published in Government Notice No. R1942 contained in Regulation Gazette No. 2533 of 23 September, 1977.

Calculations for the purposes of the valuation of annuities or of fiduciary, usufructuary or other limited interests in property in the estate of any person who died or dies on or after 1 April 1977 shall be made in accordance with the Tables subjoined hereto:

(The regulations promulgated under **Government Notice 641 of 13 April 1956** shall continue to apply in relation to the estate of any person who died before 1 April 1977.)

Table A

The Expectation of Life and the Present Value of R1 per Annum for Life Capitalised at 12 per cent over the Expectation of Life of Males and Females of Various Ages.

Age next birthday	Expectation of life		Present value of R1 per annum for life		Age
	Male	Female	Male	Female	
0	64,74	72,36	8,32791	8,33105	0*
1	65,37	72,74	8,32828	8,33114	1*
2	64,50	71,87	8,32776	8,33091	2*
3	63,57	70,93	8,32714	8,33064	3*
4	62,63	69,97	8,32644	8,33033	4*
5	61,69	69,02	8,32567	8,32999	5*
6	60,74	68,06	8,32480	8,32961	6*
7	59,78	67,09	8,32381	8,32918	7*
8	58,81	66,11	8,32271	8,32869	8*
9	57,83	65,14	8,32146	8,32815	9*
10	56,85	64,15	8,32007	8,32753	10*
11	55,86	63,16	8,31849	8,32684	11*
12	54,87	62,18	8,31673	8,32608	12*
13	53,90	61,19	8,31480	8,32522	13*
14	52,93	60,21	8,31265	8,32427	14*
15	51,98	59,23	8,31029	8,32320	15*
16	51,04	58,26	8,30770	8,32203	16*
17	50,12	57,29	8,30489	8,32071	17*
18	49,21	56,33	8,30180	8,31926	18*

Age next birthday	Expectation of life		Present value of R1 per annum for life		Age
19	48,31	55,37	8,29841	8,31764	19*
20	47,42	54,41	8,29471	8,31584	20*
21	46,53	53,45	8,29061	8,31383	21*
22	45,65	52,50	8,28613	8,31161	22*
23	44,77	51,54	8,28117	8,30912	23*
24	43,88	50,58	8,27564	8,30633	24*
25	43,00	49,63	8,26959	8,30326	25*
26	42,10	48,67	8,26274	8,29981	26*
27	41,20	47,71	8,25516	8,29595	27*
28	40,30	46,76	8,24677	8,29171	28*
29	39,39	45,81	8,23737	8,28697	29*
30	38,48	44,86	8,22694	8,28170	30*
31	37,57	43,91	8,21538	8,27583	31*
32	36,66	42,96	8,20257	8,26930	32*
33	35,75	42,02	8,18836	8,26210	33*
34	34,84	41,07	8,17262	8,25400	34*
35	33,94	40,13	8,15536	8,24509	35*
36	33,05	39,19	8,13647	8,23517	36*
37	32,16	38,26	8,11558	8,22426	37*
38	31,28	37,32	8,09274	8,21199	38*
39	30,41	36,40	8,06781	8,19866	39*
40	29,54	35,48	8,04030	8,18386	40*
41	28,69	34,57	8,01067	8,16762	41*
42	27,85	33,67	7,97844	8,14983	42*
43	27,02	32,77	7,94344	8,13012	43*
44	26,20	31,89	7,90547	8,10881	44*
45	25,38	31,01	7,86380	8,08527	45*
46	24,58	30,14	7,81924	8,05956	46*
47	23,79	29,27	7,77109	8,03119	47*
48	23,00	28,41	7,71843	8,00026	48*
49	22,23	27,55	7,66236	7,96617	49*
50	21,47	26,71	7,60201	7,92950	50*
51	20,72	25,88	7,53713	7,88967	51*
52	19,98	25,06	7,46748	7,84646	52*
53	19,26	24,25	7,39387	7,79965	53*
54	18,56	23,44	7,31631	7,74834	54*
55	17,86	22,65	7,23234	7,69355	55*
56	17,18	21,86	7,14414	7,63363	56*
57	16,52	21,08	7,05178	7,56896	57*
58	15,86	20,31	6,95225	7,49927	58*

Age next birthday	Expectation of life		Present value of R1 per annum for life		Age
59	15,23	19,54	6,85004	7,42321	59*
60	14,61	18,78	6,74206	7,34135	60*
61	14,01	18,04	6,63010	7,25457	61*
62	13,42	17,30	6,51232	7,16020	62*
63	12,86	16,58	6,39301	7,06046	63*
64	12,31	15,88	6,26822	6,95537	64*
65	11,77	15,18	6,13789	6,84161	65*
66	11,26	14,51	6,00726	6,72393	66*
67	10,76	13,85	5,87165	6,59893	67*
68	10,28	13,20	5,73403	6,46635	68*
69	9,81	12,57	5,59182	6,32818	69*
70	9,37	11,96	5,45165	6,18466	70*
71	8,94	11,37	5,30775	6,03607	71*
72	8,54	10,80	5,16744	5,88278	72*
73	8,15	10,24	5,02437	5,72222	73*
74	7,77	9,70	4,87876	5,55743	74*
75	7,41	9,18	4,73490	5,38893	75*
76	7,07	8,68	4,59354	5,21727	76*
77	6,73	8,21	4,44663	5,04679	77*
78	6,41	7,75	4,30309	3,87092	78*
79	6,10	7,31	4,15898	4,69389	79*
80	5,82	6,89	4,02440	4,51647	80*
81	5,55	6,50	3,89051	4,34399	81*
82	5,31	6,13	3,76802	4,17315	82*
83	5,09	5,78	3,65276	4,00482	83*
84	4,89	5,45	3,54546	3,83988	84*
85	4,72	5,14	3,45232	3,67921	85*
86	4,57	4,85	3,36864	3,52371	86*
87	4,45	4,58	3,30066	3,37426	87*
88	4,36	4,33	3,24907	3,23175	88*
89	4,32	4,11	3,22597	3,10296	89*
90	4,30	3,92	3,21438	2,98912	90*

N.B.—The age is to be taken as at the next birthday after the date when the right was acquired.

Example.—Find the present value of an annuity or *usufruct* of R100 per annum for life of: (A) a female who becomes entitled thereto at the age of 42 years 3 months, or (B) a male who becomes entitled thereto at the age of 65 years 9 months.

	(A)	(B)
Age when acquired	42 years 3 months	65 years 9 months
Age next birthday	43 years	66 years
Present value of R1 per annum for life	R8,13012	R6,00726
Therefore present value of R100 per annum for life equals	R813,01	R600,73

Table B.

Present Value of R1 per Annum Capitalised at 12 per cent over Fixed Periods.

Years	Amount R	Years	Amount R	Years	Amount R	Years	Amount R
1	0,8929	26	7,8957	51	8,3076	76	8,3318
2	1,6900	27	7,9426	52	8,3104	77	8,3320
3	2,4018	28	7,9844	53	8,3128	78	8,3321
4	3,0374	29	8,0218	54	8,3150	79	8,3323
5	3,6048	30	8,0552	55	8,3170	80	8,3324
6	4,1114	31	8,0850	56	8,3187	81	8,3325
7	4,5638	32	8,1116	57	8,3203	82	8,3326
8	4,9676	33	8,1354	58	8,3217	83	8,3326
9	5,3282	34	8,1566	59	8,3229	84	8,3327
10	5,6502	35	8,1755	60	8,3240	85	8,3328
11	5,9377	36	8,1924	61	8,3250	86	8,3328
12	6,1944	37	8,2075	62	8,3259	87	8,3329
13	6,4236	38	8,2210	63	8,3267	88	8,3330
14	6,6282	39	8,2330	64	8,3274	89	8,3330
15	6,8109	40	8,2438	65	8,3281	90	8,3330
16	6,9740	41	8,2534	66	8,3286	91	8,3331
17	7,1196	42	8,2619	67	8,3291	92	8,3331
18	7,2497	43	8,2696	68	8,3296	93	8,3331
19	7,3658	44	8,2764	69	8,3300	94	8,3331
20	7,4694	45	8,2825	70	8,3303	95	8,3332
21	7,5620	46	8,2880	71	8,3307	96	8,3332
22	7,6446	47	8,2928	72	8,3310	97	8,3332
23	7,7184	48	8,2972	73	8,3312	98	8,3332
24	7,7843	49	8,3010	74	8,3314	99	8,3332
25	7,8431	50	8,3045	75	8,3316	100	8,3332

N.B.—Fractions of a year are to be disregarded when using this table.

Example.—Testator, who died on 1 April 1977 left to (A) an annuity or usufruct value R100 per annum, to terminate when (A) attains majority, which will occur, say, at 30 September 1987. This period is found to be 10 years 6 months, but is taken as 10 years.

Present value of R1 per annum for 10 years

R5,6502

Therefore present value of R100 per annum for 10 years

R565,02

GLOSSARY

- Administrator** This term is used in this guide to refer to the person administering another person's estate. An executor administers a deceased estate whereas a trustee administers an insolvent estate. This term is used collectively where the treatment of deceased and insolvent estates are similar.
- Connected person** Describes and identifies the relationships between different persons. If persons are connected in terms of the definition it may be necessary to apply special time and value of supply rules whereby the supplier may be required to charge VAT on the open market value of the supply, rather than on the amount of consideration received. For purposes of this guide, it is limited to natural persons and estates.
- Examples include the following (amongst others):
- Natural persons who are related;
 - A natural person and a company where that natural person owns more than 10% of the shares or voting rights in that company.
- Consideration** The total amount of money (including VAT) received for a supply. For barter transactions where the consideration is not in money, the consideration is the open market value of goods or services received for making the taxable supply. Section 10 determines the value of supply or consideration for VAT purposes for different types of supplies.
- Any act or forbearance, whether voluntary or not for the inducement of a supply of goods or services will constitute consideration, but it excludes any donation made 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.
- Date of sequestration** The date of voluntary surrender of an estate, if accepted by a court or the date of provisional sequestration of an estate if the court grants a final order of sequestration.
- Deceased estate** A deceased estate is the estate of a deceased person which is administered by an executor. It includes all the assets and liabilities of the deceased person.
- 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 Republic;
 - in the course or furtherance of which goods or services are supplied to another person for a consideration, that is, some form of payment;
 - whether or not for profit.
- Examples of special inclusions:
- Welfare organisations.
 - Share block companies.

Enterprise (continued)	<p><u>Examples</u></p> <ul style="list-style-type: none"> • Ordinary businesses – manufacturers, traders, auctioneers, landlords, contractors etc. • Trades and professions – builders, electricians, plumbers, doctors, lawyers, accountants etc. <p>The following activities are <u>not</u> enterprise activities and will therefore not attract VAT:</p> <p>(This list is not exhaustive)</p> <ul style="list-style-type: none"> • Services rendered by an employee to his/her employer, for example, salary/wage/remuneration earners. • Private occasional transactions, for example, occasional sale of domestic/household goods, personal effects or private motor vehicle. • Supplies by persons who are not vendors.
Estate	The property, whether movable or immovable, of a natural person or partnership. This term is used collectively to refer to both deceased and insolvent estates.
Executor	Any person who is authorised to act under letters of executorship granted or signed and sealed by a Master to administer a deceased estate.
Exempt supplies	<p>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 VAT incurred on expenses as “input tax”.</p> <p>Section 12 contains a list of exempt supplies.</p> <p><u>Examples</u></p> <ul style="list-style-type: none"> • Rental of accommodation in any "<i>dwelling</i>" including employee housing. • Certain services to members of a sectional title, share block or old age scheme funded out of levies (not applicable to timeshare schemes).
Goods	<p>Includes the following:</p> <ul style="list-style-type: none"> • Corporeal (tangible) movable things, goods in the ordinary sense (including any real right in those things); • Fixed property, land & 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; • Electricity; • Postage stamps; and • Second-hand goods. <p>Excludes the following:</p> <ul style="list-style-type: none"> • 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.

Input tax	<p>Tax paid by the recipient to the supplier of goods or services. Input tax may only be deducted by the recipient vendor if the goods or services are acquired for making taxable supplies and if the vendor is in possession of a valid tax invoice for the supply. Where goods or services are acquired only partly for taxable supplies, only a portion of the VAT incurred may be deducted.</p> <p>In certain instances, input tax may also be deducted on non-taxable supplies of second-hand goods acquired by the vendor, but the vendor must retain a proper record of the details of the transaction. Before 10 January 2012, the input tax on the acquisition of any second-hand goods constituting fixed property was limited to the transfer duty payable and could only be deducted after the transfer duty had actually been paid. For transactions on or after 10 January 2012, the input tax is no longer limited to the transfer duty payable.</p> <p>Input tax may not be deducted where goods or services are acquired for making exempt supplies or other non-taxable activities or for private use.</p>
Insolvent estate	<p>An estate of a natural person under sequestration which is administered by a trustee appointed by the Master. It includes all the assets and liabilities of the insolvent person.</p>
Master	<p>The Master, Deputy Master or Assistant Master of the High Court who has jurisdiction in respect of an estate.</p>
Output tax	<p>VAT charged by a vendor in respect of the taxable supplies of goods or services.</p>
Person	<p>Refers to a natural person or a body of natural persons, for example a partnership, and the estate of such person. For purposes of this guide, the term “person” would not include companies and other legal entities.</p>
Recipient	<p>In relation to any supply of goods or services, means the person to whom the supply is made.</p>
Return	<p>A form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment or is the basis on which an assessment is to be made by SARS, e.g. VAT 201 return. (Section 1 of the TA Act).</p>
SARS	<p>The South African Revenue Service.</p>
Services	<p>Broadly defined and includes the following:</p> <ul style="list-style-type: none">• 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 in terms of section 8, <p>but <u>excludes</u>:</p> <ul style="list-style-type: none">• A supply of “<i>goods</i>”;• A supply of “<i>money</i>”; and• Any stamp, form or card which falls into the definition of “<i>goods</i>”. <p><u>Examples</u>:</p> <ul style="list-style-type: none">• Commercial services - electricians, plumbers, builders.• Professional services - lawyers.• Advertising agencies.

- 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** The administrator is required to issue tax invoices within 21 days from making taxable supplies on behalf of the estate. A tax invoice is also required to be held by a vendor to deduct input tax. The term is dealt with in s 20 which sets out what is required to be reflected on the document as follows:
- Full tax invoice (s 20(4))
- The following details are required where the consideration is R5 000 or more, or is a zero-rated supply:
- The words “TAX INVOICE” in a prominent place;
 - Name, address and VAT registration number of the supplier;
 - Name, address and VAT registration number of the recipient;
 - Serial number and date of issue;
 - Accurate description of goods and/or services;
 - Quantity or volume of goods or services supplied ; and
 - Price and VAT.
- Abridged tax invoice (s 20(5))
- Where the amount (including VAT) is less than R5 000, the same requirements as above, except that the name, address and VAT registration number of the recipient and the quantity or volume does not need to be specified.
- 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 per year).
 - Category D - Six-monthly (certain farmers only – taxable supplies less than R1,5 million per annum).
 - Category E - Annually (only in exceptional circumstances for connected persons with only one transaction per year).
 - Category F - Four-monthly (small businesses only – taxable supplies less than R1,5 million per year). This category will no longer be available from 1 July 2015. Vendors falling within this category will be absorbed into Category A or B tax periods.
- Taxable supplies** These are supplies (including zero-rated supplies) which are chargeable with tax under the VAT Act. 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 of 14% must be charged.
- A taxable supply does not include any exempt supply listed in section 12, even if supplied by a registered vendor.
- Trustee** Means the trustee of an estate under sequestration, and includes a provisional trustee.

VAT	Value-added tax
VAT registration number	The number allocated to a vendor by the Commissioner in terms of section 24 of the TA Act.
Vendor	This is any person that is registered, or is required to be registered for VAT. Therefore any person making taxable supplies in excess of the R1 million threshold amount (prescribed in section 23) is a vendor, whether that person has actually registered for VAT or not.

CONTACT DETAILS

The SARS website www.sars.gov.za contains contact details of all SARS branch offices and border posts.

Contact details appearing on the website under “Contact Us” (other than branch offices and border posts) are reproduced below for your convenience.

SARS Head Office

Physical address

South African Revenue Service
Lehae La SARS
299 Bronkhorst Street
Nieuw Muckleneuk
0181
Pretoria

Postal address

Private Bag X923
Pretoria
0001
South Africa

SARS website

www.sars.gov.za

Telephone

(012) 422 4000 (Head office)

SARS Fraud and Anti-Corruption hotline

0800 00 28 70

SARS Large Business Centre (LBC) Head Office

Physical address

Megawatt Park
Maxwell Drive
Sunninghill
Johannesburg

Postal address

Private Bag X170
Rivonia
2128
South Africa

Telephone

(011) 602 2010

email

LBC@sars.gov.za

For contact details of each LBC sector go to “Contact Us” on the SARS website then go to “SARS Large Business Centre”.

SARS Service Monitoring Office

Telephone

0860 12 12 16

Fax

(012) 431 9695

Website

www.sars.gov.za/ssmo

Postal Address

P O Box 11616
Hatfield
0028
South Africa

email

ssmo@sars.gov.za

e-Filing

Call Centre

0800 00 72 77

Website

www.efiling.gov.za

Fax

(011) 602 5312

email

eFilingAssist@sars.gov.za

National Call Centre

You may contact SARS by phone, email, fax or visiting a SARS Branch

- Call our SARS Contact Centre on 0800 00 7277
- International Callers may contact our Contact Centre on +27 11 602 2093
- National eFiling email address for specific eFiling enquiries: eFilingAssist@sars.gov.za
- Email or fax one of our dedicated four contact centres:

Area	Telephone	Fax	E-mail
Northern South Africa Vendors residing in Gauteng north (including Centurion and Pretoria), North West, Mpumalanga and Limpopo.	0800 00 7277	012 670 6880	Contact.north@sars.gov.za
Central South Africa Vendors residing in Gauteng south (including Midrand, the Greater Johannesburg area, Kempton Park, Boksburg, Vereeniging and Springs), the Free State and Northern Cape.	0800 00 7277	010 208 5005	Contact.central@sars.gov.za
Eastern South Africa Vendors residing in KwaZulu Natal and northern parts of the Eastern Cape (up to and including East London).	0800 00 7277	031 328 6018	Contact.east@sars.gov.za
Southern South Africa Vendors residing in the Eastern Cape, south of East London and the Western Cape.	0800 00 7277	021 413 8905	Contact.south@sars.gov.za

Practitioners Unit

Telephone/ Call Centre

0800 00 72 77

E-mail

pcc.pavilion@sars.gov.za

Business hours

Weekdays 8:00 – 16:00 (except Wednesdays)
 Wednesdays 9:00 – 16:00

Physical address

Pavilion
 226 Bronkhorst Street
 Nieuw Muckleneuk
 Pretoria

This facility is for Tax Practitioners already registered with SARS (Pretoria area only). Appointments can be made online by visiting: www.sars.gov.za, then go to the Tax Practitioners' web page.

VAT Rulings

Fax

086 540 9390

E-mail

VATRulings@sars.gov.za