

PUBLICATIONS

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

Guides updated

- VAT 404: Guide for Vendors.
- VAT 414: Guide for Associations not for Gain and Welfare Organisations.

Draft Interpretation Notes issued for public comment

- Remission of Interest in terms of Section 39(7)(a).
- Discounts, Rebates and Incentives.

Interpretation Notes issued as final documents

- Interpretation Note 52 – Tax Periods.
- Interpretation Note 56 – Recipient-Created Tax Invoices, Credit and Debit Notes.
- Interpretation Note 57 – Sale of an Enterprise or Part thereof as a Going Concern.

These documents are all available on the [Legal & Policy](#) page on the [SARS website](#).

CHANGES TO THE VAT RETURN (FORM VAT 201e)

In line with SARS's modernisation agenda which aims to improve efficiencies in tax and customs administration, a few changes to the VAT return (form VAT 201e) have been made. The changes are aimed mainly at addressing certain compliance aspects in regard to the import and export of goods – in particular fraudulent VAT refunds linked to exports. A letter was included with the VAT returns in April and May 2010 to inform vendors of the changes. The new form applies to e-filers from 28 June 2010. Vendors that file their returns manually must complete and submit the form as provided to them by SARS.

The new fields on the VAT 201e form are as follows:

- **Field 2A** – indicates the value of all exported goods supplied at the zero rate during the period.
- **Fields 14A and 15A** – these fields are for indicating respectively, the value of all capital goods and non-capital goods imported for which valid import bills of entry and receipts for the payment of the VAT on importation are held.
- A field has been created for the vendor's **Customs Code**, to be completed. This is the reference number which is allocated to a person who is registered as an importer or exporter. The Customs Code will create a link between the information declared for Customs and VAT purposes. It will be mandatory to fill in the Customs Code if any of **Fields 2A, 14A or 15A** are completed.

The effect of the changes is that vendors will need to distinguish between the value of zero-rated exports and other zero-rated supplies on their returns. Input tax relating to the importation of goods must now also be indicated separately from other taxable purchases. Vendors will therefore need to check that their accounting and administrative systems are able to generate the required reports and information so that the VAT return can be completed correctly.

Refer to the Media Release dated 28 June 2010 – [SARS introduces new VAT 201 form](#) and to the [VAT page](#) on the [SARS website](#) for further information.

CASH AND CHEQUE PAYMENTS

With effect from November 2009, a process began whereby the acceptance of cash payments at SARS's cash offices was phased out. This process is now complete and with effect from 1 April 2010, vendors who previously paid by way of cash were required to select one of the other payment methods. These include the use of online banking, electronic funds transfers (EFTs) or payments through the secure e-filing channel. Refer to the [SARS Payment Rules](#) for more information on how the different payment methods work.

On 17 March 2010, SARS also issued a media statement to announce that from 1 April 2010, cheque payments made using the abbreviation "SARS" will no longer be accepted. All cheques must be made out to the "South African Revenue Service" (written out in full) and be crossed "not negotiable/transferable". This decision has been taken as part of ongoing efforts by SARS and the banking institutions to limit the opportunities for fraudulent activities and to decrease possible losses due to similar account names.

NEW LEGISLATION

The draft Bills which give effect to the 2010 Budget tax proposals were released for public comment on 10 May 2010. The revised Bills are scheduled to be tabled in Parliament in August or September 2010. The proposed amendments will come into operation on the date of promulgation of the Bills unless another date is specified as being applicable for a particular amendment. The Bills are available on the websites of the National Treasury ([www.treasury.gov.za](#)) and SARS ([www.sars.gov.za](#)).

Included in the Taxation Laws Second Amendment Bill is a proposal to institute a voluntary disclosure programme (VDP) from 1 November 2010 to 31 October 2011. In terms of the VDP, it is proposed that qualifying persons be provided with relief for any additional tax, penalties and interest relating to the default, but that the full amount of tax will remain due and payable. More details on the VDP will be forthcoming from SARS in the near future. The draft VDP relating to exchange control contraventions and amendment to the Exchange Control Regulations was published for public comment on 1 July 2010 by the South African Reserve Bank (SARB). These documents are available on the SARB website ([www.reservebank.co.za](#)).

A number of other Bills which will have a direct or indirect effect on vendors are also in the process of becoming final legislation. These are as follows:

- Draft Customs Control Bill and Draft Customs Duty Bill.
- Draft Tax Administration Bill.
- Revised Draft Regulation of Tax Practitioners Bill.

Visit the [Legal & Policy](#) page on the [SARS website](#) for further information.

SUPPORTING DOCUMENTS FOR VAT REGISTRATION

Any person that applies to register for VAT must ensure that the correct supporting documents as set out in the policy document [AS-VAT-08 - Guide for Completion of VAT Registration Application Forms](#) are submitted together with the VAT 101 application form to avoid any delays in obtaining a VAT number. The policy document was updated on 1 March 2010.

WITHDRAWAL OF PRACTICE NOTES

The following VAT Practice Notes were recently withdrawn:

- No. 1 of 1991 – Valuation of Livestock.
- No. 5 of 1991 – Tax Periods. (Refer also to the article **“TAX PERIODS AND THE 10-DAY RULE”** below.)
- No. 14 of 1991 – Going Concerns.
- No. 15 of 1991 – Treatment of Supplies of Dried Maize and Maize Products.
- No. 1 of 1996 – Withdrawal of Rulings in respect of Value-Added Tax.

Refer to the [Notice on the Withdrawal of Practice Notes](#) dated 1 February 2010 for more details. Refer also to [Interpretation Note 57 – Sale of an Enterprise or Part thereof as a Going Concern](#) which withdrew VAT Practice Note No. 14 of 1991.

RECIPIENT-CREATED TAX INVOICES

[Interpretation Note 56](#) was issued on 31 March 2010 on the topic of recipient-created tax invoices (also known as self-invoicing). Paragraph 5 of this Note contains a binding general ruling (BGR) which provides for situations where the recipient (i.e. the customer) determines the quantity, quality or consideration for goods or services supplied, or is responsible for measuring or testing the goods sold by the supplier. The BGR provides that in such cases, the recipient, instead of the supplier, may issue any tax invoices, credit and debit notes for the supplies concerned. This is on condition that the parties to the transaction comply with the requirements set out in the Note. Paragraph 5 of VAT Practice Note No. 2 dated 25 September 1991, which previously provided guidance on this topic, has been withdrawn by the Interpretation Note.

Vendors that are unable to comply with the requirements stipulated in paragraphs 5.1 or 5.2 of the Interpretation Note will have to apply for approval at the local SARS office before being allowed to apply self-invoicing. The application must include details of the nature of the transactions concerned, the difficulties experienced in complying with the said requirements and the reason(s) why self-invoicing is an appropriate solution in the circumstances.

TAX PERIODS AND THE 10-DAY RULE

Tax periods normally end on the last calendar day of the month, but a vendor is allowed to close off for accounting purposes within 10 days before or after the end of the month in which those tax periods would otherwise end. This is known as the “10-day rule” which is explained in [Interpretation Note 52 – Tax Periods](#) dated 14 December 2009. Paragraph 5 of the Note contains a BGR in which the Commissioner has provided for approved categories of fixed cut-off dates, provided the 10-day rule is adhered to. The categories are –

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

One of the conditions is that when a cut-off date is changed in accordance with the BGR, the cut-off date must be applied consistently for a minimum period of 12 months. Vendors that comply with all the conditions set out in the BGR do not need to apply for a specific ruling.

VAT Practice Note No. 5 of 1991, which previously provided guidance on this topic, has been withdrawn by the Interpretation Note.

FIXED PROPERTY / TIMESHARE SALES

In a recent VAT case, the Supreme Court of Appeal (SCA) had to decide if the issuing of preference shares together with certain “timeshare” occupation rights, constituted exempt supplies for VAT purposes. The vendor had previously engaged in selling timeshare “points” on which VAT was payable, but later underwent a “restructuring”. It argued that after the business had been restructured, it was supplying only “equity securities” which are exempt financial services, and accordingly, was not liable to account for VAT on its sales. SARS disagreed and assessed the vendor on the basis that it was selling timeshare interests which constituted “goods” and “fixed property” as defined in the VAT Act, which attracted VAT at the standard rate.

For the vendor to succeed in its argument, it had to show that the rights stemming from the sale of “points” formed part of the bundle of incorporeal rights comprising the preference shares. This was found not to be the case because, although the occupation rights could only be purchased together with the shares, this did not result in the merger of the rights relating to each supply. It was held that both shares and “points rights” were being supplied, and further, that it was the points rights and not the shares that entitled the purchaser to the accommodation rights. The right of occupation was therefore not incidental to being a shareholder, but was a separate contractual arrangement.

The decision of the Durban Tax Court, which found that the sale of the timeshare “points” were subject to VAT at the standard rate, was accordingly confirmed.

FRINGE BENEFITS: 2010 FIFA WORLD CUP™ ITEMS

Draft legislation was released on 10 June 2010 to provide that a nil value will apply for any 2010 FIFA World Cup™-related items such as T-shirts, soccer jerseys and match tickets provided as fringe benefits by employers to their employees on or before 11 July 2010. Vendors will therefore not be required to declare output tax on such items provided to employees, where the value of the item (or combined value of items) did not exceed R750 per employee. Remember that a vendor may not deduct input tax on the purchase of any world cup tickets or other entertainment supplied to its employees free of charge.

Refer to Media Release – [Exemption for fringe benefit tax on 2010 FIFA World Cup items](#) on the [SARS website](#) for further information.