VAT 420

Guide for Motor Dealers

Issue 3



Value-Added Tax

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30 YEARS OF FREEDOM

SARS
South African Revenue Service

Preface

This guide concerns the application of the value-added tax (VAT) legislation in respect of vendors that supply motor cars and other vehicles (motor dealers). Although fairly comprehensive, the guide does not deal with all the legal detail associated with VAT and is not intended for legal reference. Technical and legal terminology has also been avoided wherever possible. For details in respect of the general operation of VAT, see 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 89 of 1991, and references to "sections" are to sections in the VAT Act, unless the context indicates otherwise. All references to "the TA Act" are to the Tax Administration Act 28 of 2011.

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). Similarly, the terms "motor vehicle" or "vehicle" are also used as a reference to all types of vehicles which may be supplied by motor dealers. The term "motor car" is, however, used in certain instances where it is necessary to refer to this specifically defined term. 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.

The information in this guide is based on the VAT Act (as amended) and the TA Act (as amended) as at the time of publishing. It includes the amendments contained in the –

- Revenue Laws Amendment Act 12 of 2024;
- Taxation Laws Amendment Act 42 of 2024;
- Tax Administration Laws Amendment Act 43 of 2024;
- Revenue Laws Second Amendment Act 44 of 2024; and
- Rates and Monetary Amounts Amendment Act 45 of 2024.

The reader is referred specifically to the following documents for more detailed information on specific topics dealt with in this guide:

- Interpretation Note 82 (IN 82) dealing with the definition of "motor car" and the deduction of input tax on acquisition of a "motor car".
- Interpretation Note 30 (Issue 3) (IN 30) for the requirements regarding the documentary proof required to substantiate the application of the zero rate in respect of direct exports.
- The Export Regulation that was gazetted on 2 May 2014 (as per *GG 37580*) regarding indirect exports.

There are also various other guides available on the **SARS website** or the *VAT 404 – Guide for Vendors* that may be referred to for more information relating to the *various publications*.

This guide is not an "official publication" as defined in section 1 of the TA Act and accordingly does not create a practice generally prevailing under section 5 of that Act.

The previous edition of this guide is withdrawn with effect from 4 June 2025.

All guides, interpretation notes, binding general rulings, forms, returns and tables referred to in this Note are available on the **SARS website**.

All guides, interpretation notes, rulings, forms, returns and tables referred to in this guide are the latest issues available on the **SARS website** or on eFiling at **www.sarsefiling.co.za** (guides only), unless the context indicates otherwise.

For more information, assistance and guidance you may –

- visit the **SARS website**;;
- contact the SARS National Service Centre –
  - if calling locally, on 0800 00 7277;
  - if calling from abroad, on +27 11 602 2093 (only between 8am and 4pm South African time);
- have a virtual consultation with a SARS consultant by making an appointment via the **SARS website**;
- visit your nearest SARS service centre, after making an appointment via the **SARS website**;
- submit legal interpretative queries on the TA Act by e-mail to **TAAInfo@sars.gov.za**;
- submit a ruling application to SARS headed “Application for a VAT Class Ruling” or “Application for a “VAT Ruling” together with the VAT301 form by e-mail to **VATRulings@sars.gov.za**.
- contact your own tax advisor or tax practitioner.

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

Leveraged Legal Products
SOUTH AFRICAN REVENUE SERVICE
4 June 2025

DISCLAIMER

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

Hyperlinks, and cross-references display as bold text to assist our visually impaired readers. For example, **SARS website**, and see **3.11** and **5.5**.

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Chapter 1
Introduction

1.1 Approach of the guide

For the most part, the general VAT principles as set out in the *VAT 404 – Guide for Vendors* will apply to motor dealers. The information in this guide should therefore be read together with the *VAT 404 – Guide for Vendors*. This guide expands on the application of the normal VAT principles with regard to specific types of transactions which are of interest to motor dealers[1] and the motor industry in general.

The approach to the topic and the layout of the material in this guide is set out as follows:

Chapter 1 – This chapter sketches the general VAT principles concerning the VAT treatment of the supply of motor vehicles in the Republic. An important aspect in this regard is that, as a general rule, a vendor may not deduct input tax on the acquisition of a "motor car" as defined in the VAT Act. However, this rule does not apply to a vendor that supplies motor cars for a consideration in the ordinary course of conducting an enterprise. A brief overview is also provided on the basic principles of VAT and how it applies to motor dealers.

Chapter 2 – This chapter introduces the reader to some of the more important concepts and definitions contained in the VAT Act. It also deals with terminology used in the motor industry which is relevant for the purposes of certain topics to be discussed in later chapters.

Chapter 3 – In this chapter the various types of supplies which are made by motor dealers are discussed in some detail. In particular, the focus is on the nature of the supplies and whether output tax must be declared by the motor dealer, or by some other vendor in the case where the motor dealer has acted as agent.

Chapter 4 – It is important for motor dealers that are involved in exporting vehicles to draw a distinction between direct and indirect exports, as well as new and second-hand motor vehicles exported, as the VAT treatment differs. This chapter therefore discusses the rules for applying the zero rate of VAT to different types of exports, the applicable documentation which a vendor is required to hold to justify the charging of VAT at the zero rate on exports, and the possible VAT adjustments which may be required when the export documentation is not received timeously.

Chapter 5 – The different circumstances under which goods are imported into the Republic are discussed. As the normal rules in this regard are discussed in the *VAT 404 – Guide for Vendors*, this chapter focuses on specific types of imports which may apply to motor dealers. For example, the temporary import of vehicles for the purpose of servicing or repair, trans-shipment of vehicles destined for export countries, and certain aspects concerning warranties.

Chapter 6 – This chapter focuses on the different types of supplies acquired or goods imported by motor dealers in the course of conducting an enterprise and sets out the rules with regard to the deduction of input tax in that regard.

[1] For purposes of this guide, a "motor dealer" may include reference to a financier that supplies motor vehicles under an instalment credit agreement (ICA) or operating lease.

1.2 General VAT principles

VAT is an indirect tax levied on the supply of goods or services in the Republic by a vendor. It is also levied on the importation of goods into the Republic, and in some cases, on the importation of services. The aim of VAT is to raise revenue for the government by taxing final consumption of goods and services in the Republic. Accordingly, supplies and imports of goods or services consumed in the Republic are generally taxable for VAT purposes.

A person that continuously or regularly supplies motor vehicles (for example, a motor dealer) will be required to register as a vendor if the compulsory VAT registration threshold of R1 million in taxable supplies in any consecutive 12-month period is exceeded. Most motor dealers will therefore be liable to register as VAT vendors. A motor dealer that is registered (or required to be registered) for VAT must levy VAT on all taxable supplies made in the course or furtherance of its enterprise. VAT is currently levied at the standard rate of 15%[2] on most supplies and importations, but there is a limited range of supplies of goods or services which are either exempt, or which are subject to tax at the zero rate (for example, exports are normally taxed at 0% provided certain conditions are met).

VAT charged to customers is called “output tax”, while the VAT incurred on vehicle purchases and other business expenses that are incurred wholly or partly for purposes of making taxable supplies is known as “input tax”. The output tax less the input tax in a tax period results in the net amount of VAT payable by or refundable to the vendor. As a general rule, input tax is specifically denied in respect of certain business expenses, for example, expenses in connection with entertainment and the acquisition of motor cars.

The term “motor dealer” is not defined in the VAT Act. For the purposes of this guide, the term “motor dealer” is used with reference to a vendor that, in the ordinary course of conducting an enterprise activity,[3] acquires motor cars exclusively for the purpose of resale or rental to third parties. The term is not limited to persons who are formally set up in the trading style of a motor dealership. The term can therefore include reference to motor manufacturers, car rental enterprises, financiers that supply motor vehicles under instalment credit agreement (ICA) or any other person that supplies motor vehicles in the course or furtherance of conducting an enterprise.

See the *VAT 404 – Guide for Vendors* for more details regarding the general principles.

1.3 Tax administration

The TA Act was promulgated on 4 July 2012 and came into effect on 1 October 2012, except for the provisions set out in Schedule 1 to the TA Act relating to interest as per Proclamation 51 dated 14 September 2012 (*GG* 35687).

With the implementation of the TA Act, certain administrative provisions previously contained in the VAT Act were replaced by similar provisions contained in the TA Act but if an administrative provision applies only to one tax type, then the administrative provision is contained in the individual tax Act such as the VAT Act. A vendor must therefore adhere to the administrative requirements that are contained in the TA Act and the VAT Act.

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

3 See **2.3**.

The TA Act regulates the administration of all the tax Acts. The VAT Act must therefore be read together with the provisions of the TA Act (for example both the TA Act and VAT Act contain requirements in respect of record keeping which must be complied with). 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.

See the *VAT 404 – Guide for Vendors* for more details regarding the interaction between the VAT Act and the TA Act.

See the Tax Administration webpage on the **SARS website**, where you can find more information on the TA Act, which includes, amongst others, the following documents:

- *The Short Guide to TA Act, 2011*
- Interpretation Note 68 "Provisions of the Tax Administration Act that did not Commence on 1 October 2012 under Proclamation 51 in *GG* 35687"

Chapter 2
Definitions and concepts

2.1 Agent

An agent is a person that acts under a contractual arrangement in terms of which one person (the agent) is authorised and required by another person (the principal) to contract or to negotiate a contract with a third person, on the latter's behalf. The agent, in representing the principal, creates, alters or discharges legal obligations of a contractual nature between the principal and the third party. The agent therefore provides a service to the principal and normally charges a fee (generally referred to as "commission" or an "agency fee") and does not acquire ownership of the goods and/or services supplied to or by the principal.

This agent/principal relationship may be expressly construed from the wording of a written agreement or contract concluded between the parties. If there is no written agreement or contract, the onus is on the person who purports to be the agent (who seeks to bind the principal in a contract) to demonstrate that an agency agreement exists with another person who is the principal for the purposes of the supply.

If an agent/principal relationship exists, the principal is ultimately responsible for the commercial risks associated with a transaction, and the agent is trading for the principal's account. The agent is appointed by, and takes instruction from, the principal regarding the facilitation of transactions as per the principal's requirements and generally charges a fee or earns a commission for that service.

Before determining the VAT consequences of a transaction, it is necessary to establish the relationship between the parties. This is to determine if the vendor is acting as an agent on behalf of another person or as principal. If an agent makes a supply on behalf of the principal, it is the principal who must account for VAT on the supply. Likewise, if a supply is made to an agent on behalf of the principal, it is the principal who may deduct the input tax, provided all the conditions for deducting input tax are met.[4] While the VAT Act allows agents to receive and issue invoices on behalf of a principal they are obligated to provide the principal with all the details of the supply in the form of a statement. Any consideration charged by the agent will be a separate supply, normally commission, which would be reflected on an invoice from the agent to the principal.

As such if the agent negotiates a discount, that discount would be that of the principal and not the agent. It is therefore imperative to point out that agency, from a VAT perspective is a pure form of agency. There are many industries and professions where people or entities are referred to as agents, eg. Travel agents, estate agents, employment agents, but this does not mean that they meet the requirements of an agent for VAT purposes based on the aforementioned.

2.2 Consideration

The term "consideration" generally means the total amount of money (including VAT) received for a supply of goods or services. "Consideration" is widely defined to include any form of payment and any act or forbearance, whether or not voluntary, for the inducement of a supply of goods or services. In the case that the consideration is not in money (for example, in the

[4] See section 54, which contains special provisions dealing with the VAT consequences arising from an agency relationship. See also the *VAT 404 – Guide for Vendors for Vendors* for more information.

case of barter transactions), the consideration is the open market value (OMV) of the goods or services (including VAT) received for making the taxable supply.

The term "consideration" excludes –

- any donation made to an association not for gain; and
- a deposit which is lodged to secure a future supply of goods or services, which has not yet been applied as payment (for example, a security deposit held in trust until the time of supply is triggered), or which has not yet been forfeited.

The value of a supply or amount of the consideration for VAT purposes for different types of supplies of goods or services is determined in section 10. Since consideration comprises the value of the taxable supply and the VAT, the following formulae can be derived:

Consideration = Value + VAT

or

VAT = Consideration – Value

2.3 Enterprise

The term "enterprise" is the starting point in determining whether a person is liable to be registered for VAT purposes in the Republic. A person is generally considered to be carrying on an "enterprise" if **all** the following requirements are met:

- An enterprise or activity must be carried on continuously or regularly by a person in the Republic or partly in the Republic.
- In the course or furtherance of carrying on the enterprise or activity, goods or services must be supplied to another person.
- There must be a consideration payable for the goods or services supplied.

In the context of an enterprise, one of the main issues is whether the supply of a "motor car" as defined in section 1(1) is a taxable supply for VAT purposes or not. A related issue is whether a vendor that conducts an enterprise can deduct input tax when a motor car is acquired for enterprise purposes. The reason for this is that the VAT Act contains special rules[5] governing the VAT treatment of motor cars.

The result of these special rules is that if the nature of the enterprise is to supply motor vehicles (including motor cars) either by way of sale, or by way of rental, then the supplies will be taxable, and a corresponding input tax deduction may be claimed by the enterprise when acquiring those motor vehicles (including motor cars). However, for any other type of enterprise that does not regularly buy and sell (or lease) motor cars for a consideration, any supply of a motor car by way of sale or rental is not regarded as an enterprise activity. In such a case, even if a motor car is acquired for enterprise purposes, the input tax incurred will normally be denied and no output tax will be declared on the consideration received in respect of the occasional sale or rental of the motor car.

5 See sections 8(14) and 17(2)(*c*).

2.4 Exported

The term “exported” in the context of this guide, refers to a situation when motor vehicles (being movable goods) are supplied under a sale or ICA by a South African motor dealer (vendor) and subsequently removed from the Republic and imported into an export country.

If the motor dealer consigns or delivers the motor vehicle(s) to a customer in an export country, it is referred to as a “direct export” which is subject to VAT at the zero rate.[6] The zero rate applies only if the necessary documentary proof is obtained and retained to prove that the vehicle was exported within the prescribed period. In the case of a direct export, the supplier is in control of the movement of the goods and is responsible for the delivery thereof at a place in an export country.

On the other hand, an “indirect export” is when the customer takes delivery of the goods and is responsible for the removal (exportation) of the goods from the Republic. The motor dealer supplying the goods in this case will not be in control of the movement of the goods after the sale has been concluded and cannot be certain that the goods will be exported by the customer.

Generally, indirect exports are subject to VAT at the standard rate, but if the goods are subsequently exported from the Republic, the customer may apply to the VAT Refund Administrator (Pty) Ltd (VRA)[7] for the VAT charged on the supply to be refunded. In certain instances, a motor dealer may elect to apply the zero rate in respect of an indirect export, provided all the requirements in the Export Regulation[8] are met. In these cases, the motor dealer will bear the risk of ensuring that the required documentation will be received to justify the application of the zero rate. (See **Chapter 4** for more details.)

2.5 Floor plan

A “floor plan” is a generic term used to refer to the financing of motor vehicles that are held in stock by a motor dealer before they are sold. The motor vehicles could be in transit, in a special storage facility (for example, a special storage warehouse), or on the motor dealer's showroom floor. A floor plan is a standing arrangement, involving various parties and a predetermined combination of transactions and conditions primarily aimed at funding assets during the period between manufacture, export or import (or purchase by a dealer – in the case of second-hand motor vehicles) and the ultimate sale of those assets to the motor dealer’s customer. It is common practice in the motor industry for a motor dealer to enter into a floor plan agreement to finance the acquisition of new motor vehicles which may be purchased from local motor vehicle manufacturers or importers.

Although a number of variations exist which take into account different funding requirements and risk factors, the supply of vehicles under a floor plan agreement basically involves –

- the purchase of motor vehicles by the financier for cash or on credit terms from the manufacturer; importer or dealer; and
- the subsequent supply of those vehicles under an ICA[9] by the financier to the motor dealer.

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6 See paragraph (*a*) of the definition of “exported” in section 1(1), read with sections 11(1)(*a*)(*i*) and 11(3). See also IN 30 for the requirements regarding documentary proof of export.

7 A private company appointed by SARS to administer the VAT refund mechanism.

8 The Export Regulation was gazetted on 2 May 2014 (as per GG 37580).

9 “Instalment credit agreement” as defined in section 1(1)

A floor plan agreement need not be a financing agreement in its own right but an arrangement which sets out how finance will be provided. It could also constitute a "master agreement" (ICA or otherwise) against which individual motor vehicles are added to the agreement, as and when they are supplied. (See **3.2.3** for more details.)

2.6 Goods and second-hand goods

The term "goods" means corporeal movable things, fixed property and any real right in such thing or fixed property. The term refers to any tangible property and any real right in such tangible property and therefore includes "movable goods" as discussed in **2.4.**

The term "second-hand goods" includes goods which were previously owned and used. The term excludes certain things, for example, animals, gold, gold coins, and "old order" mining rights.

2.7 Input tax and "notional" input tax

Generally, the VAT charged by a vendor to another vendor on any goods or services acquired for the business will qualify as input tax in the hands of the recipient. It does not matter if the goods or services are acquired for the purposes of consumption or use by the business itself, or for the purposes of making a taxable supply to another person. It is important that input tax is only deducted insofar as the supplies are used for the purposes of making taxable supplies in the course or furtherance of the enterprise. Input tax may not be deducted if the goods or services are acquired for private purposes or for making exempt supplies. In the case of VAT being incurred for both taxable and non-taxable purposes, the input tax must be apportioned.

To qualify as input tax, three requirements must be met, namely:

(a) The goods or services supplied must be acquired by the vendor wholly or partly for consumption, use or supply in the course of making taxable supplies; and

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

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

- Standard-rated supplies – a valid tax invoice, debit note or in certain prescribed circumstances, such other alternative documentation containing such information as is acceptable to the Commissioner.
- Non-taxable supply of second-hand goods or goods repossessed or surrendered under an ICA – records must be maintained by the vendor deducting the input tax as per form VAT264 and section 20(8).
- Importation of goods – a bill of entry or other prescribed Customs document which may be required in the circumstances, as well as the relevant proof of payment of the VAT in respect of the importation made to Customs.

A vendor may, in respect of tax periods from 1 April 2016, under circumstances prescribed by the Commissioner, make a deduction based on alternative documentary proof acceptable to the Commissioner under section 16(2)(*g*). In order to qualify for such a deduction, the following two requirements must be met:

- The circumstances as prescribed by the Commissioner must apply; and

- The vendor must be in possession of documentary proof containing the information which is acceptable to the Commissioner at the time that a return in respect of the deduction is furnished.

For more details regarding documentation relating to input tax and other deductions, see the *VAT 404 – Guide for Vendors.*

In the case of "second-hand goods" It is necessary to determine whether goods are indeed second-hand goods because if a vendor acquires second-hand goods under a non-taxable supply from a resident for the purposes of making taxable supplies, the vendor may be permitted to deduct an amount of VAT as notional input tax. The notional input tax deductible by a motor dealer is limited to the tax fraction applied to the lesser of the consideration in money paid by the motor dealer to the customer or the OMV of that supply. An arrangement was, however, made in Binding General Ruling 12 "Input Tax on the Acquisition of a Non-taxable Supply of Second-hand Motor Vehicles by Motor Dealers" (BGR 12) to allow motor dealers to deduct input tax on the full consideration paid, including any so-called over-allowance amount, provided certain conditions were met (see **6.3** for more details). In terms of the amendment to section 72 of the VAT Act, which came into operation on 21 July 2019, BGR 12 ceased to apply from 1 January 2022. The effect is therefore that the notional input tax is not only limited to the extent of payment of the consideration but that any so-called over-allowance is not recognised in determining the OMV for purposes of that limitation.

In the case of second-hand goods, the notional input tax deduction is calculated as follows:

$$\text{VAT (input tax)} = \text{Lesser of consideration or OMV}^{10} \times \frac{15}{115} \times \frac{\text{consideration paid}}{\text{total consideration}}$$

Example 1 – Notional input tax deduction by a motor dealer

Facts:

Miss C (a resident) intends studying in Europe and sells her 2010 Toyota Yaris to S Motor Dealers (a vendor) for R115 000 which is also equal to the open market value of the vehicle. S Motor Dealers intends selling the vehicle in its dealership and pays this amount by directly depositing it into Miss C's bank account.

What are the VAT implications for S Motor Dealers?

Result:

Miss C is not a vendor and cannot charge VAT on the agreed selling price. Since S Motor Dealers has purchased the motor car from a resident for a consideration of R115 000 for the purpose of making taxable supplies, an amount of R15 000 (R115 000 × 15 / 115) may be deducted as notional input tax to the extent that the consideration has been paid in the tax period concerned. A Motor Dealers is required to be in possession of a completed VAT264 form declaring that the supply of the motor vehicle is not a taxable supply as required under section 20(8) or such other documentation acceptable to the Commissioner in certain prescribed circumstances.

[10] See **2.11** and **6.3** for more details in this regard.

See **6.2** to **6.9** for the application of certain special rules which may be applicable to motor dealers and the deduction of input tax.

2.8 Instalment credit agreement and rental agreement

There are two types of ICAs for VAT purposes, namely, an instalment sale agreement and an instalment lease agreement (ordinarily referred to as a "finance lease"). Instalment sale agreements are characterised by a condition that the passing of ownership of the goods supplied only takes place upon payment of the final instalment or once the residual amount[11] has been settled (as the case may be). Instalment sale agreements will normally provide for the payment of the purchase price including finance charges (at a fixed or determinable charge). An instalment lease agreement provides for the payment of a fixed or determinable rental amount which includes any finance charge or any other amount determined with reference to the time value of money. In addition, the lessee normally accepts the risks attached to those goods in so far as loss or damage is concerned.

A rental agreement (or operating lease) will normally provide for the payment of a rental amount for the use of the goods and, in terms of the contract, the lessee does not become the owner of the goods at the end of the lease period.

2.9 Motor car

The term "motor car" includes vehicles which have three or more wheels, are normally used on public roads and which are constructed or converted wholly or mainly for carrying passengers, for example, ordinary sedan or hatch type motor cars, SUVs, double-cab bakkies (LDVs) etc.

The following vehicles do not fall within the term "motor car" as defined:

- Vehicles capable of accommodating more than 16 persons (for example, a bus).
- Specialised vehicles such as hysters, graders, tractors, mobile cranes and earthmoving vehicles which can only seat one person.
- Hearses, ambulances and caravans.
- Vehicles with an unladen mass of 3 500 kg or more.
- Single cab bakkies (LDVs), trucks and delivery vehicles.
- Game viewing vehicles, that is vehicles which are constructed or permanently converted for the carriage of seven or more passengers and used exclusively for game viewing in national parks, game reserves, sanctuaries or safari areas.

See IN 82 dealing with the definition of "motor car" and the deduction of input tax on acquisition of a "motor car" for more information.

2.10 Output tax

Output tax refers to the tax levied by a vendor on the taxable supply of goods or services. The output tax is determined by applying the standard rate of VAT to the value of a supply of goods or services. For example, if the value of supply is R500, the output tax will be R75 (R500 × 15%). If the amount charged (consideration) for the supply of goods or services includes VAT at the standard rate, the output tax is determined by applying the tax fraction to

[11] Also known as a "balloon payment".

the consideration. For example, if the charge including VAT is R500, output tax included in the amount is R65,22 (R500 × 15 / 115).

2.11 Over-allowance

Motor dealers sometimes agree to pay an amount to a customer which is in excess of the generally accepted trade-in market value of a second-hand motor vehicle. Motor dealers usually determine the market value of second-hand vehicles according to a publication known as the "Auto Dealer's Guide". The difference between this value and the amount credited or paid to the customer is referred to as an "over-allowance". This usually comes about when the vehicle traded-in is an integral part of another transaction involving the supply of a new or used vehicle to the same customer by the same motor dealer.

Previously, an arrangement was made in terms of BGR 12 and section 72 to allow motor dealers to deduct input tax on the full consideration (including any over-allowance amount) paid or credited to the supplier for a second-hand vehicle traded-in under a non-taxable supply. However, with effect from 1 January 2022, BGR 12 ceased to apply. Motor dealers may therefore no longer consider any amount of over-allowance paid or credited to the supplier of the second-hand vehicle traded-in under a non-taxable supply when calculating notional input tax. This is on the basis that paragraph (*b*) of the definition of "input tax"[12] limits the amount of notional input tax to the lesser of the tax fraction of the consideration paid by the vendor for the second-hand goods or the OMV of the goods.

See **6.3** for more information in this regard.

2.12 Sale, supply and taxable supply

The term "sale" is defined in the VAT Act to mean an agreement of purchase and sale and includes any transaction or act by which or in consequence of which ownership of goods passes or is to pass from one person to another.

The definition of the term "supply" in the VAT Act is very broad defined and includes all forms of supply and any derivative of the term, irrespective of where the supply is effected. The term includes transactional performance in terms of a sale agreement, rental agreement, ICA or barter transaction. The term also includes supplies which are made voluntarily (for example, the donation of goods or services) or supplies which take place by operation of law (for example, forced sales, expropriation transactions etc.). In order for a supply to occur there must be at least two parties to the transaction, a supplier and a recipient.

Apart from the supplies mentioned above, section 8 also provides for certain "deemed supplies". For example –

- the receipt of an indemnity payment under a contract of insurance is deemed to be consideration received in respect of a supply of services;
- the supply of the use, or right to use any goods under various agreements; and
- the supply of goods or services under a warranty agreement.

The term "taxable supply" includes all supplies of goods or services made by a vendor in the course or furtherance of an "enterprise" which is subject to VAT at either the standard or zero rate. (See **Chapters 3** and **4** for more details.)

[12] As defined in section 1(1) of the VAT Act.

2.13 Services

The term “services” is defined in the VAT Act to mean anything done or to be done, resulting in a definition of wide inclusion. Therefore, anything that does not constitute “goods” or “money” will usually constitute the supply of “services”.

2.14 VAT registration

A person who conducts an enterprise and the value of taxable supplies made by that person is more than R1 million in any consecutive period of 12 months, or will exceed that amount in terms of a contractual obligation in writing, is obliged to register for VAT. In cases when the value of taxable supplies is less than R1 million, the person may qualify for voluntary registration.[13]

The example below illustrates when a person that supplies motor vehicles will be liable to register for VAT.

Example 2 – Liability to register as a vendor

Facts:

Mr S is employed fulltime as a financial consultant at a local bank. From July 2020, in his spare time, Mr S started buying old motor cars and selling them after restoration. During the period July 2021 to March 2022 he bought, restored and sold the following motor cars:

Date of sale	Description of goods supplied	R
04 July 2021	2016 Opel Corsa	99 000
28 August 2021	2018 Nissan NP200	89 000
01 September 2021	2015 Toyota Fortuner 2.5	225 000
17 October 2021	2015 Hyundai Getz	70 000
06 November 2021	2017 Renault Sandero 1.6 United	99 000
09 December 2021	2015 Polo 1.4	85 000
28 January 2021	2006 BMW 318i	95 000
07 February 2022	2017 Chevrolet Cruze 1.6	123 000
28 March 2022	2017 Kia Sportage	229 000
Total		1 104 000

Does Mr S carry on an enterprise and is he required to register for VAT? If he is required to register, from which date will he be liable to account for VAT?

Result:

The activity of buying, restoring and selling motor cars on a continuous or regular basis is an enterprise for VAT purposes. In this case, Mr S became liable to register as vendor at the end of March 2022 as this was the month in which he exceeded the compulsory VAT registration threshold. As a result, Mr S was obliged to apply for registration as a vendor within 21 business days[14] from the end of March 2022. The sale of vehicles from 1 April 2022 would therefore be taxable supplies on which VAT must be charged.

[13] For more information regarding VAT registration, see the *VAT 404 – Guide for Vendors*.

[14] See section 22 of the TA Act.

Note:

The monthly salary that Mr S receives from his employer is “remuneration” earned in the course of his employment at the local bank and is not in respect of any taxable supplies made by him. The remuneration therefore falls outside the ambit of “enterprise” and is not considered in determining the value of taxable supplies for VAT registration purposes.

Chapter 3
Types of supplies

3.1 Introduction

Motor dealers supply new as well as second-hand motor vehicles to customers situated in the Republic or in an export country. Generally, the supply of a motor vehicle by a motor dealer is subject to VAT at the standard rate as it will be supplied in the course or furtherance of the enterprise that continuously or regularly supplies motor vehicles. In the case of exports, subject to certain exceptions, the rate of 0% may apply. (See **2.3** and **Chapter 5**.)

Motor dealers supply not only motor vehicles, but also a wide range of other goods and services associated with motor vehicles. In this chapter we take a look at the different supplies made by motor dealers and discuss the VAT consequences of the transactions concerned.

3.2 Supply of motor vehicles

As mentioned in **3.1** the main type of supplies made to and by motor dealers are motor cars and other motor vehicles. These supplies are generally subject to VAT at the standard rate and can be carried out by way of a number of different types of agreements.

It is important to note as a general point that any prices advertised, displayed, published or quoted to the public must be VAT-inclusive. This is so that the customer will know the final price payable upfront.

3.2.1 Outright sales

Outright sales are the simplest type of transaction and may be entered into if a private person or a business has cash resources available or has borrowed funds from a financial institution to purchase the vehicle outright.

The VAT implications of outright sales follow the normal rules which determine that –

- output tax is declared by the supplier at the time that the transaction occurs, being the earlier of the time that payment for the supply is made, or an invoice for the supply is issued, unless the parties are connected persons. In this regard, a special time of supply rule applies in the case of transactions between connected persons. The time of supply is important as it establishes the tax period in which the supplier must account for output tax, and the tax period in which the recipient may deduct input tax (subject to the requirement that the person must be in possession of a tax invoice for the supply); and
- input tax may, subject to section 17(2)(*c*),[15] be deducted in respect of the acquisition of motor cars provided that the recipient is in possession of a valid tax invoice or other documentation which is acceptable to the Commissioner in certain circumstances at the time the deduction is made in a return. In order to make a deduction of input tax, the vehicle must be acquired by the vendor for the purpose of making taxable supplies (See **Chapter 6** for further details regarding input tax).

If the vehicle is exported, the supply may be subject to VAT at the zero rate. (See **Chapter 4**.)

[15] See **6.10** for further details regarding the denial of input tax.

3.2.2 Instalment Credit Agreements

The purchase of vehicles may be funded by way of an ICA.[16]

The time of supply for motor vehicles or other goods supplied under an ICA takes place at the earlier of the time that –

- the goods are delivered; or
- any payment of the consideration is received by the supplier in respect of the supply of the motor vehicle.

The value upon which VAT must be accounted for is the cash value of the supply. The cash value does not include the cost of providing credit (that is, interest, finance charges or any amount determined with reference to the time value of money).

Motor dealers may purchase and supply motor vehicles under ICAs, but usually the supply made to the final customer is financed by a financial institution and not the motor dealer. For VAT purposes, the sale of a motor vehicle under an ICA to the final customer usually results in two separate supplies in that the motor dealer supplies the motor vehicle to the financial institution, which in turn, supplies the motor vehicle to the customer.

Example 3 – Supply of a motor vehicle by way of an ICA

Facts:

In February 2023, Mrs D (a vendor) purchases a new delivery van to be used in her enterprise. The sale of the delivery van was negotiated with ABC Motor Dealers (a vendor) and Mrs D is granted finance for the transaction by XYZ Bank Limited (a vendor). ABC Motor Dealers sells the delivery van to XYZ Bank Limited for the purpose of selling it to Mrs D and providing finance for the deal.

What are the VAT implications on the abovementioned transactions?

Result:

For ABC Motor Dealers

Although ABC Motor Dealers negotiated the sale to Mrs D, the delivery van is actually supplied first to XYZ Bank Limited. Since the supply of the delivery van is a supply of goods made in the course or furtherance of an enterprise carried on by ABC Motor Dealers, the sale to XYZ Bank Limited is subject to VAT at the standard rate.

If a commission or referral fee is paid to ABC Motor Dealers by XYZ Bank Limited, that fee is also subject to VAT at the standard rate. ABC Motor Dealers would be required to issue a tax invoice to XYZ Bank Limited.

[16] See **2.8** for more information regarding the types of ICAs.

For XYZ Bank Limited

As XYZ Bank Limited is a vendor that supplies motor vehicles in the course of its enterprise, the supply of the delivery van to Mrs D will be subject to VAT at the standard rate and the bank is entitled to deduct input tax on the acquisition of the delivery van from ABC Motor Dealers. Input tax may also be deducted on any commission or referral fee paid to ABC Motor Dealers which includes VAT at the standard rate to the extent that it relates to its taxable activities. XYZ Bank Limited is required to issue a tax invoice to Mrs D in respect of the supply of the delivery van. Alternatively, the bank may authorise ABC Motor Dealers to issue the tax invoices on its behalf.

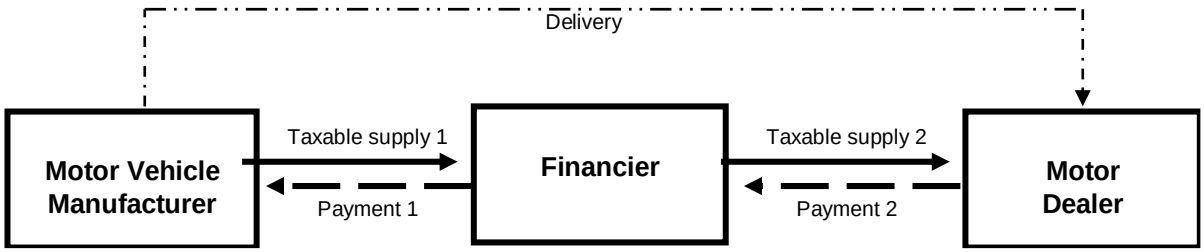
For Mrs D:

The vehicle purchased by Mrs D is a delivery van and not a "motor car" as defined. Mrs D may therefore deduct input tax on the acquisition thereof provided that the delivery van is to be used by Mrs D for purposes of making taxable supplies.

3.2.3 Floor plan agreements

As motor dealers usually require finance for their purchases of new motor vehicles, it is common practice in the motor industry for a motor dealer to enter into a floor plan agreement[17] with a financial institution or with the manufacturer of the motor vehicles. Although there can be different types of floor plan arrangements, the discussion in this guide will be limited to the basics of the most common type.

The process for the financing of **new vehicles** is depicted below.



The flow of transactions and VAT implications for the parties are as follows:

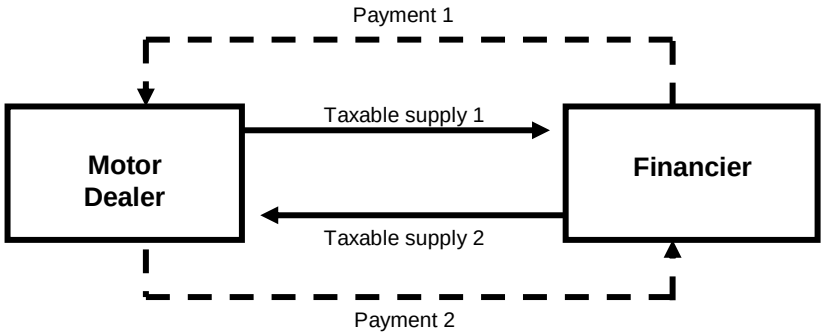
- The manufacturer, importer, dealer or other institution (being a vendor), sells a motor vehicle on credit or for cash to the financier and accounts for output tax. Ownership of the motor vehicle is reserved until payment is received from the financier. (Taxable supply 1).
- The financier receives a tax invoice from the manufacturer, importer, dealer or other institution and may deduct input tax thereon (although the cartage contractor may be solicited by the financier, the cost of the delivery service is usually invoiced to the manufacturer as this is built into the price of the motor vehicle invoiced by the manufacturer or importer). The financier pays the manufacturer, importer, dealer or other institution after any "interest-free" period which may be applicable, and ownership of the motor vehicle passes to the financier.
- The motor vehicle is sold by the financier to the motor dealer under an ICA and placed on the motor dealer's floor plan. The financier issues a tax invoice to the motor dealer and accounts for output tax. The dealer deducts input tax once the tax invoice has been received. (Taxable supply 2)

[17] See **2.5** for a more details on the term "floor plan".

- Payment by the motor dealer to the financier usually happens as follows:
  - Interest is paid at predetermined intervals, and
  - The full settlement amount in terms of the ICA for that motor vehicle (including any outstanding interest) is paid shortly after the motor dealer has sold the motor vehicle to a customer.

  The financier does not declare any output tax on these payments as interest is exempt, and the VAT on the capital amount paid in respect of the motor vehicle would have already been accounted for at the time that the motor vehicle was supplied under the ICA. Similarly, no input tax may be deducted by the motor dealer on these payments as interest is exempt from VAT.
- The motor dealer will account for the output tax once the motor vehicle has been supplied to a customer (a buyer or a lessee), either in terms of an outright sale for cash, or under an ICA.

The process for **second-hand vehicles** is depicted below.



The flow of transactions and VAT implications for the parties to a second-hand goods transaction are as follows:

- The motor dealer supplies the motor vehicle (acquired from a 3rd party) to the financier in terms of a normal sale, issues a tax invoice and accounts for output tax upon issuing an invoice or receiving payment from the financier (whichever event occurs first). If the financier entered into a similar arrangement with a private individual or vendor who was denied an input tax deduction at the time of purchase, the supply to the financier would not be subject to VAT. A notional input tax deduction can be made by a vendor if a completed and signed VAT264 form is obtained and retained together with other documents specified on the VAT264 form or, in certain prescribed circumstances, such alternative documentation containing the information as is acceptable to the Commissioner[18]. Also, if the financier exports a motor vehicle acquired from a non-vendor in these circumstances, the supply will be subject to VAT at the standard rate to the extent of the notional input tax deducted, based on the special value of supply rule (original acquisition cost upon which notional input tax was deducted).[19]
- The motor vehicle is acquired back from the financier immediately thereafter in terms of an ICA, and input tax is deducted by the motor dealer on the cash value upon receipt of the tax invoice from the financier. The financier declares output tax on the transaction.
- Payment by the motor dealer to the financier usually happens as follows:

[18] See **6.3.**
[19] See **4.2.2.**

- Interest is paid at predetermined intervals, and
- The full outstanding amount (cash value and any unpaid interest) is settled within a few days of reselling the motor vehicle.

Upon resale of the motor vehicle to a customer under an outright sale, or on terms provided by the motor dealer, a tax invoice is issued and output tax is declared by the motor dealer.

- Any subsequent supplies resulting from a customer's requirement to finance the purchase will no longer form part of the floor plan arrangement and must be dealt with in accordance with the VAT provisions applicable to that supply.

3.3 Consignment stock

In order to determine the VAT implications of motor vehicles supplied on consignment, the legal and contractual relationship established between the consignor and the motor dealer as consignee must be understood.

If the agreement is that the motor dealer becomes the principal (owner) in respect of the goods at the time that the goods are sold to a customer, the consignor makes a supply, as principal, to the motor dealer and the motor dealer makes a supply, as principal, to the customer. The motor dealer in this case will be liable for the output tax on the supply to the customer. If the consignor, being a motor dealer, is registered for VAT and was entitled to deduct input tax on the acquisition of those vehicles, the consignor must issue the motor dealer with a tax invoice and account for output tax as the supply is a taxable supply. The motor dealer is entitled to a corresponding input tax deduction.

The general time of supply rule, being the earlier of the time an invoice is issued or the time any consideration is received, will be applicable. In the event that the motor dealer only acts as the selling agent on behalf of the consignor, the consignor will be the principal and will be responsible to account for output tax, if applicable, on the supply to the customer in terms of the general time of supply rule as set out above. Depending on the agreement, either the consignor (principal) will issue the tax invoice, or the motor dealer (agent) will issue the tax invoice on the principal's behalf. In this regard, the agent must submit a statement to the principal, in writing, within 21 days of the end of each calendar month.

3.4 Sundry supplies made by motor dealers

3.4.1 Referral fees

If a motor dealer –

- acts as an agent and arranges the supply of goods or services; or
- refers the business of customers to other suppliers, for example to a certain bank, insurance company or fitment centre,

the motor dealer is making a taxable supply of services to such other person. Payment in the form of commission, fees, rebates or other consideration will be received from the person to whom the service has been provided. These supplies by motor dealers are usually subject to VAT at the standard rate as the amount received will, in most cases, constitute consideration for a taxable supply of services rendered to a resident.[20]

[20] See Binding General Ruling 5 "Discounts, Rebates and Incentives in the Motor Industry" (dated 25 March 2011).

3.4.2 The supply of accessories or parts

If a motor dealer is the supplier of any accessories or extras such as anti-smash-and-grab products, tracking devices, satellite navigation devices, paint protection, tow bars and mag wheels, the motor dealer must charge VAT at the standard rate on the price of the products, whether they are supplied separately, or included in the price of the motor vehicle. In some instances, motor dealers may rather refer its customers to a fitment centre for the abovementioned accessories. In this case, should the accessories or parts be supplied by the fitment centre, it will charge VAT at the standard rate to the customer or to the motor dealer (if these products are already included in the price of the vehicle).

The following are some examples of amounts which may be received by motor dealers for other goods or services supplied:

- The supply of scrap metal or dismantled motor vehicle parts by second-hand motor dealers or dealers in scrap metal constitutes a taxable supply and is subject to VAT.
- Commission for credit, life or short-term insurance or comprehensive vehicle insurance sold.
- Advertising rebates.
- Other rebates received from a manufacturer, for example, for rendering excellent customer service.
- Warranty payments. (See also **3.11** and **5.5**.)

Output tax must also be declared on volume rebates received which could constitute a variation of the previously agreed consideration for past supplies or consideration for the supply of a service. See Binding General Ruling 5 for further information.

3.5 Sponsorship

According to the Sponsorship Code[21] of the Advertising Standards Authority of South Africa (ASA) the term “sponsorship” is defined as –

> “a form of marketing communication whereby a sponsor contractually provides financial and/or other support to an organisation, individual, team, activity, event and/or broadcast in return for rights to use the sponsor's name and logo in connection with a sponsored event, activity, team, individual, organisation or broadcast”.

Further, it is considered that the objective of investing in sponsorship is to create a positive association between a sponsor's image, product or brand and a sponsored event or activity, team, individual, organisation or broadcast, within the sponsor's target market in order to attain marketing and corporate objectives.

Sponsorship can take on many forms, from an altruistic act of donating funds or the use of goods to a charitable cause, to a formal business arrangement under which goods, services or funding is made available under a sponsorship contract to a person in return for specific advertising, branding and promotional services. In the commercial world of a motor manufacturer or motor dealer, it is seldom the case that funds are donated or vehicles are made available to sporting organisations or other businesses without expecting something of value in return which is in pursuance of the sponsor’s organisational objectives. Typical arrangements include the making available of funds, vehicles and technical expertise in motor sports, as well as national and provincial team sports or for competitions and events. If a motor

[21] The Sponsorship Code is available on the website of the ASA

dealer makes a true "*donation*" as defined in section 1(1) to an association not for gain, the motor dealer will not declare any output tax on such donation. Since most forms of sponsorship do not constitute donations, this aspect is not discussed further in the guide.

It follows that when a motor manufacturer or motor dealer concludes a sponsorship agreement to provide funding to an organisation, the payment will usually constitute consideration for an advertising, branding or promotional service provided by the recipient. If the organisation receiving the sponsorship funding is a vendor, the advertising, branding or promotional service provided will be a taxable supply and a tax invoice should be issued to the motor manufacturer or motor dealer.

In the event that the right to use a motor vehicle is provided to an organisation for a specified period of time, in return for the advertising, branding or promotional service, this constitutes a barter transaction, and as the consideration received by each party to the agreement is not in money, the open market value (OMV) of each supply must be determined. The OMV is the consideration in money (including VAT) that the supply of those goods or services would generally fetch if supplied in similar circumstances on the relevant date in the Republic if the supply was freely offered and made between persons who are not "connected persons" as defined. [22]

In a barter transaction, the motor dealer must declare output tax on the OMV of the advertising or promotional benefit received, as this constitutes the consideration for the supply of the right of use of the motor vehicle. Similarly, if the person receiving the sponsorship vehicle is registered for VAT, output tax must be declared on the OMV of the right of use of the motor vehicle, being the consideration for the taxable supply of the advertising or promotional service supplied to the motor dealer.

Each party will also be entitled to deduct input tax on the consideration "paid" for the supplies, provided that the goods or services are acquired for taxable purposes and that a tax invoice is held, subject to the organisation acquiring the vehicle will usually not be able to deduct input tax on the acquisition of the right of use if the vehicle is a "motor car" as defined in section 1(1). The motor dealer will not be entitled to deduct input tax on the advertising or promotional service provided if the supplier is not a registered VAT vendor. Similarly, to the extent that the supply to the motor dealer constitutes "entertainment", input tax may not be deducted.

Example 4 – Sponsorship of a professional sports team

Facts:

Manufacturer X enters into an agreement with Team Y. Both parties are registered VAT vendors. In terms of the agreement –

- Team Y is supplied with the right to use 12 motor cars owned by Manufacturer X for a period of 12 months; and
- Team Y, a vendor, must participate in all of Manufacturer X's advertising campaigns, and the vehicles must carry the branding and logos of Manufacturer X.

[22] See section 1(1).

The specific type of motor cars supplied to Team Y may each be rented on a monthly basis from a reputable local car rental enterprise for R11 500 per month (including VAT).

What are the VAT implications of this barter transaction for the parties concerned?

Result:

The OMV of the right of use of the motor cars is calculated as follows: OMV = R11 500 × 12 = R138 000 including VAT. Furthermore, the OMV of the advertising, branding and promotional service is determined to be R138 000.

Manufacturer X

Manufacturer X has granted the right of use of the motor cars to Team Y in return for the performance of specific advertising, branding and promotional services. Manufacturer X is therefore liable to account for output tax on the consideration received for the supply of the right to use the motor cars. The consideration received is equal to the OMV of the advertising, branding and promotional service.

Manufacturer X will therefore declare output tax of R18 000 (R11 500 × 12 × 15 / 115) for the duration of the contract, that is, R1 500 per month. Manufacturer X will be entitled to deduct input tax on the amount "paid" for the services acquired from Team Y, provided that it is in possession of a valid tax invoice issued by Team Y or such other documentation containing the information as is acceptable to the Commissioner.

Team Y

Similarly, Team Y, a vendor, supplies an advertising, branding and promotional service to Manufacturer X in return for the right of use of the motor cars. Team Y must, therefore, account for output tax on the consideration received for the supply of services to Manufacturer X. The consideration received is equal to the OMV of the advertising, branding and promotional service. Team Y will, therefore, declare output tax of R18 000 (R138 000 × 15 / 115) for the duration of the contract. Team Y will not be entitled to deduct input tax on the amount "paid" for the acquisition of the right of use of the motor car, as input tax will be denied under section 17(2)(*c*), since Team Y is not in the business of supplying motor cars. If the right to use the vehicles is supplied by Team Y to any of the players in the team (being employees), this constitutes a taxable fringe benefit for employee's tax and VAT purposes. Team Y will be required to account for output tax on the value of the benefit, calculated at 0,3% of the "determined value" of the motor vehicle (for each month or part thereof) for each employee.

See **3.12** for more details regarding a vehicle which is provided as a fringe benefit and the applicable calculations.

3.6 Rental agreements and discounted rental agreements

Under an ICA, the VAT is accounted for at the earlier of the time that the goods are delivered or the time any payment of consideration in respect of the supply is received, while under a rental agreement[23] the VAT is accounted for by the motor dealer as the VAT liability arises in each tax period. In the case of a motor dealer concluding a rental agreement with a customer and subsequently discounting the right to receive the payments under the agreement to a financial institution, the discounting transaction constitutes an exempt financial service. The motor dealer must, however, continue to declare output tax in each tax period until the agreement terminates if the discounting of the rental income stream does not have the effect of cancelling or transferring the other rights and obligations under the original rental agreement. If the rights and obligations under a rental agreement (for example, the rights of repossession and ownership) are also transferred to the person to whom the rental income stream was "discounted", this constitutes a taxable supply of "goods" at the standard rate.

3.7 Discounted instalment credit agreements

Some motor dealers conclude ICAs with customers and subsequently cede the debt under the ICA to a financial institution.[24]

In these cases, the motor dealer must account for the VAT upfront at the earlier of the time that the goods are delivered or the time any payment of consideration is received and the subsequent payment to the dealer by the bank constitutes the consideration for the cession of a debt security which is exempt from VAT.[25]

The amount paid for the cession may either be at a premium or a discount, based on the face value of the debt security. The supply of the debt security is exempt from VAT. The amount paid therefore constitutes consideration in respect of an exempt supply.

Example 5 – Cession of rights under an ICA by a motor dealer

Facts:

A Motors is a registered vendor that supplies motor vehicles, and also provides finance under ICAs if required by the customer. During April 2021, Ms K entered into an ICA with A Motors for the purchase of a motor car. A Motors subsequently cedes the rights to receive the payments due under the ICA which has a face value of R200 000 to Bank X. Bank X pays A Motors R195 000 as consideration for the cession of the debt owed under the ICA.

What are the VAT implications of these transactions for A Motors and X Bank?

[23] A rental agreement is sometimes referred to as an "operating lease" or "lease agreement".

[24] This is commonly referred to as a "discounted deal".

[25] See section 12(*a*), read with section 2(1)(*c*).

Result:

A Motors

A Motors must account for output tax on the full selling price of the motor vehicle supplied to Ms K. The provision of credit under the ICA constitutes financial services and is an exempt supply. Any interest charged in respect of the finance provided therefore constitutes consideration in respect of an exempt supply. The cession of the ICA by A Motors is a cession of a debt security which is a financial service and therefore exempt from VAT. Accordingly, the consideration of R195 000 received by A Motors for the cession of the debt is not subject to VAT.

Bank X

Bank X is not entitled to deduct input tax on the cession of the debt, as it is an exempt financial service and is not subject to VAT.

3.8 Deemed supplies in respect of indemnity payments

The VAT Act provides that if a vendor receives any indemnity payment, or if an amount of money is paid to another person under that vendor's contract of insurance, the payment is deemed to be consideration received for a supply of services by that vendor to the extent that it relates to a loss incurred in the course of carrying on an enterprise.[26]

Consequently, when a motor dealer insures motor vehicles held in dealer stock or other property held for enterprise purposes (taxable supplies), output tax must be declared if any payment is made by the insurer in terms of the contract of insurance to the motor dealer for any insured property that has been damaged or stolen.

This rule does not apply if the indemnity payment received from the insurer is in connection with the total reinstatement of goods that have been stolen or damaged beyond economic repair or if a deduction of input tax on the insured goods or services was denied under section 17(2). For example, vendors that are not motor dealers will not declare output tax on the loss of a motor car used in an enterprise as input tax would have been denied on the acquisition thereof. Similarly, if a motor dealer provides free meals to its employees, any loss relating to the assets used in the canteen facility will not give rise to an output tax liability in the hands of the motor dealer. This is because input tax would have been denied [section 17(2)] on the assets acquired which are used in the canteen for providing those meals.

If the damaged or stolen goods are replaced by the insurer instead of making a payment to the vendor, the motor dealer will not be required to declare any output tax. In such cases, the motor dealer will not be entitled to deduct input tax on the replacement or restoration of vehicles or other property, as this will be deducted by the insurer.

[26] See section 8(8) and Binding General Ruling 14 "VAT Treatment of Specific Supplies in the Short-term Insurance Industry (BGR 14).

Example 6 – Insurance indemnity payment received by a motor dealer

Facts:

H Motor Dealership has a contract of short-term insurance with Insurance Company A for theft or damage of new motor cars held in dealer stock. On 20 November 2022, one of H Motor Dealership's employees damaged a new motor car whilst driving it onto the showroom floor. A claim is lodged on the same day in respect of the damage, and on 28 November 2022, Insurance Company A pays R11 500 to H Motor Dealership so that the motor car can be repaired.

What are the VAT implications of the payment of R11 500 received by H Motor Dealership?

Result:

The payment received by H Motor Dealership is an indemnity payment made under a contract of insurance. Section 8(8) deems the R11 500 to be consideration received for a taxable supply of services performed on the day of receipt of the payment. H Motor Dealership must therefore account for VAT of R1 500 (R11 500 × 15 / 115) on the payment received in the tax period in which 28 November 2022 falls (the date of receipt of the payment).

See the *VAT 421 – Guide for Short-Term Insurance* for more information regarding indemnity payments and BGR 14.

3.9 Licensing and registration

In principle, no VAT is payable on motor vehicle licensing and registration fees because these charges are levied by the provincial government which is not a vendor. Therefore, to the extent that a motor dealer merely obtains a reimbursement for the costs of the motor vehicle licensing and registration fees which it has outlaid on behalf of the purchaser, the motor dealer does not make any supplies in this regard and no output tax is payable. Any separate fee charged by the motor dealer for performing the service of arranging the payment of those fees and other incidental goods or services in connection with the delivery of the motor vehicle to the customer is subject to VAT at the standard rate. Examples of incidental goods or services are carpets, reflectors, number plates and inspection or delivery charges provided that the motor dealer is the principal for the purpose of those supplies. However, if the customer is charged for a full tank of petrol or diesel, there will be no additional VAT charge, as these products are subject to VAT at the zero rate.

Motor dealers should, therefore, identify any "on the road" service fee separately on the tax invoice from the recovery of any fee charged by the province in respect of licenses, permits or motor vehicle registration. Failure to make this distinction may result in the full amount "charged" by the motor dealer being subject to VAT at the standard rate.

The VAT treatment of other goods or services acquired in connection with the delivery of the motor vehicle to the customer will depend on whether those supplies are made by the motor dealer as principal, or if the motor dealer has acted as the agent of the customer in that regard. (See **2.1**.) For example, if the motor dealer charges a documentation fee to compensate for the time spent completing forms, standing in queues and travelling to the place where payment of the motor vehicle licensing and registration fees is made, that fee will be subject to VAT at the standard rate. If the motor dealer merely acts as agent by paying the charges on behalf of the customer to obtain the new number plates, no supply is made by the motor dealer to the customer in this regard.

In this case, the supply is made by the person supplying the number plates and the motor dealer will indicate the amount paid as a disbursement. Any fee charged for arranging the supply of the number plates constitutes consideration for a taxable supply which is subject to VAT at the standard rate.

3.10 Service and maintenance plans

In the case of a motor dealer supplying a service or maintenance plan as principal to the purchaser, output tax must be accounted for at the standard rate, whether the amount charged is included in the selling price of a vehicle or charged separately by the motor dealer. A vendor may deduct input tax on the VAT-inclusive service or maintenance charge for a vehicle (including a “motor car”) to the extent that it is used in the course of carrying on an enterprise by that vendor. This deduction will only be permitted if the price of the service or maintenance plan is indicated as a separate item on the tax invoice issued for the sale of vehicle, or if it is invoiced separately.

If the motor dealer acts as agent for the supply of the service plan which is provided by another person (for example, the manufacturer or importer of the motor vehicle), the VAT on any separate charge for the service plan must be accounted for by that other person and not the motor dealer. Output tax at the standard rate must be declared on any commission received on the sale of the service plan.

The above principles will also apply in regard to any extended service plan, top-up policy or used car warranty sold separately to the customer. The liability to account for any VAT payable on the supply of these products will, therefore, depend on whether the motor dealer makes the supply as principal or as agent.

Any charges by motor dealers for the servicing, maintenance and supply of parts whether in terms of a service/maintenance plan or not, are subject to VAT at the standard rate. If services and parts are supplied in respect of motor vehicles that are specifically imported into the Republic for the purpose of servicing or for repairs to be carried out, after which the motor vehicle is re-exported, the supplies may be subject to VAT at the zero rate under certain conditions. (See **5.3** for more details in this regard.)

3.11 Warranty services

A motor vehicle manufacturer (warrantor) generally supplies a warranty in respect of the motor vehicles which it manufactures. The aim is to provide assurance to the end consumer that any manufacturing defaults covered within the warranty period will be rectified free of charge. Accordingly, when the motor vehicle manufacturer supplies the motor vehicle to a motor dealer, the selling price would inherently include an amount for the warranty. If the supply is provided by a non-resident motor vehicle manufacturer, the person importing the motor vehicle would be liable for VAT on importation of the motor vehicle including the warranty which would be included in the price.

The VAT payable on importation is determined by applying the standard rate of VAT (currently 15%) to the selling price of the motor vehicle, including any embedded charge or deemed value in respect of the warranty.

In the case of warranty repair services being carried out, or replacement parts being fitted under the warranty agreement by a local VAT-registered vendor, the service is subject to VAT at the standard rate. If the warranty services are provided to a warrantor who is not a resident of the Republic and not a vendor in respect of goods that were subject to VAT upon

importation,[27] the services are subject to VAT at the zero rate.[28] In the event that the warrantor compensates the local VAT-registered vendor by way of replacing a defective part, the importation of the part is exempt from VAT.[29]

The general time of supply rule applies to warranty services. This is the earlier of the date that an invoice is issued, or the date that payment for the supply is made for the supply.

After a motor dealer has carried out the necessary repairs to a motor vehicle in terms of the warranty agreement, it submits a warranty claim to the warrantor in respect of the cost of its services rendered and any parts used. This claim may not necessarily constitute an "invoice" for VAT purposes, as the warrantor may still have to evaluate the claim. Whether or not the claim constitutes an invoice for VAT purposes will depend on the facts and circumstances of the case. For example, it will constitute an invoice if the claim notifies the warrantor of an obligation to make payment for the supply.

In many cases motor dealers receive the payment in respect of the claim before receiving the self-invoicing tax invoice from the local motor vehicle manufacturer (warrantor). The time of supply is, therefore, often triggered by the receipt of the warranty payment.

3.12 Fringe benefits

In the case of an employee of a motor dealer being granted the right of use of a motor car or other type of motor vehicle for private or domestic purposes either free of charge or for a consideration payable by the employee which is less than the value of such use, the motor dealer is deemed to have made a taxable supply to the employee in the course or furtherance of the enterprise[30] and output tax is payable by the employer (motor dealer) on the consideration determined for that fringe benefit.

The consideration for the supply is calculated in the manner prescribed by the Minister of Finance in Regulation GN 2835 – Directions for purposes of sections 10(8) and (13) – dated 22 November 1991. This Regulation basically provides that the consideration in money for the deemed supply (fringe benefit) upon which VAT is payable is calculated as being –

- 0,3% of the "determined value" of the motor vehicle (for each month or part thereof) if an input tax deduction on the motor vehicle was specifically denied under section 17(2); or
- 0,6% of the "determined value" of the motor vehicle (for each month or part thereof) if an input tax deduction has been or may be deducted on the motor vehicle.

The determined value is generally the cost of acquisition, excluding interest and VAT, of the vehicle to the employer.

If a motor dealer deducts or is entitled to deduct input tax on the acquisition of a motor vehicle (including a "motor car" as defined) for the purpose of resale or rental, the rate of 0,6% must be used to calculate the consideration for the fringe benefit if that motor dealer supplies the motor vehicle to an employee as a fringe benefit. However, if a vendor (including a motor

27 Levied under section 7(1)(*b*).
28 See sections 8(26) and 11(2)(*v*).
29 See Item No. 412.26/00/00/01.00 of paragraph 8 of Schedule 1, read with section 13(3), and subject to the requirements contained in the proviso to the said item number.
30 See section 18(3).

dealer) was not entitled to deduct input tax on the acquisition of a motor car, then the rate of 0,3% will apply when calculating the taxable consideration for that fringe benefit.

The consideration determined in terms of the calculation above may be reduced by –

- any consideration paid by the employee for the right of use of the motor vehicle; and
- the lesser of R85 or the amount of the consideration in money determined monthly if the employee bears the full cost of repairs and maintenance of the motor vehicle; and
- the extent to which the motor vehicle is used to make exempt supplies.

3.13 Repossession and surrender of goods

An ICA usually provides for the creditor (that is, usually a bank or other institution which provides vehicle finance to customers. The creditor could, however, also be a motor manufacturer or motor dealer that is an approved credit provider under the National Credit Act) to retain ownership of the vehicle until full payment has been made by the customer (debtor). The ICA will also provide that if the debtor defaults by not making payment as agreed, the creditor may exercise a right of repossession over the vehicle.

Under the National Credit Act, a debtor can opt to terminate an ICA by surrendering the goods that are subject to the agreement, back to the creditor. If a vehicle is repossessed or surrendered, a supply of goods is deemed to be made by the debtor to the creditor on the date of repossession or surrender, whichever is applicable. If both the creditor and the debtor are vendors in relation to the deemed supply, the debtor must account for output tax on the deemed supply if the goods constituted part of the assets of an enterprise.

The creditor must issue the debtor with a document which contains the particulars of a tax invoice[31] (which will be deemed to be a tax invoice) within 21 days of repossession or surrender of the vehicle and the creditor may deduct input tax in respect of the deemed supply. In this regard, the creditor in the case of a repossessed or surrendered vehicle is the person that issues the tax invoice and not the debtor. The VAT Act basically provides for a self-invoicing situation to be permitted in this case.

In the case where the debtor's rights and obligations under the ICA could be reinstated under any law, the time of the supply is deemed to be the day after the last day of any period during which the debtor may be reinstated.[32]

The debtor does not account for any output tax on the deemed supply if the debtor –

- is not a vendor; or
- acquired the vehicle exclusively for making exempt supplies; or
- acquired the vehicle for other non-taxable purposes; or
- was specifically denied an input tax deduction on the acquisition of the motor car which has been repossessed or surrendered. [33]

See **6.3** and BGR 63 "Further Particulars Prescribed by the Commissioner under Section 20(8A)(*c*)" for further information about documentary requirements in this regard.

31 See section 20(3).
32 See section 9(8).
33 See sections 17(2)(*c*) and 17(3).

3.14 Auction sales

Vehicles that are repossessed by the creditor under an ICA, surrendered, or otherwise recovered from a debtor are usually sold on public auction in satisfaction of the debt. Furthermore, private individuals and businesses often also make use of auctioneers to sell their second-hand vehicles.

The auctioneer does not obtain ownership of the goods sold at the auction, and at the fall of the hammer, ownership of the goods passes directly from the seller (principal) to the person who makes the highest bid. As auctioneers act as selling agents on behalf of their clients they must ensure that the vehicles (or other goods) sold on auction are charged with VAT at the standard rate where applicable. VAT is also charged to the client on any commission payable if the auctioneer is registered for VAT.

The general provisions applying to agents and auctioneers are dealt with in section 54. The normal rule under this provision is that where an auctioneer (agent) sells goods on behalf of a principal, the supply is deemed to be made by the principal and not by the auctioneer. The principal must, therefore, account for output tax on the supply in the VAT201 return for the tax period concerned. The auctioneer (agent) will account for the VAT on any commission charged on sales.

Section 54(5) contains special provisions which allow auctioneers, who are vendors, to proceed on the basis that all items being auctioned are charged with VAT. This rule applies if the auctioneer agrees with the principal to have a non-taxable supply treated as if it were a taxable supply made by the auctioneer. For example, if only one vehicle on the auction would not be a taxable supply, the auctioneer can obtain the agreement of the owner to treat the sale as if it were a taxable supply made by the auctioneer.

In these cases, the VAT charged on the non-taxable supplies must be accounted for by the auctioneer and the auctioneer is required to issue the tax invoice to the purchaser. In terms of this special rule, the auctioneer may recover the amount of tax charged on the supply, from the principal through the Courts, or retain or deduct the VAT from any amount due by the auctioneer to the principal.

The auctioneer must also maintain the records contemplated in section 20(8) (form VAT264 and attachments) for the purposes of deducting notional input tax as if the principal has made a non-taxable supply of second-hand goods to the auctioneer. If no agreement is made between the auctioneer and the principal, the taxable treatment of each supply is determined based on the seller (that is, supplier of the vehicle).

After the auction, payments are disbursed to the owners of the goods sold at the auction. Registered vendors will receive a VAT-inclusive payment for their goods supplied. Suppliers that are not registered for VAT will receive the selling price less any VAT which must be accounted for by the auctioneer if the owner and auctioneer agreed to treat the supply as a taxable supply. The auctioneer’s commission (including the VAT on the commission), will also be deducted from the payments made to the owners.

In establishing if a particular vehicle should be charged with VAT when sold at the auction, the factors listed below should be taken into account by auctioneers and vehicle owners.

The taxable nature (or otherwise) of vehicles supplied on auction will depend on the following factors:

- The VAT status of the owner or supplier.
- Whether the vehicle is a "motor car" or some other type of vehicle.
- Whether, in the case of a "motor car", the owner or supplier is a motor car dealer or car rental enterprise which was entitled to deduct input tax on the acquisition of the motor car.
- Whether there is any agreement between the auctioneer and the principal, to regard a non-taxable supply of the vehicle to be a taxable supply.

Considering the above factors, the following will apply:

Taxable supplies – Vehicles supplied on auction under the following circumstances will constitute taxable supplies upon which VAT must be charged by the auctioneer (in addition to the VAT on the auctioneer's commission):

- Vehicles that have been repossessed under an ICA by a bank, motor dealer or other financial institution or surrendered by the debtor. This will apply for all vehicles, including those falling within the definition of "motor car", as the owners in this case, that is, the bank, motor dealer or other financial institution, are regarded as being in the business of supplying motor cars in the ordinary course of their enterprises. In this regard, input tax would have been deducted by the owners once the vehicles were repossessed as explained in **3.13.**
- Vehicles such as trucks and other trade vehicles of a type not falling within the definition of "motor car", if the owner of the vehicle is a VAT registered vendor that has applied the vehicle as an asset of the enterprise in the course of making taxable supplies.
- All vehicles, including those falling within the definition of a "motor car", if the owner of the vehicle is a VAT registered motor car dealer or motor manufacturer. This will include any vehicles which are owned by the auctioneer which are sold at the auction.
- In the case of the vehicle being attached by the creditor so that it could be sold in satisfaction of a debt, the supply is taxable in some cases. The auctioneer is required to obtain a written declaration from the owner (debtor) confirming whether that person is a vendor or not, and whether the supply by that person would constitute a taxable supply or not. The VAT treatment will follow what is stated in the declaration. In the event that the declaration cannot be obtained, VAT must be charged. This is to prevent a situation where, after the auction, it is found that the supply should have been taxable.[34] For example, if the vehicle is a "motor car" and the owner (being a debtor and a vendor) is a motor car dealer or car rental enterprise, the supply will be taxable at auction because if the vehicle was supplied by the owner, VAT would be charged on that supply.
- In the case of the owner and the auctioneer agreeing that an otherwise non-taxable supply shall be a treated as a taxable supply as provided under the special rule under section 54(5).

[34] See section 8(1).

Non-taxable supplies – Vehicles supplied on auction under the following circumstances will constitute non-taxable supplies upon which no VAT must be charged by the auctioneer (except for VAT on the auctioneer's commission):

- If the vehicle is a "motor car", the supply will generally not be subject to VAT, provided the owner is not in the business of supplying motor cars in the ordinary course of an enterprise (for example, motor dealers and motor manufacturers).
- If the debtor is not a vendor, the supply by the debtor will not be a taxable supply. Therefore, if the vehicle was attached by the sheriff on behalf of the creditor and sold in satisfaction of a debt at auction, the sale will not be subject to VAT.
- In any other case in which the owner is a private person or a business which is not registered for VAT, or if the asset was used for other non-taxable purposes by a vendor.

Chapter 4
Exports

4.1 Introduction

As mentioned in **2.4**, a motor dealer that supplies motor vehicles for use in an export country may levy VAT at the zero rate if the supply is made under a direct export. On the other hand, when the customer takes delivery of a motor vehicle in the Republic, the supply is generally subject to VAT at the standard rate even if it will subsequently be exported. If the motor vehicle is subsequently removed from the Republic, this is referred to as an indirect export, and the customer may apply to the VRA for the VAT charged on the supply to be refunded. However, should the requirements of the Export Regulation be met, the supplier may elect to zero-rate the supply of the motor vehicle.

It is important to draw a distinction between direct and indirect exports, as well as new and second-hand motor vehicles exported, as the VAT treatment differs. The VAT implications of the different types of exports are therefore discussed in some detail in this chapter.

Before 2 May 2014, indirect exports were regulated by the VAT Export Incentive Scheme. Indirect exports are now regulated by the Export Regulation. In addition to exports by air and sea, the current Export Regulation now makes provision for a vendor to elect to supply movable goods to a qualifying purchaser at the zero rate where the qualifying purchaser exports goods by road or railway, subject to certain requirements being met.

To give effect to these changes, certain definitions in the Export Regulation were amended to broaden the scope of persons who are able to obtain a VAT refund and some changes to the procedure for claiming a VAT refund were made. In addition, changes were made concerning the extension of the time period to –

- export the movable goods;
- obtain the required documentary proof; and
- apply for a refund of VAT to the VRA in certain circumstances.

IN 30 deals with the documentary proof required to substantiate the application of the zero rate to direct exports and is discussed in this chapter.

4.2 Direct exports

4.2.1 New goods

In the case of a motor dealer supplying new goods, for example, a new motor vehicle or new motor vehicle spares, the supply may be subject to VAT at the zero rate if the goods are exported to the purchaser under a direct export.

A direct export requires that the motor dealer be responsible for the delivery of the goods to the recipient (that is, the purchaser, whether a resident of the Republic or a non-resident), the recipient's duly appointed agent or the recipient's customer at an address in an export country by either using the motor dealer's own driver (being an employee of the motor dealer), the motor dealer's own delivery vehicle or by the motor dealer engaging a "cartage contractor".

Cartage contractor

Motor dealers generally engage the services of a cartage contractor to transport goods which have been supplied to the purchaser in another country. In this regard, the motor dealer must ensure that the cartage contractor is –

- a person whose activities include the transportation of goods. This includes couriers and freight forwarders;
- contractually obliged to deliver the goods on behalf of the motor dealer to the recipient, the recipient's duly appointed agent or the recipient's customer at an address in an export country; and
- paid by the motor dealer for the transport costs.

Period during which goods must be exported

Subject to certain exceptions, the motor dealer must ensure that the goods are exported from the Republic within 90 days from the earlier of the time an invoice is issued by the motor dealer or the time any payment of consideration is received by the motor dealer.[35] The goods must also be exported *via* a designated commercial port.[36]

Documentary proof

A motor dealer must obtain and retain documentary proof[37] as follows to substantiate the levying of VAT at the zero rate on the supply:

(a) The zero-rated tax invoice;

(b) Either the purchaser's order or the contract between the motor dealer and the purchaser;

(c) Proof that the goods have been received by the purchaser in the export country (for example, a signed delivery note);

(d) Customs documentation as prescribed in terms of the Customs and Excise Act 91 of 1964 (Customs and Excise Act) (for example, the SARS Customs Declaration);

(e) Proof of payment in respect of the supply of the motor vehicle;

(f) Transport documentation relevant to the mode of transport (as listed below) even where the motor dealer exported the goods by physically delivering the said goods in an export country.

In the case of a motor dealer making use of a cartage contractor, the following additional documents must be retained:

(g) Goods transported by road –

- proof that the motor dealer paid the transport costs; and
- either
  - proof that the cartage contractor took possession of the goods from the motor dealer; or
  - a copy of the road manifest issued by the cartage contractor, or

35 See paragraph 5 of Interpretation Note 30.

36 See the *Preamble* of Interpretation Note 30 for a list of designated commercial ports.

37 Under Annexure B to Interpretation Note 30, the documentary proof required includes the electronic form of such documentation.

Goods transported by rail –

- proof that the motor dealer paid the transport costs; and
- a copy of the rail consignment note; and
  - ➢ if by wagon, a copy of the combined consignment note and wagon label issued by the rail operator; or
  - ➢ if by container, a copy of the container terminal order or freight transit order issued by the rail/container operator; or

(h) Goods transported by air or sea –

- proof that the motor dealer paid the transport costs; and
- a copy of the airfreight transport document or sea freight transport document (whichever is applicable); or

(i) Goods transported by post –

- proof that the motor dealer paid the postage costs; and
- proof of receipt of the goods by the postal service.

All of the documentation must be obtained within a period of 90 days calculated from the date the movable goods are required to be exported from the Republic subject to certain exceptions.[38]

Example 7 – Direct export of a new motor vehicle

Facts:

On 10 May 2022, ABC Motors (a vendor) sells a new double cab bakkie to Mr N (a resident of the Republic), for use on his game farm in Namibia and issues a tax invoice on the same date. ABC Motors undertakes to deliver the motor vehicle on 20 May 2022 to Mr N at his farm in Namibia. ABC Motors contracts with XYZ Transporters on 15 May 2022 to transport the motor vehicle to Mr N *via* the Nakop land border post. The delivery is carried out as planned, and on 25 May 2022, XYZ Transporters provides ABC Motors with the documents pertaining to the exportation of the motor vehicle.

Can ABC Motors charge VAT at the zero rate on the supply of the double cab bakkie to Mr N?

Result:

ABC Motors makes a supply of new goods, under a direct export and may charge VAT at the zero rate on the supply. It does not matter that Mr N (the recipient) is a resident of the Republic. The key point to consider in applying the zero rate of VAT under a direct export is that ABC Motors must control the exportation of the goods by either using its own mode of transport or by engaging a cartage contractor to deliver the goods to the recipient at an address in an export country on its behalf.

[38] See paragraph 7 of IN 30 for further details.

ABC Motors has met all the requirements in that –

- it has obtained and retained the relevant export documentation;
- the vehicle is exported within the required 90-day period from the time of supply, that is, the date that the tax invoice has been issued;
- delivery takes place in Namibia (an export country);
- XYZ Transporters' activities include the transportation of goods and is regarded as a "cartage contractor"; and
- Nakop land border post is an official designated commercial port for the purpose of imports into, and exports from, the Republic (as listed in the *Preamble* of Interpretation Note 30).

VAT adjustments

Should any of the documentation not be received within the prescribed 90-day period, the motor dealer must account for output tax on the supply at the standard rate. This must be included in Field 12 of the VAT201 return for the tax period in which the prescribed 90-day period ends. The adjustment is calculated by applying the tax fraction to the consideration for the supply.

If the documentation is subsequently received within five years from the end of the tax period during which the original tax invoice in respect of that supply was or should have been issued, the motor dealer may deduct the output tax previously declared as an adjustment in Field 18 of the VAT return in the tax period in which the documentation is subsequently received.

Proof of payment

The general rule regarding the VAT adjustments above is subject to the exception that a vendor is not required to account for output tax in certain circumstances [39] if all the required documentary proof was obtained within the 90-day period but only the proof of payment remains outstanding. For instance, the motor dealer has entered into a written contract with the recipient for the payment of the consideration in respect of the supply to be made after or over a period exceeding the 90 days but not exceeding 6 months.[40]

4.2.2 Second-hand goods

If a motor dealer exports second-hand goods in respect of which a notional input tax deduction was claimed (or a connected person in relation to that motor dealer). a special valuation rule applies.[41] The rule provides that the consideration (inclusive of VAT) for the supply of those second-hand goods is equal to the original purchase price paid by the motor dealer when the goods were originally acquired. In other words, the rule operates in such a way that if the motor dealer exports second-hand goods in respect of which notional input tax was deducted, output tax equal to the amount of notional input tax previously deducted must be declared in the tax period during which the goods are supplied (exported).

[39] See paragraph 7(d) of IN 30.

[40] See paragraph 7(d) of IN 30 for a comprehensive list of instances where the motor dealer is not required to account for output tax if the proof of payment has not been obtained.

[41] See **2.6** and **2.7,** as well as section 10(12) and the proviso to section 11(1). The special rule does not apply if the motor dealer buys second-hand goods under a normal taxable supply at the standard rate for which a tax invoice is required to be issued.

If the motor dealer acquired the second-hand goods concerned from a "connected person" that previously deducted notional input tax on the acquisition thereof, the consideration upon which output tax must be declared is the greater of –

- the purchase price at which those goods were acquired by the motor dealer supplying the goods for export; or
- the original purchase price for the supply when the goods were acquired by that connected person.

It follows that unlike other direct exports, the export of second-hand goods in respect of which notional input tax was deducted on the original acquisition of those goods by the motor dealer, or a connected person in relation to that motor dealer, may not be subject to VAT at the zero rate. The VAT on these types of exports must be declared by the motor dealer whether the VAT was charged (and shown separately) to the purchaser or not, and it is not refundable under any circumstances.

Example 8 – Direct export of a second-hand motor vehicle

Facts

ABC Motors sells a second-hand motor vehicle for R150 000 (including VAT) to Mr B (a resident of Botswana) and issues a tax invoice for the supply on the same date. ABC Motors undertakes to deliver the motor vehicle to Mr B at his residence in Botswana.

ABC Motors enters into a contract with XYZ Transporters to transport the vehicle by road *via* the Ramatlabama designated commercial border post to Mr B in Botswana. The vehicle was initially acquired by ABC Motors from a private individual for R115 000 and ABC Motors deducted notional input tax of R15 000 (R115 000 × 15 / 115) at the time. (ABC Motors and the private individual are not "connected persons" for VAT purposes.)

Can ABC Motors charge VAT at the zero rate on the supply of the motor vehicle to Mr B?

Result

The supply of the motor vehicle to Mr B cannot be subject to VAT at the zero rate even though it is a "direct export". The reason is that a special valuation rule is applicable to second-hand goods in such cases. The special rule requires that VAT must be declared at the standard rate on the consideration of R115 000 000, the cost of acquiring the second-hand motor vehicle from the private individual. ABC Motors must, therefore, charge VAT of R15 000 (R115 000 × 15 / 115) on the supply even though the motor vehicle was sold for R150 000.

Example 9 – Direct export of a second-hand motor vehicle acquired from a "connected person"

Facts:

Mr and Mrs J trade separately as ABC Motors and XYZ Motors respectively, and both are registered for VAT. On 6 May 2022, XYZ Motors buys a second-hand motor vehicle from Mr Y (who is not a VAT vendor) for R115 000 and deducts notional input tax of R15 000 (R115 000 × 15 / 115) on the acquisition. On 9 May 2022, XYZ Motors sells the same vehicle to ABC Motors for R10 000 (including VAT). XYZ Motors declares output tax on the sale and ABC Motors deducts input tax on the acquisition based on the consideration of R10 000 reflected on the tax invoice.

On 11 July 2022, ABC Motors sells the same motor vehicle for R150 000 (including VAT) to Mr L (a Lesotho resident) and issues a tax invoice for the supply on the same date. ABC Motors enters into a contract with QRS Transporters to deliver the vehicle by road *via* the Maseru designated commercial border post to Mr L's residence in Lesotho.

Can ABC Motors zero rate the supply of the motor vehicle to Mr L?

Result:

No, ABC Motors cannot supply the second-hand motor vehicle at the zero rate even though the supply is a "direct export". The reason is that Mr J (trading as ABC Motors) and Mrs J (trading as XYZ Motors) are "connected persons" in relation to each other and a notional input tax deduction of R15 000 (R115 × 15 / 115) was claimed when XYZ Motors initially acquired the vehicle.

VAT must be declared by ABC Motors at the standard rate on a consideration equal to the greater of the purchase price of those goods to ABC Motors (R10 000) and the purchase price of those goods to XYZ Motors (the connected person). ABC Motors must therefore charge VAT of R15 000 calculated as the tax fraction of the greater amount of R115 000, even though the selling price of the vehicle to Mr L was R150 000.

4.3 Indirect exports

4.3.1 Part One of the Export Regulation

If a motor dealer supplies goods to a purchaser who takes delivery of the goods in the Republic with the intention of exporting the goods to an export country (referred to as an "indirect export") VAT must be charged at the standard rate. This rule applies whether the goods are new or second-hand. The reason why the zero rate of VAT may not be charged in these cases is that the motor dealer does not have control of the goods once the customer has taken delivery and cannot be certain that the purchaser will export the goods from the Republic. A motor dealer must, therefore, as a general rule, treat an indirect export of goods just like any other local supply of goods and levy VAT at the standard rate. If the goods are subsequently removed from the Republic (exported) by the purchaser or a cartage contractor appointed by the purchaser for consumption in an export country, the qualifying purchaser may submit a claim to the VRA for the VAT incurred on the goods to be refunded.

Part One of the Export Regulation requires that the following must be complied with in order for the VRA to process a refund claim:

- The purchaser must be a qualifying purchaser;
- The goods must be exported within 90 days from the date of the tax invoice;[42]
- The VAT inclusive total of all movable goods purchased during a particular visit to the Republic and subsequently exported at the end of such visit must exceed a minimum of R250;
- The request for a refund, together with the relevant documentation, must be received by the VRA within 90 days from date of export (The Commissioner may extend the period within which an application for a refund must be submitted to the VRA in certain limited circumstances); and

[42] Part Three of the Export Regulation provides for certain exceptions in this regard.

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

Documentary proof

In the event that the goods are exported *via* a designated commercial port where the VRA is not present, the qualifying purchaser's written VAT refund request, together with the following documentation, must be received by the VRA within 90 days from the date of export of the goods:

- The original tax invoice,[44] proof of payment for the supply and the export documentation prescribed under the Customs and Excise Act.
- A copy of the passport of the qualifying purchaser or, where the qualifying purchaser is not a natural person, a copy of the passport of its authorised representative. In the case of the qualifying purchaser being in the RSA at the time of purchase, the passport must reflect the proof of entry and exit from the RSA.
- A copy of the tax invoice (or invoice where the cartage contractor is not a vendor) issued to the qualifying purchaser by the cartage contractor (where applicable).

Further to the above, the following additional documents are required in certain cases:

- *Foreign enterprises* – the trading license or other document acceptable to the Commissioner proving that the business is conducted in an export country and a letter authorising the representative to act on behalf of the enterprise.
- *Foreign diplomats* – a letter from the relevant diplomatic or consular mission stating that the diplomat is departing from the RSA permanently.
- *RSA passport holders who are permanently resident in another country* **–** proof of permanent residence in an export country as well as proof that the person resides in an export country at the time of purchase.
- *Registrable goods* – proof of registration in the export country concerned (in the form of a copy of the registration certificate which has been certified by a Commissioner of Oaths).
- *Travellers* – if the tourist is a traveller as contemplated in section 15 of the Customs and Excise Act, who is not required to be registered as an exporter under that Act, and the VRA is not present at the border post, proof of importation into the export country must be provided.

Second-hand goods

As mentioned previously, VAT is generally charged at the standard rate on the supply of goods (whether new or second-hand) which are indirectly exported. In the case of an indirect export of second-hand goods, it should be noted that the Commissioner will determine the VAT amount that is refundable to the qualifying purchaser after ascertaining whether the motor dealer or any other person who is a connected person to the motor dealer, deducted notional input tax on the acquisition of the second-hand goods supplied and exported. The value of the refund is, therefore, limited to the VAT charged in excess of the notional input tax deducted.

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43 See the definition of "designated commercial port" in the Export Regulation.

44 Part One, paragraph 5(1) of the Export Regulation provides for certain exceptions in this regard, for example if the dealer issues the invoice in electronic form.

Example 10 – Indirect export of a second-hand motor vehicle by a motor dealer

Facts:

ABC Motors is a registered vendor that supplies motor vehicles in the course or furtherance of its enterprise. On 20 May 2022, ABC Motors sells a second-hand motor vehicle to Mr Z (a resident of Zimbabwe) and issues a tax invoice for the supply for R120 000 (including VAT) on the same date. Mr Z drives the motor vehicle back to his home in Zimbabwe the next day, *via* the Beit Bridge designated commercial border post.

ABC Motors bought the vehicle from a private individual for R80 000 and notional input tax of R10 434,78 (R80 000 × 15 / 115) was deducted at the time.

What are the VAT implications for Mr Z?

Result:

Mr Z must complete the prescribed export declaration and declare the export of the motor vehicle to Customs. As there is no VRA office at the border post, Mr Z is required to lodge his claim by submitting the documentary proof listed in **4.3.1** by post to the VRA, including proof that the vehicle has been imported into, and registered in Zimbabwe. On receipt of the claim, the VRA will process and forward the claim to the Commissioner to calculate the VAT amount that is refundable to Mr Z. As ABC Motors deducted notional input tax on the initial acquisition of the motor vehicle, the VAT amount refundable to Mr Z is R5 217,39 (R120 000 × 15 / 115 = R15 652,17 – R10 434,78) less the VRA's commission.

4.3.2 Part Two – Section A of the Export Regulation – New goods

If a motor dealer supplies a new motor vehicle to a qualifying purchaser who will export the motor vehicle by sea or air, the motor dealer may elect to supply the motor vehicle at the zero rate as an indirect export in terms of Part Two – Section A of the Export Regulation. Part Two – Section A provides that the motor dealer must ensure that the motor vehicle is delivered (irrespective of the contractual conditions of the delivery) to any of the designated harbours or airports listed in the definition of "designated commercial port" of the Export Regulation. This election is at the risk of the motor dealer who will be liable for any VAT at the standard rate which may be applicable on the transaction if there is any non-compliance with the rules of the Export Regulation.

The decision to apply the zero rate is entirely subject to the motor dealer's choice. Should the motor dealer decide not to apply the zero rate, the supply is taxable at the standard rate and the qualifying purchaser may apply to the VRA for a VAT refund. (See **5.3**.)

Documentary proof

In the case of new goods supplied at the zero rate as an indirect export under Part Two – Section A of the Export Regulation, the motor dealer must obtain and retain the following documentation to substantiate levying VAT at the zero rate:

- The supplier's copy of the zero-rated tax invoice.
- A copy of the passport of the qualifying purchaser or, where the qualifying purchaser is not a natural person, a copy of the passport of its authorised representative. The copy must reflect the proof of entry and exit from the RSA if the qualifying purchaser was in the RSA at the time of purchase.

- A copy of the qualifying purchaser's trading license or other document acceptable to the Commissioner proving that the business is conducted in an export country and a letter authorising the representative to act on behalf of the enterprise.
- In the case of a foreign diplomat, a copy of the diplomat's passport and a letter from the relevant diplomatic or consular mission stating that the diplomat is departing from the RSA permanently.
- The qualifying purchaser's order or a contract between the supplier and the qualifying purchaser.
- Proof of payment from the qualifying purchaser.
- Proof of delivery of the goods to a designated harbour or airport.
- The export documentation prescribed under the Customs and Excise Act.

4.3.3 Part Two – Section A of the Export Regulation – Second-hand goods

This Part of the Export Regulation does not provide for the vendor to charge VAT at the zero rate in respect of supplies of second-hand goods to qualifying purchasers who will export the goods by sea or by air, if notional input tax was deducted on the acquisition of the goods by the supplier, or any other person who is a connected person in relation to that supplier. VAT must, therefore, be accounted for by the supplier at the standard rate in accordance with the special value of supply rules as discussed in **4.2.2** (see also **2.6** and **2.7**).

4.3.4 Part Two – Section B of the Export Regulation – New goods

This Part of the Export Regulation provides for a supplier to elect to supply movable goods to a qualifying purchaser at the zero rate where the goods are exported by road or rail subject to specific requirements that must be met by the relevant parties. This applies where movable goods are supplied by one or more vendors to a qualifying purchaser who will appoint an agent in the RSA to collect the goods from the various vendors. After collection, the goods are stored and consolidated by the agent in its warehouse until the consolidated consignment of goods is exported to the qualifying purchaser in the export country. In such cases, the various suppliers may elect to zero-rate the supply of such goods, provided that (amongst other requirements) the qualifying purchaser is registered as an "exporter" in terms of the Customs and Excise Act.

The agent and the cartage contractor who are responsible for removing the goods, either inland or to the export country, must be licensed as removers of goods in bond as contemplated in the Customs and Excise Act. As a general rule, the goods must be exported within 90 days from the earlier of the time an invoice is issued or the time any payment of consideration is received by the supplier as contemplated in Part Three of the Export Regulation.

A motor dealer that elects to apply the zero rate under this part of the Export Regulation must obtain and retain a copy of the following documentation:

- The zero-rated tax invoice.
- A copy of the passport of the qualifying purchaser or, where the qualifying purchaser is not a natural person, a copy of the passport of its authorised representative. The copy must reflect the proof of entry and exit from the RSA if the qualifying purchaser was in the RSA at the time of purchase.

- A trading license or any other equivalent document acceptable to the Commissioner proving that the business is conducted in an export country as well as the letter of authorisation and a copy of the authorised person's passport.
- The qualifying purchaser's order or contract between the motor dealer and the qualifying purchaser.
- Proof of payment in respect of the supply of the movable goods.
- Proof of delivery of the movable goods to the agent's premises.
- A statement from the agent containing the details regarding the inventory reconciliation.
- Confirmation of the proof of export from the agent.

The agent must obtain and retain the following documentation:

- A copy of the agreement between the agent and the qualifying purchaser in terms of which the agent is appointed by the qualifying purchaser.
- Proof of registration as a licensed remover of goods in bond.
- Proof of importation of the movable goods into the export country or proof of delivery of the movable goods to the qualifying purchaser or its agent in the export country.
- A copy of the inventory reconciliation.
- The export documentation as prescribed under the Customs and Excise Act.

4.3.5 Part Three of the Export Regulation

This Part deals with the time period within which movable goods must be exported from the RSA as well as the time period within which the required documentary proof must be obtained. Generally, goods must be exported within 90 days from the earlier of the time an invoice is issued or the time any payment of consideration is received by the supplier.

This general rule is subject to certain exceptions. For example, when the goods are subject to further processing, the goods have to be exported within 90 days from the date of completion of the process of repair, improvement, erection, manufacture, assembly or alteration. See Part Three of the Export Regulation for further exceptions.

Documentary proof that the goods were exported must also be obtained within 90 days from the date that the goods are required to be exported. However, as previously explained, exceptions may be made when only the proof of payment requirement remains outstanding in certain instances. Furthermore, the Commissioner may extend the period within which the documentation must be obtained in certain exceptional and limited circumstances.

VAT adjustments

If a motor dealer elects to supply a motor vehicle at the zero rate under Part 2 – Section A or B, and the required documentary proof has not been obtained within the 90-day period, an output tax adjustment must be made. The motor dealer must account for output tax on the supply at the standard rate in Field 12 of the VAT201 return for the tax period in which the prescribed 90-day period ends. The adjustment is calculated by applying the tax fraction to the consideration for the supply.

If the required documentation is received within five years from the end of the tax period during which the original tax invoice for the supply should have been issued, the motor dealer may deduct the output tax previously declared as an adjustment in Field 18 of the VAT return, in the tax period in which the documentation is received.

For more information see the Export Regulation on the **SARS website** or the VRA pamphlet which is available from all of South Africa's International Airports or the VRA's website **https://vatrefundagency.co.za**.

Chapter 5
Imports

5.1 Introduction

The South African VAT is a consumption-based tax which essentially means that where goods or services are supplied in, or imported into South Africa, those goods or services are generally subject to VAT at the standard rate. In applying the destination principle, the following applies in South Africa:

- Goods or services supplied locally are subject to VAT at the standard rate, subject to specific exemptions, exceptions, deductions and adjustments.
- Goods which are exported for consumption in an export country are generally subject to VAT at the zero rate subject to compliance with the relevant provisions (or the VAT charged may be refunded by the VRA upon export).
- Goods imported into South Africa are subject to VAT at the rate of 15%, unless the importation is specifically exempt.[45]
- Any services which are imported into South Africa otherwise than for the purpose of making taxable supplies are subject to VAT at the standard rate under section 7(1)(*c*), read with the definition of "imported services".

5.2 Importation of goods

As mentioned above, the importation of goods into South Africa by any person is subject to VAT at the standard rate, calculated on the value of the goods, under section 7(1)(*b*) of the VAT Act, unless the importation is specifically exempt (for example, a temporary importation for a specific purpose).

The VAT Act contains provisions which deal with the time and value of importation for goods imported into South Africa as follows:

- Time of importation – this is the date on which the goods are deemed to be imported in terms of the provisions of the Customs and Excise Act.
- Importation value – The value to be placed on any importation of goods is the sum of the following items:
    (a) The value of the goods for customs duty purposes;
    (b) Any duty applicable on the importation of those goods; and
    (c) 10% of the value in (a) above (except where the goods have their origin in Botswana, Lesotho, Namibia or eSwatini, in which case the 10% upliftment does not apply).[46]

5.3 Goods temporarily imported for servicing or repairs

One of the reasons why the importation of goods may be exempt from VAT is to deal with a situation where goods are temporarily imported into South Africa to be serviced or repaired and the goods are subsequently re-exported. For example, if a tractor is used in a farming business in Botswana and is sent to be repaired in South Africa, after which the tractor is

[45] Section 13(3). The specific conditions and circumstances, under which these exemptions apply, are set out in Schedule 1 to the VAT Act.

[46] See section 13(2).

returned to Botswana for continued use in the business carried on in that country, the importation of the tractor into South Africa may be exempt from VAT.

The VAT Act therefore provides for an exemption from the VAT levied on the importation of goods in these circumstances, provided that the goods are exported within six months of the date of importation.[47]

The motor dealer/service provider may zero rate the supply of goods or services in servicing or repairing the motor vehicle which is temporarily imported, provided the necessary documentary proof is obtained and retained to substantiate the entitlement to apply the zero rate of VAT. The proof is the relevant SARS Customs Declaration evidencing the temporary import as well as corresponding release notification.[48]

If an importer is unable to provide the motor dealer/service provider with the necessary proof, the supply must be subject to VAT at the standard rate. In this case, the importer may, on exiting South Africa with the serviced or repaired motor vehicle, approach the VRA for a VAT refund in respect of goods which became an integral part of the motor vehicle that was temporarily imported for servicing or repair, for example where parts are replaced or fitted such as tyres, tow bars, engine parts, wheel rims etc. Any charges for services performed in South Africa (for example labour) will not be refunded. (See **4.3.1** for more details regarding the submission of VAT refund claims to the VRA.)

For more information see Customs guide on VAT on importation Value-Added Tax levied on the importation of goods into South Africa.

5.4 Trans-shipment of goods

Goods such as motor vehicles which are shipped or conveyed to South Africa for trans-shipment or conveyance to any export country are exempt from VAT on importation.[49] The exemption is subject to the requirement that the Controller of Customs and Excise ensures that the tax is secured in part or in full. This means that the importer will normally be required to lodge what is known as a “provisional payment”, “deposit payment” or “bond” to cover the risk of any duties and taxes becoming payable if the goods are not exported.

Before the provisional or deposit payment is refunded or the bond is released, proof must be submitted to SARS Customs by the importer that the goods were removed from the Republic within 30 days (or any further period which may have been allowed by the Commissioner in exceptional circumstances).

5.5 Non-resident manufacturer warranties

As mentioned in **3.11**, when a motor vehicle has been manufactured in another country, the motor vehicle will generally be supplied by the non-resident motor vehicle manufacturer (warrantor) to a local motor distributor or motor dealer, together with a warranty which provides assurance to the customer that any costs of rectifying any manufacturing defects will be covered.

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47 See section 13(3), read with Item No’s 470.02/00.00/01.00 or 470.02/00.00/02.00 listed in paragraph 8 of Schedule 1 to the VAT Act. These Items are subject to the various provisos and Notes as stipulated in the said paragraph 8.

48 See Interpretation Note 31.

49 See section 13(3) and paragraph 6 of Schedule 1 to the VAT Act.

The purchaser, being the motor dealer or motor vehicle distributor, is usually the importer of the motor vehicle and would be liable for VAT on importation. The value on which the VAT on importation is calculated is the value for customs duty purposes plus any duty levied under the Customs and Excise Act plus 10% of that value (the 10 % does not apply in respect of BELN[50] countries).

In cases where the warrantor compensates the local motor distributor/motor dealer by way of replacing defective parts, the importation of the parts will be exempt from VAT.[51]

[50] Botswana, eSwatini, Lesotho, and Namibia.

[51] The importation is exempt under Item No. 412.26/00.00/01.00 in paragraph 8 of Schedule 1, read with section 13(3), and subject to the requirements contained in the proviso to that Item.

Chapter 6
Input tax

6.1 General rules

The application of the general rules relating to the deduction of input tax on any goods or services, or second-hand goods is dealt with in **2.7**. The special rules which may be applicable to motor dealers and the deduction of input tax are set out in **6.2** to **6.9** below.

6.2 Dealer stock

The primary input costs of a motor dealer will be the acquisition of dealer stock for resale and a motor dealer will acquire both new and used (second-hand) motor vehicles for this purpose. Dealer stock of new motor vehicles is typically acquired under a floor plan arrangement (see **3.2.3**) and stock of second-hand motor vehicles (see **6.3**) is typically acquired through trade-ins either connected to another supply made by that motor dealer, or acquired from other motor dealers that supply only new motor vehicles.

A motor dealer may deduct taxable purchases of motor vehicle stock acquired from another vendor. This deduction is subject to ordinary input tax rules where the motor dealer is in possession of a tax invoice, or in certain prescribed circumstances, such other alternative documentation containing the information which is acceptable to the Commissioner. In other words, the general rule applicable to other vendors which disallows input tax on the acquisition of a “motor car” does not apply to a motor dealer.

Motor cars acquired for demonstration purposes or which are used temporarily for other purposes in the enterprise before being supplied to a customer are regarded as having been acquired wholly by the motor dealer for taxable purposes and input tax may be deducted in respect thereof. In some cases, demonstration vehicles or other motor vehicles in dealer stock may be made available for employees to use, either free of charge, or for a consideration that is less than the cost or value of that right of use. This does not affect the motor dealer’s ability to deduct input tax on acquisition of the motor vehicle as long as the motor dealer ultimately intends to supply the motor vehicle under a taxable supply.

6.3 Second-hand goods

The supply of a second-hand motor vehicle (including a “motor car”) by a motor dealer to another motor dealer will usually constitute a taxable supply and the supplier will be required to issue a tax invoice as discussed in **6.2** above. The same will apply if a motor vehicle is purchased from any other vendor which has used the motor vehicle in an enterprise and deducted input tax thereon. It is worth noting that motor cars acquired from vendors that do not supply motor cars in the ordinary course of their business are usually not taxable supplies. Motor dealers often purchase second-hand motor vehicles from private owners (non-vendors) or accept used vehicles as trade-ins.

A motor dealer will be entitled to deduct notional input tax on a second-hand motor vehicle acquired, subject to the following conditions:

- The motor vehicle must qualify as "second-hand goods" as defined.[52]
- The supply may not be a taxable supply. This will occur when the supplier is not a registered vendor, or if the supply is made by a vendor, but is not a taxable supply in the circumstances (for example, the supply of a motor car by a vendor that has been denied input tax on the acquisition thereof).
- The supplier must be a South African resident (excluding diplomats – see explanation below).
- The goods supplied must be situated in South Africa.
- The motor dealer must have paid for the motor vehicle or at least made part payment, as input tax is only allowed to the extent that payment has been made. A set-off or granting of credit to the customer for the trade-in value of a second-hand motor vehicle against the selling price of another motor vehicle will constitute payment of the consideration for the second-hand motor vehicle traded in.
- The prescribed records must be kept (form VAT264 and attachments, a copy of the supplier's ID (or the supplier's representative's ID) must be attached as well as a copy of the business letterhead or other similar document if the supplier is a juristic person).

The notional input tax is calculated by multiplying the tax fraction to the lesser of the consideration paid or the OMV.

As mentioned in **2.11**, motor dealers sometimes agree to pay an amount to a customer which is in excess of the generally accepted trade-in value of a second-hand motor vehicle in cases where the trade-in is an integral part of another transaction involving the supply of another vehicle to the same customer by the motor dealer. The difference between this value and the amount credited or paid to the customer is referred to as an "over-allowance". The issue which arises in this regard is that the notional input tax which the dealer seeks to deduct on the vehicle traded-in is limited to the tax fraction of the lesser of the –

- consideration in money given by the dealer; or
- OMV of the vehicle.

It is generally accepted that the values mentioned in the Auto Dealer's Guide are an approximation of the OMV. As a result, when any so-called "over-allowance" is paid to the customer, the OMV will be the lesser amount, and the notional input tax credit will be limited accordingly.

Previously, an arrangement was made in terms of BGR 12 under section 72 to allow motor dealers to deduct input tax on the full consideration (including any over-allowance amount) paid or credited to the supplier for a second-hand vehicle traded-in under a non-taxable supply. However, as mentioned in **2.7**, the amendment to section 72 and consequential withdrawal of BGR 12 means that from 1 January 2022, motor dealers may not include any amount of over-allowance paid or credited to the supplier of the second-hand vehicle traded-in under a non-taxable supply in the calculation of notional input tax. This is on the basis that paragraph (*b*) of the definition of "input tax" in section 1(1) of the VAT Act, limits the amount

[52] See section 1(1).

of notional input tax to the lesser of the tax fraction of the consideration paid by the vendor for the second-hand goods or the OMV of the goods.

A notional input tax deduction by a motor dealer on any second-hand motor vehicles acquired under a non-taxable supply is also subject to the retention of a signed form VAT264 (available on the **SARS website**). Form VAT264 is a declaration in respect of the acquisition of movable second-hand or repossessed goods in which the owner of the goods or the person representing the owner declares that the supply of the goods is not a taxable supply. Alternatively, in certain prescribed circumstances, alternative documentation which has been completed and signed by the seller and retained as part of the motor dealer's records may be acceptable to the Commissioner.

For more details regarding documentation in connection with notional input tax which may be deductible on the repossession or surrender of second-hand vehicles, see BGR 63.[53]

Motor dealers may not deduct input tax on the acquisition of second-hand motor vehicles from diplomats or consular or diplomatic missions if relief was granted to the owner on the acquisition of that motor vehicle in the form of a refund of VAT.[54]

6.4 Importation of motor vehicles

In the case of a motor dealer importing motor vehicles for subsequent supply in South Africa, VAT is payable as the motor vehicles will be imported for home consumption. The VAT incurred on importation may be deducted as input tax provided certain requirements are met.

With effect from 1 April 2015, for purposes of section 16(2)(*d*), a vendor must be in possession of the following documentation in order to deduct input tax:

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

In respect of goods imported on or after 1 April 2015 for purposes of section 16(2)(*d*A), where an agent imports motor vehicles on behalf of a motor dealer and the bill of entry or other customs documents reflect the agent as the importer, such agent must furnish the vendor with a statement within 21 days from the end of the calendar month during which the goods were imported.

This statement must contain the following particulars:

- A full and proper description of the goods imported
- The quantity or volume of the goods imported
- The value of the goods imported
- The amount of the tax paid on importation
- A receipt number for the payment of the VAT on importation issued on eFiling

53 Binding General Ruling 63 "Further Particulars Prescribed by the Commissioner under Section 20(8A)(*c*).

54 See section 68.

See the *VAT 404 – Guide for Vendors* for more information regarding documentary requirements and recent changes to the law in connection with the timing of the deduction of input tax on importation. Also see the binding general ruling about documentary proof in relation to the deduction of input tax on importation

A motor dealer cannot deduct notional input tax on any second-hand motor vehicle purchased[55] from a non-resident.

6.5 Insurance

In terms of certain floor plan agreements between the dealer and the financial institution, the motor dealer must ensure that the motor vehicles in its possession are properly insured, even though the financial institution may be the owner of the motor vehicles. These insurance contracts are then in certain instances, ceded to the financial institution.

Alternatively, the motor dealer will insure the stock that it owns. In these scenarios, the supply of insurance is made to the motor dealer and input tax may therefore be deducted, provided the motor dealer is in possession of a valid tax invoice or documents and information which constitutes an alternative to a tax invoice.[56]

6.6 Commissions paid

In the event that the motor dealer pays a “finder’s fee” (commission), it must be established if the person to whom the fee is paid is a vendor. In the event that the person is not a vendor, the motor dealer is not entitled to deduct input tax. Where the commission is paid to a vendor, the motor dealer is entitled to input tax on the commission paid subject to the motor dealer obtaining the relevant documentation.

6.7 Repossession and surrender of goods

In any of the instances referred to in **3.13**, the creditor is still entitled to deduct input tax on repossession or surrender of the vehicle. The input tax deduction is calculated by multiplying the tax fraction applicable at the time that the original agreement was entered into by the balance of the cash value (see the definition of “cash value” and paragraph (c) of the definition of “input tax” in section 1(1)).

No input tax may however be deducted on the basis that the original debt is irrecoverable.[57] The consideration for the deemed supply is equal to that portion of the original cash value of the goods which has not yet been recovered at the time of the repossession or surrender.[58]

The “cash value” is calculated as shown in the table on the following page.

55 See **6.3**.
56 See BGR 14.
57 See section 22(1).
58 See section 10(16).

Bankers and financiers	Motor dealers
The balance of the cash value (consideration) equals **the sum of** – • an amount equal to (or exceeding) the cost of the vehicle to the banker/financier • the cost of erection, construction, assembly or installation (where applicable) • the VAT leviable on the supply **minus** – • repayments already made by the debtor in respect of the capital (excluding any appropriate amount allocated to interest).	The balance of the cash value (consideration) equals **the sum of** – • an amount equal to or exceeding the price at which the goods are usually supplied for cash • the cost of erection, construction, assembly or installation (where applicable) • the VAT leviable on the supply **minus** – • repayments already made by the debtor in respect of the capital (excluding any appropriate amount allocated to interest).

6.8 Floor plans

The financier/motor dealer may deduct input tax on the acquisition of the motor vehicle from the manufacturer/financier respectively, subject to the financier/motor dealer being in possession of the relevant documentation. The input tax is based on the cash value of the motor vehicle.

See **3.2.3** which deals with input and output tax on transactions concluded under floor plan arrangements.

6.9 General overheads

Input tax may be deducted by the motor dealer to the extent that general overheads such as rent, electricity, administration costs, audit fees, office equipment and the like are incurred for the purpose of making taxable supplies (as discussed in **Chapter 3**). This is subject to the usual documentary requirements and other conditions for deducting input tax as set out in **6.1** and **6.3** being met.

6.10 Denial of input tax

The deduction of VAT incurred on the acquisition of a motor car as input tax under section 16(3) is subject to the provisions of section 17(2)(*c*). Section 17(2)(*c*) precludes a vendor from deducting input tax on the acquisition of a motor car irrespective of the purpose for which the motor car was acquired. The proviso to section 17(2)(*c*), however, contains certain exceptions that allow certain vendors, in limited circumstances, to deduct input tax on the acquisition of a motor car.

The general rule that input tax may not be deducted on the acquisition of motor cars does not apply in the case of motor dealers as they purchase and supply motor cars in the ordinary course of their enterprises. This also applies where a vehicle is in dealer stock and it is used temporarily for demonstration purposes or as a courtesy car provided to customers whose vehicles are being repaired. If however the motor dealer rents a motor car from another vendor specifically for the purpose of supplying that motor car as a courtesy car to a customer, input tax is denied. This is because in such a case, the motor dealer does not acquire the motor car for the specific purpose of selling or leasing it in the course or furtherance of the enterprise.

For a more detailed discussion on the general VAT principles in regard to input tax, see the *VAT 404 – Guide for Vendors*. See also IN 82 dealing with the definition of “motor car” and the deduction of input tax on the acquisition of a “motor car”.

Glossary

Consideration

This is generally the total amount of money (incl. VAT) received for a supply. For barter transactions where the consideration is not in money, the consideration will be the OMV of goods or services (incl. VAT) received for making the taxable supply. Section 10 determines the value of supply or amount of the consideration for VAT purposes for different types of supplies.

Any act of forbearance whether voluntary or not, for the inducement of a supply of goods or services will constitute consideration, but it excludes any donation made as an unconditional gift to an association not for gain. Also excluded is a "deposit" which is lodged to secure a future supply of goods and held in trust until the time of the supply. Since VAT is the difference between the selling price including the VAT and the value of the taxable supply, the following formulae can be derived:

VAT = consideration – value
or
Consideration = value + VAT

Enterprise

Includes any business activity in the broadest sense. It includes any activity carried on –

- continuously or regularly;
- by any person;
- in or partly in the RSA;
- in the course or furtherance of which goods or services are supplied for a consideration to another person, that is, some form of payment;
- whether or not for profit.

Special inclusions:

- Public authorities – certain government departments and provincial authorities
- Municipalities
- Welfare organisations and FDFPs[59]
- Share-block companies
- Non-residents supplying certain electronic services (this includes the activities of local and non-resident intermediaries) where at least two out of three of the following circumstances apply, namely: 1. The electronic services are supplied to a South African resident, 2. Payment originates from the RSA, or 3. The recipient has an address (that is business, postal or residential) in the RSA.

The following activities are not "enterprise" activities and will therefore not attract VAT:

- Services rendered by an employee to an employer for example, salary/wage/remuneration earners. This must however be

[59] The definition of "enterprise" was amended to include reference to the activities of an implementing agency in respect of the FDFP activities rather than to regard the FDFP as a "person".

distinguished from a private independent contractor who is not excluded

- Supplies by a branch or main business permanently located outside the RSA (must be separately identifiable and maintain its own system of accounting)
- Private or recreational pursuits or hobbies (unless carried on like a business)
- Private occasional transactions for example, occasional sale of domestic/household goods, personal effects or private motor vehicle
- Any exempt supplies (listed in section 12)
- The supply of commercial accommodation[60] of a value of less than R120 000 per annum.

Exempt supplies

an exempt supply is a supply on which no VAT may be charged (even if the supplier is registered for VAT). Persons making only exempt supplies may not register for VAT and may not recover input tax on purchases to make exempt supplies.

Section 12 contains a list of exempt supplies.

Exempt supplies include:

- certain “financial services” as defined;
- supplies by any "association not for gain" of any donated goods or services or any other goods made or manufactured by such association if at least 80% of the value of the materials used in making or manufacturing such other goods consists of donated goods;
- rental of accommodation in any "dwelling" including employee housing;
- certain educational services;
- services of employee organisations for example, trade unions;
- certain services to members of a sectional title, share block or old age scheme funded out of levies. (Not applicable to timeshare schemes);
- public road and railway transport of fare-paying passengers and their luggage; and
- childcare services in a crèche or after-school care centre.

Exports

There are two types of exports for VAT purposes:

- Direct exports – consigned or delivered by the supplying vendor to a recipient in an export country.
- Indirect exports – removed from the Republic by either the recipient or the recipient’s cartage contractor.

Goods

The term “goods” includes –

- corporeal (tangible) movable things, goods in the ordinary sense (including any real right in those things);

[60] Paragraph (*a*) of commercial accommodation in section 1(1).

- fixed property, land and buildings (including any real right in the property for example, servitudes, mineral rights, notarial leases);
- sectional title units (including timeshare);
- shares in a share block company;
- postage stamps;
- electricity; and
- second-hand goods.

The term "goods" excludes –

- money, that is, notes, coins, cheques, bills of exchange (except when sold as a collector's item);
- value cards, revenue stamps etc which are used to pay taxes (except when sold as a collector's item); and
- any right under a mortgage bond.

Input tax

This includes, amongst others, the tax paid by the recipient to the supplier of goods or services, the VAT paid on the importation of goods and includes notional input tax on second-hand goods. Input tax may only be deducted by the recipient vendor if the goods or services are acquired for making taxable supplies and if the vendor is in possession of the relevant documentary proof under section 16(2)(*a*) to (*e*). Under section 16(2)(*g*) a vendor may in certain circumstances deduct input tax based on alternative documentary evidence acceptable to the Commissioner in terms of a ruling issued by the Commissioner.

An apportionment of input tax must be made if goods or services are acquired only partly for making taxable supplies.

In the case of an importation, where the bill of entry or other documentation prescribed by the Customs and Excise Act reflect the vendor as the importer, the vendor must be in possession of such document together with the receipt for the payment of the VAT in relation to the importation of the goods and the EDI Customs Status 1 Release Message. Should the vendor not be in possession of the aforementioned documentation, it must in terms of section 54(3)(*b*) be in possession of the statement issued by the agent when deducting input tax under section 16(3)(*a*)(iii) or(*b*)(ii).

In the case of second-hand goods acquired by the vendor, the vendor must retain a proper record of the details of the transaction on **VAT264** Form. Should the second-hand goods acquired constitute fixed property, the transfer of which requires registration in a Deeds Registry, input tax may only be deducted once the property has been registered in the name of the vendor claiming a deduction and is limited to the extent that the consideration for the property has been paid.

As a general rule, input tax may not be deducted on supplies of "entertainment", motor cars and club subscriptions. Input tax may also not be deducted where goods or services are acquired for the purpose of making exempt supplies, for private use or for other non-taxable activities.

Person

This term refers to the entity which is liable for VAT registration and includes the following:

- Sole proprietor, that is, a natural person

- Company/CC
- Partnership/joint venture
- Deceased/insolvent estate
- A trust
- Incorporated body of persons for example, an entity established under its own enabling Act of Parliament
- Unincorporated body of persons for example, a club, society or association with its own constitution
- A municipality
- A public authority

Recipient The person to whom a supply of goods or services is made.

SARS South African Revenue Service

Services The term “services” is very broad and includes –

- the granting, assignment, cession, surrender of any right;
- the making available of any facility or advantage; and
- certain acts which are deemed to be services under section 8.

The term excludes –

- a supply of “goods”;
- money; and
- any stamp, form or card which falls into the definition of “goods”.

Examples:

- Commercial services – electricians, plumbers, builders.
- Professional services – doctors, accountants, lawyers.
- Advertising agencies.
- Intellectual property rights – patents, trade marks, copy rights, know-how.
- Restraint of trade.
- Cover under an insurance contract.

Supply The 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.

Taxable supplies This is a supply (including a zero-rated supply) which is chargeable with tax under the VAT Act. A taxable supply does not include any exempt supply listed in section 12, even if supplied by a registered vendor.

There are two types of taxable supplies, namely –

- those which attract the zero rate (listed in section 11); and
- those on which the standard rate must be charged.

Tax period There are five different tax periods as follows:

- Category A – two-monthly (ending at the end of every odd month). For example, Jan, Mar, May, July
- Category B – two-monthly (ending at the end of every even month). For example, February, April, June
- Category C – monthly (taxable supplies greater than R30 million in any consecutive period of 12 months)
- Category D – six-monthly (certain farmers and micro-businesses – taxable supplies less than R1,5 million in any consecutive period of 12 months)
- Category E – annually (only in exceptional circumstances for connected persons with only one transaction per consecutive period of 12 months)

Time of supply As a general rule, a supply is deemed to take place at the earlier of the time an invoice is issued, or the time any payment of consideration is received by the supplier. Section 9 provides for specific time of supply rules (for example, connected persons, periodic or progressive supplies, fixed property etc.).

Value of supply The price charged, excluding VAT. Section 10 makes provision for specific value of supply rules (for example, connected persons, ICAs, tokens, vouchers or stamps etc.).

VAT The acronym for “value-added tax”.

Vendor Any person that is registered, or is required to be registered for VAT. Therefore, any person making taxable supplies in excess of the threshold for compulsory registration prescribed in section 23, is a vendor regardless of whether or not the person is registered as such. The registration threshold is currently R1 000 000 in taxable supplies in a consecutive period of 12 months.

Contact details

The **SARS website** contains contact details of all SARS service centres and border posts.

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

Digital channels

E-mail

- For tax practitioners: **pcc@sars.gov.za**
- For taxpayers: **contactus@sars.gov.za**

When you send an e-mail to the above mailboxes, you will receive an automated reply with a case number assigned. For ease of use, this number will be quoted in related correspondence on the progress of the case.

SARS Online Query System
Use our Digital Service offerings offered by the SARS Online Query System (SOQS). Go to ‘Contact Us’ on the SARS website **www.sars.gov.za** and click on “Send us a Query”.

Online appointments
Use our online booking system to request an online appointment or before going to a SARS branch. Go to ‘Contact Us’ on the SARS website sars.gov.za and click on “Make an appointment”.

SARS Head Office

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

Postal Address
Private Bag X923
Pretoria
0001
South Africa

SARS website
www.sars.gov.za

Telephone
012 422 4000

SARS Fraud and Anti-Corruption hotline
0800 00 28 70

Complaints Management Office

Telephone
0860 12 12 16

SARS Website
www.sars.gov.za

Office
Any SARS Service Centre

National Service Centre
0800 00 7277

eFiling Website
www.sarsefiling.gov.za

SARS Contact Centres

- You may contact SARS by phone, e-mail or visiting a SARS service centre. Before visiting a service centre, remember to “Make an Appointment”. Find the function under “Contact Us” on the **SARS website**.
- Call our SARS National Service Centre on 0800 00 7277
- International Callers may contact our National Service Centre on +27 11 602 2093

Practitioners

Telephone / Contact Centre
0800 00 72 77

E-mail
pcc@sars.gov.za

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

Before visiting a service centre, remember to “Make an Appointment”. Find the function under “Contact Us” on the **SARS website**.

VAT Rulings

Should there be any aspects relating to VAT on which a specific VAT Ruling is required, you may submit a ruling application on a VAT301 to SARS by e-mail to **VATRulings@sars.gov.za**. All applications must comply with section 79 of the TA Act [excluding section 79(4)(*f*), (*k*) and (6)].