

VAT Connect

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Welcome to VAT Connect – your electronic newsletter that will provide you with the latest news and information on VAT and related matters. We hope you enjoy the read and that you will find the information helpful in meeting your VAT obligations.

Taxation Laws Amendment Act 22 of 2012 (the TLAA)

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Budget Proposals 2013/14

In his Budget speech on 27 February 2013, the Minister of Finance announced that it is proposed that foreign businesses which sell e-books, music and other digital goods and services should be required to register as VAT vendors, in line with regulations which have been adopted by the European Union and other jurisdictions.

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Forex supplied in duty free areas

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Exports

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In this issue

- **Taxation Laws Amendment Act 22 of 2012 (the TLAA)**
- **Budget Proposals 2013/14**
- **Forex supplied in duty free areas**
- **Exports**
- **VAT rulings**
- **Statements of account**

Taxation Laws Amendment Act 22 of 2012 (the TLAA)

Shortly after publishing the last issue of VAT Connect, various amendments to the VAT Act which were proposed in the Taxation Laws Amendment Bill, 2012 were promulgated. (Refer to the TLAA published in Government Gazette 36122 dated 1 February 2013.) The amendments came into effect from the date of promulgation (1 February 2013) unless otherwise provided in the TLAA.

The most important topics covered by the amendments are:

- Extension of the definition of “instalment credit agreement” to include Islamic finance arrangements known as *ijarah*.
- Extension of the circumstances under which credit and debit notes may be issued.
- Amendments to Custom Controlled Area (CCA) rules.
- Clarification of the application of the exemption for pre-entry sale of imported goods by non-residents.
- New exemptions introduced for bargaining councils and political parties as well as relief for past supplies.
- Conversion from share block to other forms of property ownership.

A summary of these amendments is available in the latest issue of the VAT 404 – Guide for Vendors which was issued in March 2013.

For more details, refer to the following documents on the SARS website under “Legal & Policy”:

- Taxation Laws Amendment Act, 2012 (Act 22 of 2012)
- Explanatory Memorandum on the Taxation Laws Amendment Bill, 2012

Budget Proposals 2013/14

In his Budget speech on 27 February 2013, the Minister of Finance announced that it is proposed that foreign businesses which sell e-books, music and other digital goods and services should be required to register as VAT vendors, in line with regulations which have been adopted by the European Union and other jurisdictions. More details about these changes will be included in the Taxation Laws Amendment Bill and Explanatory Memorandum to the Bill which will be issued later on this year.

The proposal is likely to cover the supply by way of electronic delivery mechanisms such as the facility to download over the internet –

- software programmes and updates thereof;
- digitised content of books and other electronic publications;
- subscriptions to online newspapers and journals; or
- files containing digitised images, music, films or games (or the accessing of such content, for example, in the form of participation in an online game).

Other VAT issues highlighted in the Budget Review include the announcement that –

- a single registration process for multiple tax products will be launched to simplify registration for all businesses; and
- VAT registration will be streamlined to ease the compliance burden whilst making sure that safeguards are in place to prevent opportunities for fraudulently claiming VAT refunds.

Forex supplied in duty free areas

The Supreme Court of Appeal (the SCA) has confirmed that foreign exchange (forex) services supplied in the duty free area of an international airport are subject to VAT at the standard rate of 14%. (Refer to *Master Currency v CSARS* (155/2012 [2013] ZASCA 17 (20 March 2013).)

In their appeal, Master Currency argued that as the forex services were supplied in a duty free area of the airport, the services to non-resident customers should be zero-rated in terms of section 11(2)(l) of the VAT Act because they were outside the Republic when the services were rendered. Alternatively, Master Currency argued, that the zero rate in terms of section 11(2)(k) should apply to forex services supplied to both resident and non-resident customers, because the services are physically rendered outside of the Republic.

The SCA could find no basis to support Master Currency's contentions that VAT did not apply in certain areas of international airports and agreed with the Commissioner that the duty free area of an airport is not outside the Republic. The SCA went on to confirm that section 11(2)(l)(iii) excludes the application of the zero rate in circumstances where the recipient or any other person is present in the Republic at the time the services are rendered.

Master Currency also sought to rely on a ruling issued by the Commissioner in 2003 under section 72 of the VAT Act which was said to indicate that supplies of goods in duty free areas were subject to VAT at the zero rate. The court concluded that Master Currency could not rely on the ruling because the ruling was limited in its application to goods supplied by duty free shops in duty free areas and therefore did not apply to services. In addition, the ruling was a special arrangement in terms of section 72 which intended to relieve a non-resident of the burden of having to apply for a refund of the VAT which would otherwise have been paid on goods purchased in the duty free area and subsequently refunded by the VAT Refund Administrator.

The court stated that since the VAT was both chargeable (section 7(1)(a)) and refundable (section 44(9)), the section 72 ruling did not have the effect of substantially reducing or increasing the ultimate liability for VAT under the VAT Act. There was therefore no question of an official remitting any portion of a tax or of absolving someone from the payment of tax.

This judgment confirms a basic VAT principle that goods or services consumed within the borders of the Republic are subject to VAT at the standard rate unless the VAT Act specifically provides for an exemption or zero-rating. This means that vendors operating in duty free areas are conducting their enterprises inside the tax jurisdiction of the Republic and that the normal VAT rules apply. Furthermore, it confirms that the requirements of section 72 must be met before the Commissioner's discretion may be exercised in terms of that provision.

Exports

In the last issue of VAT Connect it was mentioned that a New Draft Export Regulation was issued for public comment regarding proposed new rules to come into effect for indirect exports. Since receiving the public comments, two workshops were held in February 2013 with representatives of exporters and their consultants to get a deeper understanding of the comments received. It is expected that the Regulation will be finalised within the next three to six months.

Meanwhile, an updated Draft (Issue 3) of Interpretation Note 30 (IN 30) which deals with direct exports was issued for public comment in March 2013. The draft update of IN 30 is aimed at setting out the documentary proof required in order to substantiate a vendor's entitlement to apply the zero rate when movable goods are exported directly from the Republic. IN 30 takes into account various changes as a result of the customs modernisation programme and aligns the export timeframes with those proposed in the New Draft Export Regulation for indirect exports (i.e. 90 days).

VAT rulings

Any person wanting to apply for a VAT ruling must please remember to make sure that all the requirements as set out in section 79 of the Tax Administration Act, 2011 (TA Act) (excluding sections 79(4)(f) and (k) and (6)) are met. This includes the requirement that the applicant must show that their tax affairs are in order before the ruling application can be accepted. (Refer to Chapter 17 of the VAT 404 – Guide for Vendors.)

A further aspect to note is that Government Notice No. 103 (the Notice) was issued in Government Gazette 36119 on 8 February 2013 in relation to additional considerations in respect of which an application for a binding private ruling or a binding class ruling may be rejected in terms of section 80(2) of the TA Act. The Notice lists some general considerations as well as specific topics relating to the different taxes administered by the Commissioner. The Notice essentially replaces what was previously known as the “No Rulings List” and applies not only to Advance Tax Rulings, but also to VAT rulings.

All VAT ruling applications (excluding advance tax ruling applications) should be headed “Application for a VAT Class Ruling” or “Application for a VAT Ruling” and sent by fax to +27 86 540 9390 or email to VATRulings@sars.gov.za. Please do not send your enquiries on tax matters to the fax number and email address provided here, as they are exclusively for incoming VAT ruling applications. Should you require assistance with an enquiry, contact the SARS Contact Centre on 0800 00 SARS (7277) or refer to the contact details provided on the SARS website or in the VAT 404 – Guide for Vendors.

Statements of account

From 2 April 2013, a VAT Statement of Account (VATSA) must be requested from SARS as these will no longer be sent automatically to vendors.

A VATSA may be requested through one of the following channels:

- Electronically via eFiling;
- By calling the SARS Contact Centre on 0800 00 SARS (7277); or
- By visiting a SARS Branch.

Dispute resolution

A Draft Notice proposing tax administration rules in terms of section 103 of the TA Act was issued on 22 February 2013 in relation to objection and appeal procedures, alternative dispute resolution and the conduct and hearing of appeals before a Tax Board or Tax Court.

Public comments were due by 22 March 2013. The comments received will now be considered in the process of finalising the rules.

Publications

The SARS website has been updated with the following documents which have been published as final, updated or issued for public comment since the last issue of VAT Connect:

Guides

- VAT 404 – Guide for Vendors (updated).
- VAT 409 – Guide for Fixed Property and Construction (updated).
- VAT 412 – Guide for Share Block Schemes (updated).
- VAT 419 – Guide for Municipalities (updated).
- VAT 421 – Guide for Short-Term Insurance (finalised).
- Transfer Duty Guide (finalised – previously known as the “Transfer Duty Handbook”).

Interpretation Notes

- Draft Interpretation Note: Vouchers supplied at a discount (issued for public comment by 31 May 2013).
- IN 30 (Draft Issue 3): Supply of movable goods as contemplated in section 11(1)(a)(i) read with paragraph (a) of the definition of “exported” and the corresponding documentary proof (issued for public comment by 31 May 2013).
- IN 31 (Issue 3): Documentary proof required for the zero-rating of goods or services (updated).
- IN 39 (Issue 2): VAT treatment of public authorities, grants and transfer payments (updated).
- IN 49 (issue 2): Section 16(2) – Documentary proof required to substantiate a vendor’s entitlement to input tax or a deduction (updated).
- IN 52 (Issue 2): Approval to end a tax period on a day other than the last day of a month (updated – formerly called “Tax Periods”).
- IN 70 – Supplies made for no consideration (finalised).

Binding General Rulings (BGRs)

- BGR 4 (Issue 2): Apportionment methodology to be applied by Category A and B Municipalities. BGR 4 (Issue 2) replaces the first issue of BGR 4 and withdraws BGR 10: Apportionment methodology to be applied by Category B Municipalities.
- BGR 12: Input tax on the acquisition of a non-taxable supply of second-hand motor vehicles by motor dealers.
- BGR 13: Calculation of VAT for certain betting transactions.
- BGR 14: VAT treatment of specific supplies in the short-term insurance industry.
- BGR 15: Recipient-created tax invoices, credit and debit notes.
- BGR 16: Standard apportionment method.
- BGR 17: Cancellation of registration of separate enterprises, branches and divisions.
- BGR 18: The zero-rating of various types of dates.
- BGR 19: Approval to end a tax period on a day other than the last day of a month.