

VAT NEWS



keeping vendors informed

AUGUST 2004 No. 24

LEGAL STANDING OF VAT 201 RETURNS

Returns are legal and binding documents which constitute a declaration made to SARS. Although addressed in many past issues of VAT NEWS, certain constant errors are made on returns. All vendors must ensure that the following is adhered to:

- mandatory fields must be completed;
- returns must be signed; and
- **all fields** where correctional fluid was used, must be initialled.

Non adherence to these rules will result in returns being regarded as having not been submitted.

UPDATED GUIDES

The VAT 404 (Guide for Vendors) and VAT 414 (Guide for Associations Not for Gain and Welfare Organisations) have been updated and are available on the SARS website www.sars.gov.za/VAT/guides. Printed versions will be made available in due course.

A simplified version of the VAT 404 aimed at small vendors will also be made available during the year.

GOODS SUPPLIED TO FOREIGN-GOING SHIPS AND AIRCRAFT

With effect from 1 May 2004, vendors who supply goods at the zero rate for use or consumption on foreign-going ships and aircraft are required to obtain, complete and retain form VAT 266 as part of their records for proof of export of the goods supplied. The form is not required for goods such as petrol and diesel, fresh fruit and vegetables, etc., which are already zero-rated when supplied in the Republic. Examples of goods supplied where the form would be required include:-

- aviation kerosene and aviation spirit which is used to propel aircraft;
- pre-packed meals and beverages for consumption by crew and passengers; and
- spare parts supplied in the course of repairing foreign-going ships or aircraft.

The form is available on the SARS website under www.sars.gov.za/VAT/forms.

TAX INVOICES

From 1 March 2005, any tax invoice for a supply where the consideration is R 1 000* or more (or any debit or credit

note in respect of that supply), must have the VAT registration number of the recipient reflected thereon **if the purchaser is a vendor**. Vendors are encouraged to ensure that they have this information in their customer database, and, if possible, to implement the new requirement before the deadline date so that any problems can be identified and dealt with timeously.

Note that customers will not be able to claim input tax where their VAT number has been omitted from the tax invoice. Suppliers who omit this information from any tax invoice issued may be penalised if the customer has provided their VAT number as required.

For supplies such as those under an annual lease or insurance contract, the recipient's VAT number need only appear on the contract document (which serves as the tax invoice) for contracts entered into or renewed on or after 1 March 2005.

The VAT webpage on the SARS website www.sars.gov.za now contains a section which deals specifically with tax invoices. It includes a document which helps answer some of the frequently asked questions (FAQ's) about the practical implementation of the new requirement. If you have a question or any suggestions on this topic, you can send an e-mail to taxinvoices@sars.gov.za. The FAQ document will be updated regularly with answers to your questions.

* the R 1 000 requirement may be increased by 1 March 2005.

e-FILING

Regulation No. 312 issued on 12 March 2004 sets out the procedures and requirements for e-filing of returns and electronic signatures.

E-filing of returns - The Regulation provides that a **user-ID and access code** as well as a procedure must be provided by SARS to the vendor or tax practitioner after obtaining positive proof of identity of that person. It must be uniquely linked to the subscriber so that it serves as the only means of being identified and gaining access to the e-filing service. It must also be capable of being maintained under the sole control of the subscriber concerned.

Electronic signature - this is electronically attached to the return and consists of the user-ID of the subscriber together with the date and time that the return is received on the e-filing website. The signature is deemed to have been attached to any return submitted by that person by way of the e-filing service.

INBOUND TOUR OPERATORS

Any vendor operating in the tourist industry in relation to inbound tours is obliged to levy VAT in terms of VAT Ruling 52. For example, VAT must be levied at the **standard rate** on goods and services rendered in South Africa, international transport is **zero-rated**, while local bus, taxi and train fares are **exempt** from VAT. Any ruling to the contrary is hereby withdrawn.

Enquires in this regard may be posted to the SARS VAT Law Administration Section, Private Bag X923, Pretoria, 0001, or faxed to (012) 422 5194, or e-mailed to vattourqueries@sars.gov.za.

WELFARE ACTIVITIES

A proposed list of what are considered to be welfare activities for VAT purposes was published on the SARS website for public comment. Once the comments and any proposed amendments have been considered by the Minister, the list will be published in the form of a Regulation. Comments must be received by 15 September 2004.

LATE PAYMENT OF VAT ON IMPORTATION

Interest and penalties will now be levied when VAT is not paid timeously on the importation of goods and the clearance thereof from a Customs bonded warehouse. Interest and penalties are also levied where amounts due under the Customs deferment scheme are not made within the prescribed period.

EXPORTS TO LESOTHO

VAT NEWS 22 and Media Release 10 dated 3 July 2003 provided details of the arrangement between SARS, the Lesotho Revenue Authority (LRA) and the VAT Refund Administrator (VRA) regarding the crediting of South African VAT charged on **certain indirect exports** against the VAT on importation into Lesotho. This arrangement applies where the customer or their agent (e.g. a transport contractor appointed by the customer) takes delivery of the goods in South Africa. Two questions arise in this regard, namely:-

Question 1

Is the South African supplier, or the customer in Lesotho liable for VAT on importation of the goods into Lesotho?

Answer to Question 1

The **importer** as defined in terms of Lesotho's Customs and Excise legislation (Act No. 10 of 1982) is liable.

Question 2

May South African suppliers charge VAT at the standard rate (14%) on a direct export to Lesotho?

Answer to Question 2

A direct export is where the supplier either delivers the

goods to the customer in Lesotho, or appoints a transport contractor to make that delivery on his/her behalf. Direct exports are charged with VAT at 0%, provided that the supplier has the relevant proof of export.

The practice of charging (South African) VAT at 14% on **direct exports**, based on the premise that the VRA will apply the VAT charged as a credit against the Lesotho VAT liability of 14% on importation is incorrect. As pointed out in VAT NEWS 22, the refund arrangement between SARS, the LRA and the VRA **applies only in respect of the VAT charged on certain indirect exports**.

Note that, any vendor who has incorrectly charged VAT at 14% on a direct export and failed to declare this on their VAT 201 return, or failed to pay that VAT over to SARS, will be assessed for the outstanding tax. In addition, the vendor will be liable for additional tax, penalty and interest thereon.

To avoid any unnecessary problems at the border, South African exporters should ensure that there is agreement with the customer as to whose name will appear as the importer on the CCA 1, who will actually pay the VAT on importation, and the method of payment to be used. For example, the exporter could pay the VAT on the importer's behalf and recover it as a disbursement, or the customer (Lesotho vendor) may agree to have the VAT charge added to their VAT Import Credit facility with the LRA.

APPORTIONMENT OF INPUT TAX

Certain vendors can not claim all the VAT paid on their purchases, because they may not relate entirely to making taxable supplies, e.g. VAT incurred:-

- on a building consisting of offices (taxable) and residential flats (exempt supply).
- by an enterprise which makes taxable supplies, but also earns interest income.

Rules relating to the apportionment of input tax are set out on pages 26-30 of the new VAT Guide for Vendors (VAT 404) which can be found on the SARS website. Vendors who fail to apportion input tax correctly will be penalised.

BOOKMAKERS

In terms of section 37 of the VAT Act, the onus of proof in relation to input tax claimed, rests on the vendor claiming the input tax. In addition, a vendor must keep proper records to enable him or her to determine the VAT liability and for SARS to verify it.

Bookmakers are reminded to retain winning tickets to substantiate input tax relating to bets paid out. In addition, where the punter uses a *nom de plume*, the bookmaker must have a separate record of the actual name of that punter.

CONTACTING SARS: Where vendors have queries relating to VAT, including where to fax their returns, they should contact their local SARS branch office. Additional information can be obtained on the SARS website at: www.sars.gov.za