

eFiling

Due to unexpectedly high volumes of traffic on the Internet, some eFiling clients experienced difficulties effecting their VAT payments as required on 31 October 2007 in respect of tax periods ending September 2007.

Provided the relevant return was submitted via eFiling and payment was made on or before 5 November 2007, no penalties and/or interest for late payments and submissions of the VAT returns for tax periods ending September 2007 will be levied.

Municipality transitional arrangements

Binding General Ruling (VAT) No: 3 has been issued to make an arrangement in terms of section 72 of the VAT Act in connection with certain supplies by municipalities which became taxable for the first time on 1 July 2006. In terms of Regulation No. 270 in Government Gazette No. 29741 dated 31 March 2007, a transition period of 12 months (1 July 2006 to 30 June 2007) was allowed within which municipalities were to account for the output tax on the supplies concerned in a return which was due for payment by no later than 25 July 2007.

The ruling provides a schedule of due dates for payment which may deviate from 25 July 2007 as stated in the Regulation, in the case of municipalities which:

- are registered under Category A tax period;
- are registered as eFilers; or
- pay their VAT by debit order.

The ruling is available on the SARS website at: www.sars.gov.za/v_a_t/VAT_Rulings/Numerical/BGR_3.pdf

Industrial Development Zones (IDZs)

IDZs are geographically designed, purpose-built industrial estates in the Republic of South Africa which have been designated by the Minister of Trade and Industry. As a rule IDZs will be developed and operated by the private sector with the main purpose of stimulating trade and job creation.

Interpretation Note No. 40 was issued in December 2007 to explain the VAT implications of the various types of supplies of goods or services to or by an enterprise or IDZ operator situated in a Customs Controlled Area (CCA) of an IDZ.

The note is available on the SARS website at: www.sars.gov.za/it/Interpretation_Notes/Note_40.pdf

Section 72 Rulings

VAT rulings are issued either by the legal manager at the relevant branch office, or in some instances, by SARS's Head Office. Sometimes, it may be necessary to issue a VAT ruling setting out special arrangements, or to give direction to a vendor or class of vendors to overcome difficulties, anomalies or incongruities

that have arisen or which may arise in regard to the application of any of the provisions of the VAT Act.

VAT rulings which provide for special arrangements in terms of section 72 of the VAT Act are issued by the Legal and Policy Division: Indirect Taxes at SARS Head Office and certain requirements must be met before the Commissioner will make these arrangements, namely:

- the Commissioner must be satisfied that there is a difficulty, anomaly or incongruity that exists which prevents a vendor or a class of vendors from complying with the provisions of the VAT Act; and
- any arrangements in this regard must not have the effect of substantially reducing or increasing the ultimate liability for tax levied under the VAT Act.

A VAT ruling in terms of section 72 of the VAT Act may be granted where a genuine shortcoming is identified in the application of the VAT law, and where an interim solution is sought by a vendor or class of vendors until it is possible to address the problem through an amendment to the law.

Recently it has been noted that requests for rulings in terms of section 72 of the VAT Act have sharply increased. Most of these requests had to be rejected as they were sought purely to correct a vendor's erroneous application of the law, or to alleviate the vendor's own internal administrative difficulties or lack of capacity. A common example of this is where the Commissioner is requested to condone the non-levying of VAT on taxable supplies made by the supplier where there has also been no deduction of input tax by the recipient.

Vendors are requested to refrain from applying for rulings under section 72 of the VAT Act where they have merely applied the VAT law incorrectly (or not at all), and where there is no genuine difficulty, anomaly or incongruity in the application of the VAT law itself.

Vendors should contact their local SARS branch office for assistance where they have applied the law incorrectly.

Fractional Ownership

As a result of widespread media coverage on fractional ownership in property and the differences of opinions of interested parties such as lawyers, estate agents and property developers on the VAT treatment of these supplies, it has become necessary for SARS to clarify the position.

Fractional ownership has been advertised and promoted as a new concept of ownership and investment and refers to the collective ownership of an asset. The asset concerned could be anything from an aircraft to a yacht, but typically the underlying asset is a luxury home, holiday apartment, or hotel

suite of high monetary value (often with managed hospitality and support services) which is used by the fractional owners for leisure purposes. The costs of administering the scheme are divided among the fractional owners in accordance with their shareholding in the entity (normally a company) which owns the asset.

In short, the purchase of a fractional interest normally involves the sale of shares in a company which goes hand-in-hand with a use agreement which regulates how the underlying property or any part thereof is to be used by the fractional owners.

The issue which has been debated recently in the media is whether the supply of a fractional ownership interest in a company (which has as its underlying asset a fixed property) constitutes:

- the sale of an “equity security” (share) - which is exempt from VAT and therefore treated the same as the normal purchase of shares in a juristic person; or
- the supply of shares in a share block company or the supply of a time-sharing interest – both of which constitute the supply of “fixed property” and “goods” and are subject to VAT at the standard rate of 14% if the supplier is registered for VAT (or required to be registered); or
- a supply which is subject to Transfer Duty.

Members of the legal fraternity have expressed the view that certain fractional ownership schemes may, (depending on the type of scheme), be operating in contravention of either the Share Blocks Control Act, No. 59 of 1980, or the Property Time-Sharing Control Act, No. 75 of 1983. Further, that any supply of fractional interests in relation to the use of fixed property owned by the company in which the shares are held, constitutes the supply of “fixed property” because of the occupation rights which it confers on the owners, and accordingly, the supply thereof will fall into the VAT net.

Estate agents and developers who promote these schemes appear mainly to be of the view that the supply of the fractional interests constitutes the supply of shares (equity securities) which are exempt from VAT. This seems to be based on the view that fractional ownership schemes do not fall within the ambit of either the Share Blocks Control Act or the Property Time Sharing Control Act.

From a VAT perspective, the determining factor of the taxable nature or otherwise of the supply of these fractional interests is based on whether the supply of the rights and interests under the fractional ownership scheme constitutes the supply of “fixed property” and “goods” as defined in section 1 of the VAT Act (regardless of whether the fractional ownership scheme itself complies with the provisions of the Share Blocks Control Act or the Property Time Sharing Control Act). The characteristics of the fractional ownership schemes described above which involve the underlying use of fixed property are very similar to share block and time-sharing schemes. This is because included in the supply is a right to, or an interest in, the use of immovable property or a part thereof.

SARS’s view is therefore that the supply of fractional ownership interests in a scheme where the objective is for the shareholders to acquire the use of fixed property does not merely constitute the supply of equity shares, but rather, interests in share block or time-sharing schemes which confer a right of use or occupation upon the owners.

Since the supply of such rights and interests constitutes “fixed property” and “goods” as defined in section 1 of the VAT Act, it follows that a property developer, a property agent or any other vendor supplying fractional ownership interests in fixed property is liable to levy and collect the VAT from the purchaser where the value of the supplies made by that person exceed the registration threshold of R300 000.

These supplies are therefore subject to VAT at the standard rate of 14% when supplied by a person who is, or who should be, registered as a VAT vendor. Failure to charge VAT will result in the price charged for the supply being deemed to include VAT at 14%.

Where fractional ownership interests in fixed property are supplied by persons who are not liable to register for VAT, the supply is subject to Transfer Duty.

Submitting of returns and payment of VAT

To eliminate any uncertainty which may still exist about the rules for submitting VAT returns and making payments, the table below provides the date by which the VAT201 return must be submitted and the date by which payment must be made.

| Payment method | SARS must receive return by (or last preceding business day) | SARS must receive payment by (or last preceding business day) |
|--|--|---|
| Cash | 25th | 25th |
| Cheque | 25th | 25th |
| Counter Payment at FNB, ABSA, Nedbank or Standard Bank | 25th | 25th |
| Electronic Funds Transfers via internet | 25th | 25th |
| VAT201(a) debit order | 25th | Last business day of the month |
| SARS eFiling of return only and payment not using SARS eFiling | Last business day of the month | 25th |
| SARS eFiling of return and payment via SARS eFiling website | Last business day of the month | Last business day of the month |

Call Centre 0860 12 12 18

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



www.sars.gov.za