Keeping vendors informed

# VAT NEWS • Number 33 February 2009

## UPDATE ON GUIDES

The following Guides have been finalised and are available on the SARS website www.sars.gov.za:

- Guide for Fixed Property and Construction (VAT 409)
- Guide for Municipalities (VAT 419)

To access the documents click on "All Publications" and then "Value-Added Tax".

## LEGISLATIVE AMENDMENTS

Various amendments to the VAT Act have recently been made which came into effect on 8 Januarie 2009. For more details, refer to the following documents on the SARS website under "Legal & Policy" and "Legislation":

- The Revenue Laws Amendment Act, 2008.
- The Revenue Laws Second Amendment Act, 2008.
- The Explanatory Memoranda to the above Acts.

Some of these amendments are as follows:

*Sections 11(1)(s) and (t) – Land reform and land restitution transactions*
Fixed property acquired by a beneficiary in terms of the Provision of Land Assistance Act, 1993 and the Restitution of Land Rights Act, 1994 qualifies to be taxed at the zero rate when the Department of Land Affairs (DLA) makes payment on behalf of the beneficiary directly to the vendor supplying the property. The zero rate only applies to the extent that the payment by the DLA covers the purchase price of the property. Any additional consideration payable by the beneficiary to the supplier is subject to VAT at the standard rate.

*Sections 11(1)(u), 12(k) and 13(1)(ii) – Sale of imported goods in storage warehouses*
The supply of any imported goods stored in a licensed Customs and Excise storage warehouse, before being entered for home consumption is subject to VAT at the zero rate. If the supplier is a non-resident, the supply is exempt from VAT unless an application to override the exemption is made to the Commissioner together with submission of the VAT 101 registration form. Non-residents therefore have an option to be exempt, or to register for VAT and charge VAT at the zero rate on such supplies provided that the requirements for VAT registration are met.

*Section 23(1) – Compulsory VAT registration threshold*
The compulsory VAT registration threshold will increase from R300 000 to R1 million from 1 March 2009. (See article on **SIMPLIFIED TAX SYSTEM FOR MICRO BUSINESSES**.)

*Sections 28(1) and (4) – Returns and payments*
The amendment allows the Minister of Finance (the Minister) to prescribe another date for the submission of returns and payments for any particular tax period, provided that the date so prescribed may not be more than two business days before the date that the vendor would normally submit the return and pay the VAT for that tax period. The notice must be published in the *Gazette* at least 30 days before the date prescribed by the Minister.

*Sections 44(3)(d) and 45(1)(iiA) – Refunds, interest and banking details*
Only non-resident companies may request that VAT refunds be paid into a bank account of a nominated person. In the case of a "subsidiary company" or "holding company" as defined in section 1 of the Companies Act, 1973, VAT refunds may be paid into the bank account of either the subsidiary company or holding company, on condition that SARS is indemnified against any loss which may occur. Due to concerns involving VAT refund fraud, the use of third-party bank accounts will not be permitted in any other cases.

The VAT Act was also amended to provide that the 21-day interest free period for VAT refunds will only commence from the date that the vendor's updated banking particulars have been received. In the case of a vendor that is permitted to use a bank account of a third party, the interest-free period will only commence from the date that the indemnity form VAT 119i has been received.

As the amendments to sections 44 and 45 come into operation on 1 April 2009, vendors affected by these changes should provide their local SARS office with updated banking particulars and indemnities by completing and submitting forms VAT 126 and VAT 119i before the end of March 2009 to prevent refunds from being withheld.

## GENERAL RULINGS REGISTER

When VAT was introduced in 1991, many of the published general written rulings focused on basic concepts which have since been covered in the various guides and other publications issued by SARS over the years. Over time, these rulings have become outdated and apart from the different styles and formats used, the wording in some of the rulings has created some uncertainty on the application of the law.

The rulings register will therefore be withdrawn in a phased approach and a new rulings register will be created. Any person who is relying on any of the old general written rulings is therefore advised to apply to the local SARS office for a written ruling if certainty is required on the VAT treatment of certain supplies. Any application for a ruling should be in writing, and should contain all the necessary particulars as set out in VAT News 32 (August 2008 issue).

As the current rulings register is to be withdrawn, interested parties are invited to submit recommendations to policycomments@sars.gov.za on topics to be considered for inclusion in the new rulings register.

Requests should be in writing and include a clear description of all the relevant facts and circumstances of the contracting parties, the nature of the transactions involved, an explanation of the conclusion, and reasons why a binding general ruling on the topic should be issued.

## SIMPLIFIED TAX SYSTEM FOR MICRO BUSINESSES

As part of Government's broader mandate to encourage entrepreneurship and create an enabling environment for small businesses to survive and grow, the Minister announced initiatives in the 2008 National Budget to reduce the tax compliance burden on small businesses with a turnover of up to R1 million per annum (micro businesses).

The simplified tax system is essentially an alternative to the current income tax and VAT systems, meaning that a micro business still has the option to use the conventional tax system. It will be available to sole proprietors, partnerships, close corporations, companies and cooperatives from 1 March 2009.

The package consists of a turnover tax and relief from VAT, capital gains tax (CGT) and secondary tax on companies (STC).

Unlike the income tax system that makes use of comprehensive inclusion rules and a reduction process that requires proof of expenditure to be maintained, the turnover tax will be calculated by simply applying a tax rate to a taxable turnover. The taxable turnover will essentially consist of the turnover of the business with a few specific inclusions and exclusions.

**Turnover Tax Rates**

| Turnover | Marginal Rates (R) |
|---|---|
| R0 to R100 000 | 0% |
| R100 001 to R300 000 | 1% of each R1 above R100 000 |
| R300 001 to R500 000 | R2 000 + 3% of the amount above R300 000 |
| R500 001 to R750 000 | R8 000 + 5% of the amount above R500 000 |
| R750 001 and above | R20 500 + 7% of the amount above R750 000 |

The turnover tax will be levied for a year of assessment that runs from the first day of March to the last day of February of the following year. It will include two six-monthly interim payments, followed by a final payment. **A micro business that opts for the turnover tax must apply to do so before 1 March 2009** and must remain in the system for at least three years unless it is specifically disqualified. Equally, a micro business that exits the turnover tax system will not be allowed to re-register for a period of three years.

Micro businesses that opt for the turnover tax will be specifically exempted from CGT. The turnover tax will simply include 50% of the proceeds on disposal of business assets in taxable turnover. The proceeds on the disposal of immovable property will only be taken into account in the calculation to the extent that the property was used for business purposes.

Micro businesses that opt for the turnover tax will also be exempt from STC, to the extent that their dividend distributions do not exceed R200 000 per annum. Any excess will be subject to STC.

The simplified tax system does not provide specific relief for payroll taxes/levies like employees' tax (exempt if employees are not liable), the skills development levy (exempt if the payroll does not exceed R500 000 a year) and unemployment insurance fund contributions.

The existing VAT registration threshold of R300 000 will be increased to R1 million from 1 March 2009. As the simplified tax system is a package that aims to alleviate intensive record-keeping, a micro business that is registered for the turnover tax will not be permitted to register for VAT, which requires intensive record-keeping.

Any vendor that deregisters from the VAT system needs to pay VAT (exit VAT) on the lesser of the cost or open market value of the assets held before deregistering. Vendors that deregister from the VAT system as a result of the increase in the VAT registration threshold to R1 million, will be allowed to pay the exit VAT over a period of six months. A vendor that deregisters from the VAT system to register for the turnover tax will be granted further relief by way of a deduction of up to R100 000 from the value of the assets held by that vendor prior to deregistration. This equates to a reduction of up to R12 281 in the exit VAT that will be payable. Conversely, if a person deregistered as a VAT vendor in order to register for the turnover tax and later re-registers for VAT, the value of assets for which VAT input credits can be claimed on re-registration will be reduced by up to R100 000.

A micro business registered for the turnover tax must notify SARS within 21 days of its qualifying turnover exceeding R1 million for the year of assessment, or where there are reasonable grounds to believe that the amount will be exceeded. The business will then be deregistered from the turnover tax, unless SARS is of the view that the excess will be small and temporary. The deregistration and liability for VAT will take effect from the beginning of the month after the month in which the qualifying turnover exceeded, or was likely to exceed, the cap.

SARS may also, after consultation with the micro business, deregister the business from the turnover tax where it is satisfied that the taxable turnover of the micro business is sufficient to render that business liable to register for VAT.

More information on the qualification criteria and details of the simplified tax system is available on the SARS website.