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VAT NEWS

Keeping vendors informed

LEGISLATIVE AMENDMENTS

The proposed amendments to the VAT Act which were mentioned in the previous issue of VAT News have now been passed into law, and **came into effect on 30 September 2009,** unless otherwise stated.

For more details, refer to the following documents on the SARS website under "Legal & Policy" and "Legislation":

- The Taxation Laws Amendment Act, No. 17 of 2009.
- The Taxation Laws Second Amendment Act, No. 18 of 2009.
- The Explanatory Memoranda to the above Acts.

REMISSION OF INTEREST

Interest is levied at the prescribed rate on any shortfall of VAT for a tax period which a vendor has failed to pay at the time that the VAT was due and payable. Currently, the Commissioner's discretion for remitting any interest is based on whether it can be shown that either –

- the vendor did not benefit financially as a result of the non-compliance (taking interest into account); or
- the State did not suffer any financial loss (including a loss of interest) taking into account both input tax and output tax.

With effect from 1 April 2010 the Commissioner's discretion to remit interest will be based solely on whether the interest was incurred as a result of circumstances beyond the vendor's control. An example of the circumstances envisaged, is when a vendor's payment instruction could not be carried out by the vendor's bank because of a failure in the banking system. The new dispensation applies to any interest imposed in terms of section 39 on or after 1 April 2010. An interpretation note is currently being drafted to provide further guidance.

NEW VOLUNTARY REGISTRATION THRESHOLD

Currently, the general rule is that a person may register voluntarily for VAT if the value of taxable supplies made by the enterprise has exceeded the minimum threshold of R20 000 in the past 12 months. As from 1 March 2010, any person who applies to register voluntarily for VAT will be required to meet the new minimum threshold of R50 000 (or R60 000 in the case of persons supplying "commercial accommodation"). This excludes foreign donor funded projects and welfare organisations which are not required to meet the voluntary registration threshold.

Vendors that no longer qualify to be registered as a result of the increase in the threshold have been identified through the VAT system. SARS is also currently preparing a communication which will be sent to the affected vendors advising them of the change in the law and notifying them that their VAT registrations will be suspended with effect from 1 March 2010. Deregistration will take place once all outstanding returns have been submitted, all outstanding taxes have been paid, and a final deregistration audit has been conducted. If you are registered for VAT and your taxable supplies have not exceeded R50 000 over the past 12-month period and you did not receive a letter regarding deregistration by the second week of February 2010, you should contact your local SARS office to establish whether you still qualify to be VAT registered. In the event that you do not qualify, application should be made to cancel the VAT registration by completing and submitting form VAT 123 to SARS. If you believe that you qualify for voluntary registration and have been sent the deregistration letter in error, you should also approach the local SARS office with your written motivation (objection) as to why you should remain on register.

Those vendors that are required to deregister must remember to declare output tax (exit VAT) in terms of section 8(2) on the lesser of cost or open market value of any enterprise assets held on 28 February 2010. This includes not only physical assets (e.g. stock, buildings and equipment), but also any rights which are capable of assignment, cession or surrender (e.g. licences and intellectual property rights). The value of the assets and the exit VAT must be declared respectively in Fields 1A and 4A of the final VAT 201 return together with any other VAT which may be due for the final tax period.

Vendors that have to deregister solely as a result of the increase in the minimum threshold may apply to the local SARS office to make an arrangement to pay off the exit VAT in equal instalments over a period of six months without incurring any penalty or interest. These special payment arrangements do not apply to vendors that have already been identified for deregistration in the current exercise which is being conducted to clean up the VAT register. For more details in this regard, refer to the article **"VAT DEREGISTRATION PROJECT"** in *VAT News 34* (August 2009) as well as the Media Release dated 15 September 2009: *Clean up of VAT register under way.*

More information regarding deregistratlon in general and the impact of the increase in the voluntary registration threshold can also be found on the SARS website.

SUPPLIES FOR NO CONSIDERATION MADE BY ASSOCIATIONS NOT FOR GAIN

In a recent unreported case heard in the Johannesburg Tax Court, the principle was confirmed that an association not for gain is not permitted to deduct input tax on the costs incurred to make supplies for no

consideration if those supplies are made in the course of carrying on a non-taxable or non-enterprise activity. The case concerned a religious organisation which carried on activities in connection with its objective of ministering, promoting and spreading its religious message. Teachings and messages were spread via various means such as radio and television broadcasts, conventions, the internet, personal correspondence, and by the distribution of certain magazines for no consideration. The association had also registered for VAT in respect of books, CDs, DVDs and other religious material which it supplied for a consideration through its bookshop. The dispute concerned the disallowance of input tax which was attributable to the religious activities, including the VAT costs associated with the distribution of religious magazines for no consideration.

A key point in the judgment concerned the application of the valuation rule contained in section 10(23). The vendor was of the view that because it was registered for VAT, the supplies which it made for no consideration in pursuance of its religious objectives qualified as taxable supplies. It therefore submitted that the VAT incurred to make those supplies constituted deductible input tax in its hands. The claim for input tax was made despite the fact that it did not qualify as a "welfare organisation" for VAT purposes, as religious activities do not qualify as welfare activities.

SARS's contention was that most of the VAT was incurred for the purpose of carrying out religious objectives which involved the making of supplies for no consideration, rather than being for the purpose of making taxable supplies from the bookshop. It was accepted by the Court that only a portion of the VAT incurred was for the purposes of making taxable supplies and that the supplies made for no consideration constituted non-taxable supplies. Consequently, input tax could not be deducted to the extent that the expenses were incurred for the purpose of carrying out those non-taxable (religious) activities. Further, the Court ruled that the purpose of section 10(23) is merely to provide for the value of a supply to be nil in certain circumstances, and cannot be interpreted in such a way that it has the effect of converting a non-taxable supply for no consideration into a taxable supply for no consideration.

This case highlights one of the main differences in the VAT treatment of an association not for gain and a welfare organisation. Welfare organisations are allowed to register and claim input tax on any goods or services acquired in carrying out welfare activities. Supplies made by welfare organisations in connection with their welfare activities are regarded as taxable supplies, even if they are made for no consideration. The rationale behind this special treatment is to prevent the VAT on purchases from becoming trapped. This allows the full amount of donations and grants of public funds to be spent on much needed welfare goods and services which are generally for the benefit of the poor and needy. An association not for gain that does not conduct welfare activities and which is not a welfare organisation is not entitled to the same benefits.

An interpretation note is currently being drafted to provide further guidance in this regard. For more information, refer to the ***VAT 414 – Guide for Associations not for Gain and Welfare Organisations*** which is available on the SARS website.

LAND AFFAIRS SUBSIDIES

The Department of Rural Development and Land Reform (the Department) has a number of land reform programmes which have been established to give effect to land transfers contemplated under the Provision of Land Assistance Act, 1993 and the Restitution of Land Rights Act, 1994. In ***VAT News 33*** (February 2008), it was mentioned that the VAT Act would be amended to allow certain supplies of fixed property in terms of the Department's programmes to be subject to VAT at the zero rate. This is provided for in sections 11(1)(*s*) and 11(1)(*t*) which came into effect on 31 October 2009. (Refer to *Government Gazette 32664* dated 30 October 2009.)

It should be noted that the zero-rating only applies to the extent that the transactions are financed from grants or subsidies to which beneficiaries are entitled from the Department and does not apply to any additional consideration which may be payable by the beneficiary to the vendor supplying the fixed property. The zero rate will also not apply where any movable property such as farming implements and other equipment is supplied together with the fixed property, unless the transaction qualifies as the supply of a going concern [section 11(1)(*e*)]. If the transaction is not the supply of a going concern, the movables are treated as a separate supply from the fixed property, and the consideration attributable to the movables must be charged with VAT at the standard rate [section 8(15)].

WITHDRAWAL OF GENERAL RULINGS REGISTER

In July 2009, notice was given that rulings in the general rulings register would be withdrawn in a phased approach, commencing from 1 August 2009. This process was completed with the withdrawal of the final batch of rulings on 1 November 2009. The effect is that these rulings are no longer binding and may not be relied upon from the date of withdrawal. Any person who requires certainty on the correct application of the VAT Act in a specific case is advised to apply to the local SARS office for a ruling.

Interested parties are invited to submit recommendations to ***policycomments@sars.gov.za*** on topics to be considered for inclusion in the new rulings register.