

LEGISLATIVE AMENDMENTS

This issue of VAT News focuses mainly on recent amendments to the VAT Act.

For more details on the amendments, refer to:

- [Taxation Laws Amendment Act, 2010](#) (Act No. 7 of 2010 – *Government Gazette* 33726, Notice 1024);
- [Voluntary Disclosure Programme and Taxation Laws Second Amendment Act, 2010](#) (Act No. 8 of 2010 – *Government Gazette* 33727, Notice No. 1025); and
- [Explanatory Memoranda](#) on the Bills.

The amendments came into effect on **2 November 2010** unless otherwise stated.

FOREIGN-GOING SHIPS AND AIRCRAFT

The scope of the definitions “foreign-going aircraft” and “foreign-going ship” has been widened to allow the supply of certain consumables and repairs to foreign naval ships and foreign military aircraft to qualify for VAT to be charged at the zero rate.

TAX INVOICES, DOCUMENTS AND RECORD-KEEPING

Although the supplier is not obliged to issue a tax invoice in cases where the consideration for a taxable supply is less than R50, the recipient must nevertheless be in possession of a source document such as an invoice or till slip as proof that the expense has been incurred before an input tax deduction may be claimed.

It is also a requirement that vendors maintain the required records (as prescribed in form VAT 264) in respect of any second-hand goods acquired. Previously this was only required for purchases in excess of R1 000. The proof of payment as well as the date on which payment was made is also required as part of the vendor's records to validate any input tax deduction for second-hand goods acquired.

TURNOVER TAX

It has been clarified that the maximum amount of R100 000 that may be applied as a reduction against the value of assets upon which VAT is calculated when exiting the VAT system cannot reduce the output tax liability below zero. In addition, the R100 000 reduction is no longer subject to recoupment if the person is required to re-enter the VAT system.

Paragraph 3 of the Sixth Schedule to the Income Tax Act was also amended to provide that a partner in a partnership will not be allowed to register for turnover tax if the partnership is registered for VAT. Similarly, a person that is registered for VAT may not register for turnover tax. The amendments to the Sixth Schedule apply to years of assessment commencing on or after **1 March 2011**.

ADJUSTMENTS FOR OUTSTANDING DEBTS

A vendor that is registered on the invoice basis of accounting and has previously deducted input tax on a taxable supply of any goods or services acquired, but has not made full payment for the supply within 12 months, must repay the input tax previously deducted [section 22(3)]. The vendor must account for this VAT by making an output tax adjustment in the return immediately after the 12-month period expires, calculated from the time that the amount concerned was deducted as input tax. The VAT is calculated by multiplying the tax fraction (14/114) by the amount outstanding at that time. In a case where the supplier has allowed payment arrangements over a period exceeding 12 months, the adjustment must be made in the tax period immediately after the extended credit period has expired.

To eliminate any potential double VAT charge, the law now provides that the value attributable to any asset that has already been subject to the input tax clawback in terms of this provision will be excluded from the value of assets which will be subject to VAT upon ceasing the enterprise.

SUPPLIES MADE VIA MACHINES, METERS OR DEVICES

When supplies are made via vending machines, meters or other devices which are operated by inserting a coin or token, a special time of supply rule applies. This allows the vendor making those supplies to account for output tax in the tax period in which the coins or tokens are removed from the machine.

The law now clarifies that this time of supply rule also applies when payment is made using paper money. However, when payment is made by any other means, the time of supply takes place when payment is made. For example, in the case of any electronic payment made by credit or debit card via a machine, VAT must be paid at the time that payment is transferred into the supplier's bank account via the banking system.

IMPORTED SERVICES

Before the VAT Act was amended, the VAT due on any imported services had to be declared on form VAT 215 and paid to SARS within 30 days of importation.

The law now provides that with effect from **1 February 2011** any VAT due **by a vendor** on imported services must be declared on form VAT 201 and paid together with any other VAT which may be due for the tax period concerned. Therefore, if a vendor is registered to pay VAT on a bi-monthly basis, any services imported during that two-month period must be declared on the VAT 201 return concerned and paid together with the VAT which is due on all the vendor's other transactions for that period.

Vendors must include the VAT payable on any imported services in **Field 12** of the current VAT 201 return.

Non-vendors will continue to apply the previous arrangement by submitting form VAT 215 together with the payment within 30 days of importing the services.

BUSINESS ACTIVITIES OF NON-RESIDENTS

As South Africa does not have explicit place of supply rules, there is sometimes uncertainty as to whether the business activities of a non-resident are also conducted in South Africa.

In [VAT News 13 \(December 1999\)](#) the view was expressed that the granting by a non-resident business of the right to use any trade mark or intellectual property over a period of time in South Africa is regarded as the carrying on of an enterprise partly in South Africa. Consequently, any non-resident business that regularly receives royalties, franchise or agency fees is required to register and levy VAT if the annual receipts in this regard exceed the compulsory VAT registration threshold. It was, however, decided that if the activities were completely passive and if the non-resident did not have a physical presence or fixed place of business in South Africa, SARS would not insist on the non-resident business having to register for VAT.

This policy and others related to non-resident businesses are in the process of being reviewed. The current policies will, however, remain in place until the review has been completed and public notice has been given as to any changes.

eFILING OF RETURNS AND PAYMENTS

In [VAT News 32 \(August 2008\)](#), it was highlighted that some eFiling clients file their returns on eFiling but submit payment via another method. As this problem still persists, eFiling clients are once again reminded that to obtain the benefit of filing a VAT return and making payment on the last business day of the month, **the full amount of the VAT liability as per the return must be made on the eFiling system itself, and no other payment method will be accepted.**

VAT AND TRANSFER DUTY

The Transfer Duty Act provides for an exemption from transfer duty when a supply of fixed property is subject to VAT. The exemption certificate is issued once SARS is satisfied that the VAT payable on the transaction has been paid, or will be paid. In some cases, the seller may be required to provide security if the VAT has not yet been paid. For example, if the seller of the property has a history of non-compliance, security for the unpaid VAT may be required.

Some refinements to this process were implemented in August 2010 to ensure that the exemption certificates are issued promptly, whilst also addressing any fiscal risks. In terms of the refined process, when security is required, the seller will be informed of certain options which may be available to resolve the outstanding issues before SARS will be in a position to issue the transfer duty exemption certificate.

These options are:

- Resolve all outstanding tax obligations; or
- Provide security for the VAT payment in respect of the property transaction concerned; or

- Instruct the seller's transferring attorney (conveyancer) to provide an undertaking to pay the VAT directly to SARS from the proceeds of the sale of the property concerned. Where this option is elected, the conveyancer will be required to complete a [SARS TD-VAT form](#).

These options together with the associated procedures are explained in detail in a letter dated 4 August 2010 which was addressed to the Law Society of South Africa. The letter can be accessed by clicking on the link [AS-TD-L03 Application for Transfer Duty Exemption in terms of Section 9\(15\) of the Transfer Duty Act, No.40 of 1949 \(Transfer Duty Act\) and Request for Security](#).

RULING RECONFIRMATIONS

Binding general ruling No. 2 (BGR 2) was issued on 1 January 2007 to provide guidance on the status of written decisions (rulings) issued before 1 January 2007 and the process of obtaining confirmation of the binding nature of such rulings. Refer also to [VAT News 29 \(February 2007\)](#). Paragraph 3.3 of BGR 2 allowed the applicant to continue to rely on the ruling as binding whilst awaiting written reconfirmation or written notice of withdrawal of the ruling.

SARS is now in the process of finalising and reconciling the list of reconfirmation applications. As part of this process, notice is hereby given that the binding effect of the rulings mentioned in paragraph 3.3. of BGR 2 will be withdrawn with effect from **1 October 2011**. Any person who has applied for, but not yet received confirmation of the binding status or withdrawal of such a ruling is therefore advised to follow up on the status of their application.

Any enquiries in this regard should be sent by facsimile to Brenda Fisher at (012) 422 5043. The facsimile should be headed "Ruling reconfirmations" and must include the VRC reference number that was issued at the time the original application was made.

TAX ADMINISTRATION BILL (TAB)

The TAB is in the final stages of completion and was published for a second round of public comment on 29 October 2010. [Schedule A - Schedule of Amendments](#) reflects the proposed consequential amendments to the various tax acts which were necessary to align them with the TAB. More details on the TAB can be found under "Draft Bills" on the [Legal and Policy page](#) on the [SARS website](#).

VOLUNTARY DISCLOSURE PROGRAMME (VDP)

In the previous issue of [VAT News](#) we mentioned that the VDP will be made available to provide taxpayers with an opportunity to voluntarily apply to SARS to disclose their defaults and regularise their tax affairs.

The period within which VDP applications can be made to SARS is prescribed by the Commissioner by notice in the *Government Gazette* and runs from **5 November 2010 to 31 October 2011**.

Refer to [GG 33731 Notice 1026](#) dated 5 November 2010 as well as the [VDP page](#) on the [SARS website](#) for more information.