

SOUTH AFRICAN REVENUE SERVICE

INTERPRETATION NOTE NO: 42

DATE: 2 APRIL 2007

ACT: VALUE-ADDED TAX ACT NO. 89 OF 1991, (the VAT Act)

SECTION: SECTIONS 1, 7 AND 11

SUBJECT: THE SUPPLY OF GOODS AND/OR SERVICES BY THE TRAVEL AND TOURISM INDUSTRY

| TABLE OF CONTENTS | | | |
|--------------------------|---------------|--|--------------|
| No | Sub No | Topic | Pg No |
| 1. | | Purpose | 2 |
| 2. | | Background | 2 |
| 3. | | The Law | 3 |
| 4. | | Application of the law | 6 |
| | 4.1 | The rationale for the taxation | 6 |
| | 4.2 | Agent or principal | 8 |
| | 4.2.1 | Agent | 9 |
| | 4.2.2 | Principal | 10 |
| | 4.3 | VAT implications on the various supplies within a tour package | 10 |
| | 4.3.1 | Transport services | 10 |
| | 4.3.1.1 | International air travel | 10 |
| | 4.3.1.2 | Domestic air travel | 11 |
| | 4.3.1.3 | Sea travel | 12 |
| | 4.3.1.4 | International road or rail travel | 12 |
| | 4.3.1.5 | Domestic road or rail travel | 13 |
| | 4.3.2 | Accommodation services | 13 |
| | 4.3.3 | Meals and beverages | 14 |
| | 4.3.4 | Other entertainment | 14 |
| | 4.3.5 | Time of supply | 15 |
| 5 | | Game viewing | 15 |
| | 5.1 | Exempt supply of game viewing | 16 |
| | 5.2 | Standard-rated supplies to exempt supplies | 16 |
| | 5.3 | Standard-rated supply of game viewing | 17 |
| | 5.4 | Assessments | 17 |
| | 5.5 | The supply of game viewing on or after 1 January 2007 | 17 |
| | 5.6 | General | 17 |
| 6 | | Tax Invoices | 17 |
| | 6.1 | Consideration for the supply exceeds R50 but not R3 000 | 18 |
| | 6.2 | Consideration for the supply exceeds R3 000 | 18 |
| | 6.3 | Agents | 18 |
| | 6.4 | General | 19 |
| | 6.5 | Examples of tax invoices | 20 |

1. Purpose

The purpose of this Note is to provide—

- clarity on the interpretation of section 11(2)(ℓ) of the VAT Act as it applies to the tourism industry;
- guidance in assisting travel agents, tour operators and travel brokers (herein after referred to as local entrepreneurs), who are registered as vendors for value-added tax (VAT) purposes, in applying and understanding the VAT legislation for the supply of tour packages to non-residents (foreign tourists) within the travel and tourism industry (excluding professional hunters and taxidermists); and
- clarity on the VAT implications on the supply of game viewing in the Republic of South Africa (the Republic).

2. Background

VAT is an indirect tax levied by vendors on the supply of goods or services. Its aim is to tax final consumption that takes place in the Republic. Accordingly, supplies of goods or services consumed in the Republic, regardless of to whom the services are supplied, are taxable for VAT purposes.

Most local entrepreneurs assemble a marketable tour package of services which, *inter alia*, consists of transport, accommodation, meals, etc. Such tour package may be sold directly by the local entrepreneur to the foreign tourist or to a foreign entrepreneur who then on-sells the tour package to a foreign tourist. The local entrepreneur either applies a mark-up to the tour package or receives a commission.

The VAT implications of these supplies by local entrepreneurs were addressed in Ruling No. 52 dated 27 September 1991. However, it has been detected that there is inconsistent VAT treatment of these supplies by local entrepreneurs.

Please note that as a general rule, with effect from 1 January 2007, all rulings issued by the Commissioner prior to 31 December 2006 are withdrawn. However, this will not apply to written decisions issued by the Commissioner in respect of supplies that were made on or before 31 December 2006 (i.e. supplies that will not occur after 1 January 2007). These decisions will remain binding and the vendor can rely on such decisions.

With regard to written decisions issued by the Commissioner prior to 1 January 2007, in respect of supplies made or to be made on or after 1 January 2007, vendors who wish to retain the certainty that a binding ruling provides, must apply to the Commissioner for confirmation of the status of the decision.

This interpretation note, unless otherwise specifically stated, does not constitute a binding general ruling as envisaged in section 76P of the Income Tax Act, 1962 as made applicable to the VAT Act by section 41A of the VAT Act.

3. The law

Section 1 of the VAT Act - Definitions

“**commercial accommodation**” means—

- (a) lodging or board and lodging, together with domestic goods and services, in any house, flat, apartment, room, hotel, motel, inn, guest house, boarding house, residential establishment, holiday accommodation unit, chalet, tent, caravan, camping site, houseboat, or similar establishment, which is regularly or systematically supplied and where the total annual receipts from the supply thereof exceeds R60 000 per annum or is reasonably expected to exceed R60 000 per annum, but excluding a dwelling supplied in terms of an agreement for the letting and hiring thereof;
- (b) lodging or board and lodging in a home for the aged, children, physically or mentally handicapped persons; and
- (c) lodging or board and lodging in a hospice;

“**export country**” means any country other than the Republic and includes any place which is not situated in the Republic: Provided that the President may by notice in the *Gazette* determine that a specific country or territory shall from a date and to the extent indicated in the notice, be deemed not to be an export country;

“**exported**”, in relation to any movable goods supplied by any vendor under a sale or an instalment credit agreement, means—

- (a) consigned or delivered by the vendor to the recipient at an address in an export country as evidenced by documentary proof acceptable to the Commissioner; or
- (b) delivered by the vendor to the owner or charterer of any foreign-going ship contemplated in paragraph (a) of the definition of “foreign-going ship” or to a foreign-going aircraft when such ship or aircraft is going to a destination in an export country and such goods are for use or consumption in such ship or aircraft, as the case may be; or
- (c) delivered by the vendor to the owner or charterer of any foreign-going ship contemplated in paragraph (b) of the definition of “foreign-going ship” for use in such ship; or
- (d) removed from the Republic by the recipient for conveyance to an export country in accordance with the provisions of an export incentive scheme approved by the Minister;

“**goods**” means corporeal movable things, fixed property and any real right in any such thing or fixed property, but excluding—

- (a) money;
- (b) any right under a mortgage bond or pledge of any such thing or fixed property; and
- (c) any stamp, form or card which has a money value and has been sold or issued by the State for the payment of any tax or duty levied under any Act of Parliament, except when subsequent to its original sale or issue it is disposed of or imported as a collector’s piece or investment article;

“Republic”, in the geographical sense, means the territory of the Republic of South Africa and includes the territorial waters, the contiguous zone and the continental shelf referred to respectively in sections 4, 5 and 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);

“services” means anything done or to be done, including the granting, assignment, cession or surrender of any right or the making available of any facility or advantage, but excluding a supply of goods, money or any stamp, form or card contemplated in paragraph (c) of the definition of “goods”;

“supplier”, in relation to any supply of goods or services, means the person supplying the goods or services;

Section 7 – Imposition of value-added tax

- (1) Subject to the exemptions, exceptions, deductions and adjustments provided for in this Act, there shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the value-added tax—
- (a) on the supply by any vendor of goods or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him;
 - (b) on the importation of any goods into the Republic by any person on or after the commencement date; and
 - (c) on the supply of any imported services by any person on or after the commencement date, calculated at the rate of 14 per cent on the value of the supply concerned or the importation, as the case may be.

Section 11 – Zero-rating

- (2) Where, but for this section, a supply of services would be charged with tax at the rate referred to in section 7(1), such supply of services shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero per cent where—
- (a) the services (not being ancillary transport services) comprise the transport of passengers or goods—
 - (i) from a place outside the Republic to another place outside the Republic; or
 - (ii) from a place in the Republic to a place in an export country; or
 - (iii) from a place in an export country to a place in the Republic; or
 - (b) the services comprise the transport of passengers from a place in the Republic to another place in the Republic to the extent that that transport is by aircraft and constitutes “international carriage” as defined in Article 1 of the Convention set out in the Schedule to the Carriage by Air Act, 1946 (Act No. 17 of 1946); or
 - (c) ...
 - (d) the services comprise the insuring or the arranging of the insurance or the arranging of the transport of passengers or goods to which any provision of paragraph (a), (b) or (c) applies; or
 - ...
 - (ℓ) the services are supplied to a person who is not a resident of the Republic, not being services which are supplied directly—
 - (i) in connection with land or any improvement thereto situated inside the Republic; or
 - (ii) in connection with movable property (excluding debt securities, equity securities or participatory securities) situated inside the Republic at the time the services are rendered, except movable property which—
 - (aa) is exported to the said person subsequent to the supply of such services; or
 - (bb) forms part of a supply by the said person to a registered vendor and such services are supplied to the said person for purposes of such supply to the registered vendor; or
 - (iii) to the said person or any other person, other than in circumstances contemplated in subparagraph (ii)(bb), if the said person or such other person is in the Republic at the time the services are rendered,
- and not being services which are the acceptance by any person of an obligation to refrain from carrying on any enterprise, to the extent that the carrying on of that enterprise would have occurred within the Republic; or

4. Application of the law

The South African VAT system is a destination based tax that imposes tax on goods or services consumed in the Republic, regardless of where the goods are produced or services are supplied. Exports which are not consumed in the country are therefore free of tax, and imports which are consumed in the country are taxed when imported.

Accordingly, supplies of goods or services consumed in the Republic, regardless of to whom the goods or services are supplied, are taxable at the standard rate for VAT purposes. Where consumption of the goods or services supplied will occur outside the Republic, provision is made for such supplies to be zero-rated.

In applying these principles to the tourism industry, the VAT implications relating to the supply of the various common elements of a tour package are set out in this Note.

4.1 The rationale for the taxation

The VAT implications of supplies by local entrepreneurs to foreign tour operators are explained in Ruling No. 52 dated 27 September 1991. This ruling was issued prior to the implementation of VAT in order to provide clarity on the application of VAT regarding the supply of tour packages, and was aligned with the policy recommendations made in the VATCOM Report. The zero-rating provisions cannot apply where services are rendered to a non-resident or to 'any other person', if the non-resident or 'other person' is in the Republic at the time the services are rendered. This is to ensure that services are standard-rated, where the person consuming the service is physically in South Africa when the service is rendered (irrespective of the location of the contracting parties). In this regard, the constituent parts of a tour package supplied by the local entrepreneur are considered to be separate supplies. The local entrepreneur may apply the zero rate to international travel, an exemption to local bus transport and the standard rate to goods and services supplied to tourists locally, such as hotel accommodation (see sections 8(15) and 10(22) of the VAT Act).

Based on this, it is clear that the provisions of section 11(2)(f) of the VAT Act can never be applied to the aforementioned supplies as the services supplied will be consumed in the Republic and such services will not be exported nor form part of a supply by a non-resident to a vendor.

However, if a local entrepreneur arranges a tour as agent for a foreign tour operator, the fee received (i.e. commission only) from the foreign tour operator for arranging the tour will be zero-rated (See section 11(2)(f) of the VAT Act).

Foreign tour operators who continually and regularly supply goods or services in the Republic will be required to register as vendors for VAT purposes.

VAT Ruling No. 52
Local package tours - foreign tourists – commission
Plaaslike toerpakette – buitelandse toeriste - kommissie

Question

An overseas tour wholesaler requests a South African travel agent to make up a tour package at a price per tourist. The agent assembles the package, adds his mark-up, and sells the package to the overseas wholesaler. The wholesaler contracts overseas with tourists for the sale of the tour. Should the supply by the local travel agent be *zero-rated*?

Answer

The constituent parts of a package may be considered to be separate supplies. The South African travel agent may accordingly apply the zero rate to international travel, an exemption to local bus transport and the standard rate to goods and services supplied to tourists locally, such as hotel accommodation (see sections 8(15) and 10(22)). It is not necessary for the different elements of the package to be invoiced to the foreign tour operator separately, but the travel agent must keep the necessary records to show what portion of the supply has been properly attributed to each element.

If a South African travel agent arranges a tour as agent for an overseas tour operator, the fee he receives from the tour operator will be zero-rated (See section 11(2)(l).)

28/3/2 - 27 September 1991

The aforementioned VAT Ruling No 52 listed in the Rulings Register on the SARS website is hereby withdrawn with effect from 1 June 2007. In view of the withdrawal of this ruling, it is recommended that the person who relied on such ruling should apply for either a VAT ruling or a binding private ruling.

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4.2 Agent or principal

In the travel and tourism industry, many of the goods and services supplied by service providers are made available through local entrepreneurs. That is, such local entrepreneurs act as agents under common law in representing principals (i.e. the service providers) that supply the goods and services. Notwithstanding this, local entrepreneurs may also act as principals, for example, the purchase and resale of tour packages.

Due to the unique relationship between an agent and the principal, special provisions have been introduced in the VAT Act, to deal with the VAT consequences arising from such relationships. In order to correctly apply the VAT legislation to the concept of agents, it is necessary to identify and understand the concept of an agent, as treated in common law.

An agency is a contract whereby one person (the agent) is authorised and usually required by another (the principal) to contract or to negotiate a contract with a third person, on the latter's behalf.

- This relationship may be expressly construed from the wording of a written agreement or contract concluded by the parties; or
- Where a written agreement or contract does not exist, the onus of proof is on the person who seeks to bind the principal. Such person must show that the relationship was that of a principal and agent.

An understanding of the relationship between the parties is therefore a requirement in understanding the treatment of a supply of a tour package for VAT purposes.

For VAT purposes, the differences between an agent and a principal can be summarised as follows:

| | Agent | Principal |
|---|--|---|
| a | The agent will not be the owner of any goods or services acquired on behalf of the principal. | The principal is the owner of the goods or services acquired on his/her behalf by the agent. |
| b | The agent will not alter the nature or value of the supplies made between the principal and third parties. | The principal may alter the nature or value of the supplies. |
| c | Transactions on behalf of the principal will not affect the agent's turnover, except to the extent of the commission or fee earned on such transactions. | The total sales represent the principal's turnover whereas the mark-up is the principal's profit percentage. The commission charged by agents forms part of the principal's expenses. |
| d | An agent only declares the commission for Income Tax and VAT purposes. | The principal declares gross sales as income for Income Tax purposes and as taxable supplies for VAT purposes. |

In essence, the above-mentioned differences indicate, *inter alia*, that a person who accepts the commercial risks associated with a transaction and is trading for that person's own account, is the principal and not the agent when concluding such transactions. For information on the legality (from a VAT perspective) of issuing tax invoices on behalf of the principal, refer to Paragraph 6 (Tax invoices).

4.2.1. Agent

Where the local entrepreneur is acting as an agent, the following will be applicable.

VAT on the fees/commission received by the agent

- Zero-rated - the fees/commission charged by the local entrepreneur for the service of *arranging* the tour package will be zero-rated according to section 11(2)(ℓ) of the VAT Act if the foreign entrepreneur and the foreign tourist, i.e. the recipients, are outside the Republic at the time the service of *arranging* the tour package is rendered.

Example: X, an American citizen who is a permanent resident of America, contacts a South African travel agent to *arrange* his family vacation to South Africa.

The fee that the South African travel agent will charge X for *arranging* the family's vacation will be zero-rated for VAT purposes. This is due to the fact that X is a non-resident of the Republic, and is not in the Republic at the time the service of *arranging* is rendered.

- Standard-rated - the fees/commission charged by the local entrepreneur for the service of *arranging* the tour package will be standard-rated according to section 7(1)(a) of the VAT Act if the foreign entrepreneur or foreign tourist, i.e. the recipient, is in the Republic at the time the service of *arranging* the tour package is rendered.

Example: X, an American citizen who is a permanent resident of America, whilst in South Africa on a family vacation, contacts a South African travel agent to *arrange* his accommodation requirements in respect of his extended vacation.

The fee that the South African travel agent will charge X for *arranging* the extended family vacation will be standard-rated for VAT purposes. This is due to the fact that X is in the Republic at the time the service of *arranging* is rendered.

Example: X, an American citizen who is a permanent resident of America, whilst in South Africa on a family vacation, contacts an American travel agent (a non-resident and not a vendor in the Republic) to *arrange* his accommodation requirements in respect of his extended vacation. The American travel agent thereafter contacts a South African travel agent to make the necessary arrangements.

The fee that the South African travel agent will charge the American travel agent for *arranging* the extended family vacation of X will be standard-rated for VAT purposes. This is due to the fact that X is in the Republic at the time the service of *arranging* is rendered.

4.2.2. Principal

Where the local entrepreneur is acting as principal, the following will be applicable:

VAT on the consideration received by the principal

- Zero-rated - the consideration charged by the local entrepreneur for the service of *arranging* the tour package will be zero-rated according to section 11(2)(ℓ) of the VAT Act, if the foreign entrepreneur or the foreign tourist, i.e. the recipient, is outside the Republic at the time the service of *arranging* the tour package is rendered.
- Standard-rated - the consideration charged by the local entrepreneur for the service of *arranging* the tour package will be standard-rated according to section 7(1) of the VAT Act, if the foreign entrepreneur or foreign tourist, i.e. the recipient, is in the Republic at the time the service of *arranging* the tour package is rendered.

The examples used under 4.2.1 will apply in the same way where the principal charges a fee/commission for the *arranging* of the tour package.

4.3 **VAT implications on the various supplies within a tour package**

In order to correctly identify the VAT implications pertaining to the supply of the tour package, it is necessary to identify the separate supplies included in the tour package.

The section below explains the various common components of a tour package and the VAT implications thereof.

4.3.1. **Transport Services**

4.3.1.1 **International Air Travel**

The services provided by an airline carrier (the supplier), being a vendor for VAT purposes, of transporting passengers (or goods in some instances) may be zero-rated in the following circumstances:

- (i) The transportation of passengers from a place in an export country to a place in another export country:

In this case, both the point of origin and the point of destination of the transport of the passengers must be located outside the Republic in order for the supply to qualify for zero-rating.

- (ii) The transportation of passengers from a place in the Republic to a place in an export country:

The passengers are transported from the Republic to an export country. The point of origin must be located in the Republic and the point of destination in the export country, and the supplier of the transport service must be

responsible for the entire movement of the passengers between such points.

- (iii) The transportation of passengers from a place in an export country to a place in the Republic:

The passengers are transported from an export country to the Republic. The point of origin must be located in an export country and the point of destination in the Republic, and the supplier of the transport service must be responsible for the entire movement of the passengers between such points.

- (iv) The transportation of passengers from a place in the Republic to another place in the Republic to the extent that that transport is by aircraft and constitutes "international carriage":

Where passengers are transported by air from one place in the Republic to another place in the Republic, and such transport constitutes "international carriage" as defined in Article 1 of the Convention set out in the Schedule to the Carriage by Air Act of 1946, such transport is zero-rated. Therefore, VAT at the zero rate is also applicable to domestic transportation by air to the extent that the domestic air journey is one leg of an overall journey that involves international air travel.

Example: A passenger arranges for a flight from Cape Town to Germany. As part of the international flight, the airline operator provides the passenger with a flight from Cape Town to Johannesburg and from Johannesburg to Germany. This flight from Cape Town to Johannesburg falls within the definition of "international carriage".

The supply for the flight from Cape Town to Johannesburg will be zero-rated for VAT purposes as it constitutes "international carriage". In addition, the supply of the flight from Johannesburg to Germany will also be zero-rated.

In order to substantiate the zero-rating of the supply in the aforementioned circumstances, the documentation as set out in Interpretation Note No. 31 must be retained.

4.3.1.2 Domestic Air Travel

Unlike international air travel, all domestic air travel will be subject to VAT at the standard rate, provided that it is not part of an international air ticket (i.e. international carriage).

Example: An air ticket between Cape Town and Durban or between Port Elizabeth and Johannesburg will be subject to VAT at the standard rate.

4.3.1.3 Sea Travel

The services of transporting passengers (or goods in some instances) provided by a shipper (the supplier), being a vendor for VAT purposes, may be zero-rated in the following circumstances:

- (i) The transportation of passengers from a place in an export country to a place in another export country:

In this case both the point of origin and the point of destination relating to the transportation of the passengers must be located outside the Republic in order for the supply to qualify for zero-rating.

- (ii) The transportation of passengers from a place in the Republic to a place in an export country:

The passengers are transported from the Republic to an export country. The point of origin must be located in the Republic and the point of destination in the export country, and the supplier of the transport service must be responsible for the entire movement of the passengers between such points.

- (iii) The transportation of passengers from a place in an export country to a place in the Republic:

The passengers are transported from an export country to the Republic. The point of origin must be located in an export country and the point of destination in the Republic, and the supplier of the transport service must be responsible for the entire movement of the passengers between such points.

In order to substantiate the zero-rating of the supply in the aforementioned circumstances, the documentation as set out in Interpretation Note No. 31 must be retained.

4.3.1.4 International Road or Rail Travel

As in the case of international air travel (see paragraph 4.3.1.1), where a vendor provides passenger transport by road or rail, such supply may be zero-rated in the following circumstances:

- (i) The transport is between two places both in export countries:

In this case both the point of origin and the point of destination of the transport of the passengers must be located outside the Republic in order for the supply to qualify for zero-rating.

- (ii) Between a place within the Republic and a place in an export country:

The supply of passenger transport by road or rail will be zero-rated where the transport is from a place in the Republic to a place in an export country where the point of origin is located in the Republic and the point of destination in the export country (or vice versa), and the supplier of the transport service is responsible for the entire movement of the passengers or goods between such points.

4.3.1.5 Domestic Road or Rail Travel

The transport by road or rail (excluding a funicular railway which is in essence one operated by cable with ascending and descending cars counterbalanced) within the Republic, of any fare-paying passengers and their personal effects is exempt from VAT. In terms of section 12(g) of the VAT Act, this transport service is an exempt supply only if the supplier operates a transport business which involves operating a vehicle to transport passengers and their belongings for a fare.

In order to determine the scope of this exemption, refer to [VAT Practice Note No. 7](#) issued by SARS on 10 February 1992.

4.3.2. Accommodation Services

The supply of “commercial accommodation”, as defined in section 1 of the VAT Act, by a vendor to any person (including a non-resident) will be subject to VAT at the standard rate.

Where commercial accommodation is provided for periods not exceeding 28 days, the full charge or tariff is subject to VAT. In the following circumstances, the vendor supplying commercial accommodation will only account for output tax on 60% of the all-inclusive charge for the supply of commercial accommodation that is –

- supplied for an unbroken period exceeding 28 days, and
- charged as an all inclusive fee for commercial accommodation and the supply of domestic goods or services.

It is important to note that the full value of any domestic goods or services, which are supplied or charged for separately, is subject to VAT.

“Domestic goods and services” means goods and services provided by any enterprise supplying commercial accommodation, including:

- cleaning and maintenance;
- electricity, gas, air conditioning or heating;
- a telephone, television set, radio or other similar article;
- furniture and other fittings;

- meals;
- laundry; or
- nursing services

4.3.3 Meals and beverages

The supply of the basic foodstuffs listed in Schedule 2, Part B to the VAT Act is zero-rated. However, the supply of prepared meals, snacks, beverages or other refreshments (excluding meals falling within the ambit of “domestic goods and services” as defined in paragraph 4.3.2) supplied, attracts VAT at the standard rate of 14 percent.

Example: X, a resident of Botswana, whilst on business in South Africa has a meal at the Rainbow Nation Restaurant. The Rainbow Nation Restaurant is a registered vendor for VAT purposes.

The supply of the meal by the Rainbow Nation Restaurant to X will be standard-rated for VAT purposes (i.e. 14%) as the meal is consumed by X whilst she is in the Republic.

Example: X, a resident of Botswana, arranges with a South African travel agent to arrange the supply of her meals at various restaurants for her upcoming visit to South Africa. The South African travel agent arranges the supply of such meals with the Rainbow Nation Restaurant. The Rainbow Nation Restaurant is a registered vendor for VAT purposes.

The supply of the meals by the Rainbow Nation Restaurant to X will be standard-rated for VAT purposes (i.e. 14%), as the meal is consumed by X whilst in the Republic.

4.3.4 Other Entertainment

The supply of any entertainment by a local entrepreneur attracts VAT at the standard rate of 14 percent.

Example: X, a resident of Botswana, whilst on business in South Africa, attends a show hosted by Rainbow Nation Restaurant. The Rainbow Nation Restaurant is a registered vendor for VAT purposes and charges an entrance fee for such show.

The supply of the show by the Rainbow Nation Restaurant to X will be standard-rated for VAT purposes (i.e. 14%).

Example: X, a resident of Botswana, arranges with a Botswana travel agent to acquire a ticket on her behalf, to attend a show to be hosted by Rainbow Nation Restaurant. The Rainbow Nation Restaurant is a registered vendor for VAT purposes and charges an entrance fee for such show.

The supply of the show by the Rainbow Nation Restaurant to X will be standard-rated for VAT purposes (i.e. 14%).

4.3.5 Time of supply

The general rule relating to the time of supply is that the supply is deemed to have taken place where an invoice is issued or any payment in respect of the supply is received, whichever is earlier. The significance of the time of supply is that it determines in which tax period the VAT leviable on a transaction must be accounted for and paid for the benefit of the National Revenue Fund.

Therefore output tax must be accounted for by the local entrepreneur for the supply of the tour package at the earlier of an invoice being issued or any payment received for the supply and not when the service is rendered (e.g. when the hotel room is used by the tourist).

5. Game Viewing

With the introduction of VAT, passenger transport by way of road and rail was exempt from VAT in terms of section 12(g) of the VAT Act. This was specifically aimed at providing tax relief to the less affluent consumers who use public commuter services (e.g. buses, taxis and trains). The relief afforded in terms of this provision was not intended to exempt luxury transport services. However, it was difficult to define what constitutes commuter and luxury transport, the latter including game viewing.

In this regard, the wording of the VAT legislation did not provide absolute clarity as to whether the supply of game viewing drives was passenger transport as envisaged in the exemption or not. The policy adopted by SARS is that the service provided is game viewing and not passenger transport, and therefore subject to VAT at the standard rate. With this in mind, an amendment to the definition of "motor car" in section 1 of the VAT Act came into effect from 24 January 2005 to unblock input tax on a legitimate business expense, namely the purchase of game viewing vehicles. In addition, an amendment to section 12(g) of the VAT Act was effected in order to provide clarity that the supply of game viewing drives is a taxable supply at the standard rate.

Subsequent to the promulgation of the relevant law amendments in 2005, representations were made to SARS to consider delaying the implementation of the aforementioned sections, due to the negative impact the amendments would have on the industry. After specific consultation and agreement, the following was approved by SARS:

- a. In view of the practice followed by most suppliers of game viewing services to treat their service as being "*the transport of fare paying passengers*", it was directed that the supply of game viewing services is exempt from VAT until 31 December 2006;
- b. Vendors requesting the supply of game viewing services to be subject to VAT at the standard rate of 14% before 31 December 2006, were dealt with on an *ad hoc* case by case basis in that these vendors were entitled to subject the supply of game viewing services to tax at the standard rate and were entitled to the input tax on the acquisition or conversion of the game viewing vehicle.

5.1 Exempt supply of game viewing

Where the vendor elected to treat the supply of game viewing as an exempt supply (subject to the conditions set out below), input tax directly attributed to the making of such supply is not claimable and must be disallowed. In this regard, such vendors were not entitled to input tax on the “game viewing vehicle” acquired or converted on or after 24 January 2005 as it was not acquired for the use, consumption or supply in the course of making taxable supplies.

Furthermore, a vendor who exclusively supplied game viewing services (i.e. no other taxable supplies were made) was not carrying on an “enterprise” for VAT purposes and accordingly had to be deregistered for VAT purposes. These VAT registrations, subject to the registration requirements in terms of section 23 of the VAT Act, could be re-activated on or after 1 January 2007.

In this regard, it must be noted that this concession was only permitted on condition that vendors who elected to exempt the supply of game viewing for VAT purposes were -

- a. only entitled to deduct input tax on the “game viewing vehicle” acquired or converted on or after 1 January 2007; and
- b. not entitled to standard rate the supply of game viewing before 31 December 2006.

This implied that vendors –

- a. who, on or after 24 January 2005 and before 1 January 2007, acquired or converted a “game viewing vehicle” were not entitled to input tax on such acquisition or conversion; and
- b. must have retained the exemption status on the supply of game viewing until 31 December 2006.

It must, however, be noted that SARS reserves the right to withdraw the aforementioned dispensation and raise assessments to treat the supply of game viewing as a taxable supply (i.e. standard-rated at 14%), where it is detected that vendors who have treated the supply of game viewing as an exempt supply for VAT purposes **and** have claimed input tax on the “game viewing vehicles” acquired or converted on or after 24 January 2005. In addition, where the vendor concerned has not elected to utilise this option before 31 March 2006, such vendor must comply with the rules as set out in Standard-rated supplies in paragraph 5.3.

5.2 Standard-rated supplies to exempt supplies

- a. Where a vendor has with effect from 24 January 2005 applied the standard rate to the supply of game viewing services and has subsequently elected to exempt such supply under the dispensation contained in paragraph 5.1., the refund process must be done in compliance with the provisions of section 44 of the VAT Act. This implies that the vendor must first refund the client the VAT charged (i.e. issue a credit note for the VAT and effect the corresponding payment to the client) and thereafter apply for a refund from SARS.

This process must take into account the reversal or disallowance of input tax previously claimed (including the potential input tax claim on the acquisition or conversion of a “game viewing vehicle”).

- b. Alternatively, the vendor may elect not to refund the VAT previously charged to its clients and only change the VAT status with effect from a future date. In this regard, the vendor will not be required to refund the output tax paid by its clients and SARS will not request the vendor to reverse the input tax previously claimed (excluding input tax on the “game viewing vehicle” acquired or converted on or after 24 January 2005, i.e. the vendor is required to reverse input tax claimed on the acquisition of a “game viewing vehicle”).

The aforementioned arrangement was only applicable to a vendor who had elected to utilise this option before 31 March 2006. Vendors that have not utilised this option before 31 March 2006 must comply with the rules as set out in standard-rated supplies in paragraph 5.3.

5.3 Standard-rated supply of game viewing

Vendors that elected to standard rate the supply of game viewing made written submission to SARS (i.e. Legal & Corporate Services – Head Office) for this option. On approval, the vendor was permitted to standard rate the supply of game viewing and was entitled to deduct input tax on all expenses (subject to the provisions of section 17 of the VAT Act) incurred in the course or furtherance of rendering such services. In addition, such vendors that have acquired or converted “game viewing vehicles” on or after 24 January 2005 were entitled to deduct input tax on such expenses.

5.4 Assessments

In circumstances where SARS has raised assessments to standard rate the supply of game viewing services that were being treated as an exempt supply by vendors, such vendors who elected to exempt the supply of game viewing must make written requests to the SARS branch office to rectify the relevant assessments.

5.5 The supply of game viewing on or after 1 January 2007

- a. The supply of game viewing will be subject to VAT at the standard rate of 14%; and
- b. vendors will be entitled to deduct input tax on the “game viewing vehicle” acquired or converted on or after 1 January 2007.

5.6 General

All rulings issued in respect of game viewing services are hereby withdrawn in terms of section 5(2) of the VAT Act with effect from 19 October 2005.

6. Tax invoices

A registered vendor making a taxable supply must issue a tax invoice within 21 days of making such supply (i.e. this is irrespective of whether the recipient of the supply requests a tax invoice). To constitute a valid tax invoice, the relevant document must be in the currency of the Republic and contain the details prescribed in section 20 of the VAT Act. These details will vary depending on the consideration for the taxable supply.

6.1 Consideration for the supply exceeds R50 but not R3 000

If the consideration for the supply exceeds R50, but not R3 000, the document must contain the following particulars before it will constitute a valid tax invoice (referred to as an 'abridged tax invoice'):

- The words 'tax invoice' displayed in a prominent place.
- The name, address and VAT registration number of the supplier.
- An individual serialized number and the date on which the tax invoice is issued.
- A full and proper description of the goods (indicating, where applicable, that the goods are second-hand goods) or services supplied.
- With regard to the tax charged, either the value of the supply, the total amount of tax charged and the consideration including tax charged for the supply; or the consideration including tax charged for the supply and either the amount of tax charged or a statement to the effect that it includes a charge for the tax and the rate at which the tax was charged.
- The value and consideration must be denominated in Rand (except in relation to a zero-rated supply).

6.2 Consideration for the supply exceeds R3 000

If the consideration for the supply exceeds R3 000, the document must contain the following particulars before it will constitute a valid tax invoice (referred to as a 'full tax invoice'):

- The words 'tax invoice' displayed in a prominent place.
- The name, address and VAT registration number of the supplier.
- The name, address and VAT registration number of the recipient.
- An individual serialised number and the date on which the tax invoice is issued.
- A full and proper description of the goods (indicating, where applicable, that the goods are second-hand goods) or services supplied.
- The quantity or volume of the goods or services supplied.
- With regard to the tax charged, either the value of the supply, the total amount of tax charged and the consideration including tax charged for the supply; or the consideration including tax charged for the supply and either the amount of tax charged or a statement to the effect that it includes a charge for the tax and the rate at which the tax was charged.
- The value and consideration must be denominated in Rand (except in relation to a zero-rated supply).

Importantly, while the general requirement is that the tax invoice must be in the currency of the Republic, this is not necessary where the supply is subject to tax at the zero rate (proviso to section 20(4) of the Act).

6.3 Agents

The VAT Act makes provision for an agent, being a vendor, who makes a taxable supply on behalf of a principal, to issue a tax invoice on behalf of that principal. However, in this instance the principal will not be entitled to issue a tax invoice. This would however, not preclude the principal from accounting for output tax on that transaction in its VAT201 return.

The agent in issuing the tax invoice on behalf of the principal is required in terms of the VAT Act to maintain sufficient records to ascertain the name, address and VAT registration number of the principal. In addition, the agent must notify the principal in writing within 21 days of the end of the calendar month during which the supplies were made, the particulars of –

- full and proper description of the goods (indicating, where applicable, that the goods are second-hand goods) or services supplied;
- the quantity or volume of the goods or services supplied;
- either—
 - the value of the supply, the amount of tax charged and the consideration for the supply; or
 - where the amount of tax charged is calculated by applying the tax fraction to the consideration, the consideration for the supply and either the amount of the tax charged, or a statement that it includes a charge in respect of the tax and the rate at which the tax was charged:

6.4 General

Vendors that find it impractical to issue a full tax invoice (as set out in paragraph 6.1 and 6.2), must apply to SARS in order to obtain approval to deviate from the relevant provisions. In this regard, it must be noted that this application will only be considered by SARS if the vendor can satisfy the Commissioner of SARS that there are or will be sufficient records available to establish the particulars of any supply or category of supplies, and that it would be impractical to require that a full tax invoice be issued in terms of section 20 of the VAT Act. In addition, SARS might introduce certain conditions that it might deem necessary.

6.5 Examples of a tax invoice that can be issued by the agent are set out below:

TAX INVOICE

Tax invoice number (serialised)
TAX INVOICE NO. 1958

Trading name & address of supplier
Sipho's Tour Operators
CK no 99/52389/23
VAT No.: 4111252081
57 Bush Heights
BUSHLANDS
1234

Name & address of the recipient
To :
Mr Joe Soap
123 Gingerbread Road
Nottingham
United Kingdom
VAT No. N/A

The words "Tax invoice" clearly indicated

VAT registration number of the supplier

Name, address & VAT registration number of recipient only applicable if consideration exceeds R 3000

Accurate description of goods or services supplied

Date : 30 November 2005

Date of tax invoice

Quantity or volume supplied

| DATE | QTY | DESCRIPTION OF SERVICE/GOODS | VAT R | R |
|------------|-----|--------------------------------------|--------------------|-----------------|
| 30/11/2005 | 1 | Air ticket – London to JHB to London | 0.00 | 3 000.00 |
| | 5 | Accommodation - JHB | 420.00 | 3 420.00 |
| | 5 | Meals (Breakfast & Dinner) | 70.00 | 570.00 |
| | 1 | Commission | 0.00 | 570.00 |
| | | | Total | 7 560.00 |
| | | | VAT included @ 14% | 490.00 |

Amount of VAT included in the consideration

Total consideration charged

TAX INVOICE

TAX INVOICE NO. 1958

To :
Mr Joe Soap
123 Gingerbread Road
Nottingham
United Kingdom
VAT No. N/A

Sipho's Tour Operators
Ck no 99/52389/23
VAT No.: 4111252081
57 Bush Heights
BUSHLANDS
1234

Date : 30 November 2005

| DATE | QTY | DESCRIPTION OF SERVICE/GOODS | R |
|--------------------|-----|--------------------------------------|----------|
| 30/11/2005 | 1 | Air ticket – London to JHB to London | 3 000.00 |
| | 5 | Accommodation - JHB | 3 420.00 |
| | 5 | Meals (Breakfast & Dinner) | 570.00 |
| | 1 | Commission | 570.00 |
| Total | | | 7 560.00 |
| VAT included @ 14% | | | 490.00 |

Total consideration charged

Amount of VAT included in the consideration

Tax invoice number (serialised)

TAX INVOICE

Trading name & address of supplier

The words "Tax invoice" clearly indicated

Name & address of the recipient

VAT number of the supplier

Name address & VAT number of recipient only applicable if consideration exceeds R 3000

Accurate description of goods or services supplied

Date of tax invoice

Quantity or volume supplied

Amount of VAT included in the consideration

Total consideration charged