

Non-Executive Directors

VAT Quick Reference Guide

Value-Added Tax

Preface

This quick reference guide provides information and guidelines regarding the VAT treatment of non-executive directors (NEDs) and should be read in conjunction with Binding General Ruling (BGR) 40 “Remuneration Paid to Non-Executive Directors” and BGR 41 (Issue 2) “VAT Treatment of Non-Executive Directors”. This guide does not deal with all the legal detail associated with VAT and is not intended for legal reference. For more details on VAT in general, see the *VAT 404 – Guide for Vendors* (VAT 404).

All references to sections are to sections of the Value-Added Tax Act 89 of 1991 (VAT Act), unless the context indicates otherwise. The Tax Administration Act 28 of 2011 and the Income Tax Act 58 of 1962 are referred to as the “TA Act” and the “Income Tax Act” respectively. The terms “Republic”, “South Africa” or the abbreviation “RSA”, are used interchangeably in this document as a reference to the sovereign territory of the Republic of South Africa, as set out in the definition of “Republic” in section 1(1). The information in this guide is based on the VAT Act and the TA Act legislation as at the time of publishing.

The information in this guide is issued for guidance only. This guide is not an “official publication” as defined in section 1 of the TA Act and accordingly does not create a practice generally prevailing under section 5 of that Act. It is also not a binding general ruling under section 41B of the VAT Act.

Most of the examples in this guide relate to periods when the standard rate of VAT was 14%. With effect from 1 April 2018 the standard VAT rate of 15% applies to all supplies of goods or services, as well as the importation of goods and imported services, subject to certain exceptions.

Refer to the *VAT and PAYE – Non-Executive Directors – FAQs on BRGs 40 and 41* for a list of questions and answers clarifying certain technical and practical aspects relating to BGRs 40 and 41.

The previous edition of this guide has been withdrawn with effect from 28 July 2021.

The following guides have also been issued and may be referred to for more information relating to the specific VAT topics:

- *Vendors and Employers: Trade Classification Guide* (VAT / EMP 403)
- *Guide for Vendors* (VAT 404)
- *VAT Rulings Process Reference Guide*

For more information you may –

- visit your local SARS branch;
- visit the SARS website at www.sars.gov.za; or
- contact your own tax advisor or tax practitioner;

- contact the SARS National Contact Centre –
 - if calling locally, on 0800 00 7277; or
 - if calling from abroad, on +27 11 602 2093 (only between 8am and 4pm South African time);

Comments on this guide may be emailed to policycomments@sars.gov.za.

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SOUTH AFRICAN REVENUE SERVICE

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1. Background

BGR 41 confirms that non-executive directors (NEDs) are not common law employees and that no control or supervision is exercised by the company concerned, over the manner in which an NED performs his or her duties or the NED's hours of work.

Based on the above, the fees earned for services rendered as an NED (hereinafter referred to as director's fees) do not constitute "remuneration" as contemplated in paragraph 1 of the Fourth Schedule to the Income Tax Act and should therefore not be subject to the mandatory deduction of employees' tax by the company concerned.

BGR 40 confirms that for VAT purposes an NED is treated as an independent contractor as contemplated in proviso (iii)(bb) to the definition of "enterprise" in section 1(1) in respect of those NED activities. An NED who carries on an "enterprise"¹ in the Republic is therefore required to register if the compulsory registration threshold of R1 million in total value of taxable supplies is exceeded, or will exceed that amount in terms of a contractual obligation in writing in any consecutive period of 12 months.

Both BGR 40 and BGR 41 were issued on 10 February 2017. BGR 41 clarified that NEDs are carrying on an "enterprise" in respect of services rendered as an NED. BGR 41 (Issue 2) was subsequently issued on 4 May 2017 to clarify certain aspects relating to an NED's liability date for VAT registration. BGR 40 and BGR 41 both apply with effect from 1 June 2017.

The information in this guide applies to an NED, being a sole proprietor. This guide is intended to assist NEDs by highlighting specific aspects particular to NEDs, and the VAT implications of those aspects. This guide must be read in conjunction with BGR 41 (Issue 2), BGR 40 as well as the VAT 404.

2. Non-executive director

A director is member of a board of a company.² Only a natural person can be appointed as a director of a company.³

A person is entitled to serve as a director of a company, if that person is appointed or elected as such under the Companies Act, or holds an office, title, designation or similar status to be an *ex officio* director of the company. Furthermore, the person must have provided written consent to the company to serve as a director.⁴

According to the Companies Act, a company may pay remuneration⁵ to its directors for services rendered as such. The remuneration is paid in accordance with a special resolution approved by the shareholders.⁶

¹ See section 1(1).

² Section 1 of the Companies Act 71 of 2008 (Companies Act).

³ See section 66 of the Companies Act.

⁴ Section 66(7) of the Companies Act.

⁵ Note that this is not "remuneration" as envisaged in the Income Tax Act.

⁶ Section 66(8) and (9) of the Companies Act.

Based on the above, an NED is a natural person who is a member of a board of a company as appointed under the Companies Act. The NED provides services to the company as an NED, and is remunerated as such. NEDs are required to serve on various committees such as the following:

- Board committees
- Risk and Audit committees
- Remuneration committees
- Social and Ethics committees

BGR 40 clarifies that SARS considers an NED to be a director who is not involved in the daily management or operations of a company, but simply attends, provides objective judgment, and votes at board meetings.

Of importance is that BGR 40 and BGR 41 (Issue 2) only apply to NEDs who are appointed as such, under the Companies Act. It will therefore also apply to NEDs of “public entities” as defined in the Public Finance Management Act 1 of 1999, to the extent that the public entity is a company.

3. Enterprise

3.1 General

Any enterprise or activity carried on continuously or regularly in the Republic or partly in the Republic, and in the course or furtherance of which goods or services are supplied to another person for a consideration, constitutes an “enterprise”.

An NED conducting his or her trade or profession continuously or regularly in or partly in the Republic, in the course or furtherance of which the NED services are supplied to a company for a fee, is carrying on an enterprise. See BGR 41 (Issue 2). This applies to both resident and non-resident NEDs.

In instances where the non-resident NED is not carrying on any enterprise activity in South Africa, the company acquiring the NED’s services, may be liable to pay VAT on “imported services” as defined in section 1(1) to the extent that those services are acquired for non-taxable purposes.

Refer to the VAT 404 and paragraph 5.1 of Interpretation Note 70 “Supplies made for no consideration” for further details.

3.2 Nominee directors

In some instances, an NED may serve on the board of a company as a result of being nominated by a shareholder of the company that is also an employer of such NED (nominee NED). The nominee NED under those circumstances is typically expected to look after the interests of the shareholder in that company, as an employee of the shareholder, which may include, for example, ensuring that the funds invested by the shareholder are spent for the agreed purpose and to participate in the management of the said company to ensure the security of the investment.⁷

⁷ *Public Investment Corporation v Bodigelo* (128/2013) [2013] ZASCA 156 (22 November 2013)

As a result of the employer-employee relationship that exists between the shareholder and the nominee NED, it is a common outcome for the shareholder to retain the director's fees which may become payable in respect of the NED services rendered by the nominee NED to the company. For example, the shareholder may require the company to either pay the fees directly to the shareholder or to the nominee NED subject to a condition that such NED must pay the fees over to and for the benefit of the shareholder.

It is important to note that even if the director's fees are paid directly to or passed on to the shareholder, the fees are still regarded as consideration payable in respect of the NED services rendered by the nominee NED in his or her appointed and individual legal capacity, as a natural person to the company. By virtue of the appointment of the nominated NED to the board of the company, that NED is contractually supplying services to the company. Should all other requirements for enterprise be met, the nominee NED is regarded as carrying on an enterprise with respect to the supply of services as a nominee NED and will be required to register for VAT where the compulsory VAT registration threshold is exceeded.

In some instances, the nominee NED may be appointed to the board of a company without being entitled to receive any director's fees, that is, fees are neither payable directly to the shareholder or to the nominee NED. This is common within group companies where the shareholder and the company form part of the same group of companies. Under those circumstances, the nominee NED is regarded as not carrying on an enterprise with respect to the supply of services as a nominee NED, as the services are not supplied for a consideration.

4. Registration

4.1 When does a non-executive director become liable to register for value-added tax?

An NED is required to register as a vendor where the total value of taxable supplies made in any consecutive period of 12 months exceeds R1 million, or where such an amount will be exceeded in a period of 12 months, in terms of a contractual obligation.⁸ This is referred to as the compulsory registration threshold.

According to BGR 41 (Issue 2) an NED whose remuneration exceeds the compulsory registration threshold, and who is not registered as a vendor is, under section 23(4)(b), required to register with effect from 1 June 2017.

An NED may also voluntarily register as a vendor where the value of taxable supplies in any consecutive period of 12 months has exceeded R50 000.⁹ The Commissioner will determine the effective date of becoming a vendor when the NED has applied for and has satisfied the requirements to be registered voluntarily.

Once registered, an NED must carry out all the duties of a vendor. For example, the NED is required to charge VAT for services supplied as an NED (and any other taxable supplies), submit returns, make VAT payments on time and keep proper records for at least five years. VAT may only be charged on taxable supplies. VAT may not be charged on supplies that are exempt from VAT or supplies that fall outside the scope of VAT.

⁸ Section 23(1).

⁹ Section 23(3).

An NED must distinguish between services rendered in the capacity of a sole proprietor, and those rendered as a juristic person. For example, where an NED also conducts a business through a company, or a director or shareholder of a company is appointed to serve as an NED of another company, that person is appointed in his or her individual capacity, and not the company. That person must therefore separately register for VAT if the total value of taxable supplies derived from providing services as an NED, exceeds the compulsory registration threshold.

4.2 How must the value of taxable supplies be calculated?

The value of taxable supplies (turnover) made in carrying on all enterprises is taken into account to determine whether a person is liable to register. A person that operates several enterprises, or who operates an enterprise in branches or divisions cannot avoid the liability to register for VAT by considering the turnover of each enterprise, branch or division individually, subject to certain exceptions. Therefore, a running total of the turnover in respect of all enterprises for the past 12 months must be kept in order to determine whether the registration threshold is exceeded.¹⁰ For example, a sole proprietor who provides consulting services, and who supplies services as an NED must combine the consideration in respect of both these activities in order to determine whether the sole proprietor has a registration obligation. Note that amounts received for services supplied in the capacity of an employee, such as an executive director, are not included in determining the value of taxable supplies, as these amounts are not received in the course or furtherance of carrying on an enterprise.

In the case where the director's fees payable to a nominee NED are passed on or paid directly to the shareholder, these fees must still be included in determining the value of taxable supplies made by the nominee NED, in order to determine whether the nominee NED is liable to register. This is because these amounts are received in the course or furtherance of carrying on an enterprise by the nominee NED. For income tax purposes however, the fees may still be disregarded when determining the "gross income"¹¹ of the nominee NED, subject to certain conditions.¹²

A person must also consider the next 12 months because, if in terms of a contractual obligation in writing that person will make taxable supplies in excess of the R1 million threshold within that period, that person will be liable to register from the beginning of the first month of that period.¹³

In the case of an NED, the director's fees earned during the previous 12 months will be a good indication of whether that person is required to register. An NED who earned fees for a period of 12 months, before 1 June 2017, exceeding R1 million, will be required to register with effect from 1 June 2017. An NED who was appointed as a board member before 1 June 2017, and will earn director's fees exceeding the compulsory registration threshold in the next 12 months, is also required to register from 1 June 2017.

¹⁰ Section 23(1)(a).

¹¹ As defined under section 1(1) of the Income Tax Act.

¹² For more information, refer to Practice Note 4 of 1985 "*Nominee Directors: Directors Fees*".

¹³ Section 23(1)(b).

Example 1 – Calculation of the value of taxable supplies: Compulsory registration threshold exceeded after 1 June 2017

Facts:

Z commenced providing forensic accounting services to companies on 1 February 2017. From 1 February 2017 to 31 July 2017 (6 months), Z earned R560 000 in respect of the supply of forensic accounting services.

From 1 August 2017, Z is also appointed as an NED of Company X. Z receives director's fees based on the actual number of board meetings attended. For the period 1 August 2017 to 31 January 2018, Z attended 2 meetings per month, and received a fee of R45 000 per meeting.

Result:

Following Z's appointment as an NED, the value of taxable supplies made in all Z's enterprises will exceed the compulsory registration threshold $[R560\ 000 + (R45\ 000 \times 2 \times 6)] = R1\ 100\ 000$ in a consecutive period of 12 months (from 1 February 2017 to 31 January 2018). Z is required to register as a vendor with effect from 1 January 2018. The reason is that Z will exceed the compulsory registration threshold by the end of December 2017, which is the 11th month in that 12 month consecutive period¹⁴ $[R560\ 000 + (90\ 000 \times 5) = R1\ 010\ 000]$.

Z could also choose to register voluntarily for VAT at any time after the minimum threshold of R50 000 in taxable supplies has been exceeded and provided all the other requirements for voluntary registration have been met.

Example 2 – Calculation of the value of taxable supplies: Compulsory registration threshold exceeded before 1 June 2017

Facts:

Z commenced providing forensic accounting services to companies on 1 January 2016. For the period 1 January 2016 to 31 December 2016 (12 months), Z earned R950 000 in respect of the supply of forensic accounting services. Z entered into an agreement with Company X to provide forensic services from 1 January 2017 to 31 December 2017. Company X will pay Z an amount of R1 200 000 for the forensic accounting services rendered during that period. Z has also been appointed by Company Y to provide services as an NED and will sit on the Board of Company Y's Audit Committee from 1 April 2017 to 31 March 2018. Z will earn director's fees of R350 000 from Company Y during that period.

Z did not register as a vendor, as the value of taxable supplies for the past 12 months (the period ending December 2016) had not yet exceeded the R1 million threshold.

Result:

As Z will exceed the registration threshold in the next 12 months in terms of Z's contractual obligation with Company X to supply taxable services in excess of R1 million, Z became liable to register as a vendor with effect from 1 January 2017.¹⁵ Furthermore, in accordance with BGR 41 (Issue 2), if Z did not charge and account for VAT on the director's fees earned for services rendered as an NED for April 2017 and May 2017, then Z must start charging and accounting for VAT on director's fees earned on or after 1 June 2017.

¹⁴ Section 23(1)(a).

¹⁵ Section 23(1)(b).

Example 3 – Registered vendor earning director’s fees exceeding the threshold before 1 June 2017

Facts:

Z is registered as a vendor, and supplies forensic accounting services to various companies. Z has also been providing services as an NED to Company X from 1 January 2016. Z did not levy VAT nor account for VAT on the director’s fees, but did so in respect of the forensic accounting services.

Result:

Z must continue to levy and account for VAT in respect of the forensic accounting services supplied, as normal. In respect of director’s fees earned, Z must start levying VAT and accounting for output tax on the director’s fees earned from 1 June 2017.¹⁶

Example 4 – Late registration of an NED who was liable to register and account for VAT on director’s fees on or after 1 June 2017

Facts:

Z was appointed as an NED of Company DEF from 1 March 2016. In terms of the contractual arrangement with Company DEF, Z earns director’s fees of R1 500 000 annually. Z is not registered as a vendor, and applies to register as such on 1 September 2017.

Result:

Z must register as a vendor and start levying and accounting for VAT on the director’s fees from 1 June 2017.¹⁷ The fact that Z applied for registration after the liability date (that is, 1 June 2017) does not alter the fact that Z was required to register, levy and account for VAT on director’s fees earned from 1 June 2017. The result is that Z will incur penalties and interest in respect of the late payment of VAT for tax periods commencing on or after 1 June 2017.

4.3 Where must a person register?

NEDs who are liable to register must complete a form VAT101 (Value-Added Tax Registration Application) that must be submitted to SARS no later than 21 business days from the date of liability. The form must be submitted in person at the SARS branch office nearest to the place where the NED’s business is situated. Alternatively, an authorised registered tax practitioner may appear in person on behalf of the NED. (In such cases, the application must be accompanied by a Power Of Attorney form.) An NED who has several enterprises or branches or divisions that will operate under one VAT registration number should register in the area where the main enterprise or branch or division is located.

NEDs who are existing eFilers, and already registered for one or more taxes, may register for VAT by completing the Registration, Amendments and Verification form on eFiling (RAV01). NEDs who are not eFilers can register as eFilers, and then register for VAT via the RAV01 form. Refer to the VAT 404 and the **SARS website** for more information.

¹⁶ BGR 41 (Issue 2).

¹⁷ BGR 41 (Issue 2).

4.4 What documents must be submitted with an application?

It is very important that the correct documents are submitted with the application to register; otherwise there may be a delay in obtaining the VAT registration number. See the *VAT-REG-02-G01 – Guide for Completion of VAT Registration Application Forms* for a comprehensive list of documents that must be submitted. In order to prove income, NEDs will be required to submit one of the following documents:

- (a) Copy of the letter of appointment as an NED;
- (b) IRP5/IT3(a) certificate with a source code 3620 (Directors Fees – RSA Resident NED) or 3621 (Directors Remuneration – Non-Resident NED)
 - IRP5/IT3(a) certificated with these source codes will not be available prior to the issuing of the 2018 certificates by employers being April to May 2018;
 - IRP 5 certificates with source code 3620 will only be available where voluntary PAYE was withheld; or
- (c) Copy of the minutes of the directors' meeting where the director's fees of the NED were discussed and approved; or
- (d) Copy of a service contract/agreement; or
- (e) any other document evidencing the director's fees.

The NED will register as a sole proprietor with business activity code "2572".

5. Tax periods

Available tax periods for NEDs cover one or two calendar months. An NED will be required to submit monthly VAT returns under Category C where the turnover exceeds or is likely to exceed R30 million in any consecutive 12-month period.

NEDs not exceeding the above threshold will be required to submit returns as follows:

- Category A: one return for every two-month period ending on the last day of January, March, May, July, September and November.
- Category B: one return for every two-month period ending on the last day of February, April, June, August, October and December.

6. Accounting basis

6.1 Introduction

The South African VAT system generally requires vendors to account for VAT on the basis of invoices being issued or received. This method of accounting is referred to as the "invoice basis" or "accrual basis". However, certain vendors may qualify to use a different method referred to as the "payments basis" or "cash basis" of accounting.

6.2 Invoice basis

Under this method of accounting vendors must generally account for the full amount of VAT included in the price of the goods or services supplied in the tax period in which the time of supply has occurred. This applies to the output tax liability on cash and credit sales as well as the input tax that may be deducted on cash and credit purchases.¹⁸ According to the general time of supply rule, a supply occurs at the earlier of the following events:

- At the time that an invoice is issued; or
- At the time any payment is received by the supplier.

Vendors must therefore account for the full amount of output tax on any supplies made in the tax period, even where payment has not yet been received from the recipient. Similarly, the full amount of input tax may be deducted on supplies received in the tax period, even where payment has not yet been made.

6.3 Payments basis

Under the payments basis (or cash basis) the vendor only accounts for VAT on actual payments made and actual payments received in respect of taxable supplies during the period. The payments basis is only available to NEDs being natural persons whose total taxable supplies at the end of a tax period have not exceeded R2,5 million in the previous 12 months, and are not likely to exceed R2,5 million in the next 12 months. NEDs who wish to account on the payments basis, must apply in writing to account on the said basis from the date of registration. NEDs already registered on the invoice basis may also request in writing to be placed on the payments basis from a future date if the requirements are met.

7. Time of supply

7.1 General rule

Generally, the time of supply is the earlier of the time an invoice¹⁹ is issued by the supplier (or the recipient in certain instances²⁰), or the time any payment of consideration is received in respect of that supply.

7.2 Specific rules

Specific time of supply rules apply to certain transactions. For example, section 9(3)(b) provides that services supplied under an agreement or law that provides for periodic payments, are deemed to be successively supplied and each successive supply is deemed to take place when a payment becomes due or is received, whichever is earlier.

The type of arrangement regarding fees will determine when the NED is required to levy and account for VAT, as well as when tax invoices must be issued. These details may be specified in the contract for services, or the special resolution approved by shareholders.

¹⁸ Note that the input tax deduction is subject to the documentary requirements under section 16(2).

¹⁹ This is any document notifying you of an obligation to make payment and is not necessarily a tax invoice.

²⁰ For example, when the conditions for recipient-created invoicing by the recipient are met.

7.2.1 Single fee or fee per attendance

NEDs may be paid a fee to serve as a member of various committees, for example, the Remuneration Committee as well as the Risk and Audit Committee. In this instance, the NED will be paid in respect of each attendance. NEDs may also be paid a single fee, regardless of the number of committees on which the NED serves. In this instance, the fees may be paid periodically, for example, monthly or quarterly.

Example 5 – Time of supply: Single fee

Facts:

B is registered as a vendor and is paid a single fee for providing services as an NED to Company EFG. The contract for services makes provision for the fee to be paid on the last business day of each quarter. B is paid R800 000 for the quarter March to June 2017 on 30 June 2017. B is registered under Category B. B has not issued an invoice in respect of the NED services supplied for the said quarter.

Result:

Under section 9(3)(a), B's services are deemed to be supplied when payment becomes due or is received, whichever is earlier. The services supplied by B are therefore deemed to take place on the last business day of each quarter. The payment on 30 June 2017 triggers the time of supply for the entire amount of R800 000. VAT must therefore be accounted on the R800 000 in the tax period ending 30 June 2017.

Example 6 – Time of supply: Fee per attendance

Facts:

In terms of the contract for services with GEF Ltd, B is paid a fixed fee every time B is required to serve on GEF's committee meetings as an NED. B is registered as a vendor.

Result:

Under section 9(1), the time of supply will be triggered at the earlier of the time when an invoice is issued or payment of consideration is received in respect of the supply. The time of supply will therefore be triggered each time a payment is made to B for serving on GEF's relevant committee, or when B issues an invoice for that supply – whichever event occurs first.

7.2.2 Retainer fee

Instead of companies paying a fee per meeting, a retainer fee is sometimes paid to an NED, or may be paid in combination with other fees. A retainer fee is an upfront payment or prepayment for services to be rendered as an NED.

Example 7 – Time of supply: Retainer fee

Facts:

W is an NED and is registered as a vendor. In terms of the contract for services, W is paid a retainer fee in cash in order to attend all the Main Board and Audit Committee meetings of HDI Ltd, as and when these meetings arise.

Result:

Under section 9(1), the time of supply will be triggered at the earlier of the time when an invoice is issued or payment of consideration is received in respect of the supply. The time of supply will therefore be triggered when the retainer fee is paid by HDI, or when W issues an invoice in that regard – whichever event occurs first.

8. Value of supply and consideration

8.1 General rule

The consideration for a supply will normally be equal to the amount of money that is payable for the supply. The consideration for a supply is represented by the value plus the VAT charged.²¹ The term “consideration” includes payment made or to be made, whether in money or otherwise. In cases where the consideration is not in money, the consideration will be the open market value of the consideration.²² The open market value includes the VAT element.

Note that although section 10 of the VAT Act is titled “Value of supply”, some of the subparagraphs in that section prescribe the *consideration* for the supply instead of the *value* of the supply.

Specific value of supply rules apply to certain transactions. See the VAT 404 for more details.

Example 8 – Value of supply: Single fee

Facts:

In terms of the contract for services, Y (sole proprietor), an NED and registered as a vendor, will be paid a fixed fee to attend all the Main Board and Audit Committee meetings as these meetings arise. The fee per meeting is R25 000. On 1 August 2017, Y is paid R25 000 for attending one meeting during July 2017.

Result:

Under section 10(2), the value of the supply is the amount of the consideration less tax. As the consideration is in money (that is, R25 000), the consideration is the amount of the money under section 10(3). The value of the supply is calculated as follows:

Consideration R25 000

VAT	R3 070,18 (14 / 114 × R25 000)
Value	R21 929,82 (R25 000 – R3 070,18)

8.2 Reimbursive expenses and allowances

NEDs are sometimes “reimbursed” for direct and indirect expenses reasonably and properly incurred in the performance of rendering services as an NED. In other instances the NED may be paid an “allowance” to cover these expenses. In order to determine the correct VAT implications, it is important to understand whether the expenses are those of the company, or of the NED. In addition, it must be clear whether the NED is acting as principal or agent when incurring the expense. Sometimes the label of a payment for accounting purposes does not accurately or correctly reflect the nature of the payment. NEDs and companies must therefore be able to clearly demonstrate the contractual arrangement, supported by the relevant

²¹ Section 10(2).

²² Section 10(3). See also section 3.

documentary evidence, when determining the VAT treatment relating to reimbursive expenses and allowances.

A “reimbursement” normally occurs when the NED incurs out-of-pocket business-related expenses on behalf of the company, without the benefit of an advance or an allowance. Examples are air travel and accommodation expenses in order to attend meetings. The NED is subsequently reimbursed in full for the expenditure after having proved and accounted for the expenditure to the company. In this case, the expenditure is that of the company and not the NED. The company will therefore be entitled to deduct input tax on those VAT-inclusive expenses, subject to the usual requirements under sections 17(2), 16 and 20 being met. As the expenditure is incurred by the NED on behalf of the company, it does not form part of the consideration for the services supplied as an NED, and is not subject to tax in the hands of the NED. Furthermore, the NED is not entitled to any deduction of VAT incurred in respect of these expenses.

An “allowance” is generally based on anticipated business expenses that the NED will incur²³ in providing services as an NED. In the case of an allowance, there is no obligation on the NED to prove or account for the expense. In this instance, the allowance forms part of the calculation of the total consideration that needs to be paid for services rendered as an NED for the period. The NED is therefore required to account for output tax on the so-called “allowance” received. The company will be entitled to deduct input tax on the VAT-inclusive director’s fees, subject to sections 16, 17 and 20 and the definition of “input tax” in section 1(1). The NED will be entitled to an input tax deduction in respect of any VAT incurred on the goods or services actually acquired when the “allowance” was spent, subject to the usual requirements under sections 17(2), 16 and 20, and provided that such expenses were incurred in the course of the NEDs enterprise, and not incurred for private or other non-taxable purposes.

See the *VAT 411 – Guide for Entertainment, Accommodation and Catering* for further guidance on when VAT on goods or services acquired falling into the category of “entertainment” may be deducted. NEDs or companies requiring further guidance on the VAT implications of reimbursive expenses or allowances may apply for a VAT class ruling or a VAT Ruling. See the *Quick Reference Guide on VAT Ruling Application Procedure* for further details. The Commissioner may not rule on whether a person is acting as an agent or principal in respect of a supply of goods or services.

Example 9 – Consideration: Allowance

Facts:

In terms of the contract for services, C, an NED registered as a vendor, will be paid an allowance to attend board meetings in Cape Town. C is resident in Pretoria. The allowance of R35 000 has been calculated on expenses relating to the air ticket, accommodation and meals to attend four meetings in Cape Town. The resultant travel and meal costs are regarded as part of the NED’s costs of business.

²³ In this case, the sum of the expenses incurred will be determined by the NED and feature in the calculation of the NEDs fees. The expenses are therefore a direct cost to the NED and not the company. It follows that only the NED and not the company will be entitled to deduct input tax on any VAT-inclusive amounts charged in this regard (if applicable).

Result:

The amount of the allowance (R35 000) will form part of the calculation of the total consideration charged by C for the supply of services as an NED. Input tax on the VAT-inclusive travel, accommodation and meal expenses may be deducted by the NED, provided the expenses are incurred by C in the course or furtherance of carrying on an enterprise and provided that the expenses are not specifically denied under section 17(2). The NED must be in possession of the relevant tax invoices issued in the name of the NED.

Example 10 – Reimbursement

Facts:

D, an NED registered as a vendor, incurs R7 896 (including VAT) out-of-pocket expenses for travel and accommodation to attend Company DEC's board meeting in Cape Town. In line with Company DEC's reimbursement policy, D submits a claim by completing the claim form, and attaching the tax invoices, air ticket and other relevant documentation as proof of the expenditure incurred on Company DEC's behalf. Company DEC reimburses D once D's claim has been approved.

Result:

The amount reimbursed does not constitute consideration in the hands of D for the supply of NED services. Although D has been refunded the full VAT-inclusive amount of out-of-pocket expenses, there is no input tax or output tax on the payment. However, Company DEC will deduct input tax to the extent that the expenses incurred on its behalf by D are in the course or furtherance of Company DEC's enterprise, and subject to sections 17(2), 16, 20 and the definition of "input tax" in section 1(1).

9. Taxable and non-taxable supplies

9.1 Introduction

The term "supply" is widely defined in the VAT Act to include performance under any sale, rental agreement and instalment credit agreement. It also includes all other forms of supply, whether voluntary, compulsory or by operation of law, irrespective of where the supply is effected, and includes any derivative of the term.

9.2 Taxable supplies

A taxable supply is any supply (including a deemed supply) of goods or services made by a vendor in the course or furtherance of an enterprise, that is chargeable with VAT under the VAT Act. Taxable supplies, in turn, are divided into standard-rated supplies, which attract VAT at the standard rate (15% with effect from 1 April 2018²⁴ and zero-rated supplies, which attract VAT at the zero rate (0%).

9.2.1 Zero-rated supplies

Zero-rated supplies are taxable supplies on which VAT is levied at a rate of 0%. The application of the zero rate must be supported by documentary proof acceptable to the Commissioner (See the Interpretation Note 31 "Documentary Proof Required for the Zero-Rating of Goods or Services").

²⁴ Before 1 April 2018, the standard VAT rate was 14%, subject to certain exceptions.

Services physically performed outside the Republic

The supply of services physically rendered or performed outside the RSA on an ad-hoc basis, qualifies for the zero rate. This provision will apply to both residents and non-residents.

Example 11 – Services physically performed outside the Republic

Facts:

M, a resident of the RSA, serves as an NED to various companies in the Republic. The total value of these supplies exceeded the compulsory registration threshold, and M therefore registered as a vendor in respect of the NED services. ABC, a South African intermediate holding company, with its holding company in London, usually holds board meetings in South Africa. However, a board meeting to approve the Annual Financial Statements is held in London as the majority of the board members are in London attending a conference. M travels to London to attend the board meeting, where the Annual Financial Statements will be approved and signed off by the authorised directors.

Result:

To the extent that M is physically rendering NED services to ABC in London, M must levy VAT on these services at the zero rate under section 11(2)(k). NED services supplied to companies in the Republic are subject to VAT at the standard rate.

Certain services supplied to non-residents

The supply of services to a non-resident that is not in the RSA at the time the services are rendered will qualify for the zero rate [section 11(2)(l)]. Note that the standard rate will apply, where, for example, the services are supplied directly to the non-resident while the non-resident is in the Republic at the time the services are rendered.

9.2.2 Deemed supplies

A vendor may sometimes be required to declare an amount of output tax even though the vendor has not actually supplied any goods or services. Deemed supplies will generally attract VAT at either the standard rate or zero rate.

Examples of deemed supplies on which a vendor has to account for output tax at the standard rate include –

- assets retained upon ceasing to carry on an enterprise – when a vendor deregisters as a vendor, certain goods or rights forming part of the enterprise’s assets are deemed to be supplied in the course of the vendor’s enterprise, immediately before the person ceased to be a vendor, irrespective of when those assets may have been acquired, subject to certain exceptions;
- short-term insurance claims that have been paid in connection with the enterprise (for example, insurance pay-outs received for damaged or stolen stock) (see the *VAT 421 – Guide for Short-Term Insurance* and BGR 14 “VAT Treatment of Specific Supplies in the Short-Term Insurance Industry”); and
- change in use adjustments.²⁵

²⁵ See the VAT 404 for more details.

Example 12 – Insurance indemnity payment (deemed supply)*Facts:*

N (sole proprietor), an NED who is registered as a vendor, insured a laptop used in carrying out the services as an NED. The laptop was stolen during July 2017 and N's insurer pays R25 000 to N on 1 August 2017 to compensate for the loss.

Result:

As N is registered under the Category B tax period, and the indemnity payment is deemed to be received in the course of N's enterprise, N must account for output tax in the August 2017 return (covering the period July and August 2017). The VAT is calculated by applying the tax fraction to the amount received. Therefore output tax = $R25\,000 \times 14 / 114 = R3\,070,18$.

9.3 Non-taxable supplies

A non-taxable supply is a supply on which no VAT is charged under the VAT Act. There are two types of non-taxable supplies, namely, exempt supplies and out of scope supplies. Section 12 contains a list of specific types of supplies of goods and services that are exempt. Examples include the supply of financial services (for example, the provision of a loan at interest). Supplies made by persons who are not vendors, and supplies by vendors not made in the course or furtherance of an enterprise constitute non-taxable supplies, which fall outside the scope of the VAT Act.

10. Input tax and other deductions**10.1 What will qualify as input tax or a deduction?**

Generally, the VAT charged by a vendor to another vendor on any goods or services acquired for the business will qualify as input tax in the hands of the recipient vendor. It is important that input tax is only deducted insofar as the supplies are used for the purposes of making taxable supplies in the course or furtherance of the enterprise.

No VAT may be deducted when goods or services are acquired for private purposes, exempt supplies or other non-taxable purposes.

The relevant documentary proof must be held by the vendor, for example, in the case of standard-rated supplies, a valid tax invoice, debit note or credit note or other prescribed documentation must be held.²⁶

In the case of second-hand goods, records must be maintained by the vendor deducting the input tax as per form VAT264 and section 20(8).

Note that in the case of "second-hand goods", the amount of input tax that is deductible is the tax fraction (that is, 14/114 or 15/115) of the payment made towards the purchase price.

²⁶ Section 16(2)(a).

Example 13 – Limitation of notional input tax to the extent of payment of the consideration

Facts:

An NED (vendor) buys a used laptop from a non-vendor on 1 May 2018 for R6 000. The NED pays the person R4 000 immediately and the balance of R2 000 in the next tax period.

Result:

Input tax is calculated as follows:	R
Deduct in tax period 1 – R4 000 × 15 / 115 =	521,74
Deduct in tax period 2 – R2 000 × 15 / 115 =	<u>260,87</u>
Total =	<u>782,61</u>

See the VAT 404, Interpretation Note 92 “Documentary Proof Prescribed by the Commissioner”, and BGR 36 “Circumstances Prescribed by the Commissioner for the Application of Section 16(2)(g)” for more details.

The following are typical examples of expenses incurred for the purpose of making taxable supplies on which input tax may be deducted by an NED:

- Water, electricity and telephone charges.
- Administrative overheads such as audit and accounting fees.
- Marketing and advertising expenditure.
- Movable assets such as office furniture, computer equipment and cell phones.
- Rental charges for office space.
- Fees charged by VAT registered consultants and other independent contractors (but not salaries and wages of employees).
- Repairs to a motor vehicle.
- Travel expenses for business purposes, for example, an air ticket.

The following are typical examples of expenses incurred on which input tax may generally not be deducted by an NED:

- Acquisition or rental of a motor vehicle.
- Accommodation in a hotel, including for business purposes.²⁷
- Business lunches.²⁸
- Personal computer used by the family.
- Travel expenses for private purposes.
- Membership fees or subscriptions of clubs, associations or societies of a sporting, social or recreational nature.

²⁷ Unless the exception in section 17(2)(a)(ii) applies.

²⁸ Unless the exception in section 17(2)(a)(ii) applies.

10.2 How is a deduction made?

Input tax and other deductions are declared on the VAT201 return for the particular tax period.

The deductions are set-off against the output tax liability on the VAT201 return. The difference between these two amounts can either give rise to a refund, or a liability for that tax period. If the deductions exceed the total output tax liability on the VAT201 return (and any other amounts that you may owe SARS for past tax periods or other taxes), or if there is no output tax for that particular tax period, the excess will be refunded. Make sure that SARS has the correct banking details so that any refunds due can be paid safely and conveniently into the account without any unnecessary delays.

10.2.1 Period in which a deduction should be made

A deduction is only allowed in the tax period that the relevant prescribed or acceptable documentary proof is obtained. Further, to avoid forfeiting the claim, ensure that the deduction is made in time.²⁹

A deduction that was not permitted in accordance with the practice generally prevailing, is limited to six months before the tax period in which the deduction is made.³⁰ See the VAT 404 for more information.

10.3 Apportionment

10.3.1 Introduction

Generally, the full amount of VAT on goods or services acquired or imported by a vendor for the purposes of making taxable supplies may be deducted as input tax. However, where goods or services are imported or purchased locally for taxable and other non-taxable purposes (mixed purposes), only a portion of the VAT or notional input tax in respect thereof (collectively referred to as VAT) may be deducted. Therefore, when goods or services are not acquired exclusively for taxable supplies, the vendor is required to determine the part that relates to taxable supplies and deduct input tax only to that extent.

10.3.2 Direct attribution vs apportionment

Before attempting to apportion an expense, the first step is to determine if the expense can be directly attributed to a taxable or non-taxable supply. Direct attribution means that the vendor is required to attribute the VAT expense according to the intended purpose for which the goods or services acquired will be used.

Direct attribution means that permissible expenses³¹ are incurred either –

- wholly for making taxable supplies, in which case the VAT can be deducted in full; or
- wholly for making exempt supplies or other non-taxable purposes, in which case no VAT on the expense can be deducted as input tax.

²⁹ Paragraph (i) of the proviso to section 16(3).

³⁰ Paragraph (ii) of the proviso to section 16(3).

³¹ VAT on certain expenses listed in section 17(2) may not be deducted, even if the expense is incurred for purposes of making taxable supplies.

It is only when an expense has been incurred partly for the purpose of consumption, use or supply in the course of making taxable supplies and partly for exempt and other non-taxable purposes, that the VAT must be apportioned. Once it is clear that the expense must be apportioned, the next step is to calculate the proportion of VAT that may be deducted as input tax. This is referred to as the apportionment ratio and is expressed as a percentage. Although there may be a few exceptions, the most common expenses that need to be apportioned are the general overheads of the business. See the VAT 404 for more details.

The concept of direct attribution is illustrated in **Examples 14 to 16** below.

Example 14 – Direct attribution: Taxable supplies

Facts:

S, an NED and a vendor, acquires a second cell phone from a vendor that will only be used for purposes of conducting activities as an NED.

Result:

As S will only use the second cell phone in the course or furtherance of the enterprise (that is, for supplying services as an NED), the expense is wholly attributable to making taxable supplies and S can deduct the full amount of VAT charged as input tax.

Example 15 – Direct attribution: Private use

Facts:

S (sole proprietor), an NED and a vendor, acquires a cell phone from a vendor that will be used wholly for private purposes.

Result:

Since S will use the cell phone wholly for private purposes, S is not entitled to any input tax deduction.

Example 16 – Direct attribution vs. apportionment

Facts:

S, an NED and a vendor acquires a cell phone from a vendor that will be used partly in the enterprise (supplying services as an NED), and partly for private purposes.

Result:

Since S will use the cell phone partly to make taxable supplies (services as an NED) and partly for private purposes, S cannot directly attribute the expenses wholly to taxable or wholly to non-taxable/exempt supplies. S will therefore be required to apportion the expenses using an appropriate apportionment method.

10.3.3 Apportionment methodology

Once it has been established that the expense cannot be directly attributed wholly to taxable purposes or wholly to exempt or other non-taxable purposes, the second level of enquiry is to determine the portion of VAT that qualifies as input tax, based on the extent to which the intended use is for taxable purposes. The apportionment ratio must be determined by using an approved apportionment method so that a fair and reasonable proportion of VAT is deducted as input tax.³²

The only pre-approved method that may be used to apportion VAT incurred for mixed purposes without specific prior written approval from the Commissioner is the turnover-based method. This method may be applied in the absence of a specific ruling obtained by the vendor to use another method. However, in circumstances where the turnover-based method is inappropriate because it produces an absurd result, proves impossible to use, or does not yield a fair approximation of the extent of taxable application of the enterprise's VAT-inclusive expenses, the vendor must approach SARS to obtain approval to use an alternative method that yields a more accurate result.³³

As the turnover-based method will generally not be appropriate for NEDs, NEDs should apply for a VAT Ruling in order to obtain approval to use an alternative method of apportionment. See the *Quick Reference Guide on VAT Ruling Application Procedure* for more details.

11. Tax invoices

11.1 Introduction

The issuing of a tax invoice is an obligation on every vendor that makes taxable supplies in the course or furtherance of their enterprise and it is an integral part of the audit trail of a vendor and its activities. Failure to issue tax invoices is therefore a contravention of the VAT Act and vendors will be guilty of an offence.³⁴ The TA Act requires all vendors to maintain records in their original form, for example, tax invoices, and for those records to be kept at a safe location.

The VAT Act identifies different transactions that each requires different types of tax invoices:

- If the consideration for the supply is more than R5 000 (including tax), a full tax invoice must be issued.
- If the consideration for the supply is less than R5 000 (including tax), an abridged tax invoice may be issued, except when that supply is a zero-rated supply.³⁵
- If the consideration for the supply is less than R50, a tax invoice does not have to be issued.
- If the Commissioner is satisfied that it is impractical to issue a full tax invoice in respect of a particular transaction and that there are sufficient other records available, the Commissioner may direct that a tax invoice does not need to be issued or certain particulars need not be reflected on the tax invoice.³⁶

³² See section 17(1) and Chapter 7 of the TA Act.

³³ See BGR 16 "Standard Apportionment Method".

³⁴ Section 234 of the Tax Administration Act 28 of 2011.

³⁵ See the proviso to section 20(5).

³⁶ See BGR 27 "Application of Sections 20(7) and 21(5)"; Interpretation Note 83 "Application of Sections 20(7) and 21(5)".

The NED, being the registered vendor is required to issue a tax invoice to the company the NED serves, in respect of the NED services. On the basis that the NED is serving the company in his or her personal capacity, another juristic legal entity (for example, a company through which the NED is conducting a consulting business) cannot issue the tax invoice on behalf of the NED as contemplated in section 54(1), as the juristic person cannot supply the NED services for or on behalf of the NED as agent.³⁷

11.2 What are the requirements for tax invoices?

The following information must be reflected on a tax invoice for it to be considered valid:

Full tax invoice (Consideration of R5 000 or more) Section 20(4) of the VAT Act.	Abridged tax invoice (Consideration less than R5 000) Section 20(5) of the VAT Act.
<ul style="list-style-type: none"> • The words “tax invoice” or “invoice” or “VAT invoice” may be reflected on the document. • Name, address and VAT registration number of the supplier.³⁸ • Name, address and VAT registration number of recipient. • Serial number and date of issue. • Full and proper description of the goods and/or services. • Quantity or volume of goods or services supplied. • Price and VAT (according to any of the 3 approved methods discussed below). 	<ul style="list-style-type: none"> • The words “tax invoice” or “invoice” or “VAT invoice” may be reflected on the document. • Name, address and VAT registration number of the supplier. • Serial number and date of issue. • Full and proper description of the goods and/or services. • Price and VAT (according to any of the 3 approved methods discussed below).

The table below shows the correct methods of reflecting the consideration and VAT for taxable supplies on a tax invoice, debit note or credit note.

Method 1	Method 2	Method 3
All individual amounts reflected.	Total consideration only and the VAT rate charged.	Total consideration and the VAT charged.
Price (excl. VAT) R500 VAT charged <u>R 75</u> Total including VAT <u>R575</u>	The total consideration R575 VAT included @ 15%	The total consideration R575 VAT included R 75

³⁷ This guide does not deal with nominee directors.

³⁸ See BGR 21 “Address to be Reflected on a Tax Invoice, Credit and Debit Note”.

Example 17 – Full tax invoice (consideration more than R5 000)

S Sole Proprietor
Rivers Edge Road
Mount Edgecombe
The Hills
VAT Number: 4111252081

Invoice: 2020/ 004

DATE: 30 April 2020

TAX INVOICE

To : ABC (Pty) Ltd
456 Pale water Drive
Glen Fields
Johannesburg
VAT No. : 4740123987

Date	Quantity	Description	R
30/04/2020	1	Attendance of board meeting on 5 April 2020 @ R80 000 VAT exclusive	80 000,00
		VAT @ 15%	12 000,00
		Total	92 000,00

Quantity of goods or services supplied.

Name, address and VAT registration number of the supplier.

Serialised tax invoice number and date of the invoice.

The words “tax invoice” or “VAT invoice” or “invoice” must appear on the document.

Name, address and VAT registration number of the recipient.

Proper description of the goods or services supplied.

Total selling price charged including VAT. The VAT amount must either be separately quoted or the tax invoice must contain a statement that the total consideration includes VAT and the relevant VAT rate.

The following important points should also be noted with regard to tax invoices:

- A vendor must issue a tax invoice to the recipient within 21 days of the supply having been made for which the consideration for the supply exceeds R50.
- A tax invoice must be in South African currency, except for a zero-rated supply (for example, goods exported) or in the case of certain supplies of electronic services by non-resident suppliers.³⁹ A full tax invoice (see the example on the previous page) must be issued in respect of zero-rated supplies, even if the consideration is less than R5 000. A full tax invoice must indicate the recipient’s VAT registration number (if that person is a vendor).

³⁹ See BGR 11 “Use of an Exchange Rate” for more information.

11.3 Other cases

Should the Commissioner be satisfied that there will be sufficient records, and that it will be impractical for a tax invoice to be issued, permission may be granted to the supplier⁴⁰ that tax invoices are not required to be issued, or that the information on the tax invoice may vary from the standard requirements. Should a supplier be permitted by the Commissioner to issue such a varied or alternative document, the recipient of the supply will be permitted to use that document as documentary proof to deduct input tax. See BGR 27 “Application of Sections 20(7) and 21(5)”, and Interpretation Note 83 “Application of Sections 20(7) and 21(5)” for more information.

12. Debit and credit notes

12.1 Introduction

Debit and credit notes must be issued in certain instances. For example, a debit note will be issued by the supplier when the tax invoice for the supply has already been issued and the previously agreed consideration is subsequently increased. Conversely, a credit note will be issued by the supplier when the tax invoice for the supply has already been issued and the previously agreed consideration is subsequently reduced. Note that it is not permissible to issue more than one tax invoice per taxable supply.

12.2 When must debit and credit notes be issued?

The following events relevant to an NED trigger the need for a vendor to issue a debit note or credit note:

- The price on the tax invoice was either overstated or understated. The supplier must make an adjustment in calculating the tax payable in the return for the tax period during which it has become apparent that the output tax is incorrect.
- The rate of tax charged is incorrect.

Should the above circumstance apply and the supplier has issued a tax invoice in which the tax charged is incorrect, a debit or credit note must be issued, whether or not the supplier accounts for tax on an invoice or payments basis.

12.3 What details must appear on debit and credit notes?

The following details should appear on debit and credit notes:

- The words “debit note” or “credit note” (as the case may be).
- The name, address⁴¹ and VAT registration number of the vendor.
- The name and address of the recipient (unless the supplier originally issued an abridged tax invoice).
- The date on which the debit note or credit note is issued.
- The amount by which the value of the supply and the VAT charged has been altered (or where the tax invoice reflected only the total consideration and a statement regarding the rate of tax applied, the amount by which the consideration has been reduced must be reflected and either the difference in VAT or a statement that the adjustment includes an amount of tax and the rate of the tax included).

⁴⁰ Section 20(7).

⁴¹ See also BGR 21 for more information.

- A brief explanation of the circumstances giving rise to the debit or credit note.
- Sufficient information to identify the transaction to which the debit or credit note refers for example, a reference to the original tax invoice number and the date on which it was issued.

13. Record keeping

The VAT Act prescribes records and documents that must be retained in addition to the record required under the TA Act.⁴² This includes a record of all goods and services supplied by or to the vendor, the rate of tax applicable and all invoices, tax invoices, credit notes, bank statements, and details about any apportionment method used.

The VAT Act includes specific requirements on the issuing of tax invoices, debit and credit notes, and the storage of these documents.

The period for which the records must be retained is five years from the date a return has been submitted for a tax period. See the VAT 404 for more guidance.

⁴² Section 55 of the VAT Act and Part A of Chapter 4 of the TA Act.