

HOW TO DEAL WITH VAT WHEN YOU ARE ACTING AS AN AGENT

1. In the commercial world, one often finds agents buying or selling goods and services for their principals. Where a company buys or sells goods for another group company, it will usually be acting as an agent of that company. There is no law which requires agency agreements to be in writing, agency agreements can be verbal.
2. To accommodate this phenomenon, section 54 of the Value-Added Tax Act, 1991, provides as follows:

54(1) *Where an agent **sells** on behalf of a principal, the sale is deemed to be made by the principal and not the agent.*

If the sale is VATable and the agent is a VAT vendor, the agent can issue his tax invoice, debit or credit note as if he made the sale.

The agent can hand over the tax invoices made out in his name to his principal and the principal must declare the output tax on these sales. The tax invoices should be marked "agent sales."

*The agent **must** not declare output tax on these sales (as they are the principal's sales) and he **must** not claim input tax when he pays over the money for these sales to his principal. If he gets this wrong, his VAT returns will not reconcile with his income tax returns and he will have a serious audit from SARS.*

*The agent declares output tax **only** on the commission he receives and must issue a tax invoice to his principal so that the principal can claim input tax on the commission he paid to the agent.*

54(2) *Where an agent **buys** goods or services for his principal, the purchase is deemed to be made by the principal and not the agent.*

If the sale is VATable, the agent can request the seller to make out the tax invoice to him, as if he was the purchaser.

The agent can hand over these tax invoices to the principal to enable him to claim the input tax. The tax invoices should be marked "agent purchases," because they show the agent's details and not the principal's.

The agent **must** not claim input tax on these purchases (because they are not his purchases) and must not declare output tax when he is reimbursed by the principal. There is no reason why the principal cannot pay the supplier directly. If SARS finds that he has claimed input tax on purchases made for his principal, it will disallow the input tax and levy penalties and interest.

The agent must declare output tax **only** on any commission he receives from his principal, and must issue a tax invoice to the principal so that the principal can claim the input tax on the commission.

54(3) The agent must maintain records of sales and purchases he makes on behalf of his principal.

Because an agent may not want to disclose to his principal who he sold to, or who he bought from, he may keep copies of the tax invoices he made out for sales or the tax invoices he received for purchases on behalf of his principal.

In such case, the agent must send a monthly statement to his principal giving details of the goods or services sold or bought, the quantity of the goods or services bought or sold, the selling or purchase price and the amount of VAT charged or paid. This statement can also constitute the tax invoice for the agent's commission. In such case, it must state "statement for agency sales/purchases" and "tax invoice." It must also show the VAT registration numbers of the agent and the principal.

In terms of section 16(2)(e) of the VAT Act, if the agent bought goods or services for his principal and the agent keeps the tax invoices, the principal must claim his input tax credit on the basis of the information contained in this monthly statement.

Where the agent sells on behalf of his principal and the agent keeps the tax invoices he has made out in his name in respect of such sales, the principal must declare output tax according to the information shown on the monthly statement.

Peter Franck
VAT Specialist
Pretoria