VAT Fundamentals

Presented by

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Programme:

08:15 – 08:55  Registration
09:00 – 10:30  VAT Fundamentals
10:30 – 10:50  Tea Break (20 mins)
10:50 – 13:00  VAT Fundamentals
13:00          Conclusion
Welcome
2016 VAT Fundamentals

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2016 VAT Fundamentals
PREFACE

The Seminar notes are designed to assist you in understanding the basic principles of Value-Added Tax (VAT) and can be used as a helpful tool to solve everyday VAT questions.

We have highlighted and interpreted various sections of the Value-Added Tax Act, no 89 of 1991 ("the Act") and will discuss these concepts briefly in the seminar.

Even though we have taken the greatest care to ensure that our notes are accurate, it is only intended to serve as a guide to understanding the basic VAT principles and is by no means a comprehensive guide or a summary or an opinion of the Act and should not be used for legal reference. The notes are intended for training purposes only.

You are encouraged to contact our facilitator when dealing with more unusual and complicated concepts in your daily administration of VAT. The facilitator can be contacted as follows:

Victor Terblanche 011 262 6626 victort@vatitsa.co.za

We hope that you will enjoy your seminar!

Terms of referencing:

The Value-Added Tax Act, 1991: ("the Act")
Tax Administration Act No. 28 of 2011: ("TAA")
Promotion of Administrative Justice Act 3 of 2000: ("PAJA")

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1. Background to SA VAT system

There are currently more than 160 countries using VAT or goods and services tax.

VAT introduced in September 1991, replacing General Sales Tax ("GST").

Any retail tax greater than 10% resulted in an increase in tax evasion and fraud.

Government decided to implement a VAT system which would be:

- **Destination based**: invoice-based which taxes domestic consumption and importation. Not intended to tax exports

- **Invoice method**: forms the basis for the calculation and function of VAT and is supported by the use of tax invoices

- **VAT base**: should be as broad as possible

- **Single rate**: levied at a single rate, which is currently 14%.

Under the VAT system, the tax is charged on each transaction in the production and distribution chain i.e. from the sale of the raw materials to the manufacturer, then to the retailer and finally to the consumer.

The intention is to tax the final consumer and the VAT system therefore allows the vendors in the supply chain to generally claim input tax deductions.
2. Enterprise

2.1 The Meaning of Enterprise

"Enterprise" is defined in section 1(1) of the Act and is the basis for determining whether or not a liability for VAT will occur, i.e. whether a reason exists for a person to register for VAT.

An "enterprise" as defined is a business in the broadest sense of the word.

Almost all the VAT systems in the world will have a similar definition which will test the existence of a "VAT-able activity".

In UK VAT the term "business" is used and in New Zealand, the term "taxable activity" is used.

We analyse below the various components of the "enterprise" definition:

"...any enterprise or activity...

The "enterprise or activity" can be tested by applying some of the following guidelines:

- A serious undertaking or occupation - not necessarily confined to commercial undertakings;
- An occupation or function which is actively pursued with reasonable or recognisable continuity;
- An activity organised in a regular manner, using recognised business principals;
- The making of supplies to customers for a consideration;
- An activity commonly carried on by others with a view to making a profit.

These factors are important considerations but are not conclusive to establish the existence of an enterprise or activity.
“...which is carried on continuously or regularly...”

continuous and regular should arguably be construed as complementary, where “regularly” is concerned with repeated actions and “continuously” with an ongoing assignment or assignments.

“...by any person in the Republic or partly in the Republic...”

A "person" is widely defined and includes companies, individuals, partnerships, a body of persons and foreign companies.

The “Republic” is defined in section 1(1) of the Act and includes the territory of the Republic of South Africa (SA), the territorial waters (the sea within a distance of twelve nautical miles from the baselines), the contiguous zone (the sea beyond the territorial waters, but within a distance of twenty four nautical miles from the baselines) and the continental shelf (the continental shelf as defined in article 76 of the United Nations Convention on the Law of the Sea, 1982).

Generally any person supplying goods or services within this territory would therefore be regarded as supplying the goods or services in or partly in the "Republic" for the purposes of the definition of an "enterprise".

“... and in the course or furtherance of which goods or services are supplied to any other person for a consideration...”

"goods" and "services“ are widely defined in the Act and includes inter alia fixed property, tangible movable goods and any real right in corporeal movable goods, the granting, assignment, cession or surrender of any right, anything done or to be done etc.

"consideration“ includes any payment made or to be made whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods or services.

By applying the above test, it can be determined whether an "enterprise“ exists. In addition to the above, various other specific inclusions and exclusions exist when determining the existence of an "enterprise".
2.2 Specific inclusions

Specifically included within the meaning of enterprise are the following examples (not a comprehensive list):

- supplies by the State approved by the Minister of Finance;
- "welfare organisation";
- commencement or termination of an enterprise;

2.3 Specific exclusions

The meaning of enterprise is limited by the exclusion of a number of activities, of which some are listed below:

- Supply of goods or services outside SA by a branch or main business of any concern;
- Services rendered by an employee to his employer in the course of his employment, or the rendering of services by the holder of any office in performing the duties of his office (independent contractors, labour brokers etc. not included);
- Private or recreational pursuits or hobbies;
- The making of exempt supplies (detail in part 4);
- Supplies by constitutional institution listed in Schedule 1 of the PFMA;
- Commercial accommodation not exceeding R 120 000 (1 April 2016).
3. Registration

3.1 General

After having applied the "enterprise" test as per our part 2, a vendor will thereafter have to determine whether or not it is liable to register for VAT.

Value of all taxable supplies exceeds, or is expected to exceed, R1 000 000 in any 12 month period.

Expectation of exceeding R 1 000 000 in any period of 12 months, not necessarily a calendar year, will also require a VAT registration.

Complete a VAT101 "Application for Registration form" which is obtainable from the South African Revenue Services (SARS) website (www.sars.gov.za).

Must be submitted within 21 days of the person becoming liable for registration. Various other documents must be submitted together with the VAT101 form for an application to be considered by SARS.

Representative vendor must be appointed. It is this person’s responsibility to perform the duties imposed on him by the Act.

The representative vendor must ensure that SARS is notified within 21 days if there are any changes with regards to the vendor’s information (change in business address, turnover exceeds R30 million in any 12 month period, appointment of new Directors, etc.).

A taxpayer is not relieved from any liability or duty imposed under a Tax act by reason of the fact that the taxpayer appointed a representative vendor.

Voluntary registration possible if threshold of R50 000 in any 12 month period is exceeded or if other requirements are met without having sales.
3.2 Categories of Registration

<table>
<thead>
<tr>
<th>Category</th>
<th>Example</th>
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<tbody>
<tr>
<td>Category A</td>
<td>Vendors whose tax periods are periods of two months</td>
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<td>&quot;Unequal months&quot;, thus ending on the last day of the months of January,</td>
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<td>March, May, July, September and November</td>
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<td>Small/Medium businesses</td>
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<tr>
<td>Category B</td>
<td>Vendors whose tax periods are periods of two months</td>
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<td>&quot;Equal months&quot;, thus ending on the last day of the months of February,</td>
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<td>April, June, August, October and December</td>
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<td>Small/Medium businesses</td>
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<td>Category C</td>
<td>Vendors whose tax periods are periods of one month ending on the last day</td>
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<td>of each of the 12 months of the calendar year</td>
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<td>Bigger companies with turnovers greater than R30 000 000</td>
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<td>Category D</td>
<td>Vendors whose tax periods are periods of six months ending on the last</td>
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<td>day of February and August of the calendar year</td>
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<td>Businesses with agricultural, pastoral or other farming activities</td>
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<td>As of 1 March 2014, Micro Businesses may apply to be placed into this</td>
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<td>category</td>
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<td>Category E</td>
<td>Vendors whose tax periods are periods of twelve months ending on the last</td>
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<td>day of their &quot;year of assessment&quot; as defined in section 1 of the Income</td>
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<td>A Company or trust fund with letting of fixed property or renting of</td>
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<td>movable goods, which issues annual invoices</td>
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4. Supply

After successfully registering for VAT, a vendor will be obliged to declare its output tax liabilities to SARS.

4.1 Definition of supply

The term "supply" is widely defined in section 1(1) of the Act and includes performance in terms of a sale, rental agreement, instalment credit agreement and all other forms of supply, whether voluntary, compulsory or by operation of law, irrespective of where the supply is effected, and any derivative of "supply" shall be construed accordingly.

There must be a transfer of ownership from one person to another, including barter transactions.

Branches and divisions may in certain circumstances be regarded as separate persons for VAT purposes.
4.2 Taxable supply

“Taxable supply” is defined in section 1(1) of the Act and means any supply of goods or services which is chargeable with tax under the provisions of section 7(1)(a), including tax chargeable at the rate of zero per cent under section 11.

Taxable supplies consist of standard rated supplies, zero rated supplies and deemed standard and/or zero rated supplies.

Non taxable supplies consist of i.e. exempt supplies and non-supplies.

4.3 Different types of supply:

We proceed to discuss all the various types of supplies:

4.3.1 Standard rated supply – section 7(1) of the Act

This is a taxable supply made by a vendor, which is taxed at the rate of 14%. The vendor is entitled to a deduction for the tax payable by him on all goods and services acquired and utilised by him in making the taxable supplies (his “input tax”).

As a general rule, all goods and services are supplied at the standard rate, unless it is specifically zero rated or exempt in terms of the Act.

Section 7(1)(a) of the Act - VAT at the standard rate of 14% on supplies of goods or services in the course or furtherance of any enterprise.
4.3.2 Zero rated supply – section 11 of the Act

A zero rated supply is also a “taxable supply” which is charged at a tax rate of 0%.

The vendor obtains a full deduction for the tax payable by him on all goods and services acquired and utilised by him in the course of making the supply.

Zero rating is the most favourable treatment for any transaction in the VAT system.

Vendors making zero rated supplies generally find themselves in the position of being owed refunds by SARS.

Examples of zero rated supplies:

- Direct (SARS Interpretation Note 30) and indirect export of goods (Interpretation Note 31 read with Regulation GNR. 316 of 2 May 2014) supplied to a recipient in an export country;
- The sale of a business as a going concern, subject to certain requirements;
- Goods acquired and used for agricultural, farming and pastoral purposes for example animal feed, animal remedies, fertilizer, pesticide etc, and subject to certain requirements;
- Certain fuel levy goods (petrol and diesel);
- Basic foodstuff, for example brown bread, maize meal, milk, fruit and vegetables (Schedule 2 of the Act).
- Export and/or rendering of certain services to non-residents;
- Municipal property rates are subject to the zero rate;
- Transport of passengers or goods to an export country;
- Services physically rendered outside the Republic.
4.3.3 Exempt supplies – section 12 of the Act

An exempt supply is a supply on which no VAT is charged.

It is irrelevant whether the supplier is a vendor or a non-vendor.

The person making the supply is not entitled to an input tax deduction on any goods or services acquired and utilised by him for the purposes of making the supply.

Examples of exempt supplies include:

- Financial services (such as interest, life insurance, pension fund, provident fund, and medical aid);
- Supplies by associations not for gain of any donated goods or services if at least 80% is used in making a supply (such as church bazaars);
- Letting and hiring of residential accommodation in a dwelling;
- Levies paid to body corporate and share block companies (subject to requirements);
- Transportation of fare-paying passengers by road or rail (including bus travel, taxis and trains); and
- The provision of educational services (crèches, primary and secondary schools, universities, technikons and other institutions registered under an Educational Act).
4.3.4 Non-supplies

Where a gift, donation, inheritance or in specie distributions are made to a recipient for which no consideration is paid or no supply is made in return by the recipient.

No effect on the vendor’s output tax calculations as the value of the supply is nil.

4.3.5 Deemed supply – section 8 of the Act

As a registered vendor, you may sometimes be required to declare an amount of output tax even though you have not actually “directly” supplied any goods or services.

Deemed supplies will generally attract VAT at the standard rate. However, in some instances the zero rate will apply.

**Examples of standard rated deemed supplies include—**

- A person ceasing to be a vendor is deemed to make a supply of certain assets in his enterprise;
- Trading stock taken out of the business for private use;
- Certain fringe benefits provided by an employer to its employee (Seventh Schedule to the Income Tax Act of 1962) includes: use of company cars, free or discounted use of assets, free or discounted services;
- Short-term insurance indemnification payments;
- Change in use adjustments – section 18 of the Act.
Examples of zero rated deemed supplies include-

- Grants or subsidies paid to vendors (not defined as a "designated entity") by a public authority or municipality;
  - The deemed supply is subject to VAT at the zero rate in the hands of the recipient, unless the receipt constitutes payment for the actual procurement of goods or services by the public authority or municipality making the payment.

- The disposal of an enterprise as a going concern or a part thereof which is capable of separate operation.

4.4 Importation of goods and services

4.4.1 The importation of goods – section 13 of the Act

Subject to exceptions, any goods imported into SA and cleared by SARS for home consumption will be subject to VAT at 14%.

VAT on importation may be claimed by a vendor in the course of conducting an enterprise.

The vendor, or the vendor’s agent must hold a valid bill of entry (DA500, CCA1 or SAD 500), together with the receipt for the VAT paid to SARS on the importation.
4.4.2 The importation of services – section 14 of the Act

"Imported services" means a supply of services that is made by a supplier who is resident or carries on business outside the Republic to a recipient who is a resident of the Republic to the extent that such services are utilized or consumed in the Republic otherwise than for the purpose of making taxable supplies.

The recipient of the imported services is responsible for the declaration and payment of the VAT.

Electronic service providers (e-books, music, apps and other digital services) are required to register for VAT subject to requirements.

4.5 Intercompany supply

A separately VAT registered branch/division/subsidiary is a separate entity for VAT purposes.

As a result, even if two branches or divisions with two separate VAT numbers are part of the same legal entity and a supply takes place between these two branches/divisions, the transaction may be subject to VAT.

The supplying branch/division must issue a tax invoice to enable the recipient party to claim an input tax deduction.

Journal entries or intercompany debit notes are not sufficient.

However, it is important to remember that where a transaction takes place between two divisions/branches of the same VAT entity (thus, one VAT registration number) the transaction is not subject to VAT.
A purchasing vendor is obliged to account for VAT on the unpaid portion of a supply, where goods and/or services are acquired but not paid for in full within 12 months (i.e. representing a claw-back of the VAT which the vendor claimed when it acquired the goods and/or services).

This creates anomalies where these provisions are applied to supplies between intra-group companies where loan accounts (as is often the case) are not cleared within 12 months.

As from 10 January 2012 these adjustments will not be required for intra-group supplies subject to the supplying company not writing off the debt.

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5. Time and Value of Supply

5.1 Time of Supply

5.1.1 General

The general rule for the time of supply in section 9(1) of the Act is the earliest of:

- The date on which the invoice is issued; or
- The date on which any payment of consideration is received.

An "invoice" means a document notifying an obligation to make payment; and

"Consideration" includes any payment made or to be made whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods or services. Consideration specifically excluded deposits, other than a deposit on a returnable container.

Generally, the time of supply for a vendor registered on the payment basis is to the extent that payment is received for a supply.
**5.1.2 Specific time of supply rules**

**Connected persons**

A "connected person" is a defined term in section 1(1) of the Act and includes:

- Relatives of a natural person or the estate of any such relative if the relative is deceased or insolvent; or
- Trust funds in respect of which any such relative or such estate of such relative is a beneficiary; or
- Any trust fund and any person who is or may be a beneficiary in respect of that fund; or
- Any partnership or close corporation and its members and any other person connected to such a member; or
- Any company (other than a close corporation) and:
  - any person, his spouse or minor child or any trust fund in respect of which they may be a beneficiary, is separately interested or two or more of them are in the aggregate interested in 10 per cent or more of the company’s paid-up capital or equity share capital or voting rights of the shareholders, whether directly or indirectly; or
  - any other company the shareholders in which are substantially the same persons as the shareholders in the first-mentioned company, or which is controlled by the same persons who control the first-mentioned company; or
- Any separate enterprise, branch or division of a vendor which is separately registered as a vendor; or
- Branch, division or separate enterprise of an association not for gain; or
- Any person and any superannuation scheme of which the members are mainly employees or former employees.

**Time of supply for connected persons in terms of section 9(2)(a) of the Act:**

Where the supplier and the recipient are "connected persons", a supply of goods or services shall be deemed to take place:

- Where the goods can be removed, at the time the goods are physically removed;
- Where the goods cannot be removed, at the time when the goods are made available to the recipient;
- Where the supply constitutes services, when the services are performed.

No apparent reason for this provision where both parties are registered vendors and the supplies are made in the course or furtherance of its enterprises.

Relief from 1 April 2016 where the consideration can not be determined at the time of supply and the recipient is entitled to a full input tax deduction then default to general rule.
Example of Time of supply for connected persons

Company ABC is a vendor registered under Category B. ABC rents a delivery truck to its executive director (50% shareholder) to assist in deliveries for his personal business during January to March 2012. The Executive Director collects the truck on 10 January 2012. Company ABC submits their return for February on 25 March 2012.

If no payment was received, and no invoice was issued by 25 March 2012, the time of supply will be at the time that the truck was removed, as Company ABC and the Executive Director are connected persons. ABC will have to account for the supply in its February return.

If ABC issues an invoice for the rental on or before 25 March 2012, the normal time of supply rules apply. ABC will accordingly declare the VAT on the supply in its March return.

Progressive, successive and periodic supplies – section 9(3)(a) and (b) of the Act

Where goods are supplied under a rental agreement or services are supplied where provision is made for periodic payments, they are deemed to be supplied successively.

The time of supply is deemed to take place on the earlier of the date when payment is due or when payment is received. Some examples are office machine rentals, maintenance or management contracts and cleaning services.

Where goods are supplied periodically or progressively and the agreement provides for the consideration to be paid in instalments, or according to the progress made in relation to the supply, the time of supply is the earliest of the date when payment is due or is received, or any invoice relating to the payment is issued.
Example of Time of supply for Progressive supplies (construction)

Big Builder Construction is registered for VAT under Category C tax period (monthly) and enters to a contract to build 150 residential units for a total contract price of R6 500 000 (VAT inclusive). The agreement provides for monthly progress payments to be made over a period of 12 months. At the end of January and February 2012, the work certified as completed by the appointed Project Manager was 20% and 33% respectively. Big Builder Construction issued two tax invoices as follows:

- Invoice 1234 - 31 January 2012 R1 300 000 (20% of R6 500 000)
- Invoice 1235 - 28 February 2012 R845 000 (33% of R6 500 000)

As the goods are deemed to be supplied progressively, Big Builder Construction will not account for the full contract price at the time the agreement is entered into. Big Builder Construction will account for VAT of R159 649.12 (14/114 x R1 300 000) in its January 2012 return and R103 771.93 (14/114 x R845 000) in its February 2012 return.

Instalment credit agreement (ICA)

Where goods are supplied under an ICA, the supply is deemed to take place at the earlier of the time the goods are delivered or any payment of the consideration is received by the supplier.

Fixed property

Goods consisting of fixed property or any real right therein are deemed to be supplied on registration of transfer in a deeds registry, or the date upon which any payment is made (whichever occurs first).

A “deposit” is not considered to be “any payment” until the seller is able to apply that payment as consideration.

Where the payment is held in a trust by an estate agent or attorney, it does not constitute payment made.
Delinking VAT from transfer duty

The input tax which may be deducted on the acquisition of fixed property from a non-vendor on or after 10 January 2012 is now subject to the same rules in respect of input tax deductions on other second-hand goods.

The amendment is not retrospective and does not have effect of allowing the input tax previously denied to be deducted on properties held which were acquired before 10 January 2012.

Fringe benefits

Time of supply is the end of the month in which such benefit is required to be included as remuneration.

5.2 Value of Supply – section 10 of the Act

5.2.1 General

The general rule is that the value to be placed on any supply should be the consideration in money or if the consideration in money cannot be determined, then the open market value (OMV) for the supply less any VAT.

OMV means the consideration which would be received for such goods or services if supplied in the open market.

The Act also permits the value of a supply to be nil if the supply was made for no consideration.
5.2.2 Specific Value of Supply rules

Connected persons

Anti-avoidance rules for supplies made between connected persons. The consideration in money will be deemed to be the open market value if –

- the supply is for no consideration or for a consideration which is below the open market value; and
- the recipient does not acquire the goods or services wholly in the course of conducting an enterprise; and
- the recipient would not have been entitled to a full input tax deduction on the goods or services acquired, had the open market value been charged on the supply.

Instalment credit agreement (ICA)

Consideration in money is deemed to be the cash value of the supply which includes the cost of acquisition of the goods and VAT.

Cash value is normally the amount which is capitalised to the cost of an asset (purchase price, import duties, transportation, installation costs, and any other costs directly attributable to bringing the asset to the location).

The cash value does not include the cost of providing credit (that is, interest or finance charges).
**Commercial accommodation**

The supply of commercial accommodation is a taxable supply subject to exceeding the R120 000 threshold.

Commercial accommodation includes board or board and lodging supplied together with domestic goods or services (for example, meals, laundry services, the use of a telephone) in a house, flat, apartment, room, hotel, guest house etc.

**Barter transactions**

Goods or services are exchanged for other goods and/or services.

To the extent that payment is partly by exchange of goods and/or services, the consideration is the OMV of the goods and/or services received.

**Fringe benefits**

The consideration in money is deemed to be the cash equivalent of the benefit granted to the employee as determined in the 7th Schedule to the Income Tax Act.

Where the benefit consists of a right to use a motor vehicle, the consideration is determined in terms of Regulation No. 2835 dated 22 November 1991.

SARS and Treasury in the process of aligning the VAT and Income Tax Act.
Example of Value of Supply with regards to a Motor vehicle supplied as a fringe benefit

Simply Stationery (a vendor registered under Category B tax period) purchases a “motor car” for R114 000 (including VAT of R14 000) on 1 March 2012. Simply Stationery is not entitled to claim an input tax credit on the acquisition of the “motor car” as it is a prohibited deduction. An employee of Simply Stationery (who is paid monthly) is granted the right to use the motor car with effect from 1 March 2012, and Simply Stationery bears the full cost of maintaining the vehicle.

Simply Stationery must account for output tax on the supply of the fringe benefit as follows:

- Step 1. Consideration in money = determined value of the motor car x 0.003 (0.3%)  
  = (R114 000 - R14 000) x 0.003 = R300

- Step 2. The amount of output tax payable per month will be = R300 x 14/114 = R36.84

- Step 3. The first tax period covers the months of March 2012 and April 2012 and output tax on the fringe benefit must be declared in Field 12 of the VAT 201 return and paid on 25 May 2012 and for every tax period thereafter as follows: R36.84 x 2 months = R73.68

Note that where the input tax on acquisition of the vehicle was allowed (for example, a delivery vehicle) the consideration in money is calculated by applying a factor of 0.006 (0.6%) instead of 0.003 (0.3%).

Where the employee bears the full cost of the repairs and maintenance, and receives no compensation, the consideration as determined above must be reduced by the lesser of R85 or the consideration for the fringe benefit determined per month.

6. Input Tax

Input tax is the VAT incurred by a vendor on a taxable supply of goods and/or services, or second-hand goods made to him or goods imported by him.

Must be in possession of a valid tax invoice, debit note, credit note, declaration of second-hand goods and/or a bill of entry in respect of that supply.

Input tax is only claimable to the extent that such goods and/or services are required wholly or partly for the purpose of consumption, use or supply in the course of making taxable supplies.
6.1 Tax Invoices

Section 20 of the Act regulates the requirements of valid tax invoices. This section also provides that a vendor is obliged to issue its client with a valid tax invoice within 21 days of the date of that supply.

It is an offence to issue more than one tax invoice, debit note or credit note for each supply. Supplier may provide the recipient with a copy of the tax invoice, credit note or debit note which must be clearly marked “copy”.

Section 20(4) and 20(5) of the Act provides the requirements for a full tax invoice and an abridged tax invoice respectively (example of a valid tax invoice to follow).

“VAT invoice” or “invoice” added effective 8 January 2016.

<table>
<thead>
<tr>
<th>Section 20 (4): Full tax invoice – Consideration</th>
<th>Section 20 (5): Abridged tax invoice – Consideration</th>
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<td>4. The name, address and where the recipient is a registered vendor, the VAT registration number of the recipient</td>
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</tr>
<tr>
<td>5. An individual serialized number and the date upon which the tax invoice is issued</td>
<td>5. A description of the goods (indicating, where applicable, that the goods are second-hand goods) or services supplied</td>
</tr>
<tr>
<td>6. Full and proper description of the goods (indicating, where applicable, that the goods are second-hand goods) or services supplied</td>
<td>6. 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 rate 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</td>
</tr>
<tr>
<td>7. The quantity or volume of the goods or services supplied</td>
<td>7. An abridged tax invoice may not be issued where the supply is a zero rated supply</td>
</tr>
<tr>
<td>8. 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 rate 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</td>
<td>-</td>
</tr>
</tbody>
</table>
Converting foreign currency invoices

The Act does not prescribe how exchange rates should be dealt with where transactions are concluded in a foreign currency.

SARS issued a Binding General Ruling No 11, dated 23 February 2016 in which it accepts the following:

1. The daily exchange rate on the date the time of supply occurs;
2. The daily exchange rate on the last day of the month preceding the time of supply; or
3. The monthly average rate for the month preceding the month during which the time of supply occurs.

Options 2 and 3 may not be used in exceptional circumstances i.e. collapse of a foreign currency, or fluctuation of 10% or more when applying 2 and 3 above. The exchange rates issued by SA Reserve Bank, Bloomberg or the European Central Bank may be used.
## General

Tax invoice not required for supply where the total consideration does not exceed R50, ensure a receipt or other document is retained to proof that the supplier is registered.

Electronic invoices must comply with the requirements of a valid tax invoice and must be sent in encrypted format (at least 128 bytes), over a secure line or contain an electronic signature.

The recipient of the supply must confirm in writing that he or she will accept electronic invoices for the purpose of claiming input tax.

No other tax invoice may be issued and all copies extracted by the recipient must bear the words “copy tax invoice”. Debit and credit notes may accordingly also be issued electronically, subject to the requirements set out in the Act.

It is important to note that when an invoice does not indicate the amount of VAT levied, then it will be deemed to be inclusive of VAT.

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## 6.2 Notional Input Tax

A vendor who acquires second-hand goods on which no VAT is charged (the supply not being taxable) will nevertheless be entitled to an input tax deduction if the supply is to be used wholly or partly in the course of making taxable supplies. This is often referred to as ‘notional’ input tax.

The vendor will be entitled to an input tax deduction equal to the tax fraction of the cash price paid subject to the documentary requirements listed in section 20(8) of the Act.
6.3 Self-Invoicing

Interpretation Note 56 of the Act is a Binding General Ruling (BGR) which allows for a vendor to apply self-invoicing in certain circumstances:

• where the consideration for the supply of the goods and/or services are determined by the recipient; and
• where the recipient is responsible for testing or measuring the goods sold, or
• where the determination of the quantity or quality of the supply is determined by the recipient.

Refer to SARS Interpretation Note 56 for further requirements.

6.4 Credit and Debit Notes

A supplier is required to make an adjustment in calculating his tax liability when output tax has incorrectly been accounted for in terms of section 21 of the Act as a result of one of the following:

• The cancellation of the supply;
• Any fundamental variation or alteration in the nature of the supply;
• Any alteration by agreement to the previously agreed consideration for the supply such as a discount granted;
• The return of the goods or services, or a part of them, to the supplier;
• An error occurred on the tax invoice in respect of the amount of consideration for the supply.

The vendor will adjust his liability by either reducing his output liability or by claiming an input tax deduction.

No input tax deduction may be claimed unless the non-registered recipient is repaid the excess tax in cash or by way of credit.

Refer to section 21(3)(a) and (b) of the Act for documentary requirements of a credit and debit note.
6.5 Bill of Entries

Vendor only entitled to claim VAT on importation if he/she or the clearing agent holds a bill of entry together with a receipt for the payment of tax, or other document prescribed in terms of the Customs and Excise Act 91 of 1964 in relation to the importation.

If the clearing agent is in possession of the bill of entry it must keep sufficient records of the principal’s name, address and registration number for at least five years.

6.6 Record Keeping

It is the vendor’s responsibility and legal obligation in terms of the Act to retain and preserve all the records for a period of at least five years.

The following information must be retained:

- Records of all goods and services supplied by a vendor, reflecting the rate of tax applicable to the supply;
- Suppliers or agents details;
- All tax invoices, credit and debit notes;
- Bank statements, deposit slips, stock lists and paid cheques relating to any supplies by or to the vendor;
- The charts and codes of account, accounting instruction manuals and the system and program documentation describing the accounting system used in each tax period in the supply of goods and services;
- A list of debtors and creditors if the vendor changes his system of accounting;
- Documentary proof to substantiate a vendor’s right to account for tax at zero percent.
6.7 Bad Debts

If a vendor accounted for tax on a supply and subsequently wrote off the debt or part of the debt as irrecoverable, then the vendor is entitled to claim an input tax deduction equal to the tax fraction of the amount written off.

The vendor must retain sufficient records to prove that tax was declared in respect of the initial sale.

No deductions may be made in respect of debt that was ceded or transferred to a third party on a non-recourse basis.

7. Input tax deductions specifically denied

A vendor will not be entitled to claim input tax deductions in respect of the following – section 17(2) of the Act.

7.1 Entertainment

“Entertainment“ means the provision of any food, beverages, accommodation, entertainment, amusement, recreation or hospitality of any kind by a vendor in connection with an enterprise carried on by him.

Entertainment is so broadly defined that it would include, for example, season tickets to rugby or the theatre, yachts or the hiring of a musical band.
A deduction for goods and services acquired by a vendor for the purposes of entertainment may nevertheless be claimed if the supply is made to him or her under the following circumstances:

- A vendor acquiring goods and services for the purpose of making taxable supplies of entertainment, the relevant taxable supplies are made in the ordinary course of an enterprise by a person who continually or regularly supplies entertainment to clients or customers and charges a specific consideration that covers all direct and indirect costs of supplying such entertainment.

- The entertainment is supplied to any employee, office holder or connected person in relation to the vendor; and he/she levies a charge which covers all direct or indirect costs of providing the entertainment (canteen meals must be analysed to determine if direct and indirect costs were recovered).

- Subsistence (meals, accommodation and refreshments) expenses incurred by him, his employee, his office holder or any natural person contracted to render services to the vendor. Obliged to spend at least one night away from his or her usual place of residence and his or her usual working place to qualify for an input tax deduction.

- Input tax incurred on meals and refreshments supplied to passengers may be claimed where such transport service is a taxable supply.

- Supply of entertainment acquired by a vendor for the purpose of awarding it as a prize in consequence of a supply.
7.2 Fees or subscriptions

Input tax incurred on any fees or subscriptions paid by a vendor for membership of any club, association or society of a sporting, social or recreational nature may not be claimed.

Input tax also not allowed by SARS in respect of subscription fees paid to professional bodies on behalf of employees.

7.3 Motor cars

A motor car is defined in section 1(1) of the Act and includes a station wagon, minibus, double cab light delivery vehicle and any other motor vehicle of a kind normally used on public roads.

Generally has to be constructed or converted wholly or mainly for the carriage of passengers.

The following are some exclusions from the definition:

• Vehicles suitable for carrying more than sixteen persons (bus);

• Vehicles of an unladen mass of 3 500 kg or more;

• Caravans and ambulances;

• Game viewing vehicles;

• Hearses used exclusively for that purpose;
Input tax deductions are generally denied on the importation, acquisition, lease or rental of a motor car.

A vendor who acquires a motor car wholly for business use is still denied an input tax deduction even if a driving school purchases a motor vehicle to teach students to drive.

However, if the vendor regularly and continuously supplies vehicles, the vendor will be allowed to claim input tax deductions in terms of section 17(2)(c) e.g. a motor vehicle supplier.

It should be noted that the general exclusion for claiming input tax in respect of motor cars only applies to the vehicle itself and not expenses like repairs, maintenance, insurance etc.

Where a vehicle is awarded as a prize on the outcome of a bet, then input tax deductions may be claimed.

7.4 Medical and dental services supplied by a superannuation scheme

A medical aid scheme or sickness, accident or unemployment fund is denied an input tax deduction on any goods or services acquired by it for the purpose of the supply by the scheme of any medical or dental services.

The supply of goods and/or services by an employee organisation (trade unions), bargaining councils and political parties are specifically exempt from VAT.

7.5 Goods or services supplied in the course or furtherance of a foreign donor funded project

Input tax deductions will be allowed in respect of the supply of entertainment, motor cars, fees or subscriptions, and medical or dental services supplied, if the relevant goods or services are applied in the course or furtherance of any foreign donor funded project.
7.6 Duplicating input tax deductions

Where an amount qualifies or has qualified for a deduction under more than one provision of the Act, a deduction of such amount, or any portion thereof, shall not be made more than once in the calculation of the amount of tax payable by any vendor.

8. Dealing with SARS

8.1 General

Large Business Enterprises may have their own client relationship manager located at various SARS Large Business Centres (“LBC”).

If a VAT vendor does not have its own client relationship manager, such vendor should contact their local SARS branch office or the SARS national call centre on 0800 007 277.

A vendor also has the option to log a complaint with the SARS Complaints Management Office (“CMO”) should they not receive a response or an adequate response from their local SARS branch office.

Complaints can be submitted to the CMO through the following channels:

• Manually at a SARS office or mobile tax unit;
• Contact the CMO on 0860 1212 16;
• Submitting an electronic form on SARS E-filing (CM01 form).
The following complaints may be dealt with by the CMO:

- Delays in processing returns, decision making and correction of administrative mistakes;
- Legal and policy for example debit card not accepted for payments;
- Channel experience/environment/technical issues for example contact center slow to answer or no parking at branch;
- Failure to provide reasons for making an adjustment to a return;
- Failure to respond to queries, objections and appeals; and
- The conduct an attitude of SARS staff.
- Missing or lost documentation for example: I have submitted my return, but SARS cannot find it.

SARS endeavors to resolve a complaint within a maximum of 21 days after a complaint was lodged. If you remain dissatisfied, the next step would be to escalate the case to the Tax Ombud.

The following types of complaints are not considered:

- Legislation or tax policy.
- SARS policy or practice generally prevailing, other than to the extent that it relates to a service, procedural or administrative matter arising from the application of the provisions of a tax Act by SARS.
- A matter subject to objection and appeal under a tax Act, except for an administrative matter relating to such objection and appeal.
- A decision of, proceeding in or matter before tax court.

Lodging a complaint – visit the website and download the OTO 01 form and forward to complaints@taxombud.gov.za.

The Tax Ombud strives to resolve the issue within 15 business days of receipt of a valid complaint.
8.2 SARS audit

An audit is generally a verification to test the correctness of VAT returns and payments submitted by a vendor.

**There are 3 different forms of VAT audits:**

- Verification of Value-Added Tax Declaration – System generated request when returns are submitted on E-filing
- Request for outstanding information – Where additional information is required as a result of the initial verification request
- Field audit – Where a detailed audit is conducted at the business premises.

The number of tax periods to be audited will be selected on a sample basis and will not necessarily include the latest return submitted. If material deficiencies and discrepancies arise from the selected sample, the scope of the audit may be extended to include other tax periods.

**Routine desk audits may result in the following:**

- Input tax disallowed as a result of not responding to SARS’ requests for information;
- Zero rated supplies assessed as standard rated as a result of not responding to request for information;
- Specific fields disallowed i.e. bad debts written off;
- Disallowance of specific invoices which were uploaded and non-compliant;
- VAT on importation disallowed due to proof of payment by clearing agent not being submitted;
- Random input tax items disallowed due to it appearing to be entertainment related;
- In all of the above, a 10% penalty is levied on the assessment value together with interest;
- Understatement penalties are also levied where repeat offences occur;
- Debt collection procedures are implemented and agents appointed to pay liability over to SARS;
- A vendor may only realise assessments were raised after 30 business days which will complicate the objection process;
- VAT refunds are not lifted after assessments due to debt equalization processes.
How to prepare for a VAT Audit

- Specific documents to upload – tax report, supplier VAT numbers, material input tax invoices, material output tax invoices, VAT on importation and a letter of explanation
- Respond immediately
- View E-filing on a weekly basis for audits
- Ensure compliance
- Section 42 of the TAA – keep taxpayer informed

SARS will generally focus on the following depending on the nature of the audit:

- Turnover reconciliation
  
  Reconcile turnover reflected on the VAT returns with that reflected in the financial statements. Vendors should ensure that a monthly recon is performed.

- Documentation
  
  SARS will not allow an input tax deduction if an invoice does not comply with the requirements as discussed in our part 6.1. The SARS audit may also include an investigation of sequential numbers used in output tax declarations.

- Entertainment expenses
  
  SARS will conduct a thorough audit to establish whether or not any input tax deductions were claimed in respect of entertainment expenses i.e. coffee, tea, milk, meals for staff (if not subsistence expenses), client lunches, canteen equipment (if not taxable) etc.
• Car rental

A common area where input tax is disallowed is the rental of vehicles (if not a vendor’s primary business).

• Zero rated supplies.

The following may be investigated:

1. Validity of exports and compliance with documentary requirements;
2. Law interpretation;
3. All other requirements listed in SARS Interpretation notes 30 and 31.

• Insurance Indemnity payments.

Indemnity payments may attract output tax in certain circumstances and is regularly verified by SARS.

Note that the above list is only a summary of a few areas and SARS may look at other areas as well.

8.3 Record keeping

To substantiate input tax deductions and output tax declarations it is necessary to maintain sufficient records to create an audit trail.

Retain documentation for a period of at least 5 years after submission.

Section 32 of the TAA requires documents to be retained past the five years in the event of an audit, objection or appeal until its concluded.

Records will include your books of account or relevant computer print-outs if a computer is used, as well as supporting documentation (tax invoices) and other related information.
8.4 Penalties and Interest

A Person liable to pay tax who fails to submit its return to SARS will pay:

- A penalty, equal to 10% of the amount of tax due; and

- Interest calculated at the “prescribed rate“ fixed by the Minster by notice in the Government Gazette.

The Commissioner may remit a penalty in certain circumstances if a written application is made by the vendor in terms of the requirements of Chapter 15 of the TAA.

8.5 Interest on Refunds

Section 45(1) of the Act provides SARS with 21 business days from the day of submission of a vendor’s VAT return to release a refund without having to pay interest.

Where the Commissioner fails to pay an amount refundable to a vendor, such amount attracts interest at the prescribed rate commencing from 21 business days after the date of receipt of the return.

SARS takes an "administrative action" in terms of PAJA if interest is not paid together with the delayed refunds and must provide the vendor with reasons for its decision.

If during this 21 day period, SARS requests an audit to be conducted and you are unable to meet with the auditors, or some of your records relating to the audit are not available or incomplete, SARS can postpone the 21 business days until such time that the audit can be carried out and completed. The correct address and contact details of your business should be available to SARS at all times.
8.6 Rulings

The VAT Act makes provision for the Commissioner to issue rulings regarding the VAT treatment of supplies.

A ruling is intended to provide certainty to taxpayers regarding the VAT implications of transactions.

Binding rulings can be relied upon by a vendor until withdrawn by the Commissioner, provided certain conditions were met.

With the introduction of the Advance Tax Ruling (ATR) legislation, all historical rulings were withdrawn by the Commissioner.

If a vendor needs requires clarity on a specific legislative matter, such vendor needs to obtain an ATR from SARS.

There are specific requirements when applying for an ATR which can be found on the SARS website.

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The TAA requires that the ruling application should include a statement that the applicant has:

- registered for all the applicable taxes for which that person is liable, unless the application itself is about the liability to register; and

- submitted all required returns for the taxes concerned and paid all outstanding taxes or alternatively that an arrangement acceptable to SARS has already been made in that regard.

Section 72 applications

Arrangements and decisions to overcome difficulties, anomalies or incongruities.
8.7 Objection and Appeals

8.7.1 Objection

Where a vendor is dissatisfied with any written decision by SARS, he may lodge an objection within 30 business days after receiving such decision (GN 550 of 11 July 2014).

Example:
A vendor does not agree with an assessment raised by SARS and may therefore lodge an objection. The objection must –

• be in a form prescribed by the Commissioner (ADR 1) with the information requested in the form completed;
• specify in detail the grounds upon which the objection is made;
• specify an address where you will accept notice and delivery of SARS’ decision in respect of the objection;
• be signed by you or your appointed representative; and
• be delivered to SARS at the address specified on the assessment, within 30 business days after the date of the assessment.

An objection may be declined as a result of not complying with the above requirements. SARS may inform the taxpayer by notice within 60 business days that it is not accepted as a valid objection. The taxpayer may within ten days, after the notice, submit an amended objection.

A vendor may request additional information within the initial 30 business day period in terms of section 103 of the TAA read with Rule 6 of Government Notice 550. SARS must respond within 30 business days and the vendor will have a further 30 business days to object from receiving SARS’ response.
8.7.2 Appeal

If a vendor is dissatisfied with the decision of SARS following the objection, such vendor may appeal against that decision, in which case, he must:

• Deliver a Notice of Appeal to SARS within 30 business days from the date of receiving notice of SARS’ decision in respect of the objection.
• The appeal must be on the form prescribed by the Commissioner (ADR 2);
• Indicate on which of the grounds specified in the objection you wish to appeal;
• Indicate whether you wish to make use of the Alternative Dispute Resolution (ADR) procedures or rather appeal to the Special Board or Court for Hearing Tax Appeals.

The appeal may be referred to the ADR process where an independent facilitator, appointed by SARS, will arrange a formal discussion with the objective of concluding an agreement between the vendor and SARS.

9. Submission of VAT

9.1 Submission of VAT returns on SARS e-filing

In terms of section 28(1) of the Act, the due date for both filing and payment remains the last business day of the month if the return is filed via e-filing and payment is made via e-filing.

All other methods used decreases the period to the 25th day of the month or the last business day if the 25th falls on a weekend or public holiday.

Ensure all fields are correctly completed as it is used for the IT14SD.
9.2 Implications of getting VAT wrong

Where a taxpayer provides SARS with incorrect information or fails to provide the required information, SARS has the right to impose penalties and/or interest as well as criminal prosecution.

Increased understatement penalties are imposed for repeat offences.

In-depth field audits may be conducted as a result of filing errors.

Only output tax can be increased and input tax decreased when resubmitting a return which results in penalties.

IT14SD recon issues may result in assessments or estimated assessments.

9.2.1 Penalties:

Means, a "penalty" imposed by SARS in accordance with Chapter 15 of the TAA, and excludes an understatement penalty.

If SARS is satisfied that non-compliance exists, an appropriate penalty must be imposed.

**Imposition of percentage based penalty:**

If SARS is satisfied that an amount of tax was not paid as and when required under a tax Act, SARS must, in addition to any other "penalty" or interest for which a person may be liable under Chapter 15 of the TAA, impose a "penalty" equal to the percentage of the amount of unpaid tax as prescribed in the Tax Act.

**Procedures for imposing penalty:**

A fixed amount penalty or a percentage based penalty must be imposed by way of a "penalty assessment" by SARS. In addition SARS must provide notice of the assessment in the format as SARS may decide. "penalty assessment" means an assessment in respect of: a penalty only; or tax and a penalty which are assessed at the same time.
**Understatement penalty:**
In the event of an "understatement" (as defined in Chapter 4, Part B of the TAA), the taxpayer will be liable for the tax payable for the relevant tax period as well as an understatement penalty determined in the below table:

<table>
<thead>
<tr>
<th>Item</th>
<th>Behaviour</th>
<th>Standard Case</th>
<th>If obstructive, or if it is a 'repeat case'</th>
<th>Voluntary disclosure after notification of audit</th>
<th>Voluntary disclosure before notification of audit</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>'Substantial understatement'</td>
<td>25%</td>
<td>50%</td>
<td>5%</td>
<td>0%</td>
</tr>
<tr>
<td>(ii)</td>
<td>Reasonable care not taken in completing return</td>
<td>50%</td>
<td>75%</td>
<td>25%</td>
<td>0%</td>
</tr>
<tr>
<td>(iii)</td>
<td>No reasonable grounds for 'tax position' taken</td>
<td>75%</td>
<td>100%</td>
<td>35%</td>
<td>0%</td>
</tr>
<tr>
<td>(iv)</td>
<td>Gross negligence</td>
<td>100%</td>
<td>125%</td>
<td>50%</td>
<td>5%</td>
</tr>
<tr>
<td>(v)</td>
<td>Intentional tax evasion</td>
<td>150%</td>
<td>200%</td>
<td>75%</td>
<td>10%</td>
</tr>
</tbody>
</table>

A "repeat case" (in terms of Chapter 16, Part A of the TAA) means a second or further case of any of the behaviours listed under items (i) to (v) of the understatement penalty percentage table within five years of the previous case;

A "substantial understatement" (in terms of Chapter 16, Part A of the TAA) means a case where the injustice to SARS or the fiscus exceeds the greater of five per cent of the amount of tax properly chargeable or refundable under a tax Act for the relevant tax period, or R1 000 000;

An "understatement" (in terms of Chapter 16, Part A of the TAA) means any prejudice to SARS or the fiscus in respect of a tax period as a result of:

- a default in rendering a return;
- an omission from a return;
- an incorrect statement in a return; or
- if no return is required, the failure to pay the correct amount of tax.

In terms of all the penalties mentioned above, SARS may remit these penalties imposed on its discretion, the nature of each case and the requirements for remittance provided for under the TAA.

In addition to the extent of penalties which can be imposed by SARS, the TAA further provides for offences which will constitute grounds for imprisonment in the event that a person is found guilty.
Q&A

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