Value-Added Tax Act 89 of 1991 (VAT Act)

Topic: Finance

IN A CALABASH

Introduction

Value-added tax (VAT) is a tax that is levied on the supply by a vendor of goods or services in the course and furtherance of any enterprise carried on by a vendor. VAT is an indirect tax based on consumption of goods and services in the economy. It is a tax added to the cost of a product or service and is levied for purposes of generating revenue for the government.

Objectives of the Act

The Value-Added Tax Act provides for the taxation of the supply of goods and services and the importation of goods.

Application of the Act and its implication to Tourism

This Act is applicable to all registered VAT vendors.

VAT is only charged on taxable supplies made by a vendor. Taxable supplies include supplies for which VAT is charged at either the standard rate or zero rate, but does not include–

- salaries and wages;
- hobbies or any private recreational pursuits (not conducted in the form of a business);
- occasional private sale of personal or domestic items; or
- exempt supplies.

Summary of the provisions of the Act

South African VAT is destination-based, which means that only the consumption of goods and services in South Africa is taxed. VAT is paid on the supply of goods or services in South Africa as well as on the importation of goods into South Africa.

VAT is presently levied at the standard rate of 14% on most supplies and importations, but there is a limited range of goods and services which are either exempt or subject to tax at the zero rate (for example, exports are taxed at 0%).

The importation of services is only subject to VAT when the importer is not a vendor or when the services are imported for private or exempt purposes. Certain imports of goods or services are exempt from VAT.

Characteristics of a VAT transaction

The essential characteristics of VAT are as follows:

- The tax applies generally to transactions related to goods and services;
- It is proportional to the price charged for the goods and services;
- It is charged at each stage of the production and distribution process; and
- The vendor may deduct the tax paid during the preceding stages so that the burden of the tax is on the final consumer.

Registration as a VAT vendor

A person must register as a vendor in South Africa if he or she carries on an 'enterprise' in South Africa and if the value of taxable income from such enterprise exceeds or is likely to exceed the registration threshold of R1 million for a 12-month period. Such persons are liable for compulsory registration as a vendor.

Persons who do not meet the R1 million registration threshold may apply for voluntary registration when they are able to satisfy the Commissioner that they are continuously and regularly carrying on an activity which can be expected to result in taxable supplies being made for a consideration after a period of time and where the total value of taxable supplies to be made can be expected to exceed R50 000 in a period of 12 months.

Persons liable for registration or who voluntarily elect to register must complete a form VAT 101 (Application for Registration) and submit it in person to the SARS branch office nearest to the place where such person's business is situated or carried on not later than 21 days from the date of liability. When it is impractical to submit the application in person, a registered tax practitioner may appear in person on behalf of the applicant.

Before a person may start levying VAT on its supplies, and before it may start claiming input tax deductions from the SARS, such person must register as a vendor for VAT purposes. A vendor is any person who is or is required to be registered under the Act.

Duties of a vendor

Vendors have to perform certain duties and take on certain responsibilities if they are registered or liable to register for VAT. For example, vendors are required to ensure that VAT is collected on taxable transactions, that they submit returns and payments on time, that they issue tax invoices where required, that they include VAT in all prices advertised or quoted, etc.

VAT invoices

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

- the words 'TAX INVOICE' in a prominent place;
- the name, address and VAT registration number of the supplier;
- the name, address and VAT registration number of recipient;
- the serial number and date of issue;
- a full and proper description of the goods and/or services;
- the quantity or volume of goods or services supplied;
- the price and VAT total selling price charged including VAT. The VAT must either be shown separately or the tax invoice must contain a statement that the total consideration includes VAT at 14%.

Available tax periods

One is required to submit returns and account for VAT to the SARS according to the tax period allocated to one. Available tax periods cover one, two, four, six or 12 calendar months.

On acceptance of one's registration by the SARS, one will be allocated one of these categories. Tax periods end on the last day of a calendar month. One may, however, apply to the SARS branch office in writing for one's tax period to end on another fixed day or date, which is limited to 10 days before or after the month end (the 10-day rule). This must be approved in writing and can only be changed with the written approval of the SARS.

Two-month tax period (Category A or B)

The two-month tax period is the standard tax period, generally allocated at the time of registration. Under this category, one is required to submit one return for every two calendar months.

Category A is a two-month period ending on the last day of January, March, May, July, September and November.

Category B is a two-month period ending on the last day of February, April, June, August, October and December.

One-month tax period (Category C)

Under the one-month tax period, one is required to submit one return for each calendar month. One will be registered according to Category C when one's turnover exceeds or is likely to exceed R30 million in any consecutive 12-month period.

Where one operates more than one business or operates a business with branches, the sales of all the businesses or branches must be added together to determine a total turnover. This applies whether or not the other businesses or branches have separate VAT registration numbers, one has applied in writing for this category or one has repeatedly failed to perform any obligations as a vendor.

You will cease to be registered under Category C if you apply in writing to be allocated to a different tax period and the SARS is satisfied that you meet the requirements of the relevant category.

Should your turnover exceed R30 million subsequent to your registration for VAT, you are required to notify the SARS to amend your registration to a Category C tax period within 21 days of becoming liable to register for a Category C tax period. Failure to notify the SARS may result in interest and penalties being levied.

Six-month tax period (Category D)

Under the six-month tax period, one is required to submit one return for every six calendar months. This is a category solely for farmers, farming enterprises or associations not for gain that are carrying on a farming activity with a total turnover of less than R1.5 million per 12 consecutive months.

One's allocation under this category means that one is required to submit one's returns for a six-month period usually ending on the last day of February and August. One may, however, apply to the local SARS office to alter the end of the period to another month. An individual's six-month period will be on the last day of February and August. A company or close corporation's financial year-end date will determine in which months its tax period will end. The VAT Act requires a vendor that is registered as a farmer to notify the SARS once the total value of taxable supplies has exceeded R1.5 million in any period of 12 consecutive months.

Twelve-month tax period (Category E)

Under the twelve-month tax period, one is required to submit one return for 12 calendar months. This category is for vendors whose tax periods are periods of 12 months ending on the last day of their 'year of assessment' as defined in the Income Tax Act or where any vendor falling within this category makes written application on the last day of such other month as the Commissioner may approve.

The vendor applying for registration under this category must comply with the following:

- The vendor must be a company or a trust fund; and
- The supplies by the vendor applying for Category E must be made to a connected person in relation to that vendor and consist solely of
  - o the letting of fixed properties;
  - o the renting of movable goods; or
  - o the administration or management of such companies.

The connected person who receives the supply must be registered for VAT and must be entitled to deduct the full amount of input tax in respect of those supplies.

The vendor must agree with the recipients that tax invoices are issued only once a year at the end of the year of assessment of the vendor making the supplies. Only vendors with certain activity codes can apply to be registered on the Category E tax period.

Four-month tax period (Category F)

With effect from 1 August 2005, a new tax period (Category F) was introduced to assist small businesses.

The four-month tax periods for each year are as follows: March to June to be submitted in July; July to October to be submitted in November; and November to February to be submitted in March.

Category F tax periods are only available to vendors (including companies and close corporations) that have a taxable turnover (that is, standard and zero-rated sales) which is less than R1.5 million in any consecutive period of 12 months or which is not expected to exceed that amount during the period and that do not conduct their business under different VAT registered branches, even if the combined taxable turnover of those branches is less than R1.5 million in the 12-month period.

Whilst the tax period normally ends on the last day of the month, there is provision for vendors to adopt a date ending on a day other than the end of the month. If a vendor has an accounting date within 10 days before or after the end of the month in which the tax period ends, the vendor may use that date as the last day for the tax period.

The 10-day rule

Though the tax period normally ends on the last day of the month, there is provision for vendors to adopt a date ending on a day other than the end of the month.

If a vendor has an accounting date within 10 days either before or after the end of the month in which the tax period ends, the vendor may use that date as the last day for the tax period.

A vendor who wishes to apply this option must select a fixed day or date approved by the Commissioner before or after the end of the tax period and must apply the date consistently from one tax period to the next. For example, a vendor may select the 27th day of a month (fixed date), or the last Friday in the month (fixed day but not a fixed date).

The election by the vendor to utilise a cut-off date allowed under the 10-day rule does not affect the due date for submitting the return (which remains the 25th day after the end of the month covered by that tax period).

The SARS has approved the following categories of fixed cut-off dates subject to the 10-day rule: a specific day of the week; a specific date of a calendar month; or a fixed day determined in accordance and consistent with the vendor's commercial accounting periods.

Prices advertised or quoted to include tax

Any price advertised or quoted by any vendor in respect of any taxable supply of goods or services shall include tax, and the vendor must, in his advertisement or quotation, state that the price includes VAT.

The vendor may exclude VAT and mention in bold and legible letters that the price excludes VAT.

In the absence of any statement to the contrary, all prices stated are deemed to include VAT.

Note that price tickets on goods need not state that the prices include tax if this is stated by way of a notice prominently displayed at all entrances to the premises in which the enterprise is carried on and at all points in such premises where payments are made.

Rounding-off of the tax

An amount of tax determinable under this Act must be calculated by a proportion rounded off to the fifth decimal place, a percentage rounded off to the third decimal place and fractions of less than half a cent rounded down to the last cent or half a cent or more rounded up to the next cent.

Records retention

Businesses registered for VAT must keep records which show how much VAT they have collected. For example, records must be kept of–

- invoices from one's business to customers;
- invoices from one's suppliers to one;
- a list of debtors that owe the business money and creditors that the business owes money to;
- bank statements, deposit slips and copies of cheques; and
- books of account, where the owner of the business writes down how much money has come into the business every month and how much money has been spent and on what.

Document	Period of retention
VAT Documentation	
Bank statements, deposit slips, stock lists paid by its members	Four years from last date of entry
Books of accounts	Four years from last date of entry
Detailed records of the registered vendor's transactions	Four
Invoices, tax invoices and credit and debit notes	Four years from last date of entry
System documentation	
Charts and codes of accounts	Four
Accounting system instruction manuals	Four
System and program documentation	Four
Other	Four

In the case of all other records that are not required for the submission of the income tax return, for a period of seven years from the date of the last entry in any book, or, if not in book form, from date of completion of the transactions, acts or operations to which they relate.

WHAT HAPPENS IF YOU DO NOT COMPLY?

Non-payment of VAT or non-compliance with the VAT Act can give rise to series consequences, as it is tantamount to theft.

Non-compliance with the VAT Act is a criminal offence punishable by fines and/or imprisonment.

Recovery of tax from recipient

When, in respect of any supply made by a vendor, the vendor has incorrectly applied a rate of zero per cent or treated such supply as being exempt from tax, as a consequence of any fraudulent action or any misrepresentation by the recipient of the supply, the Commissioner may raise an assessment upon the recipient for the amount of tax payable, together with any penalty or interest that has become payable in terms of the VAT Act in respect of such amount. In raising such assessment, the Commissioner may estimate the amount on which the tax is payable. The recipient must pay the assessed amount within the period that the Commissioner allows, and that amount is recoverable from the recipient in the manner provided under the VAT Act.

The Commissioner may recover the amounts of unpaid tax, penalty and interest from the vendor, but when those amounts have been recovered from the recipient, the vendor is no longer liable for the payment of the amounts due.

Publication of names of tax offenders

The Commissioner may, from time to time, publish any particulars relating to any offence committed by any person when such person has been convicted of an offence in terms of the Act or the common law, after any appeal or review proceedings have been completed or not been instituted within the period allowed.

Every publication may specify

- the name, address and principal enterprise of the vendor;
- such particulars of the offence as the Commissioner thinks fit;
- the tax period or tax periods in which the offence occurred;
- the amount or estimated amount of the tax evaded; and/or
- the amount, if any, of the additional tax imposed and the particulars of the fine or sentence imposed.

A copy of every notice published in connection with tax offenders must be presented to Parliament.

Reporting of unprofessional conduct

For the purposes of the section of the VAT Act dealing with unprofessional conduct, 'controlling body' means any professional association, body or board which has been established, whether voluntarily or by or under any law, for the purpose of exercising control over the carrying on of any profession, calling or occupation and which has power to take disciplinary action against any person who, in the carrying on of such profession, calling or occupation, fails to comply with or contravenes any rules or code of conduct laid down by such association, body or board.

The Commissioner may lodge a complaint with the controlling body where any person who carries on any profession, calling or occupation in respect of which a controlling body has been established has, in relation to the affairs of a client, done or omitted to do anything which in the opinion of the Commissioner–

- was intended to enable or assist the client to avoid or unduly postpone the performance of any duty or obligation imposed on such client by or under the Act or to obtain any refund of tax under the Act to which such client is not entitled or which, by reason of negligence on the part of such person, resulted in the avoidance or undue postponement of the performance of any such duty or obligation or the obtaining of any such refund; and
- constitutes a contravention of any rule or code of conduct laid down by the controlling body which may result in disciplinary action being taken against that person by that body.

RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

Ensure that

- the VAT registration certificate and VAT number are allocated to the vendor;
- the VAT number is reflected on all invoices;
- the VAT levied for all goods and services sold or supplied is accounted for and paid over to the SARS; and
- the VAT return is submitted timeously.

FURTHER INFORMATION

Regulator
The South African Revenue Service

Website acknowledgements
www.sars.gov.za

Forms
www.sars.gov.za/TaxTypes/VAT/Pages/default.aspx