The ins and outs of vat- A guide for accounting and bookkeeping professionals

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Presenter

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- Explore ProTech Entrepreneurial Haven (Co-Founder)
- Top 35 under 35 Chartered Accountant (SAICA)
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Course Outline

Learning Outcomes

By the end of this webinar you should:

Be up to date with the latest developments in terms of VAT with regards to:

- Section 72,
- Apportionment,
- Electronic Services,
- Going Concern,
- Tax Invoices,
- Funeral Policies,
- Exports,
- Publications and
- Other Developments

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Quote

“A person doesn't know how much he has to be thankful for until he has to pay taxes on it.”

- Anonymous

MODULE 1

VAT CONNECT ISSUE 13 - SECTION 72

VAT Connect Issue 13 - Section 72

- All decisions under section 72 that did not have a stated expiry date have ceased to apply from 1 January 2022.

- The requirements and conditions that must be met in making an application for a section 72 decision are set out in BGR 56 “Application for a Decision under Section 72”

- Clarity has also been provided on how to apply for a section 72 decision in the VAT Section 72 Decisions Process Reference Guide.

- **VAT Connect Issue 13 further clarifies concepts related to section 72.**

VAT Connect Issue 13 - Section 72

Difference between VAT Class Rulings, VAT Rulings and section 72 decisions

- ***VAT Class Rulings*** and ***VAT Rulings*** (collectively referred to as VAT Rulings) are issued under ***section 41B***.
- ***VAT Rulings*** are issued to provide certainty on the interpretation or the application of the VAT Act to a class of persons, or a person, in respect of a transaction.
- No fee payable.
- Lodged by emailing VATRulings@sars.gov.za
- VAT Rulings Process Reference Guide

VAT Connect Issue 13 - Section 72

Difference between VAT Class Rulings, VAT Rulings and section 72 decisions (continued)

- ***Section 72*** involves a decision made by the Commissioner to overcome certain difficulties, anomalies or incongruities which may arise when vendors apply the VAT law to their business circumstances.

- The interpretation or application of the law is clear, but certain difficulties, anomalies or incongruities need to be overcome so that the vendor or class of vendors can comply with the law.

- An amendment to the law may be required to address the issue.

- Only considered under very exceptional circumstances.
- Fee payable R2 500
- Lodged through ATR E-Filing
- Section 72 Guide

VAT Connect Issue 13 - Section 72

Similarities between VAT Rulings and section 72 decisions

- Both section 72 decisions and section 41B VAT Rulings are only issued for a limited period of time with a specified end date.

- The period for which the ruling or decision is granted will be determined on a case-by-case basis, depending on the circumstances of the case,

- but will **generally not exceed five years**.

VAT Connect Issue 13 - Section 72

The importance of knowing the difference between VAT Rulings and section 72 decisions:

- A VAT Ruling application which also includes, as the alternative, an application for the Commissioner to make a decision under section 72 will be rejected to the extent of the request under section 72.

- Similarly, an application made under section 72 will be rejected to the extent that it contains an application for a VAT Ruling to confirm the interpretation or the application of the VAT Act in respect of a transaction under section 41B.

VAT Connect Issue 13 - Section 72

Legislative requirements for section 72 applications:

Before a request for a decision under section 72 can be considered, the **Commissioner must be satisfied** that there are **difficulties, anomalies or incongruities** that –

- **resulted as a consequence** of the manner in which a vendor or class of vendors, **conducts its business**; **and**
- have arisen or may arise with regard to the **application of the VAT Act**; **and**
- are the **same, or similar** to, those experienced by **another vendor** or class of vendors.

VAT Connect Issue 13 - Section 72

Legislative requirements for section 72 applications:

Before a request for a decision under section 72 can be considered, the **Commissioner must be satisfied** that there are **difficulties, anomalies or incongruities** that –

- **resulted as a consequence** of the manner in which a vendor or class of vendors, **conducts its business**; **and**
- have arisen or may arise with regard to the **application of the VAT Act**; **and**
- are the **same, or similar** to, those experienced by **another vendor** or class of vendors.

Applications not dealing with these points in detail are regarded as incomplete and cannot be considered.

VAT Connect Issue 13 - Section 72

Legislative requirements for section 72 applications (continued):

In addition, the Commissioner cannot grant a decision under section 72 if it –

- **alters the liability** for tax levied under the VAT Act; or
- is **contrary to the construct and policy intent of the VAT Act** as a whole, or any specific provision of the VAT Act.

VAT Connect Issue 13 - Section 72

Quick Checklist (consider in with BGR 56 & Section 72):

- Clear description of the transaction
- The vendor or class of vendors applying
- Details or description of vendors or classes of vendors having similar difficulties, anomalies or incongruities
- Illustrate that the difficulty arises as a consequence of the manner in which the business is conducted
- Specify the sections of the VAT Act resulting in difficulties, anomalies or incongruities

VAT Connect Issue 13 - Section 72

Quick Checklist (consider in with BGR 56 & Section 72) (continued):

- Details of the specific difficulties, anomalies and incongruities experienced or which will arise
- The impact the decision will have on the VAT liability of the applicant, or connected persons
- Indicate a clear link between the difficulty, anomaly or incongruity, and the decision sought from the Commissioner
- Relevant statutory provisions or authorities, and how these support the applicant’s case
- Illustrate the decision will not be contrary to the policy intent of the VAT Act (as a whole, or any specific provision thereof).

VAT Connect Issue 13 - Section 72

Timeline

- Section 72 decisions are categorised as complex and have a standard **90-business-day turn-around time**.

- In the process of dealing with the application, **certain days are suspended** in calculating the 90 days.

  - *For example, the business days will be suspended during the time that work on the application cannot continue because an engagement with the applicant is required, or SARS is awaiting relevant information requested from the applicant.*

  - *Also, the business days from 17 December to 15 January are suspended each year.*

MODULE 2

VAT Connect Issue 13 - Apportionment

VAT Connect Issue 13 - Apportionment

- Input VAT claimed by a vendor must be apportioned when goods or services are acquired:
  - partly for the purposes of making taxable supplies and
  - partly for the purposes of making exempt supplies.

- Mixed expenses are only deductible as input tax **to the extent that they relate to the making of taxable supplies.**

- Section 17(1) provides that the extent to which such mixed expenses may be deducted is **determined by means of a ratio** issued by the Commissioner in terms of a **Binding General Ruling** or a **VAT Ruling**.

- **Binding General Ruling 16** prescribes the **standard turnover-based method of apportionment (STB)** as the default method for determining the apportionment ratio for mixed expenses.

VAT Connect Issue 13 - Apportionment

- BGR 16 provides that a vendor **may only use the STB if it is fair and reasonable**,
  - failing which the vendor must apply for a **VAT Ruling** to use an **alternative apportionment method.**

- In terms of proviso (iii) to section 17(1), when such an alternative method is approved by the Commissioner, it **may only be applied by that vendor from**:

  - a future tax period; or
  - a date within the “year of assessment” (as defined in the Income Tax Act 58 of 1962) in which the application for the alternative apportionment method was submitted.

VAT Connect Issue 13 - Apportionment

Mukuru Africa (Pty) Ltd v Commissioner for the South African Revenue Service [2021] ZASCA 116

- Appellant **applied for approval of an alternative apportionment method**.
- The **Commissioner approved** this method by issuing a VAT Ruling but only with effect **from 1 March 2016** which was the first day of the year of assessment in which the Appellant applied for the VAT Ruling.
- The **Appellant** objected and appealed against this decision, **insisting** that the Commissioner should **allow** the Appellant **to use the method from** the commencement of its business on **1 February 2014**.
- The Appellant **argued that the STB method was not fair and reasonable and hence BGR 16 did not apply to it**.

VAT Connect Issue 13 - Apportionment

Mukuru Africa (Pty) Ltd v Commissioner for the South African Revenue Service [2021] ZASCA 116

- For this reason, the Appellant submitted that it was not changing its existing apportionment method, because proviso (iii) to section 17(1) did not apply in its situation.

- In its judgement, the Supreme Court of Appeal (SCA) found that the Appellant could not simply ignore BGR 16 or unilaterally apply its own apportionment method.

- Furthermore, **if the Appellant was of the opinion that the STB was not fair and reasonable, it was required under BGR 16 to apply for an alternative apportionment method**.

VAT Connect Issue 13 - Apportionment

Mukuru Africa (Pty) Ltd v Commissioner for the South African Revenue Service [2021] ZASCA 116

- The purpose of BGR 16 requiring the vendor to apply to the Commissioner for an alternative apportionment method was to enable the Commissioner to evaluate whether the STB was in fact unfair or unreasonable and then to approve an appropriate alternative apportionment method.

- **The effect of this judgment for vendors is that the STB must be regarded as the default apportionment method unless or until a VAT Ruling has been issued to the vendor allowing an alternative method.**

- Under proviso (iii) to section 17(1) this alternative apportionment method may only be applied by the vendor (being a “taxpayer” under the Income Tax Act) with effect from a date within the year of assessment in which the vendor applied to the Commissioner for such a ruling.

VAT Connect Issue 13 - Apportionment

Mukuru Africa (Pty) Ltd v Commissioner for the South African Revenue Service [2021] ZASCA 116

- **A further effect** is that vendors that have not apportioned their input tax in previous years when they were required to do so,
  - cannot overcome the consequences of their non-compliance by applying for a VAT Ruling for an alternative method of apportionment
  - to apply from a date in the past which goes beyond what the law allows.

VAT Connect Issue 13 - Apportionment

Make sure all required information is submitted with application

- For ease of administration, the applicant can attach the information submitted with the original application, including a copy of the previous VAT Ruling issued.

- However, updated information needs to be submitted where necessary, for example:

  - Calculations

  - Annual Financial Statements

  - Recent list of expenses which indicates how the expenses are attributed respectively to taxable supplies, exempt supplies or non-taxable purposes, as well as mixed expenses.

Module 3

VAT Connect Issue 13 - Electronic Services

VAT Connect Issue 13 - Electronic Services

- Regulations were published in Government Gazette 37489 on 28 March 2014 (the **2014 Regulations**) to **introduce a very limited list of taxable services supplied by electronic means by non-residents to South African residents**.

- These are referred to as “electronic services” and such supplies became taxable with effect from **1 June 2014**.

- The Regulations on electronic services were subsequently **amended**, updated and published in Government Gazette 42316 of 18 March 2019 (the **2019** Regulations).

- The 2019 Regulations **extended the scope of electronic services to any services provided by electronic means**, *subject to a few exclusions*.

VAT Connect Issue 13 - Electronic Services

- After the 2014 Regulations were introduced, **SARS issued a number of VAT Rulings to certain non-resident suppliers of electronic services** confirming the scope of taxable electronic services and whether the applicants were liable to register and account for VAT in South Africa or not.

- At the time of issue, those VAT Rulings may have indicated that the non-resident suppliers did not fall within the ambit of the 2014 Regulations.

- As the VAT law has now been amended including the introduction of the 2019 Regulations, it is important to note that such **old VAT Rulings relating to the 2014 Regulations are no longer valid** when considering the current law and can no longer be relied upon.

VAT Connect Issue 13 - Electronic Services

- Under section 85 of the Tax Administration Act, 2011, read with section 41B, a **VAT Ruling ceases to be effective if a provision of a Tax Act that was the subject of that ruling is repealed or amended in a manner that materially affects that ruling.**

- The broadening of the scope of “electronic services” under the 2019 Regulations will therefore result in any VAT Ruling issued in respect of electronic services supplied before 1 April 2019, ceasing to be effective from 1 April 2019.

- Refer to VAT Connect 9 (February 2019), VAT Connect 10 (March 2020), the Frequently Asked Questions: Supplies of Electronic Services and the relevant Regulations for more details.

VAT Connect Issue 13 - Electronic Services

- In order to register as a vendor, a non-resident supplier of electronic services is required to download the VAT101 application form and email the completed and signed form to eCommerceRegistration@sars.gov.za.

- Refer to the External Guide: Foreign Suppliers of Electronic Services as well as

- the External Guide: Guide for Completion of VAT Application for further details.

Module 4

VAT Connect Issue 13 - Going Concern

VAT Connect Issue 13 - Going Concern

- Interpretation Note 57 “Sale of an enterprise or part thereof as a going concern” discusses the detailed requirements for a supply to be zero-rated under section 11(1)(e).

- In terms of that provision, it is a specific requirement that certain aspects must be agreed upon in writing.

- Applicants should therefore not apply for a VAT Ruling merely to confirm that the agreement meets the necessary requirements in order to treat the supply as a going concern.

- This is because it is a question of fact whether or not the agreement meets the requirements, as opposed to the interpretation or application of the law based on a set of facts.

VAT Connect Issue 13 - Going Concern

- Also, as SARS has provided comprehensive guidance on the interpretation of the law in respect of a supply of a going concern in an official publication,
  - it is generally not considered necessary to issue a VAT Ruling in this regard,
  - and **applications in this regard may be rejected**.
- However, should there be uncertainty about the interpretation or application of section 11(1)(e) in respect of a specific transaction,
  - **applicants should clearly illustrate what that uncertainty is**, as well as
  - the applicant’s interpretation of the VAT Act in that regard,
  - when an application for a VAT Ruling is submitted.

MODULE 5

VAT CONNECT ISSUE 13 - TAX INVOICES

VAT Connect Issue 13 - Tax Invoices

Company name changes

- BGR 36 “Circumstances Prescribed by the Commissioner for the Application of Section 16(2)(g)” explains **circumstances under which a vendor may, as a last resort, apply for a VAT Ruling to deduct input tax on supplies where all efforts to obtain the required tax invoice from the supplier have failed.**

- It has recently been noted that where a company undergoes a name change, there is a tendency to apply to SARS for a VAT Ruling to invoke the provisions of section 16(2)(g) for the purposes of obtaining permission to deduct input tax on tax invoices issued in the old company name.

- In such cases, a tax invoice which has been issued to reflect the old company name is not invalidated merely because of the name change.

VAT Connect Issue 13 - Tax Invoices

Company name changes (continued)

- This is on condition that all the other necessary details on the tax invoice are correct.

- The recipient vendor in that case should not apply for a VAT Ruling, but rather, maintain the documentary proof of the name change from the Companies and Intellectual Property Commission (CIPC) as part of the VAT records.

- Once the name change has been effected by the CIPC and proof thereof has been issued, all suppliers should be informed immediately to correct their customer records as soon as possible and to issue tax invoices in future in the new company name.

VAT Connect Issue 13 - Tax Invoices

Company name changes (continued)

- SARS should also be informed of the change in registered particulars on eFiling within 21 business days.

- These steps will ensure that all future tax invoices are issued in the correct (new) company name as soon as possible and will reduce the risk of having input tax denied by SARS.

VAT Connect Issue 13 - Tax Invoices

Recipient's VAT registration number

- A vendor must be in possession of a valid tax invoice before input tax on goods or services acquired may be deducted.

- One of the requirements for a valid full tax invoice (where the consideration in money for the supply exceeds R5 000) is that the VAT registration number of the recipient must appear on the document where such recipient is a registered vendor.

- There has recently been an increase in the number of VAT Ruling applications requesting SARS to confirm that a tax invoice is valid in a situation where the tax invoice was issued before the recipient became a registered vendor.

VAT Connect Issue 13 - Tax Invoices

Recipient's VAT registration number (continued)

- This happens, for example, where a vendor's compulsory registration is backdated to the date of liability in the past.

- As the recipient was not a registered vendor at the time the tax invoice was issued, the supplier could not have inserted the recipient's VAT number on the tax invoice.

- On that basis, the tax invoice concerned remains valid for the purposes of deducting input tax, as long as the tax invoice contains all the other relevant details.

- In such cases, a VAT Ruling is not required to confirm the validity of the document.

Module 6

VAT Connect Issue 13 - Funeral Policies

VAT Connect Issue 13 - Funeral Policies

- It has been noted that vendors participating in the provision of services in the funeral industry are sometimes unsure of the VAT treatment of their supplies.

- In particular, vendors that provide selling and administrative services in connection with funeral policies supplied by long-term insurers, may be of the view that they make exempt supplies.

- The VAT legislation provides that the supply of a long-term insurance policy is exempt from VAT under section 12(a) read with section 2(1)(i).

- However, the supply by an intermediary, of administrative services in respect of funeral policies for a long-term insurer, is taxable and is subject to VAT at the standard rate under section 7(1)(a).

VAT Connect Issue 13 - Funeral Policies

- This principle was illustrated in the Tax Court case of IEA Taxpayer v Commissioner for the South African Revenue Service (VAT 1908 (21 June 2021)).

- In this case, it was found that the services supplied by an intermediary to a long-term insurer in administering funeral polices, do not qualify for an exemption.

- Section 2(1) lists certain supplies that qualify as exempt financial services under section 12(a).

- However, the proviso to section 2(1) states that if the consideration payable in respect of those listed financial services is “any fee, commission, merchant’s discount or similar charge…” then, to that extent, the service is not deemed to be an exempt financial service.

VAT Connect Issue 13 - Funeral Policies

- The appellant argued that since the proviso to section 2(1) does not refer to section 2(1)(i), it should follow that the fees it charged for administering the funeral polices for the long-term insurer should be exempt and not taxable as contemplated in the proviso to section 2(1).

- The court found that, whilst the appellant advances the services of the long-term insurer, it does so as an independent contractor.

- It was agreed that the VAT consequences must be determined with reference to the agreement between the appellant and the long-term insurer.

- In terms of that agreement, it was clear that the appellant’s services were merely administrative in nature.

VAT Connect Issue 13 - Funeral Policies

- The services of the intermediary did not involve the supply of long-term insurance policies as those were supplies made by the long-term insurer.

- The activities of the appellant could therefore not be deemed to be financial services as contemplated in section 2.

- Based on the above, it is important to have regard to the relevant contractual arrangements and identify who is supplying the long-term insurance policy.

- Intermediaries operating in the funeral industry should take note of this decision and check that they are treating their supplies correctly for VAT purposes.

- Qualifying taxpayers seeking to regularise their affairs are also encouraged to apply directly to the unit responsible for the Voluntary Disclosure Programme.

MODULE 7

VAT CONNECT ISSUE 13 - EXPORTS

VAT Connect Issue 13 - Exports

The export of goods from South Africa is subject to VAT at the zero rate provided certain requirements are met, as follows:

- Direct exports – the requirements are set out in Interpretation Note 30 (Issue 3) dated 5 May 2014 (IN 30); and

- Indirect exports – under Part Two of the Export Regulation (published in Government Gazette (GG) 37580 on 2 May 2014) a vendor may, under certain conditions, elect to supply goods at the zero rate if those goods are contractually delivered in South Africa to the recipient or the agent of the recipient, but are ultimately destined for export.

VAT Connect Issue 13 - Exports

- In the case of direct exports, the vendor physically delivers the goods, or the vendor’s cartage contractor must deliver the goods to a recipient in an export country.

- In the case of indirect exports, the goods must be removed from South Africa by the recipient, or the recipient’s agent, for conveyance to an export country in accordance with the Export Regulation.

- Part One of the Export Regulation applies where the qualifying purchaser is responsible for exporting the goods from South Africa and the vendor is obliged to levy VAT at the standard rate.

- In this case, the qualifying purchaser will be entitled to a refund from the VAT Refund Administrator (VRA), subject to the conditions in the Export Regulation being met.

VAT Connect Issue 13 - Exports

- The documentary evidence, as prescribed under IN 30 and the Export Regulation, includes the export documentation as prescribed under the Customs and Excise Act, 1964.

- It follows that in order to meet the requirements in IN 30 or the Export Regulation, to zero-rate a supply, or to obtain a refund from the VRA, the requirements under the Customs and Excise Act relating to the exportation of goods, must be met.

- Refer to the Customs and Excise Exporters Page on the SARS website for more detail on who is regarded as the exporter in different circumstances, and the procedure to register as an exporter.

- Any person (whether local or foreign) wishing to export goods from South Africa, must register as an exporter under the Customs and Excise Act, and make the relevant export declarations.

VAT Connect Issue 13 - Exports

- In the case of a foreign exporter, that person must register as an exporter and nominate a registered agent in South Africa.

- Limited exceptions for formal registration include a traveller who exports goods (other than scrap metal) where the value required to be declared is less than R150 000 during any calendar year, regardless of the number of consignments during that year.

The following persons must register as an exporter and make the relevant declarations in respect of the export:

- Direct exports – the vendor that consigns or delivers the goods to an export country

- Indirect exports – the qualifying purchaser

VAT Connect Issue 13 - Exports

- The correct person must accordingly be reflected as the “exporter” on the SAD 500, in order to comply with the provisions of the Customs and Excise Act, and the relevant documentary requirements contained in IN 30 and the Export Regulation.

- VAT Rulings can only be issued in respect of the application of the VAT Act in respect of a specific set of facts.

- On that basis, no VAT Rulings will be issued on whether the provisions of the Customs and Excise Act are met, or to confirm the documentation required under that Act.

MODULE 8

VATCONNECT ISSUE 13 - PUBLICATIONS

VAT Connect Issue 13 - Publications

Binding General Rulings (BGRs)

- BGR 57 “Whether the Term “Consideration” Includes an Amount of Transfer Duty for the Purposes of Calculating a Notional Input Tax Deduction on the Acquisition of Second-Hand Fixed Property” – issued 20 October 2021

Interpretation Notes (INs)

- IN 118 “Value-Added Tax Consequences of Points-Based Loyalty Programmes” – issued 4 November 2021

- IN 70 “Supplies Made for no Consideration” – issued 10 November 2021

VAT Connect Issue 13 - Publications

Guides

- VAT Quick Reference Guide for Non-Executive Directors (Issue 2) – issued 28 July 2021
- VAT Rulings Process Reference Guide (Issue 3) – issued 4 November 2021
- Draft Guide to the Voluntary Disclosure Programme – issued 20 October 2021 for public comment.

MODULE 9

OTHER DEVELOPMENTS

VAT Connect Issue 13 - Other Developments

Maize Meal Grade Added

- Schedule 2 Part B, read together with s 11(1)(j) of the VAT Act.
- Before 2016, the Agricultural Products Standards Act allowed for 18 grades of maize products, including the below mentioned to be sold in South Africa.
- In 2016, a new grade of maize meal, super fine maize meal was added to the list
  - now 19 graded maize products.
- Item 2 of Part B of Schedule 2 to the VAT Act updated to include super fine maizemeal.
- Effective 1 April 2022.

VAT Connect Issue 13 - Other Developments

VAT on temporary letting of residential property
new ss 9(13), 10(29), 16(3)(o) & 18D of the VAT Act

- Previously -
  - Property developers are entitled to deduct input tax on the VAT costs incurred to build residential property for sale.
  - However, where the developer is unable to sell the residential property and temporarily leased it out until a buyer was found, the developer was required to make an output tax adjustment based on the open market value of the property when the property was let for the first time.
  - An announcement was made in the 2010 Budget Review to investigate and determine an equitable value and rate of claw-back for developers as the current treatment is disproportionate to the exempt temporary rental income.
  - However, no subsequent changes were made to the VAT Act.

VAT Connect Issue 13 - Other Developments

VAT on temporary letting of residential property (continued)

- **Change of use from taxable to non-taxable: s 18(1) adjustment**
  - Output tax = OMV x 15/115

- Section 18B provided temporary relief but was scrapped from 1 January 2018.

- **Second concern:** how to treat subsequent disposal of the property (after change of use)

- **BGR 55 (10 September 2020):** The subsequent sale of a dwelling in respect of which the developer was required to have declared the deemed supply under s 18(1) or 18B(3), is not subject to VAT. Transfer Duty will apply.

VAT Connect Issue 13 - Other Developments

VAT on temporary letting of residential property (continued)

New Provisions:

- S 9(13): Where any supply of goods or services is deemed to be made as contemplated in s 18D(2) the time of supply shall be deemed to be the tax period in which the agreement for the letting and hiring of the accommodation in a dwelling comes into effect.
- S 10(29): Where goods are deemed to be supplied by a vendor in terms of s 18D(2), the supply shall be deemed to be made for a consideration in money equal to the adjusted cost to the vendor of the construction, extension or improvement of such fixed property or portion of such fixed property so supplied.
- S 16(3)(o): (amount of input tax =) an amount calculated in accordance with s 10(29).

- All came into operation on 1 April 2022.

VAT Connect Issue 13 - Other Developments

VAT on temporary letting of residential property (continued)

New Section 18D(2):

- Effective from 1 April 2022.
- Applies ‘notwithstanding s 18(1)’.
- Where goods being fixed property consisting of any dwelling
- is developed by a vendor who is a ‘developer’ wholly for the purpose of making taxable supplies or is held or applied for that purpose by that vendor; and
- is subsequently ‘temporarily applied’ by that vendor in accordance with s 12(c),
- the property is deemed to have been supplied by that vendor by way of a taxable supply for
- Consideration contemplated in s 10(29) (adjusted cost to the vendor); and
- Time of supply as per (s 9(13)) (tax period in which the agreement for letting and hiring of the accommodation in a dwelling comes into effect).

VAT Connect Issue 13 - Other Developments

VAT on temporary letting of residential property (continued)

Section 18D(3) - (5):

- When the vendor who is a developer subsequently supplies the property by way of a sale during the period that the property is temporarily applied, the supply is a taxable supply in the course or furtherance of the enterprise

- Consideration = consideration contemplated in s 10(2) (normal consideration rules).

- Time of supply (s 9(3)(d)) is the earlier of –
  - date the property transfer is registered at the Deeds office; or
  - date of any payment towards the consideration.

- Input tax deduction = amount calculated under s 10(29) (s 16(3)(o)).

VAT Connect Issue 13 - Other Developments

VAT on temporary letting of residential property (continued)

Section 18D(5):

- Applies where fixed property is –
  - Supplied as per s 18D(3); **or** –
  - Temporarily applied as per s 18D(2)(b) and then no longer applied in supplying accommodation in a dwelling immediately after the ‘temporarily applied’ period has expired; **or** –
  - Let under an agreement that extends beyond the 12 months allowed in the definition of ‘temporarily applied’ and the s 18(1) adjustment therefore applies.

- Effect: the vendor may claim an input tax deduction in terms of s 16(3)(o) (equal to the amount calculated under s 10(29): adjusted cost of the fixed property).

VAT Connect Issue 13 - Other Developments

VAT on temporary letting of residential property (continued)

Definitions:

- **S 1: ‘adjusted cost’**
  - the cost of any goods or services where tax has been charged or would have been charged if s 7 of this Act had been applicable prior to the commencement date, in respect of the supply of goods and services or if the vendor was or would have been entitled to an input tax deduction in terms of para (b) of the definition of "input tax”.

- **S 18D(1)**

  – ‘developer’
  – ‘temporarily applied’

VAT Connect Issue 13 - Other Developments

VAT on temporary letting of residential property (continued)

Definitions:

- **Developer**
  - means a vendor who:
  - continuously or regularly constructs, extends or substantially improves fixed property
  - consisting of any dwelling
  - or continuously or regularly constructs, extends or substantially improves parts of that fixed property
  - for the purpose of disposing of that fixed property after the construction, extension or improvement.

VAT Connect Issue 13 - Other Developments

VAT on temporary letting of residential property (continued)

Definitions:

- **Temporarily Applied**
  - means the application of fixed property or a portion of a fixed property in supplying accommodation in a dwelling under an agreement or more than one agreement for letting and hiring thereof which agreement or agreements relate to a combined total period not exceeding 12 months:
    - Provided that ‘temporarily applied’ does not include the application of fixed property in supplying accommodation in a dwelling under an agreement for the letting and hiring thereof where any such agreement is for a fixed period exceeding 12 months, in which case this section will not apply, but the provisions of s 18(1)shall apply.

VAT Connect Issue 13 - Other Developments

Zero-rated telecommunications services – s 11(2)(y)

- The amendment extends the zero-rate to all supplies between telecommunications service providers registered in the Republic and international telecommunications service providers to the extent that such services are not provided to any branch, main business or customer of the international telecommunications service provider which branch, main business or customer of the international telecommunications service provider is situated in the Republic at the time the services are rendered.

- In order to comply with the Dubai ITR, it is proposed that the only exception to this will be international roaming services.

- Since the existing rulings given by SARS to telecommunications service providers in this regard will end on 31 December 2021 (due to amendments to s 72), this amendment is effective from 1 January 2022.

New Interpretation Notes

Publication Date	No.	Subject	Relevant sections
04/11/2021	IN 118	VAT consequences of points-based loyalty programmes	s1(1) Definitions “consideration”, “input tax”, and “supply”, ss 7 and 10

Interpretation Note 118

Loyalty Points

- Two types of loyalty point schemes
  - Internal
  - Managed

- **Consideration has to be charged in order for VAT to apply.**
  - E.g. Admin Fee
  - Pay more than Face Value for the points (like a voucher)

- Points accrue = no VAT

NEW BINDING GENERAL RULING

Publication Date	No.	Subject	Relevant sections
20/10/2021	57	VAT: Whether the term “consideration” includes transfer duty for the purposes of calculating a notional input tax deduction on the acquisition of second-hand fixed property	S 1(1) Definition of “consideration”; para (b) of the definition of "input" tax; s 16(3)(a)(ii)(aa) and (bb) and 16(3)(b)(i)

Binding General Ruling 57

Notional Input VAT claim on property bought from non-VAT vendor

- No VAT Vendor = buyer pays Transfer Duty

- If property used to make taxable supplies, then claim Notional Input VAT
  - Apply tax fraction to lesser of:
    - Consideration
    - Open Market Value

- **Question: Does consideration include Transfer Duty?**
  - NO

- **Applies from date of issue**

Thank you
for your participation