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VAT Connect Issue 9 (February 2019)



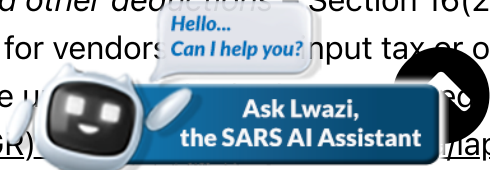
— Recent amendments

Recently the following Acts containing amendments to the VAT Act were published:

- [Taxation Laws Amendment Act 23 of 2018 \(https://www.sars.gov.za/lapd-lprim-aa-2018-03-taxation-laws-amend-act-23-of-2018-gg-42172/\)](https://www.sars.gov.za/lapd-lprim-aa-2018-03-taxation-laws-amend-act-23-of-2018-gg-42172/).
- [Tax Administration Laws Amendment Act 22 of 2018 \(https://www.sars.gov.za/lapd-lprim-aa-2018-02-tax-administration-laws-amendment-act-22-of-2018-gg-42169/\)](https://www.sars.gov.za/lapd-lprim-aa-2018-02-tax-administration-laws-amendment-act-22-of-2018-gg-42169/).
- [Rates and Monetary Amounts and Amendment of Revenue Laws Act 21 of 2018 \(https://www.sars.gov.za/lapd-lprim-aa-2018-01-rates-and-monetary-amounts-and-amendment-of-revenue-laws-act-21-of-2018-gg-42171/\)](https://www.sars.gov.za/lapd-lprim-aa-2018-01-rates-and-monetary-amounts-and-amendment-of-revenue-laws-act-21-of-2018-gg-42171/).

These Acts were promulgated on 17 January 2019 as per *Government Gazettes* 42172, 42169 and 42171 respectively. A brief summary of some of the most important VAT amendments made over the past few years is provided below:

Amendments that came into effect from 19 January 2017:

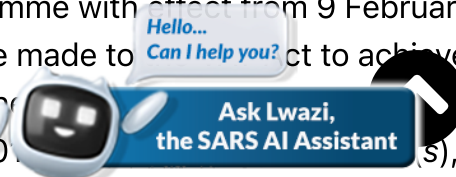
- *Alignment of tax charging provisions* – Section 7(4) was introduced to align with similar provisions in other tax Acts. It provides that the Minister of Finance, when tabling the annual national budget, may announce an increase or decrease in the standard rate of VAT with effect from a date specified in that announcement. The VAT Act must, however, be amended within 12 months of that announcement to reflect the new VAT rate. Section 77, which previously allowed the Minister to announce an increase or decrease in the rate of VAT at any time by public notice, has now been repealed.
- *Documentary proof to substantiate input tax and other deductions* – Section 16(2)(g) was originally introduced as a relief mechanism for vendors  input tax or other deductions in certain circumstances if they were unable to provide the required documentation. See [Binding General Ruling \(BGR\) 36 of 2016 \(https://www.sars.gov.za/lapd-intr-r-bgr-2016-07-bgr36-circumstances-prescribed-by-the-commissioner-for-the-](https://www.sars.gov.za/lapd-intr-r-bgr-2016-07-bgr36-circumstances-prescribed-by-the-commissioner-for-the-)

application-of-section-162g/). – Circumstances prescribed by the Commissioner for the application of section 16(2)(g) for further details in this regard. Vendors seeking access to the relief under this provision must now be in possession of a ruling issued by SARS before the deduction can be made on a return. The ruling will also specify the alternative documentary proof that must be held by the vendor to substantiate that particular deduction. This provision may only be used by a vendor as a measure of last resort after all attempts to obtain the required documentation have been unsuccessful.

- *Exemption for VAT on importation – vis major* – No customs duty or excise duty is payable under the Customs and Excise Act when certain goods are imported under rebate item 412.09, which is for goods subsequently lost, destroyed or damaged as a result of vis major (unforeseen and unpreventable events beyond the control of any person) whilst such goods are under the control of the Commissioner. The VAT Act has been amended so that it now provides an exemption for the VAT on importation of such goods under paragraph 8 of Schedule 1 to align with the circumstances mentioned in rebate item 412.09.

Amendments that came into effect from 1 April 2017:

- *Notional input tax on goods containing gold* – The definition of "second-hand goods" was amended to deal with some unintended consequences on legitimate traders in second-hand gold as a result of amendments to the definition in 2015. The effect of this amendment was explained in some detail in VAT Connect Issue 7 (December 2017) (<https://www.sars.gov.za/businesses-and-employers/my-business-and-tax/newsletters/vat-connect-issue-7-december-2017/>) and Binding General Ruling (BGR) 43 – Deduction of input tax in respect of second-hand gold (<https://www.sars.gov.za/lapd-intr-r-bgr-2017-06-bgr43-deduction-of-input-in-respect-of-second-hand-gold/>), which was issued on 12 September 2017.
- *Accounting basis for municipal entities* – Previously, section 15(2A) only allowed municipalities that account for VAT on the payments basis to be relieved of the obligation to account for the full output tax when the consideration for a supply is R100 000 or more. Section 15(2A) has now been amended to allow certain municipal entities to have access to the same relief as municipalities under this provision.
- *Industrial development zones (IDZs) and special economic zones (SEZs)* – The VAT Act makes provision for certain benefits for vendors operating in a customs controlled area of an IDZ designated by the minister in the Department of Trade and Industry as per the IDZ programme. The Department of Trade and Industry subsequently developed the SEZ programme that replaced the IDZ programme with effect from 9 February 2016. Various textual amendments were therefore made to achieve a seamless transition from the IDZ programme to the SEZ programme.
- *Low cost housing* – In terms of amendments in 2016, which deemed certain supplies of low cost housing to be made to the Department of



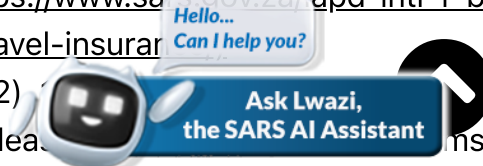
Human Settlements at the zero-rating, were deleted with effect from 1 April 2017.

These provisions were, however, re-introduced retrospectively from 1 April 2017 which, according to the Explanatory Memorandum, had the effect of postponing the deletion for a further two years.

- *Supplies made by municipalities as a result of municipal boundary changes* – Certain municipalities merged or disbanded as a result of the local government elections held during 2016. The effect was that some municipalities had to either cancel their VAT registrations or apply for new registrations. In that process, certain supplies between municipalities would have been made. Section 8(28) was therefore introduced to deem the affected municipalities to be one and the same person in certain circumstances so that there would be no supply between them for VAT purposes. Transitional measures explained in Binding General Ruling (BGR) 39 (Issue 2) – VAT treatment of municipalities affected by changes to municipal boundaries (<https://www.sars.gov.za/lapd-intr-r-bgr-2017-02-bgr39-vat-treatment-of-municipal-affected-by-changes-to-municipal-boundaries/>) were introduced to deal with these issues before section 8(28) was introduced.

Amendments that came into effect from 1 April 2018:

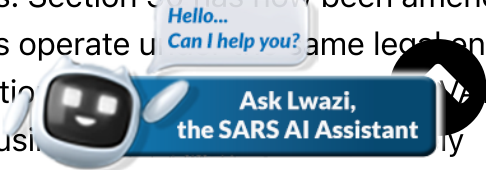
- *Increased VAT rate* – The most significant change in 2018 was the increase in the standard rate of VAT from 14% to 15%. For more detailed information on the VAT rate increase, see the Frequently asked questions: Increase in the VAT rate (<https://www.sars.gov.za/lapd-vat-g14-vat-faqs-increase-in-the-vat-rate-from-1-april-2018/>) and Pocket guide on the VAT rate increase on 1 April 2018 (<https://www.sars.gov.za/lapd-vat-g13-pocket-guide-on-the-vat-rate-increase-on-1-april-2018/>) on the SARS website. A later amendment also provides that the Minister of Finance must evaluate the impact of the VAT rate increase on revenue collection and the poor, and then table a report in that regard in Parliament by no later than 30 June 2021.
- *International travel insurance* – Section 11(2)(d) provides for the zero rate to apply to services that comprise the insuring or arranging of insurance in respect of international transportation of passengers or goods. The scope of the zero-rating was extended to include situations where the insured person is being transported to and from the original point of departure and when the insured is out of the country, but not actually travelling. Certain new definitions have also been introduced in consequence of this amendment. For more information see Binding General Ruling (BGR) 37 – VAT treatment of international travel insurance. (<https://www.sars.gov.za/lapd-intr-r-bgr-2016-08-bgr37-zero-rating-of-international-travel-insurance/>)
- *Leasehold Improvements* – Sections 8(29), 9(12) introduced to deal with the VAT implications of leasehold improvements. In terms of these amendments, the lessee is deemed to make a supply of the leasehold



improvements to the lessor at a nil value at the time that the improvements are completed. At the same time, the lessor will be required to make an output tax adjustment on the value of the improvements stipulated in the lease, or if no value is stipulated, the open market value of the improvements. The lessor will, however, not be required to make the adjustment if the leasehold improvements were acquired wholly for taxable purposes.

Amendments that came into effect from 17 January 2019:

- *Correcting of material errors on tax invoices* – Section 20(1B) has been inserted to deal with a situation where a material error or deficiency on a document purporting to be a valid tax invoice prevents the recipient from being able to deduct input tax because the document lacks the essential requirements of a tax invoice as contemplated in section 20(4) or 20(5). (This does not apply to any errors concerning the consideration that needs to be corrected by way of debit or credit note.) In such a case, the supplier must correct the document within 21 days from the date of the request by the recipient. The recipient may only deduct input tax once that person is in possession of the corrected document. The supplier must obtain and retain sufficient information to identify the transaction concerned. The correction of the tax invoice does not create another tax event for the parties, nor does it change the original time of supply.
- *Goods returned after transfer of a going concern* – Section 21(1)(d) now provides that when goods supplied by the previous owner of the business are returned to the new owner of the business that was sold as a going concern, then that new owner is deemed to have made the supply concerned. This allows the current owner to issue the required credit note to the customer and to claim a corresponding input tax adjustment, regardless of whether the supply was made to the customer by the current or previous owner.
- *Prescription period for VAT overpaid* – Section 44(11) has been inserted to clarify that any erroneous overpayment of VAT by a vendor prescribes after 5 years from the date that the overpayment was made to SARS if that vendor does not lodge a refund claim for that overpayment during that period. In addition, any such refund claim is not regarded as being received if the enterprise's banking details have not been provided to SARS within 90 days after submitting the claim.
- *Recovery of tax in respect of branches and divisions* – SARS may allow a vendor (single legal entity) to register separately for VAT in respect of any businesses carried on in the form of branches or divisions, in which case, each separate registration is regarded as a separate person for VAT purposes. Section 50 has now been amended to make it clear that as the branches or divisions operate under the same legal entity as the main business, any set-off, debt equalisation and other provisions for VAT purposes will apply equally between the main business and its registered branches.



- *Liability of bodies of persons* – Section 51(3) was amended to provide legal certainty that all the members of an unincorporated joint venture that has registered as a vendor for VAT purposes, are jointly and severally liable for the VAT debts of the joint venture and to perform any obligations required under the VAT Act (as is the case for partnerships under that provision). This rule does not apply to a joint venture company that is incorporated as a separate legal entity.

The following amendments will come into effect from 1 April 2019:

- *Electronic services* – An updated Electronic Services Regulation as well as consequential amendments to the VAT Act in this regard will come into effect from 1 April 2019 for non-resident suppliers (including local and non-resident “intermediaries” as defined) of electronic services to South African customers. See the article “**Electronic Services**” below for more details.
- *Exemption for cryptocurrency* – The issue, acquisition, collection, buying or selling or transfer of ownership of “cryptocurrency” is now treated as an exempt financial service under a new section 2(1)(o). Other fee-based services such as a commission for facilitating the sale of cryptocurrency will not fall within the scope of the exemption. For more information in this regard, see the [Consultation paper on policy proposals for crypto assets](https://www.sars.gov.za/lapd-lprep-dp-2019-01-car-wg-consultation-paper-on-crypto-assets_final/) (https://www.sars.gov.za/lapd-lprep-dp-2019-01-car-wg-consultation-paper-on-crypto-assets_final/) as well as the related [media statement](https://www.sars.gov.za/lapd-lprep-dp-2019-01a-joint-media-statement_crypto-assets-consultation-paper-vfinal/) (https://www.sars.gov.za/lapd-lprep-dp-2019-01a-joint-media-statement_crypto-assets-consultation-paper-vfinal/) issued on 16 January 2019.
- *Additional zero-rated goods* – Three more goods will be subject to VAT at the zero rate from 1 April 2019. This amendment comes after a panel of experts completed their task of making recommendations to National Treasury on whether the list of zero-rated items should be expanded to reduce the impact of the increase in the VAT rate from 14% to 15% from 1 April 2018 on poor and low-income households. The additional zero-rated items are sanitary towels (pads) and two additional basic foodstuffs in the form of “cake wheat flour” and “white bread wheat flour” as defined in Regulation 1 of the Regulations in terms of Government Notice R.405 published in Government Gazette 40828 of 5 May 2017. It has also been clarified that brown bread that is listed as Item 1 on the list of basic foodstuffs includes “whole wheat brown bread” as defined in the said Regulations.

+ Electronic services

+ Closure of dedicated enquiry mailboxes

+ Student accommodation



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VAT Connect is an information guide and not an "official publication" as defined in section 1 of the TA Act and accordingly does not create a practice generally prevailing under section 5 of that Act. It is also not a binding general ruling (BGR) under section 89 of Chapter 7 of the TA Act nor a ruling under section 41B of the VAT Act. For general enquiries regarding VAT call the **SARS Contact Centre on 0800 00 7277**. Should there be any aspects relating to VAT on which a specific VAT ruling is required, you may apply for a ruling by completing form VAT301 and sending it together with all the necessary information to SARS by facsimile on +27 86 540 9390 or by e-mail to VATRulings@sars.gov.za. Refer also to the *Quick Reference Guide on VAT Ruling Application Procedure* for more details on how to apply for a ruling.

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