

4 JUNE 2020

TAX & EXCHANGE CONTROL ALERT

IN THIS ISSUE

VAT on imported services payable by non-registered VAT vendors and goods sold in execution - the who, what and how of declarations to SARS

On 1 June 2020, the South African Revenue Service (SARS) issued an external guide titled 'Manage Declaration for Non-Registered VAT Vendors' (SARS Guide). The SARS Guide provides guidance to non-vendor recipients of imported services and in instances where goods are sold in execution of a debt, on how to settle their VAT liabilities with SARS.

VAT on imported services payable by non-registered VAT vendors and goods sold in execution - the who, what and how of declarations to SARS

The SARS Guide provides guidance to non-vendor recipients of imported services and in instances where goods are sold in execution of a debt, on how to settle their VAT liabilities with SARS.

On 1 June 2020, the South African Revenue Service (SARS) issued an external guide titled '[Manage Declaration for Non-Registered VAT Vendors](#)' (SARS Guide). The SARS Guide provides guidance to non-vendor recipients of imported services and in instances where goods are sold in execution of a debt, on how to settle their VAT liabilities with SARS.

The VAT principles applicable to imported services and goods sold in execution of a debt are first briefly described below.

Imported services

Subject to certain exceptions, VAT is payable at the standard rate of 15% by a South African recipient of imported services. This is irrespective of whether the recipient is a registered VAT vendor or a non-vendor. There are four requirements for a service to fall within the ambit of the definition of 'imported services' in the VAT Act, namely:

- The services must be rendered by a supplier who is resident outside South Africa or who carries on business outside South Africa;

- The recipient of the services must be a resident of South Africa;
- The services must be utilized or consumed in South Africa; and
- The purpose for acquiring the services must be otherwise than for the making of taxable supplies.

Where imported services are acquired for a value exceeding R100, the recipient is required to pay VAT on such importation where the services are acquired wholly or partly for a non-taxable purpose.

South Africa introduced legislation with effect from 1 June 2014 requiring foreign suppliers of 'electronic services' (e-services) to register as VAT vendors in South Africa to the extent that they make taxable supplies of e-services to South African recipients. The regulations defining what constitutes e-services were amended and the scope of what constitutes e-services was significantly broadened from 1 April 2019. The effect of the amendment is that virtually all services that are supplied by way of electronic means such as cloud computing, computer software, music, games and any online

CHAMBERS GLOBAL 2019 - 2020 ranked our Tax & Exchange Control practice in Band 1: Tax.

Emil Brincker ranked by CHAMBERS GLOBAL 2003 -2020 in Band 1: Tax.

Gerhard Badenhorst ranked by CHAMBERS GLOBAL 2014 - 2020 in Band 1: Tax: Indirect Tax.

Mark Linington ranked by CHAMBERS GLOBAL 2017- 2020 in Band 1: Tax: Consultants.

Ludwig Smith ranked by CHAMBERS GLOBAL 2017 - 2020 in Band 3: Tax.

Stephan Spamer ranked by CHAMBERS GLOBAL 2019-2020 in Band 3: Tax.



CLIFFE DEKKER HOFMEYR

VAT on imported services payable by non-registered VAT vendors and goods sold in execution - the who, what and how of declarations to SARS...continued

In terms of the SARS Guide, the VAT liability must be determined by completing a form VAT215 (imported services) or a form VAT216 (sale in execution), which are available on the SARS website. The VAT liability must then be paid via the liable person's SARS e-filing profile.

services are now included as 'electronic services'. As a result, most foreign suppliers of e-services will be registered vendors in South Africa. This removed the obligation to pay VAT on such services from the South African recipient to the foreign supplier. Consequently, a South African recipient who acquires e-services from a non-resident supplier will only be required to pay VAT on imported services if the supplier is not registered as a vendor under the e-services provisions.

Goods sold in execution

Where a person purchased goods under a credit arrangement and then defaults, another person, normally the Sheriff of the court, may take possession of the goods purchased, and the Sheriff may then sell the goods in execution of the debt owed by that person.

Where goods are sold in execution of a debt, the sale is, in certain circumstances, deemed to be made in the course of an enterprise and the sale will therefore be subject to VAT. In this instance, the seller, and not the owner of the goods is required to account for VAT thereon to SARS.

The Declaration process

Where imported services are acquired by a recipient who is a registered vendor, the VAT liability in respect thereof may be included in the vendor's VAT201 declaration. However, where the recipient is a non-vendor, such non-vendor was previously required to complete a form VAT215 and to make payment of the VAT to a SARS branch office.

Where goods are sold in execution of a debt and the sale is subject to VAT, the VAT on such sale must be accounted for and paid separately to SARS and may not be accounted for under the VAT number of the seller or that of the owner of the goods. The seller was previously required to complete a form VAT216 and to make payment of the VAT at a SARS branch office.

Where the recipient of imported services is not registered for VAT, there is no VAT number under which payment can be made to SARS. The making of payments without a VAT number at a SARS branch office became a challenge and SARS branch offices often refused to accept these payments as they did not seem to know how to process payments without a VAT number and where to allocate such payment. The process for making these payments has now been amended and the SARS Guide has been issued to clarify the payment process. The VAT215 and VAT216 forms have been updated accordingly.

In terms of the SARS Guide, the VAT liability must be determined by completing a form VAT215 (imported services) or a form VAT216 (sale in execution), which are available on the SARS website. The VAT liability must then be paid via the liable person's SARS e-filing profile following the process as described in the SARS Guide.

Once the payment has been successfully made via SARS e-filing, the e-filing system will generate a payment confirmation receipt number. The recipient of the imported services, or the seller of the

VAT on imported services payable by non-registered VAT vendors and goods sold in execution - the who, what and how of declarations to SARS...continued

Only recipients or sellers who are registered for income tax and who are also registered on the SARS e-filing system will be able to adhere to the new mandated declaration and payment process.

goods sold in execution, as the case may be, is then required to insert the payment confirmation receipt number in the 'Receipt Number' field on the VAT215 or VAT216 form. The recipient or the seller, as the case may be, is not required to submit the completed VAT215 or VAT216 forms to SARS; they are simply required to retain the completed form for a period of five years and must be able to produce this to SARS if requested to do so. Consequently, the recipient or the seller will no longer be required to visit a SARS branch office for purpose of making payment.

Comments

It is important to note that to make the VAT payments to SARS in respect of imported services or goods sold in execution via SARS e-filing, the income tax reference number of the recipient of the imported services or seller of goods

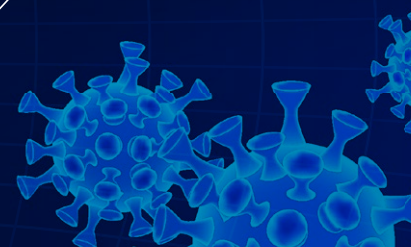
sold in execution is a pre-requisite. It is therefore only recipients or sellers who are registered for income tax and who are also registered on the SARS e-filing system will be able to adhere to the new mandated declaration and payment process. It seems, however, that the requirement to be registered for income tax represents a shortcoming in the process because there could be instances where a non-vendor recipient of imported services may not be registered for income tax, even though such instances are exceptional.

The amended process of making payments of VAT electronically in these circumstances is welcomed. However, SARS may need to reconsider introducing an alternate declaration process for persons who are also not registered for income tax.

Varusha Moodaley

CDH'S COVID-19 RESOURCE HUB

Click here for more information 



OUR TEAM

For more information about our Tax & Exchange Control practice and services, please contact:



Emil Brincker
National Practice Head
Director
T +27 (0)11 562 1063
E emil.brincker@cdhlegal.com



Mark Linington
Private Equity Sector Head
Director
T +27 (0)11 562 1667
E mark.linington@cdhlegal.com



Stephan Spamer
Director
T +27 (0)11 562 1294
E stephan.spamer@cdhlegal.com



Gerhard Badenhorst
Director
T +27 (0)11 562 1870
E gerhard.badenhorst@cdhlegal.com



Ben Strauss
Director
T +27 (0)21 405 6063
E ben.strauss@cdhlegal.com



Jerome Brink
Director
T +27 (0)11 562 1484
E jerome.brink@cdhlegal.com



Louis Botha
Senior Associate
T +27 (0)11 562 1408
E louis.botha@cdhlegal.com



Petr Erasmus
Director
T +27 (0)11 562 1450
E petr.erasmus@cdhlegal.com



Keshen Govindsamy
Senior Associate
T +27 (0)11 562 1389
E keshen.govindsamy@cdhlegal.com



Dries Hoek
Director
T +27 (0)11 562 1425
E dries.hoek@cdhlegal.com



Varusha Moodaley
Senior Associate
T +27 (0)21 481 6392
E varusha.moodaley@cdhlegal.com



Heinrich Louw
Director
T +27 (0)11 562 1187
E heinrich.louw@cdhlegal.com



Louise Kotze
Associate
T +27 (0)11 562 1077
E louise.kotze@cdhlegal.com



Howmera Parak
Director
T +27 (0)11 562 1467
E howmera.parak@cdhlegal.com

BBBEE STATUS: LEVEL TWO CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

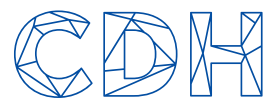
CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

©2020 8907/JUNE



CLIFFE DEKKER HOFMEYR