

Tax & Exchange Control

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South Africa

- The critical importance of the compliance requirements of BGR 16 (Issue 3) in VAT apportionment



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The critical importance of the compliance requirements of BGR 16 (Issue 3) in VAT apportionment

On 27 November 2023, the South African Revenue Service (SARS) issued Binding General Ruling 16 (Issue 3) (BGR16), which sets out the standard turnover-based method that must be applied by vendors to determine their value-added tax (VAT) apportionment ratio. BGR16 became effective from 1 January 2024 and applies to financial years commencing on or after this date.

From this date, the standard turnover-based method as outlined in BGR16 is the default method which applies to all vendors in the absence of an alternative apportionment method that is approved by SARS in writing. BGR16 introduced several important inclusions, exclusions, and adjustments to be made when vendors perform their VAT apportionment calculations. Furthermore, BGR16 contains two very important compliance requirements for vendors who apply the BGR16 apportionment method.

Annual adjustment

The Value-Added Tax Act 89 of 1991 (VAT Act) requires a vendor to determine the apportionment ratio in respect of each tax period. However, due to the difficulties experienced by vendors in calculating the actual apportionment ratio for each tax period, SARS allows vendors, in terms of its VAT404 *Guide for Vendors*, to use an estimated apportionment ratio based on the actual figures from the previous year's financial statements, and to apply that ratio for deducting input tax in each individual tax period for the current year.

However, where vendors apply the previous year's financial statement figures to determine the current year's apportionment ratio, they are required to perform an annual true-up adjustment. This adjustment reflects the difference between the estimated apportionment ratio applied during the year and the ratio calculated based on the current year's actual financial results.

BGR16 requires that the adjustment must be declared within nine months after the vendor's financial year-end. This means that the adjustment must be made in the VAT return due for month eight, which must be submitted by the end of month nine.

By way of an example, if a vendor with a February financial year end and who is registered to submit monthly VAT returns applied the prescribed apportionment method in accordance with BGR16, its first financial year in applying the method would have ended on 28 February 2025. The true-up adjustment was then required to be made in the vendor's October 2025 tax VAT return, which was due on 28 November 2025.

Compulsory reporting to SARS

BGR16 stipulates that the prescribed apportionment formula may only be applied if the vendor submits the following information annually to SARS at the time the annual true-up adjustment referred to above is reflected in the VAT201 return:

- The vendor's name.
- The vendor's VAT registration number.
- The apportionment method and formula applied.
- The apportionment ratio (percentage) for the year, rounded to two decimal places.

Furthermore, BGR16 requires that where a vendor applies the formula stipulated therein for the first time, the vendor must also describe the apportionment method that it applied during the preceding three years and the apportionment ratio for each of these three years.

All this information must be submitted to SARS by electronic mail to the email address vatrulings@sars.gov.za

Implications for vendors

If a vendor omits to perform the annual true-up adjustment, or if the adjustment is not made in the correct tax period, then the vendor will be liable for the payment of VAT, late payment penalties, interest and possibly also understatement penalties, where the apportionment ratio based on the actual figures for the financial year is lower than the estimated apportionment ratio applied during the financial year based on the prior year's financial figures.

SARS has not stated why it compels vendors to submit the details regarding the apportionment formula applied and the resultant ratio annually to SARS, or what the information will be used for. BGR16 stipulates that the formula set out therein may only be used if the required information is submitted annually to SARS. However, it is doubtful whether SARS can deny the application of the apportionment method contained in BGR16 and apply a different method unilaterally if the vendor omitted to submit the information to SARS. Section 17(1) of the VAT Act requires the vendor to apply the apportionment method as set out in BGR16 in the absence of any other approved method. Moreover, BGR16 itself stipulates that the apportionment method set out therein is the standard method of apportionment and also the default method that must be applied.

However, this does not mean that vendors can simply ignore their obligation to submit the required information annually to SARS. Section 234(2)(h) of the Tax Administration Act 28 of 2011 stipulates that a person who wilfully or negligently fails to comply

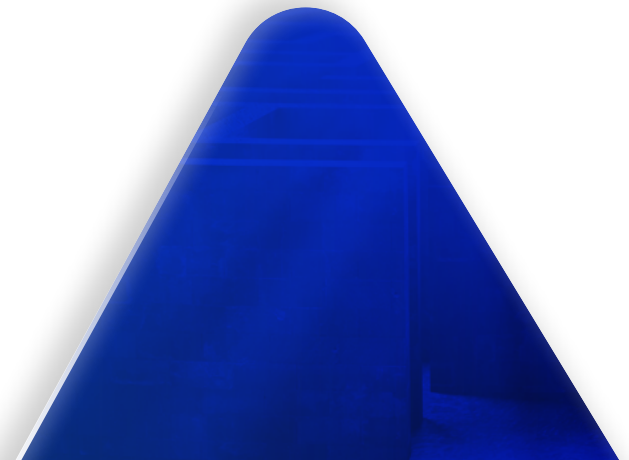
with a directive or instruction issued by SARS to a person under a tax act, is guilty of an offence and is liable, upon conviction, to a fine or imprisonment for a period not exceeding two years.

Conclusion

Vendors who apply the apportionment method as set out in BGR16 should ensure that they perform the annual true-up adjustment within the prescribed time period. Not performing the annual adjustment timeously may result in penalties and interest being incurred.

It is critical for vendors applying the BGR16 apportionment method to submit the required information annually to SARS at the stipulated email address. Failure to do so is a criminal offence. Where vendors omitted to submit the information to SARS at the required time, they are well advised to do so without any further delays, and to ensure that, going forward, the information is provided annually to SARS.

Gerhard Badenhorst and Tersia van Schalkwyk



OUR TEAM

For more information about our Tax & Exchange Control practice and services in South Africa, Kenya and Namibia, please contact:



Emil Brincker

Practice Head & Director:
Tax & Exchange Control
T +27 (0)11 562 1063
E emil.brincker@cdhlegal.com



Patrick Kauta

Managing Partner | Namibia
T +264 833 730 100
M +264 811 447 777
E patrick.kauta@cdhlegal.com



Gerhard Badenhorst

Director:
Tax & Exchange Control
T +27 (0)11 562 1870
E gerhard.badenhorst@cdhlegal.com



Jerome Brink

Director:
Tax & Exchange Control
T +27 (0)11 562 1484
E jerome.brink@cdhlegal.com



Petr Erasmus

Director:
Tax & Exchange Control
T +27 (0)11 562 1450
E petr.erasmus@cdhlegal.com



Dries Hoek

Director:
Tax & Exchange Control
T +27 (0)11 562 1425
E dries.hoek@cdhlegal.com



Alex Kanyi

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E alex.kanyi@cdhlegal.com



Heinrich Louw

Director:
Tax & Exchange Control
T +27 (0)11 562 1187
E heinrich.louw@cdhlegal.com



Howmera Parak

Director:
Tax & Exchange Control
T +27 (0)11 562 1467
E howmera.parak@cdhlegal.com



Stephan Spamer

Director:
Tax & Exchange Control
T +27 (0)11 562 1294
E stephan.spamer@cdhlegal.com



Tersia van Schalkwyk

Tax Consultant:
Tax & Exchange Control
T +27 (0)21 481 6404
E tersia.vanschalkwyk@cdhlegal.com



Nicholas Carroll

Senior Associate:
Tax & Exchange Control
T +27 (0)21 481 6433
E nicholas.carroll@cdhlegal.com



Varusha Moodaley

Senior Associate:
Tax & Exchange Control
T +27 (0)21 481 6392
E varusha.moodaley@cdhlegal.com



Mariska Delpoort

Associate:
Tax & Exchange Control
T +27 (0)11 562 1574
E mariska.delpoort@cdhlegal.com



Denis Maina

Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E denis.maina@cdhlegal.com



Puleng Mothabeng

Associate:
Tax & Exchange Control
T +27 (0)11 562 1355
E puleng.mothabeng@cdhlegal.com



Charity Muindi

Associate | Kenya
T +254 731 086 649
+254 708 562 546
+254 710 560 114
E charity.muindi@cdhlegal.com



Savera Singh

Associate:
Tax & Exchange Control
T +27 (0)11 562 1575
E savera.singh@cdhlegal.com

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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.

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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

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114
E cdhkenya@cdhlegal.com

ONGWEDIVA

Shop No. 94, Oshana Mall, Ongwediva, Namibia
T +264 (0) 81 287 8330 E cdhnamibia@cdhlegal.com

STELLENBOSCH

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

WINDHOEK

2nd Floor, 4@Steps - East Tower, Hilltop Estate, Kleine Kuppe, Windhoek.
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020
T +264 833 730 100 E cdhnamibia@cdhlegal.com

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