



Legal & Policy

Value-Added Tax

VAT 411

**Guide for Entertainment,
Accommodation and Catering**

Preface

This guide is a general guide concerning the application of the Value-Added Tax (VAT) law regarding supplies of goods or services which fall into the category of “*entertainment*” and serves as a supplement to the *VAT 404 – Guide for Vendors* which deals with the general operation of VAT. Although fairly comprehensive, the guide does not deal with all the legal detail associated with VAT and is not intended for legal reference. Technical and legal terminology has also been avoided wherever possible.

As the term “*entertainment*” covers a very wide array of goods and services, it is not possible for the guide to cover all aspects of entertainment. It focuses its attention, for the most part, on businesses which supply accommodation, food, beverages and other goods and services which are necessary to provide some form of hospitality or entertainment experience.

All references to “the VAT Act” are to the Value-Added Tax Act 89 of 1991, and references to “sections” are to sections in the Value-Added Tax Act, unless the context indicates otherwise. Similarly, all references to “the Tax Administration Act” and “the Income Tax Act” refer to the Tax Administration Act 28 of 2011 and the Income Tax Act 58 of 1962 respectively.

The terms “Republic”, “South Africa” or the abbreviation “RSA”, are used interchangeably in this guide as a reference to the sovereign territory of the Republic of South Africa, as set out in the definition of “Republic” in section 1(1) of the VAT Act. The terms “Commissioner” and “Minister” refer to the Commissioner for SARS and the Minister of Finance respectively, unless otherwise indicated. A number of specific terms used throughout the guide are defined in the VAT Act. These terms and others are listed in the **Glossary** in a simplified form to make the guide more user-friendly.

The information in this guide is based on the VAT and Tax Administration legislation (as amended) as at the time of publishing and includes the following:

- The Taxation Laws Amendment Act 25 of 2015 which was promulgated on 8 January 2016 (as per *Government Gazette* (GG) 39588); and
- The Tax Administration Laws Amendment Act 23 of 2015) which was promulgated on 8 January 2016 (as per GG 39586).

There are various other guides available on the **SARS website** which may be referred to for more information relating to the specific VAT topics. *Refer to the VAT 404 – Guide for Vendors for a list of the various guides published.*

Should any person require further clarification on any matter relating to the VAT treatment of entertainment, accommodation and catering, such person may apply for a VAT Ruling as envisaged in section 41B of the VAT Act read with **Chapter 7** of the Tax Administration Act. Refer to the **Contact details** at the end of this Guide for the address to which such ruling applications may be submitted.

This guide is not an “official publication” as defined in section 1 of the Tax Administration Act and accordingly does not create a practice generally prevailing under section 5 of that Act. It is also not a binding general ruling under section 89 of **Chapter 7** of

the Tax Administration Act nor a ruling under section 41B of the VAT Act unless otherwise indicated.

All previous editions of this guide are withdrawn with effect from 10 March 2016.

Should there be any aspects relating to VAT which are not clear or not dealt with in this guide, or should you require further information or a specific ruling, you may –

- visit the SARS website at **www.sars.gov.za**;
- contact your local SARS branch;
- contact your own tax advisors;
- contact the SARS National Call Centre –
 - if calling locally, on 0800 00 7277; or
 - if calling from abroad, on +27 11 602 2093; or
- submit legal interpretative queries on the Tax Administration Act by e-mail to **TAAInfo@sars.gov.za**; or
- submit a ruling application to SARS headed “Application for a VAT Class Ruling” or “Application for a VAT Ruling” together with the VAT301 form by e-mail to **VATRulings@sars.gov.za** or by facsimile on +27 86 540 9390.

Comments regarding this guide may be e-mailed to **policycomments@sars.gov.za**.

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Chapter 1

Introduction

1.1 Scope of entertainment topics

As mentioned in the **Preface** of this guide, the term “entertainment” covers a very wide array of goods and services. To illustrate, the definition of “entertainment” in section 1(1) means –

“the provision of any food, beverages, accommodation, entertainment, amusement, recreation or hospitality of any kind by a vendor whether directly or indirectly to anyone in connection with an enterprise carried on by him”.

If one thinks of all the different types of entertainment supplies, and all the direct or indirect ways in which a person can be *supplied* with “any food, beverages, accommodation, entertainment, amusement, recreation or hospitality” as contemplated by the definition, the permutations are almost infinite. It has, therefore, been necessary to limit the scope of this guide to focus, for the most part, on hospitality type businesses which supply entertainment in the form of accommodation, food, beverages, and associated goods and services.

Typically, this includes –

- different types of supplies made by accommodation establishments, including meals and other domestic goods and services supplied together with the accommodation (where applicable);
- supplies of food and beverages in restaurants, bars, hotels or other entertainment environments; and
- catering services supplied to customers or employees at events and places of work, as well as some of the outsourcing arrangements in respect of those supplies.

The term “*entertainment*” when used in this guide is therefore intended to focus on these limited areas, but the reader should remember that the term has a much wider meaning when applying the VAT Act in a more general sense.

1.2 Approach of the guide

The approach of this guide in dealing with the topics mentioned in **1.1** is set out below.

Chapter 1 – Explores the scope of the topic and some of the general rules regarding supplies of entertainment.

Chapter 2 – Introduces the reader to the most important concepts, terms and definitions mentioned in the guide so that the VAT treatment of supplies of entertainment which are explained in later chapters can be understood.

Chapter 3 – Provides a brief overview of the legal concepts “agent” and “principal”. This is important as the VAT consequences of a transaction cannot be determined until the contractual relationship between the parties is established. These concepts are particularly important with regard to supplies of accommodation, catering and travel, which are often arranged through agents.

Chapter 4 – Deals with supplies of entertainment in general and focuses on the special rules which deny the deduction of input tax on entertainment expenses, as well as the exceptions to these rules.

Chapter 5 – Provides a detailed analysis of the definition “*commercial accommodation*” and highlights the different types of supplies and accommodation establishments contemplated in this definition.

Chapter 6 – Explains the VAT treatment of the different types of supplies made by accommodation establishments.

Chapter 7 – Deals with matters pertaining to the time and value of supplies, as well as the issuing of invoices and tax invoices, and how this impacts on the accounting of VAT.

Chapter 8 – Focuses on the issues faced by catering businesses which supply food and beverages to customers as their main business, or as an ancillary part of carrying on another activity. Examples include restaurants, commercial caterers, employee and student canteens, and businesses which supply meals and refreshments as part of a transportation service.

Chapter 9 – Discusses the supplies made by welfare organisations, clubs, associations not for gain, societies and similar bodies, as well as some special rules which apply to these entities.

Chapter 10 – Discusses some of the other aspects regarding the supply of entertainment which are not dealt with in the other chapters.

Although some aspects of the supply of entertainment made by other vendors, such as casinos, welfare organisations, tour operators, municipalities, recreational clubs and associations not for gain will be touched on briefly in this guide, these will not be dealt with in detail. The same will apply if SARS has already issued a guide, interpretation note or other document explaining the VAT treatment of the supply of entertainment in certain situations. Where applicable, these other documents will be referred to in this guide, but the content will not be repeated unnecessarily.

For example, the following documents contain more information on other aspects of the supply of entertainment:

- VAT 404 – *Guide for Vendors*
- VAT 414 – *Guide for Associations not for Gain and Welfare Organisations*
- Interpretation Note 41 (Issue 2) “Application of the VAT Act to the Gambling Industry”
- Interpretation Note 42 “The Supply of Goods and/or Services by the Travel and Tourism Industry”
- Interpretation Note 70 “Supplies made for No Consideration”

1.3 Background

Most countries which have a VAT system of taxation have special rules regarding entertainment expenses incurred by vendors. The reasoning behind these special rules is that entertainment purchases are often subject to abuse because they have both a business

and personal consumption component. Normally, these rules take the form of a denial of input tax on such expenses. However, as an input tax deduction should, in principle, not be denied in respect of legitimate business transactions, the denial of input tax is usually subject to a limited list of exceptions where certain specified conditions have to be met before the deduction of input tax may be allowed.

These exceptions will be discussed in more detail in **Chapter 4**. If the circumstances of a particular case are not covered in the list of exceptions, the deduction of input tax is denied, even if the element of personal consumption is negligible.

Other important general features of the VAT rules regarding supplies of entertainment are as follows:

- The VAT on entertainment expenditure incurred for exempt or private purposes, is not denied under the general disallowance rule, but rather, it does not qualify as input tax since it is wholly attributable to non-enterprise activities or purposes.
- When goods or services are acquired partly for entertainment purposes and partly for the purposes of making other supplies, only the portion of the input tax on these goods or services which relates to the supply of entertainment is denied under the general disallowance rule.
- When entertainment goods or services are acquired in circumstances covered in the list of exceptions and input tax has been deducted thereon, the vendor must make an output tax adjustment if the actual use or application of the goods or services is different from the original intended purpose. This includes stock taken by the vendor for own use, or for other non-taxable purposes.
- When an input tax deduction on goods or services acquired for purposes of entertainment has been denied under the general disallowance rule, the subsequent supply of that entertainment is deemed to not have been supplied in the course or furtherance of the vendor's enterprise. In other words, no VAT will be levied on goods or services supplied when the VAT incurred on the original acquisition of those things was specifically denied. For example, an employer which provides free meals to employees (or charges a price which is less than an amount which covers all the direct and indirect costs of providing those meals) will not charge VAT on any consideration paid by the employee, and the employer will not be allowed to deduct any input tax on goods or services acquired for purposes of supplying such entertainment.

The general features of the VAT system as it relates to the provision of entertainment and the deduction of input tax in relation to supplies of entertainment are discussed in more detail in **Chapter 4**.

Chapter 2

Definitions and concepts

2.1 Accommodation

The term "accommodation" is not defined in the VAT Act, and therefore, the ordinary dictionary meaning applies. According to The Concise Oxford Dictionary "accommodation" is defined as "lodgings; a place to live". In its ordinary meaning the word is therefore capable of being interpreted as –

- the mere supply of a place to live; or
- the supply of a place to live, including all the things that commonly go with the supply of a place to live.

In the context of the VAT Act the meaning of "accommodation" is not limited to the mere supply of a place to live but should include everything that, in the circumstances of that supply, can be said to be part of the supply of the accommodation. However, it can sometimes be difficult to distinguish between supplies that may be considered to be part of the supply of accommodation and a separate supply of other goods or services not being part of the supply of the accommodation. All the circumstances must be taken into account to determine whether supplies to an occupant or tenant are integral, ancillary or incidental to the supply of accommodation in a dwelling, or to a supply of commercial accommodation (including domestic goods and services).¹

2.2 All-inclusive charge

The term "all-inclusive charge" is referred to in a special value of supply rule² which is applicable when commercial accommodation is supplied to a customer or resident together with domestic goods and services for a continuous period in excess of 28 days.

The term is not defined and therefore takes its ordinary meaning. The Encarta dictionary (English U.K.) defines the term "all-inclusive" as:

"including everything; including or encompassing everything that is expected or appropriate".

It follows that an "all-inclusive charge" in the context of the application of the special value of supply rule, means a composite amount quoted or charged for the supply of commercial accommodation including any domestic goods and services included by the supplier, or expected by the guest as an integral, necessary, or ancillary part of the supply of accommodation.

2.3 Consideration

The term "*consideration*" in its simplest form means anything that is received in return for the supply of goods or services. It therefore includes, for example, the cash payment in respect of the purchase price of goods, the giving of a post-dated cheque for the payment of

¹ Refer to **2.6** for a more detailed discussion on the difference between the supply of a "dwelling", and the supply of "commercial accommodation", as well as **Chapter 5**.

² Refer to section 10(10).

services or the open market value of services received in return for providing goods under a barter transaction. However, specifically excluded from the ambit of consideration is a donation made to an association not for gain. Also, a “deposit” payment³ whether refundable or not, given in respect of a supply of goods or services is not regarded as payment made for the supply⁴ unless and until the supplier applies the deposit as consideration for the supply or the deposit is forfeited.

2.4 Domestic goods and services

The term “domestic goods and services” is defined specifically for purposes of the application of the special value of supply rule referred to in **7.3.2**. It refers to certain specified goods and services which are supplied to the occupant as an integral, necessary, or ancillary part of the supply of the accommodation, including cleaning and maintenance, electricity, water, gas, air conditioning or heating, the use of a telephone, television set or radio, furniture and other fittings, meals etc.

Domestic goods and services may be supplied separately for a separate consideration, or they may be supplied at an all-inclusive charge to the guest as an integral part of the supply of accommodation. In the latter case, only 60% of the all-inclusive charge will be subject to VAT at the standard rate if the guest stays for a period in excess of 28 days. In the event that the guest stays 28 days or less, the consideration in money shall be 100% of the all-inclusive charge.

The full value of goods or services supplied by the accommodation establishment which do not fall within the definition of “*domestic goods and services*” (but which are not exempt or zero-rated) will always attract VAT at the standard rate whether included in the all-inclusive charge or not. Not all supplies by an accommodation establishment qualify as domestic goods and services.

Refer to **Chapter 6** for a further discussion on the application of the law in regard to goods and services falling within, and outside the ambit of the definition.

2.5 Dwelling vs Commercial accommodation

The term “commercial accommodation” refers to hospitality-type accommodation and not to the letting of office space or premises from where the occupant will carry on a business activity or occupy as a domestic dwelling under a lease agreement. Refer to **Chapter 5** for a detailed discussion on the meaning of this term.

The supply of a dwelling is exempt from VAT, whereas the supply of commercial accommodation is subject to VAT (if the supplier is a vendor). The supply of accommodation in a house, flat, room or part of a building which constitutes the place of residence of a natural person can constitute the supply of a dwelling. However, a similar type of supply in certain circumstances may constitute the supply of commercial accommodation. It is therefore important to examine the nature and characteristics of the supply as well as all the circumstances under which the supply is made to determine the VAT treatment.

³ Refer to **7.2.2** for a detailed discussion on deposits and prepayments.

⁴ This excludes a deposit on a returnable container.

The concept of “lodging or board and lodging” is central to the definition of “commercial accommodation” when compared to the concept of “a contract for letting and hiring”, in relation to the definition of “dwelling”. The term “commercial accommodation” refers not to a physical place, but rather, to an activity consisting of the “regular and systematic” supply of “lodging or board and lodging, together with domestic goods and services” in a particular type of commercial establishment which is suited to catering for the accommodation needs of its guests. On the other hand, a dwelling refers to a physical place or structure which is intended to be used as the place of residence of the occupant who is the lessee of the property.

Distinguishing characteristics which can be used as a guideline to identify the supply of a dwelling as opposed to the supply of commercial accommodation are as follows:

- A dwelling is a building (or part thereof) which is usually a self-contained unit not easily capable of subdivision into further self-contained accommodation units. A dwelling will typically have at least a kitchen, a bedroom and a bathroom;⁵ and the occupant (lessee) will usually enter into a formal written lease agreement with the owner or lessor (although verbal agreements are equally binding on the parties).
- Accommodation in a dwelling is generally supplied for long periods. Residential leases for dwellings are usually for periods of six months or more, although this does not exclude leases for shorter periods from qualifying as the supply of a dwelling. More typically, residential leases are for a fixed period of one or two years, often followed by a month-to-month arrangement (unspecified or indefinite period). Commercial accommodation is typically supplied for shorter periods. Most hospitality type accommodation is supplied for periods of less than 28 days. However, in some cases (for example in old age homes and residential hotels), the accommodation may be supplied for longer periods.
- The supply of commercial accommodation would typically be run as businesses providing varying degrees of serviced accommodation for varying lengths of time usually (but not always) to a number of different people at the same time (for example a hotel).
- Although not a requirement, the rental charge for a dwelling may often exclude the supply of water and electricity by a municipality or similar service provider. In the case of commercial accommodation, the supply of water and electricity by the municipality, will in almost all cases, be to the person conducting the commercial establishment and not to the guest or resident.
- The owner or lessor of a dwelling is usually not expected to be in attendance at the property to cater for the needs of the lessee, or to supply domestic goods and services. Under a lease agreement, the lessee expects “quiet enjoyment” of the premises without any undue interruption or interference by the landlord. The owner of the property may not usually enter the premises without prior notice and at reasonable times, unless there is an incident that requires urgent attention such as emergency repairs and maintenance. However, in a commercial accommodation establishment, it is expected that the proprietor or the employees of the establishment will regularly enter the room or unit for purposes of cleaning and maintaining the accommodation and generally to be available to cater for the needs

⁵ There may be some exceptions or variations, for example, in some cases there may be a common cooking area or shared bathroom facilities.

of guests whilst staying at the establishment. Typically, this will involve the supply of domestic goods and services – either included as part of the accommodation charge, or for a separate charge.

- The supply of furnishings and fittings is not usually a reliable indicator of whether the supply should be characterised as a dwelling or commercial accommodation. Commercial accommodation is almost always supplied together with the use of furniture and fittings and access to certain facilities and amenities, but these could also be supplied together with a dwelling under the lease agreement, for a fully or partially furnished dwelling.⁶
- When a dwelling is supplied, the owner or lessor grants the use and enjoyment of land and buildings by way of contract (a lease agreement) for a specified period in return for the payment of rent. For commercial accommodation, the accommodation unit is supplied by a commercially-run establishment providing lodging, or board and lodging to guests, and often contains a number of associated common areas from where the establishment provides other goods and services to guests (usually for additional consideration). For example, a bar, a restaurant, shops, currency exchange, etc.
- Contractually, the supply of the use of a dwelling for a consideration is a supply under leasehold tenure, and the lease agreement prescribes the acceptable purposes for which the property may be used by the lessee as a residence. Commercial accommodation involves making available the use of an accommodation unit which forms part of the assets or resources of the accommodation establishment to the guest under a general agreement, understanding, or licence to occupy. The guest is subject to the rules⁷ of the accommodation establishment which forms the basis of the terms and conditions of occupancy.

If residential units in a building are used to supply commercial accommodation, the units concerned will not constitute dwellings. Similarly, a dwelling supplied in terms of an agreement for the letting and hiring thereof is excluded from the definition of “*commercial accommodation*”. This makes the terms “*dwelling*” and “*commercial accommodation*” mutually exclusive.

2.6 Enterprise

The term “*enterprise*” is very important in the context of the VAT Act, because –

- a person who does not conduct an enterprise cannot register for VAT;
- only supplies made in the course or furtherance of an enterprise (referred to as taxable supplies) are subject to VAT; and
- only VAT on expenses incurred for the purpose of consumption, use or supply in the course of making taxable supplies can be deducted as input tax.

⁶ An example is when the supply of a dwelling includes the use of appliances such as a stove or fridge, or the use of other fixtures, fittings or facilities included in the rental charge for the dwelling.

⁷ The rules are usually made available to guests in the form of a written notice handed to the guest upon checking in at reception, or posted in plain sight of the guest in all accommodation units forming part of the accommodation establishment.

A person will generally be considered to be carrying on an enterprise if all of the following requirements are met:

- An enterprise or activity is carried on continuously or regularly in the Republic or partly in the Republic by any person.
- In the course of the enterprise or activity, goods or services are supplied to another person.
- A consideration is charged for the goods or services supplied.

“Continuously” is generally interpreted as ongoing, that is, the duration of the activity has neither ceased in a permanent sense, nor has it been interrupted in a substantial way. The term “regular” refers to an activity that takes place repeatedly. Therefore, an activity can be “regular” if it is repeated at reasonably fixed intervals taking into consideration the type of supply and the time taken to complete the activities associated with making the supply.

The general rule is that if a person conducts an enterprise and the value of taxable supplies for any 12-month consecutive period exceeds R1 million, or at the commencement of any month the value of the taxable supplies in terms of a contractual obligation in writing to be made by that person will exceed R1 million, the person is obliged to register for VAT.

In cases where the value of taxable supplies is less than the threshold, but more than R50 000, the person may apply for voluntary registration. Voluntary registration will, however, only be permitted when the value of taxable supplies that has already been made, has exceeded R50 000 in the past 12-month period or can be reasonably expected to exceed R50 000 within 12 months from the date of registration.⁸

It should be noted that although the voluntary registration rules refer to a minimum threshold of taxable supplies of R50 000, a person that supplies commercial accommodation can only qualify as an enterprise if the value of taxable supplies is in excess of (or can be reasonably expected to exceed) R120 000. If the value of the commercial accommodation supplied exceeds R50 000 but does not exceed R120 000 the person will not be entitled to register as a VAT vendor since the person will not be deemed to conduct an enterprise.

Prior to 1 April 2016 the minimum threshold of taxable supplies for a person supplying commercial accommodation in order to qualify as an enterprise was R60 000. In the event that a vendor provides commercial accommodation which previously qualified as an enterprise because the value of the taxable supplies exceeded R60 000, that vendor will, with effect from 1 April 2016, be required to de-register as a vendor if the value of taxable supplies does not exceed R120 000.

Example 1 – Registration as a business supplying commercial accommodation

Facts:

During April 2015 Ms S bought a house in Soweto which she refurbished and converted into a guesthouse to take advantage of the accommodation needs of tourists in the Johannesburg area. Ms S estimated that the potential income from the activity will be in the region of R100 000 per annum.

⁸ The circumstances under which it can be reasonably expected that the R50 000 threshold will be met are set out in Regulation 447 published in *Government Gazette* 38836 on 29 May 2015.

Since Ms S made supplies of accommodation together with domestic goods and services in excess of R60 000 in the first 12-month period she applied for voluntary registration and was registered as a vendor with effect from 1 April 2015.

Result:

If the supply of commercial accommodation together with domestic goods and services by Ms S for a 12-month periods exceeds R60 000 but does not exceed R120 000 on 1 April 2016, Ms S will be required to deregister as a VAT vendor as she will no longer be regarded as conducting an enterprise for VAT purposes.

Since the VAT Act does not require any specific number of units to be held for purposes of supplying commercial accommodation, the R120 000 threshold applies collectively to all the accommodation units available for occupation, and not to every individual place.

Whether a person meets this threshold requirement or not, is a matter of fact which must be established on the particulars of the case. For example, if an accommodation unit is continuously available for accommodation and an average monthly income of R12 000 is earned over the past 12 months, the requirement would be met ($R12\ 000 \times 12 = R144\ 000$). However, where the income from providing accommodation is more erratic over the 12-month period, evidence in the form of advance bookings, fixed contracts with corporate entities or tour operators, expected seasonal demand, or likely demand due to major events taking place in the area would be important factors to consider in determining if it is reasonable to expect that the R120 000 threshold will be attained.

Excluded from the definition of “*enterprise*” is any activity that involves the making of exempt supplies or other supplies falling outside the scope of VAT.⁹ If a person only makes exempt supplies or other non-taxable supplies, that person will not be able to register for VAT. In a case where the person is registered for VAT in respect of a taxable activity and also conducts non-taxable or exempt activities, VAT cannot be charged on the non-taxable or exempt supplies and input tax can only be deducted to the extent that the goods or services are acquired for taxable purposes.

For example, the following supplies constitute exempt supplies or other non-taxable activities:

- The supply of accommodation in a dwelling.
- The supply of accommodation which does not meet the requirements of the definition of “*commercial accommodation*” (under the minimum threshold of R120 000).
- The supply of accommodation in a hostel by an employer to employees and their families if –
 - the accommodation is used wholly or mainly to accommodate employees; and
 - the accommodation is subsidised or otherwise operated on a not-for-profit basis by the employer.
- The supply of other entertainment such as meals and beverages where the supplier does not cover all the direct and indirect costs of making those supplies.

⁹ Refer also to 2.9 where the term “exempt supply” is discussed.

Example 2 – Exempt accommodation*Facts:*

Mining Company G has six hostels in which 50 migrant workers (employees) reside for 11 months of the year whilst they are away from their permanent homes. At times when the migrant workers are not occupying their units, the accommodation is made available to other persons, including independent contractors working at the mine. Accommodation is provided free of charge to employees, but a nominal charge is made to cover costs when other persons stay in the units. The total consideration received by Mining Company G for making the accommodation available to persons other than employees was R90 000 in a 12-month period.

Result:

Mining Company G is an enterprise in respect of the mining activity, but it does not carry on an enterprise to the extent that it supplies lodging or board and lodging in the hostels. The reason is that the supply of this type of accommodation is exempt under section 12(c)(ii)(bb) as it is mainly for the benefit of the employees of Mining Company G.

In addition, the total value of taxable supplies made by Mining Company G from the supply of board and lodging to persons other than employees does not exceed R120 000 in a period of 12 months. Therefore, with effect from 1 April 2016, Mining Company G does not carry on an enterprise in respect of this activity.

Mining Company G must therefore not charge VAT to any of the occupants and it may not deduct input tax on any expenses to provide the lodging or board and lodging, or any other expenses such as building maintenance, water, electricity, meals etc. Expenses which are not directly incurred in relation to the hostel accommodation, but which are also incurred for the mining activity must be apportioned (subject to the *de minimis* rule for apportionment).¹⁰

2.7 Entertainment

This term includes the supply of food, beverages, accommodation, entertainment, amusement, recreation or hospitality. These terms are not further defined in the VAT Act, and therefore take their ordinary meaning. Examples are the sale of groceries and food, the provision of a meal in a restaurant, the provision of accommodation in a hotel, or entrance to a theatre or cinema.

2.8 Supply and taxable supply

Refer to the Glossary for the definition of “*supply*” which includes a sale, donation or barter transaction. For the purpose of this guide, it is necessary to distinguish between a “*taxable supply*” and an “*exempt supply*”.

The term “*supply*” includes deemed supplies which are dealt with under specific provisions of the VAT Act, for example –

- a vendor shall be deemed to supply services to a public authority, municipality or constitutional institution to the extent of any grant paid to the vendor in the course or furtherance of its enterprise;

¹⁰ Refer to proviso (i) to section 17(1) or Chapter 8 of the *VAT 404 Guide for Vendors*.

- the receipt of an indemnity payment under a contract of insurance, subject to certain conditions; and
- the placing of a bet.

The term “*taxable supply*” is any supply made by a vendor in the course or furtherance of an enterprise on which VAT should be levied, and includes supplies which are subject to VAT at the zero rate.

2.9 Exempt supplies

Exempt supplies are not taxable supplies and the making of exempt supplies is not deemed to be the carrying on of an enterprise. The value of exempt supplies does not form part of the taxable turnover and therefore is not used in determining whether a person must register for VAT or not. Output tax may not be levied on exempt supplies and no input tax can be deducted on any expenses incurred to make exempt supplies.

Examples of exempt supplies include the following:

- Financial services (for example the provision of credit, a life insurance policy and membership of a medical scheme, provident fund, pension fund or retirement annuity fund);
- The supply by an association not for gain of donated goods or services or other goods made by the association not for gain if at least 80% of the value of the material used in making such goods consists of donated goods;
- Renting of a dwelling for use as a private home (not being commercial accommodation);
- Passenger transport within South Africa by taxi, bus or train;
- Educational services provided by primary and secondary schools, universities and other recognised educational institutions; and
- Childcare services provided by crèches and after-school care centres.

Refer also to the examples in 2.6 in regard to other non-taxable supplies of accommodation and entertainment.

Chapter 3

Agent vs principal

3.1 Introduction

Before determining the VAT consequences of a transaction, it is necessary to establish the relationship between the parties. This is to determine if the vendor is acting as an agent on behalf of another person or as principal. Section 54 contains special provisions to deal with the VAT consequences arising from an agency relationship. This chapter aims to provide clarity regarding the VAT treatment of supplies where an agent/principal relationship exists and specific examples are provided to illustrate these concepts.

3.2 Legal principles of agency

In order to correctly apply the VAT legislation to the concept of “*agents*”, it is necessary to identify and understand the concept of an “*agent*” as understood in common law.

An agency is a contract whereby one person (the agent) is authorised and required by another person (the principal) to contract or to negotiate a contract with a third person, on the principal's behalf. The agent in representing the principal, creates, alters or discharges legal obligations of a contractual nature between the principal and the third party. The agent therefore provides a service to the principal and normally charges a fee (generally referred to as “commission” or “agency fee”) but does not acquire ownership of the goods and/or services supplied to or by the principal.

In order to correctly apply the VAT legislation, it is necessary to identify and understand the contractual relationship between the parties. The VAT treatment of supplies proceeds from the fact of whether a person is acting on their own behalf, or on behalf of another person. In essence, section 54 provides that where a person (the principal) employs the services of an agent to acquire goods or services, or to make supplies on the person's behalf, the supplies are made to, or acquired by the principal (as the case may be). There are also special provisions which deal with the receipt and issuing of tax invoices. (Refer to **7.1.3.**)

As an agent merely acts on behalf of the principal, any output tax and input tax in relation to the underlying supplies made or received on behalf of the principal must be accounted for on the VAT return of the principal (if the principal is a vendor). The agent will only declare output tax and input tax in relation to the agency services supplied (if the agent is a vendor).

3.3 Application of agency principles

According to the general principles of VAT –

- a supply of goods or services made by an agent on behalf of, or for the principal, is deemed to be a supply made by the principal; and
- a supply of goods or services to an agent on behalf of, or for the principal, is deemed to be a supply made to the principal.

In other words, the VAT consequences of the transaction will depend upon the principal's VAT status and not the agent's. To illustrate this concept, the example of travel agents, tour operators and hotels in the booking and arranging of accommodation and other entertainment is discussed in this chapter.

Note that the use of the term “agent” or “agency” in the trading name or legal name of an enterprise is not confirmation that the person conducting that enterprise is the legal agent of another person.

A primary factor in determining whether a person contracts as a principal or agent, is to establish whether the entertainment goods or services are contractually acquired –

- from the supplier of the entertainment, and then on-supplied at a marked-up price to the recipient (refer to **Example 5**); or
- by the recipient from the supplier of the entertainment, and a commission or fee is paid to the person who acts as an intermediary (agent) for arranging the supplies (refer to **Example 3** below).

A travel agent acts as an intermediary between the person conducting the accommodation enterprise (the principal) and the guest (the recipient). A travel agent receives commission from accommodation establishments for the arranging service which they supply to the contracting parties. The travel agent's fees or commission earned in this regard is subject to VAT at the standard rate if the travel agent is a vendor.

Example 3 – Travel agent earns commission for arranging a supply on behalf of a client

Facts:

Mr G wishes to go on holiday to Cape Town for two days. He makes a booking for accommodation with Hotel X through Travel Agent Y. Both Hotel X and Travel Agent Y are registered VAT vendors. Hotel X submits a tax invoice for R1 000 plus R140 VAT in respect of Mr G's stay to Travel Agent Y. Travel Agent Y recovers the full amount from Mr G and settles with Hotel X, net of any commission earned for arranging the booking. Travel Agent Y is entitled to a commission of 7% (including VAT) of the total charge to Mr G.

Result:

The implications for Travel Agent Y (legal agent – intermediary between Hotel X and Mr G) are as follows:

	R
Accommodation per tax invoice	1 140.00
Less: Agent's commission (7% of R1 140)	<u>(79.80)</u>
Amount per enclosed cheque	<u>1 060.20</u>

Travel Agent Y will therefore account for output tax of R9.80 ($R79.80 \times 14/114$) on the VAT 201 return for the period.

The implications for Hotel X (principal – supplier of accommodation to Mr G) will be:

Output Tax ($R1\ 140 \times 14 / 114$)	140.00
Less: Input Tax	<u>9.80</u>
Amount payable to SARS	<u>130.20</u>

Since Mr G's stay was at his private expense (holiday), he cannot deduct input tax. However, if Mr G (or his employer) is a vendor and the expense was incurred as personal subsistence for Mr G whilst away on business from his usual place of residence and usual working-place for at least one night, Mr G or the employer may be able to deduct input tax on the expense. (Refer to proviso (ii) to section 17(2)(a) and **4.3.3.**)

Example 4 – Hotel earns a referral fee for finding a client and acting as collection agent

Facts:

Whilst staying at Hotel X as set out in **Example 3**, Mr G notices an advert by MD Trips in the hotel reception area, advertising a deep sea fishing trip for R570 (including VAT). Mr G asks the receptionist at Hotel X to book him on a fishing trip for the next day, and to add the cost to his hotel bill. The arrangement between Hotel X and MD Trips is that a fee of R114 (including VAT) is paid for each client referred. Hotel X collects the R570 charge on behalf of MD Trips.

Result:

Hotel X acts as agent in collecting the fee for the fishing trip supplied by MD Trips. It follows that if the R570 fee is to be reflected on the bill for accommodation presented by Hotel X to Mr G, the amount should be reflected as a separate disbursement and not as consideration for a taxable supply made by Hotel X. The hotel will pay MD Trips the balance of the R570 collected from Mr Guest after deducting the referral fee of R114. Hotel X will therefore pay output tax of R14 ($R114 \times 14/114$) on the referral fee, in addition to the R140 declared in respect of the accommodation as set out in **Example 3**. Hotel X must issue a tax invoice to MD Trips in regard to the referral service. MD Trips will declare output tax of R70 on the consideration of R570 charged for the service and may deduct input tax of R14 on the referral fee paid to Hotel X.

Neither Mr G nor his employer may deduct input tax on the fishing trip as the expense is of a private nature, and is not incurred in the course of conducting an enterprise.

Example 5 – Tour operator makes supplies as a principal

Facts:

Tour Operator Z enters into a contract with Hotel X, whereby the accommodation and associated domestic goods and services are acquired for R399 per night including VAT. Both Hotel X and Tour Operator Z are registered VAT vendors. Mr G makes a booking for accommodation with Tour Operator Z for a two-day holiday in Cape Town, where he will stay at Hotel X. Hotel X provides Tour Operator Z with a tax invoice for R798 including VAT and Tour Operator Z provides Mr G with an invoice for R1 000 plus R140 VAT for the accommodation and associated domestic goods and services. Mr G also receives an invoice for R228 (including VAT) from Hotel X for meals and beverages ordered from room service, and for telephone calls made during his stay at the hotel.

Result:

Hotel X (as principal) makes the following supplies to Tour Operator Z and to Mr G:

Supply to Tour Operator Z – Invoice No. 211

	R
2 × night's accommodation (@ R350 per night)	700.00
VAT @ 14%	<u>98.00</u>
Total	<u>798.00</u>

Supply to Mr G – Invoice No. 219

	R
Room service (meals and drinks)	150.00
Telephone	50.00
VAT @14%	<u>28.00</u>
	<u>228.00</u>

Hotel X will therefore account for output tax of R126 (R98 + R28) on the VAT 201 return for the period.

Tour operator Z (as principal) makes the following supply to Mr G:

Invoice No. 0034	R
2 × night's accommodation (@ R500 per night)	1 000.00
VAT @ 14%	<u>140.00</u>
Total	<u>1 140.00</u>

VAT calculation for Tour Operator Z

	R
Output tax	140.00
Input tax	<u>(98.00)</u>
	<u>42.00</u>

Tour operator Z will therefore account for and pay a net amount of R42 VAT for the period.

Chapter 4

General rules on entertainment

4.1 Introduction

As discussed in 2.8, the provision of entertainment embraces an extremely wide ambit of supplies of both goods and services. In this chapter, the general rules which apply to persons who are in the business of providing entertainment are discussed. The special rules which apply to determine if a vendor will be able to deduct input tax on entertainment expenses are also explained (whether that vendor is in the business of supplying entertainment or not).

Vendors that are welfare organisations which provide entertainment for no charge or for a charge which is not intended to cover the full cost of providing the entertainment are briefly mentioned in 4.3.7. (For more details in this regard, refer to the VAT 414 – Guide for Associations Not for Gain and Welfare Organisations.)

4.2 General rule: disallowance of input tax

The general rule with regard to entertainment expenses and input tax, is that under section 17(2)(a), a vendor is not entitled to a deduction of input tax where goods or services are acquired for the purposes of providing entertainment.

The provision reads as follows:

17 Permissible deductions in respect of input tax

(1) ...

(2) *Notwithstanding anything in this Act to the contrary, a vendor shall not be entitled to deduct from the sum of the amounts of output tax and refunds contemplated in section 16(3), any amount of input tax-*

(a) *in respect of goods or services acquired by such vendor to the extent that such goods or services are acquired for the purposes of entertainment: Provided that...*

The purpose of this general rule is to deny input tax for vendors who are not normally in the business of supplying entertainment in the ordinary course of conducting an enterprise. Common examples of entertainment expenses which will usually be denied under this general rule are as follows:

- Food and other ingredients purchased in order to provide meals to staff, clients and business associates. This includes year-end lunches and parties, hiring of venues for those functions, as well as expenses incurred for the provision of complimentary staff refreshments (for example tea, coffee and other beverages or snacks provided to staff).
- Business lunches or other entertainment of customers and clients in restaurants, theatres, night clubs or sporting events.
- Goods and services acquired for providing employees with meals and beverages at workplace canteens if the price charged by the employer does not cover the direct and indirect costs of providing those benefits and facilities or is not equal to the

market value of such meals and beverages (for example catering services, furniture, equipment and utensils used in kitchens, canteens and dining rooms).

- Beverages, meals, entertainment shows, amusements or other hospitality supplied to customers and clients at product launches and promotional events.
- Capital goods such as hospitality boxes, holiday houses, yachts and private aircraft which are used for entertainment.

In those cases, where the supply of food and beverage is treated as a supply by a person not being in the business of supplying entertainment, any VAT incurred on the acquisition of goods or services for the purposes of such entertainment may not be deducted as input tax under section 17(2)(a). In these cases the value of the supply of entertainment is deemed to be nil¹¹ and the vendor does not declare any output tax.

4.3 Exceptions to the general disallowance rule

4.3.1 Introduction

The general rule that the VAT incurred on entertainment expenditure may not be deducted as input tax is subject to a number of exceptions. This is evident from the wording of section 17(2)(a):

- (2) *Notwithstanding anything in this Act to the contrary, a vendor, shall not be entitled to deduct from the sum of the amounts of output tax and refunds contemplated in section 16(3), any amount of input tax-*
- (a) *in respect of goods or services acquired by such vendor to the extent that such goods or services are acquired for the purposes of entertainment:*
Provided that this paragraph shall not apply where-

Provisos (i) to (ix) of section 17(2)(a) list the specific circumstances under which input tax may be deducted. These exceptions are explained in 4.3.2 to 4.3.10 below.

4.3.2 Businesses supplying entertainment

(a) General principles

The wording of proviso (i) to section 17(2)(a) is as follows:

- (2)...
 (a) ...
- (i) *such goods or services are acquired by the vendor for making taxable supplies of entertainment in the ordinary course of an enterprise which-*
- (aa) *continuously or regularly supplies entertainment to clients or customers (other than in the circumstances contemplated in item (bb)) for a consideration to the extent that such taxable supplies of entertainment are made for a charge which-*
- (A) *covers all direct and indirect costs of such entertainment; or*
- (B) *is equal to the open market value of such supply of entertainment,*
- unless-*

¹¹ Section 10(21).

- (i) *such costs or open market value is for bona fide promotion purposes not charged by the vendor in respect of the supply to recipients who are clients or customers in the ordinary course of the enterprise, of entertainment which is in all respects similar to the entertainment continuously or regularly supplied to clients or customers for consideration; or*
 - (ii) *the goods or services were acquired by the vendor for purposes of making taxable supplies to such clients or customers of entertainment which consists of the provision of any food and a supply of any portion of such food is subsequently made to any employee of the vendor or to any welfare organization as all such food was not consumed in the course of making such taxable supplies;*
- (bb) *supplies entertainment to any employee or office holder of the vendor or any connected person in relation to the vendor, to the extent that such taxable supplies of entertainment are made for a charge which covers all direct and indirect costs of such entertainment;*

The exception allows vendors that make taxable supplies of entertainment to deduct input tax on goods and services acquired for the purposes of entertainment if entertainment is continuously or regularly supplied for a consideration. The exception is structured so that input tax will only be allowed to the extent that taxable supplies of entertainment are made for a charge which covers all the direct and indirect costs of providing such entertainment or for a charge equal to the open market value of the entertainment.

Essentially, this provision introduces an anti-abuse rule in the form of a *bona fide* business test for enterprises that supply entertainment. In other words, the VAT law is drafted so that where entertainment expenditure has been incurred for purposes of a *bona fide* enterprise which continuously or regularly supplies entertainment, and these can be connected to the type of entertainment supplies made, the input tax should, in principle, be allowed.

(b) Supplies to customers and clients

Proviso (i) to section 17(2)(a) is structured so that part (aa) deals with the rules for businesses which supply entertainment to customers and clients, and part (bb) deals with supplies made to employees and connected persons. The main points regarding the supply of entertainment to customers and clients are highlighted in paragraphs (a) to (c) below.

- (a) *The goods or services acquired must be in the ordinary course of an enterprise which continuously or regularly supplies entertainment*

To meet this requirement, the vendor must supply entertainment of a type which has a close association with the type of purchases on which the vendor seeks to deduct input tax. In other words, there must be a clear link between the type of goods or services acquired, and the type of entertainment ordinarily supplied by that vendor. A further point is that the specific kind of entertainment must be supplied in the ordinary course of conducting that enterprise, and not as an *ad hoc* or intermittent activity.

For example, consider a restaurant business. From a commercial point of view, a *bona fide* restaurant business will take into account the cost of all inputs when determining its final menu prices including the supply of ice and condiments and other entertainment goods or services supplied as an integral part of the meal, or as part of the dining experience as a

whole. Therefore, the restaurant business in this example would, in principle, meet the requirements for the deduction of input tax on its VAT inclusive entertainment expenses if –

- the entertainment is supplied in the ordinary course of conducting the restaurant enterprise;
- the restaurant is a *bona fide* business operating on a continuous or regular basis; and
- the vendor covered all the direct and indirect costs of providing the entertainment based on the prices charged or such price was equal to the open market value of the entertainment.

Example 6 – Clear link between the type of purchases and the entertainment supplied

Facts:

Restaurant M (a vendor) acquires the following goods and services:

- Alcoholic drinks such as beer, wine and spirits.
- Food and ingredients such as raw meat and vegetables.
- Condiments such as cooking oil, olive oil, balsamic vinegar, ice, sauces and spices which are either used in the cooking process, and/or are placed on tables for consumption by customers.
- Wood and charcoal for the dining room fireplace and the pizza oven.
- Dining furniture, kitchen equipment, cooking and dining utensils.

Result:

Restaurant M may deduct the VAT incurred on all the goods and services acquired as input tax if it is evident that –

- there is a link between the kind of goods or services acquired, and the type of entertainment supplied by Restaurant M; and
- Restaurant M is in the business of supplying entertainment in the ordinary course of conducting its enterprise (for example, supplying hospitality in the form of a dining experience where cooked meals, and chilled beverages are served to customers); and
- Restaurant M is a genuine business and will, wherever possible, charge a price (consideration) for meals and beverages which is intended to cover all the direct and indirect business costs of supplying the entertainment or is equal to the open market value thereof.

Note:

No input tax may be deducted in respect of goods or services which are acquired at the zero rate (for example the fresh vegetables and vegetable cooking oils) as no VAT would have been incurred on the acquisition thereof. The supply of these items by Restaurant M will however be standard rated.

- (b) The entertainment must be supplied for a consideration which covers the costs or is at least equal to the open market value of that entertainment*

This requirement has two aspects, namely –

- the entertainment must be supplied for a consideration; and
- the consideration (price charged) must at least cover all the direct and indirect costs of making that supply of entertainment, or at least be equal to the open market value thereof.

The extent to which an expense is regarded as direct or indirect depends on which costs can be directly attributed (allocated) to the entertainment activities concerned. Therefore, direct costs are directly attributed to a specific cost objective and indirect costs are those elements, which could be associated with more than one cost objective.

In those situations where it is not possible in the ordinary course of the enterprise for the supply to be made for a consideration which covers all the direct and indirect costs, the supply must be made for a charge which is at least equal to the open market value thereof. For example, where a supermarket supplies perishable stock at a special promotion price in order to dispose of the stock before its expiry date. The promotional price may be less than the direct and indirect costs but could in the circumstances qualify as the open market value.

Example 7 – Covering the direct and indirect costs

Facts:

Manufacturer T (vendor) manufactures motor cars and has a canteen facility on its premises where prepared meals and beverages are served to staff. Other information is as follows:

- The canteen has six full time staff, and every day two of the factory workers assist for half of a working day in the canteen.
- Prices are set so that the costs of running the canteen plus 5% is recovered from customers.
- The factory premises are rented but no separate rental is paid for the canteen area, which constitutes 7% of the total space of the factory.
- No separate bills for water and electricity are received, but there is a dedicated telephone in the canteen area used exclusively by the canteen staff and for which a separate bill is received.
- Manufacturer T purchased fridges, ovens, dining furniture and kitchen equipment which are used exclusively in the canteen. Manufacturer T also entered into a single contract with another vendor to maintain 12 appliances, nine of which are situated in the canteen, and three in the office area.

Result:

The direct expenses attributable to the canteen will include:

- Salaries of six full time staff;
- Dedicated canteen telephone;
- Stock purchases of food and beverages for resale to customers; and

- A monthly allocation in respect of capital purchases of appliances and equipment used exclusively in the canteen. (Fridges, ovens, dining furniture, kitchen equipment etc.)¹²

The indirect expenses attributable to the canteen will be:

- Part of the salary of two part-time employees (say 50%);
- Water, electricity and rent (say 7% of each); and
- Appliance maintenance contract costs (say 9/12 or 75%).

Manufacturer T must ensure that the above costs are incorporated into, and covered by, the consideration charged for the supply of meals by the canteen if it wants to deduct input tax on the canteen (entertainment) expenses. Alternatively the consideration charged must be equal to the open market value of the meal supplied.

(c) Supplies for no consideration

If a vendor supplies entertainment to clients or customers for no consideration, the VAT law permits input tax to be deducted on the acquisition of goods or services for the purposes of that entertainment in the following three instances:

- Entertainment supplied as part of a *bona fide* promotion if that supply is similar in all respects to the entertainment normally supplied by that vendor. For example, where, as part of a special offer, two of the same products are supplied for the price of one.
- Entertainment consisting of the supply of food in a situation where not all the food was consumed. The rule is that where the excess food is provided to employees, or donated to a welfare organisation, the VAT incurred by that vendor on the food which was consumed by the employee or donated to a welfare organisation may still be deducted as input tax.
- Entertainment consisting of meals and beverages supplied as subsistence by the employer to employees in certain situations. Refer to **4.3.3** and **4.3.9** for examples.

Example 8 – Promotional gifts

Facts:

D is a vendor which rents DVDs to the general public. At the end of every year, it supplies its top 10 clients with a gift consisting of a bottle of wine and a box of chocolates.

Result:

D may not deduct input tax on the acquisition of the wine and chocolates for the following reasons:

- The wine and chocolates are supplies of entertainment for no consideration; and
- Although D might regard the expense as a genuine promotional or marketing expense, the business does not supply wine and chocolates in the ordinary course of its enterprise.

¹² The amount of the monthly allocation of costs for the capital items will depend on the costing methodology used by the enterprise. For example, the cost could be amortized over the lifetime of the asset concerned.

Example 9 – *Bona fide* promotions*Facts:*

C is a business which supplies ice cream and milkshakes to clients. C opens a new store in a major shopping centre where it has a “buy-one-get-one-free” promotion every Saturday for two months after the opening date.

Result:

Input tax may be deducted by C on the promotional items supplied. The ice creams and milkshakes are supplied as part of a *bona fide* promotion and constitute the same kind of entertainment normally supplied by C for a consideration in the ordinary course of its enterprise.

Example 10 – Free snacks and beverages provided by casinos*Facts*

W Casino is a business which supplies a variety of entertainment to its clientèle, including gambling, gaming, amusement, theatrical performances, accommodation, and food and beverages provided through various bars and restaurant facilities. Within the casino establishment, free snacks and beverages are supplied to customers whilst they are gambling at the tables or slot machines. May W Casino deduct input tax on the free snacks and beverages provided to customers?

Result:

W Casino may deduct input tax on any food and beverages supplied to customers free of charge if it operates a hotel or restaurant, or provides similar entertainment as part of its enterprise. The reason is that the supplies are regarded as being part of a *bona fide* promotion of its supplies of entertainment.

W Casino would however, not be entitled to deduct input tax on such food and beverages if it did not have a hotel or restaurant and was not continuously or regularly supplying entertainment for a consideration.

For more details on gambling, refer to Interpretation Note 41 “Application of the VAT Act to the Gambling Industry”.

(c) Supplies to employees and connected persons

Part (bb) of proviso (i) to section 17(2)(a) focuses on a situation where entertainment is supplied by a vendor to any employee or office holder of the vendor, or any connected person in relation to the vendor. A typical situation envisaged here, is where an employer provides its staff with meals through a canteen facility operated by that employer.

The general rules for deducting input tax in this situation are much the same as those explained in 4.3.2.1 and 4.3.2.2 above. For example, the vendor must ensure that the direct and indirect costs of operating the canteen are covered before input tax will be allowed as a deduction. However, the main difference is that part (bb) of the proviso, does not provide for any exceptions that allow input tax to be deducted when supplies of entertainment are made to employees or connected persons for no consideration, or for a consideration which does

not cover all the direct and indirect costs for example, the open market value of the entertainment exception.

Part (bb) of the proviso therefore recognises that where a vendor supplies entertainment to employees or connected persons in relation to the vendor, the risk of personal consumption or abusive practices is much greater and therefore the law provides for less flexibility in accommodating exceptions to the rule. (Refer to **Chapter 8** for more details in regard to the outsourcing and management of catering services.)

4.3.3 Personal subsistence

The wording of proviso (ii) to section 17(2)(a) is as follows:

- (ii) *such goods or services are acquired by the vendor for the consumption or enjoyment by that vendor (including, where the vendor is a partnership, a member of such partnership), an employee, office holder of such vendor, or a self-employed natural person in respect of a meal, refreshment or accommodation, in respect of any night that such vendor or member is by reason of the vendor's enterprise or, in the case of such employee, office holder or self-employed natural person, he or she is by reason of the duties of his or her employment, office or contractual relationship, obliged to spend away from his or her usual place of residence and from his or her usual working-place. For the purposes of this section, the term 'self-employed natural person' shall mean a person to whom an amount is paid or is payable in the course of any trade carried on by him or her independently of the person by whom such amount is paid or payable and of the person to whom the services have been or are to be rendered, as contemplated in the proviso to paragraph (ii) of the exclusions to the definition of 'remuneration' in paragraph 1 of the Fourth Schedule to the Income Tax Act;*

Proviso (ii) to section 17(2)(a) provides for a situation where employees incur personal subsistence expenditure on behalf of the employer in connection with their employment. If the actual expenditure is reimbursed to the employee, or if it is borne directly by the employer, input tax may be deducted on expenditure relating to hotel accommodation, meals and beverages provided to the employee whilst away from their usual place of residence and usual working-place for at least one night on business for the employer. This provision includes personal subsistence expenses incurred by certain self-employed natural persons who are appointed to provide services. An example is when a vendor who is involved in direct sales appoints an independent self-employed natural person (which person is not an “employee” of the vendor) to act on that vendor’s behalf to conclude sale agreements with customers at various locations around the country.

The provision is limited in its application to instances where the personal subsistence is incurred by –

- the vendor (for example sole proprietor or member of a partnership), or in the case of a vendor which is a juristic person, the official representative of the vendor (for example; member of a close corporation, director of a company etc);
- an employee or office holder of the vendor; or
- a self-employed natural person in certain instances.

VAT incurred on expenses relating to the consumption or enjoyment of the meal, refreshment or accommodation by a spouse travelling with any of the above specified persons, or where clients are entertained in a restaurant whilst negotiating a business deal

may not be deducted as input tax. Also, when an allowance is paid to an employee to cover such expenses as a part of that person's remuneration, no input tax credit will be allowed to the employer.

In addition, the subsistence expenses must also be as a result of the following:

- The person must be spending at least one night away from their usual place of residence and usual working-place.
- The person must, by reason of the prescribed duties of employment, office or contractual relationship, be away from his or her usual place of residence and usual working-place for the purpose of the vendor's enterprise of making taxable supplies.
- It must be evident from the contractual obligations that if the vendor engages a self-employed natural person (independent contractor) to conduct business at a place which is away from that person's usual place of residence and usual working-place, that the vendor on whose behalf the business is conducted is the person who is liable for the subsistence expenses.

(a) Usual place of residence and usual working-place

The usual place of residence of a person is the place to which that person would normally return at the end of a working day (ignoring temporary or occasional absences, even if they are relatively long). It is the place which the person regards as his or her home to which they will naturally return.

The usual working-place of a person is the location, such as a factory or office, from where the employer conducts its business and where the employee or independent contractor is based. This is the place that the person will report for work or will typically return to after completing an assignment at another location.

Example 11 – Usual working-place

Facts:

An employee works for a company in Port Elizabeth. The company has branches throughout the country and a head office which is located in Johannesburg. The employee is required to attend a workshop at the company's head office which will require the employee to spend three nights in Johannesburg.

Result:

The employee's usual working-place is the company's premises in Port Elizabeth where the employee normally reports for work and will return to when the workshop is completed. Whilst the employee is attending the workshop in Johannesburg, the employee will be regarded as being away from the usual working-place for the purposes of section 17(2)(a)(ii).

Example 12 – Usual residence and usual working place*Facts:*

A builder's business is based in Durban where he has his office and business premises. The builder enters into a new contract with a client for the construction of a building in Pietermaritzburg. For the purposes of this contract, the builder decides to employ local artisans based in Pietermaritzburg for the duration of the project. A quantity surveyor that is employed by the builder in Durban is required to spend one week at the building site in Pietermaritzburg. The quantity surveyor lives in Durban and will spend three nights away from home.

Result:

The artisan's usual working-place will be the building site in Pietermaritzburg where they report for work and not the builder's office in Durban.

The quantity surveyor however, will be regarded as being away from his usual place of residence and usual working-place for the purposes of section 17(2)(a)(ii) whilst working in Pietermaritzburg,.

4.3.4 Taxable transportation services

The wording of proviso (iii) to section 17(2)(a) is as follows:

- (iii) *such goods or services consist of entertainment supplied by the vendor as operator of any conveyance to a passenger or crew member, in such conveyance during a journey, where such entertainment is supplied as part of or in conjunction with the transport service supplied by the vendor, where the supply of such transport service is a taxable supply;*

Proviso (iii) to section 17(2)(a) allows vendors to deduct input tax on the entertainment expenses incurred in order to provide meals, refreshments or other entertainment as an integral part of a taxable transportation service. Examples include meals, beverages, entrance to shows, film shows and other entertainment provided to travellers whilst being conveyed by the transport operator on board a ship or aircraft where that entertainment has been included as part of a taxable transportation service. Transportation of fare-paying passengers by road or rail would also fall within this provision to the extent that the supplier is a vendor, and the supply constitutes international transportation which is subject to VAT at the zero rate.

No input tax may be deducted on the provision of meals or refreshments to passengers or crew where the road or railway transport is exempt from VAT.

The supply of entertainment by a transport operator for a separate consideration on-board the vehicle which is transporting the passengers, or at any stopover, will be subject to the normal VAT rules pertaining to the supply of entertainment as explained in 4.2, 4.3.1 and 4.3.2. For example, snacks and beverages sold separately to travellers on local flights.

4.3.5 Seminars or similar events

The wording of proviso (iv) to section 17(2)(a) is as follows:

- (iv) *such goods or services consist of a meal or refreshment supplied by the vendor as organizer of a seminar or similar event to a participant in such seminar or similar event,*

the supply of such meal or refreshment is made during the course of or immediately before or after such seminar or similar event and a charge which covers the cost of such meal or refreshment is made by the vendor to the recipient;

Proviso (iv) to section 17(2)(a) provides that the vendor as organiser of a seminar or similar event may deduct input tax on purchases of goods or services for the supply of meals or refreshments to participants at seminars and similar events. The kind of events envisaged here, are events which have the objective of transferring knowledge by the organisers of the event to the participants (or to the employers of the participants), through some element of instruction, study, training, teaching or coaching. The provision is very similar to proviso (iii) which is discussed in 4.3.4. The common principle is that input tax may be deducted where the entrance fee or other charge to participate in the seminar or similar event is sufficient to cover all the direct and indirect costs thereof, including any meals and/or refreshments which are supplied as an integral part of that event.

The meals or refreshments can be supplied to the participants before, during, or immediately after the event and the charge for the meal or refreshment must be included in the fee for the seminar.

4.3.6 Municipal recreational facilities

Proviso (v) to section 17(2)(a) reads as follows:

- (v) *such goods or services are acquired by a municipality for the purpose of providing sporting or recreational facilities or public amenities to the public;*

Property rates are viewed as charges in respect of taxable supplies made to the general public by the municipality at the zero rate. This allows the municipality to deduct input tax on any VAT-inclusive expenses incurred to make those supplies. It follows that a municipality may deduct input tax on expenses incurred to provide and maintain public recreational facilities such as sports fields, public parks and gardens, zoos, caravan parks, hiking trails and game farms. This includes cases where the charge is insufficient to cover the cost of providing the sporting or recreational facilities as well as cases where there is no explicit or direct charge.

For more information in this regard, refer to the VAT 419 – Guide for Municipalities.

Example 13 – Public recreational facilities (municipalities)

Facts:

On 1 December 2015, A Municipality incurs expenses (including VAT) to develop a public park which includes amenities such as sports field, swings, slides and other playground facilities for the entertainment of children. The facilities are made available free of charge to the general public.

Result:

Proviso (v) to section 17(2)(a) allows the municipality to deduct input tax on the entertainment expenses which were incurred to provide the playground and sports facilities, even though it does not supply the entertainment for an explicit charge which covers all the direct and indirect costs of providing that entertainment.

4.3.7 Welfare organisations

The wording of proviso (vi) to section 17(2)(a) is as follows:

- (vi) *such goods or services are acquired by a welfare organization, for the purpose of making supplies in the furtherance of its aims and objects; or*

A welfare organisation is any public benefit organisation (PBO) contemplated in paragraph (a) of the definition of “*public benefit organisation*” in section 30(1) of the Income Tax Act 58 of 1962 that has been approved by the Commissioner under section 30(3) of that Act, and which carries on a “*welfare activity*” as listed in Government Notice 112 of 11 February 2005 (GN 112).

Generally, vendors can only deduct input tax in respect of entertainment expenses incurred if they supply that entertainment at a charge that covers both the direct and indirect costs thereof. However, proviso (vi) provides that a welfare organisation may deduct input tax in respect of any entertainment expenses incurred for the purpose of conducting welfare activities in the furtherance of the organisation’s aims and objectives. A welfare organisation may therefore register for VAT and deduct input tax in respect of welfare activities which it carries on (including supplies of entertainment), even where no consideration is charged.

For further information relating to PBOs and welfare organizations, refer to the *VAT 414 – Guide for Associations not for Gain and Welfare Organisations* as well as the *Tax Exemption Guide for Public Benefit Organisations in South Africa*.

4.3.8 Medical care facilities

The wording of proviso (vii) to section 17(2)(a) is as follows:

- (vii) *such goods or services are acquired by a vendor for an employee or office holder of such vendor, that are incidental to the admission into a medical care facility;*

This provision allows an employer that pays for the costs of hospitalisation of an employee, to deduct input tax in respect of any VAT incurred on the medical fees and any incidental entertainment provided in the form of meals and accommodation to the employee whilst recovering in the medical care facility. Any entertainment provided by the employer to any employees who are injured on duty (whether provided at the employer’s medical facility or at a private facility) is regarded as a fringe benefit provided to the employee, but section 18(3) does not apply to the supply of entertainment. The employer will therefore not declare any output tax on the fringe benefit in these cases.

4.3.9 Ships’ crew

The wording of proviso (viii) to section 17(2)(a) is as follows:

- (viii) *such goods or services consist of a meal or refreshment supplied by the vendor as operator of any ship or vessel (otherwise than in the circumstances contemplated in subparagraph (iii)) in such ship or vessel to a crew member of such ship or vessel, where such meal or refreshment is supplied in the course of making a taxable supply by that vendor; or*

Proviso (viii) allows vendors that operate ships or vessels at sea in the ordinary course of conducting their enterprises (for example, fishing vessels, oil rigs, etc) to deduct input tax in respect of meals and refreshments supplied to the crew on board those ships or vessels.

Example 14 – Meals provided to crew on board a fishing trawler*Facts:*

A vendor operates a fishing business with a fleet of five fishing trawlers. The crew on four of the trawlers spend an average of eight days at sea per fishing trip, whereas the one trawler is only used for daytime fishing expeditions of up to 10 hours. Meals are provided to crew on all fishing trips by the employer.

Result:

Input tax may be deducted in respect of meals provided to the crew on all five trawlers. Under proviso (viii) to section 17(2)(a), it is not a requirement that the crew must spend at least a night away from their usual place of residence for the employer to qualify for the deduction.

4.3.10 Prizes

Proviso (ix) to section 17(2)(a) reads as follows:

- (ix) *that entertainment is acquired by the vendor for the purpose of awarding that entertainment as a prize contemplated in section 16(3)(d) in consequence of a supply contemplated in section 8(13);*

In terms of this provision, a vendor is allowed to deduct input tax in circumstances where VAT is incurred on the acquisition of entertainment which is awarded as a prize to clients or customers in consequence of a bet received by the vendor on the outcome of a race or some other unpredictable event.¹³ This provision is intended mainly for vendors who conduct betting businesses such as casinos where entertainment is continuously or regularly supplied as competition prizes which are integrally linked to the promotion of other products normally supplied by that vendor. However, the application of this provision could also apply to once-off events which have an entertainment prize such as a holiday, provided that the transaction which gave rise to the entertainment prize was a betting transaction.

The input tax deduction is subject to the following conditions:

- It is limited to the actual VAT incurred on the original cost of acquisition (for example, it is not based on the open market value or the advertised retail value).
- The VAT may only be deducted in the tax period in which the prize is awarded, and not in the tax period when the entertainment is originally acquired.

Example 15 – Entertainment prize awarded in consequence of a bet*Facts:*

A casino operator holds a competition where the jackpot prize on a certain slot machine constitutes a two week all-expenses paid vacation at an exclusive hotel in Cape Town which is advertised as being worth R50 000. In March 2015, a customer wins the prize and goes on the trip during April 2015. In May 2015, the casino operator receives a tax invoice from the hotel for the full invoice amount of R32 000.

¹³ Refer to Interpretation Note 41 (Issue 3) (31 March 2014) "Application of the VAT Act to the Gambling Industry" for more details in this regard.

Result:

The casino operator may deduct input tax in the tax period which covers the month of May 2015, based on the consideration of R32 000 paid, and not on the advertised value of R50 000.

4.3.11 Foreign donor funded projects

A “foreign donor funded project” is a development project which is funded under an international agreement between the South African government and a foreign government, or other International Development Agencies (IDAs). International agreements with foreign governments and IDAs normally provide that the funds donated should only be used for specific, mutually agreed upon programmes and activities, and cannot be used for any taxes imposed under South African law.

These international agreements are sometimes called the “umbrella agreements” as they do not usually contain the detail of how the agreement will be carried out in practice. This detail will be contained in other subordinate agreements (usually called “implementation agreements”) which will be concluded between the foreign donor and the person that is responsible for administering the expenditure of the funds in South Africa.

Section 17(2A) provides that in such cases, the general disallowance rule under section 17(2)(a) in respect of entertainment expenses does not apply to foreign donor funded projects. A person that has been appointed by a foreign donor to administer the project can register for VAT as a “foreign donor funded project” and may deduct the VAT paid on goods and services acquired for the project.

In the case of a foreign donor funded project which is administered by a public authority, the public authority qualifies to register the project as a vendor. However, the input tax is limited to the VAT incurred on goods or services acquired for the project (including entertainment expenses). It does not entitle the public authority concerned to deduct input tax on its own VAT-inclusive capital and operating costs.

Chapter 5

Commercial accommodation explained

5.1 Introduction

The VAT treatment of supplies of accommodation by hotels, residential hotels and similar establishments changed with effect from 1 October 2001. A fundamental part of these changes involved the introduction of the definition “*commercial accommodation*” which replaced the previous definitions of “*commercial rental establishment*” and “*residential rental establishment*”. To gain a full understanding of the application of the VAT law as it is today, it is useful to examine some of the history and background of the VAT rules which previously applied in this regard. This is set out in Annexure A.

This chapter explains the concept of “commercial accommodation” as defined in section 1(1) in some detail. The various elements in each paragraph of the definition are explained so that the reader will be able to understand the VAT treatment of various supplies made by accommodation establishments as set out in **Chapter 6**. Refer also to **2.6** where the difference between the supply of a dwelling and the supply of commercial accommodation is explained.

5.2 Paragraph (a) – commercial establishments

This paragraph contains the general rules applicable to enterprises which supply commercial accommodation. The different elements contained in the definition can be broken down into the following components:

5.2.1 Types of accommodation units

The places in which “*commercial accommodation*” can be provided must be interpreted within the context of the meaning of “*lodging or board and lodging*”. For example, a hospital or other medical facility may qualify as a supplier of commercial accommodation, but the rental of an office, or exhibition space to conduct business or the rental of a hall for purposes of holding a wedding reception does not constitute commercial accommodation.

The list of places referred to in the law are: houses, flats, apartments, rooms, hotels, motels, inns, guesthouses, boarding houses, residential establishments, holiday accommodation units, chalets, tents, caravans, camping sites, houseboats and similar establishments. The list of places is not meant to include every possibility, and includes reference to “similar establishments”. This means that certain types of accommodation may still fall within the ambit of paragraph (a) of the definition if the lodging or board and lodging is provided in a similar establishment, and in similar circumstances to those listed. However, specifically excluded is a dwelling supplied in terms of an agreement for the letting and hiring thereof (being an exempt supply).

Typically the commercial accommodation establishments in this paragraph are those which supply short-term business and leisure type accommodation although this is not necessarily always the case. Examples include hotels and guesthouses. However, any person can supply commercial accommodation as long as all the requirements contained in paragraph (a) of the definition are met.

Supplies may therefore be made through a formal commercial structure such as a hotel which has many units available for occupation, or through a less formal arrangement where a single apartment in a leisure resort is made available for holiday accommodation by the owner. The law does not concern itself with factors such as how many accommodation units must be available, the quality or type of facilities which should be available, or whether the accommodation is luxury or basic.¹⁴

5.2.2 Availability and frequency of supply

The accommodation unit(s) must be regularly or systematically supplied. Although the phrase “regularly or systematically” is not defined, it is required that the units are available for occupation frequently enough over a period of time to establish a pattern, routine or schedule. There also should be a measure of intended sustainability and purposeful effort to make the accommodation unit(s) available for enterprise purposes in an organised manner. If the accommodation is supplied on a casual or *ad hoc* basis, it will not constitute the supply of commercial accommodation.

5.2.3 Type and nature of supplies

The type of supplies are described in the definition as “lodging or board and lodging”, *together with* “domestic goods and services”.¹⁵ The terms “board” and “lodging” are not defined and therefore take their ordinary meaning. According to The Concise Oxford Dictionary, “lodging” means “temporary accommodation”, and “board” in the context of accommodation, means “the provision of regular meals in return for payment”. The Encarta Dictionary (English U.K.) defines the term “lodging” as “somewhere to stay temporarily”, and “a room or rooms in a boarding house or private home available for rent”. The term “board” in this context is defined as “daily meals provided at the place where somebody lives, usually for money or in return for work”.

The VAT Act defines “domestic goods and services” to include –

- cleaning and maintenance;
- electricity, gas, air conditioning or heating;
- a telephone, television set, radio or other similar article;
- furniture and other fittings;
- meals;¹⁶
- laundry;
- nursing services; or
- water.

¹⁴ In VAT Case 1015, the Tax Court found that the deduction of input tax in respect of hostel accommodation and meals for employees was prohibited since this amounted to entertainment regardless of whether the accommodation and food supplied was regarded as being basic or luxurious.

¹⁵ The description links the two groups of supplies under paragraph (a) of the definition to ensure that the supply of a dwelling does not qualify as the supply of commercial accommodation.

¹⁶ The reference to “meals” includes complimentary beverages such as tea, coffee and juice supplied as part of the meals included in the price of the commercial accommodation.

This list is not exhaustive and other goods or services provided by the enterprise supplying the commercial accommodation could potentially qualify as domestic goods and services. However, the charges for these items will not necessarily qualify to be taxed under the special value of supply rules unless they are included in the all-inclusive tariff for the accommodation charged by the establishment.

In summary, the type of supplies included here are –

- the right to occupy the accommodation unit;
- the right to use any related facilities made available to the occupant during the period of the stay included with the right of occupancy; and
- any meals, beverages or other supplies which may be regarded as domestic goods and services provided together with the accommodation, or provided separately, which supplies are incidental to, ancillary to, or in connection with, the supply of the commercial accommodation.

5.2.4 Minimum threshold of R120 000 in a period of 12 months

Prior to 1 April 2016 the definition of “commercial accommodation” also required that the total annual receipts from the supply of lodging or board and lodging and associated domestic goods and services must exceed R60 000, or be reasonably expected to exceed that amount in a period of 12 months. This threshold was removed from the definition of “commercial accommodation”. The threshold in paragraph (ix) of the proviso to the definition of “enterprise” however, has not been deleted and was increased with effect from 1 April 2016 to R120 000. A consequence of these amendments is that the supply of lodging or board and lodging may qualify as commercial accommodation even if the total annual receipts does not exceed R120 000 but will not satisfy the requirements of the definition of “enterprise” unless it is reasonably expected to exceed R120 000.

5.3 Paragraph (b) – old age homes and other care facilities

This paragraph deals with places of accommodation such as homes for the aged, children, physically or mentally handicapped persons. The typical characteristics of this kind of accommodation are that –

- although some residents are staying at the accommodation establishment by choice, a large proportion of the residents stay in such establishments due to circumstances beyond their control;
- the supplier will often (but not always) be an association not for gain or a welfare organisation;
- a high level of personal care and attention is provided to residents who depend on the supplier of the accommodation to take care of their day-to-day wellbeing;
- the accommodation establishment usually constitutes the place of residence of the occupant;
- residents stay for periods in excess of 28 days and the special value of supply rule will usually be applicable so that only 60% of the value of the commercial accommodation supplied (including the domestic goods and services) will be subjected to VAT at the standard rate.

Paragraph (b) of the definition does not contain specific conditions which have to be met in order for a person to qualify as a supplier of commercial accommodation. For example, no specific reference is made to the supply of domestic goods and services as a factor in qualifying as a supplier of “commercial accommodation” (as is the case in paragraph (a) of the definition). The supply of domestic goods and services is however, usually an integral part of the supply of accommodation by this type of facility.

5.4 Paragraph (c) – hospices

The term “hospice” is not defined in the VAT Act and therefore takes its ordinary meaning. The Shorter Oxford English Dictionary defines the term as follows:

- “1. A house of rest and entertainment for travellers or strangers, esp. one belonging to a religious order.
2. A home for the destitute or sick; spec. a nursing home for the care of the dying.”

The Encarta Dictionary (English U.K.) defines the term “hospice” in this context as:

- “1. Nursing home for dying. A usually small residential institution for terminally ill patients where treatment focuses on the patient's wellbeing rather than a cure and includes drugs for pain management, sometimes periods at home, and often spiritual counselling.
2. Refuge for travellers. Formerly, a place where pilgrims, travellers, and the homeless or destitute were offered lodging, usually by a religious order.”

From the above, it is apparent that a hospice is primarily concerned with making supplies of goods or services to patients (and families of patients) to help them deal with difficulties associated with life threatening illnesses. A hospice assists in this regard by providing palliative care and other support to residents and patients focusing on the prevention, treatment and relief of human suffering. From an analysis of these definitions within the context and structure of the VAT law, (besides the aspects which may fall within paragraph (a) of the definition of “commercial accommodation”), it becomes clear that this paragraph refers to a specific type of residential accommodation establishment which provides a high degree of personal care in regard to the wellbeing of terminally ill, homeless, destitute and dying persons.

As with paragraph (b) of the definition, paragraph (c) does not contain specific conditions which have to be met in order for a hospice to qualify as a supplier of commercial accommodation nor is there any specific reference to the supply of domestic goods and services. However, it is expected that the hospice will supply domestic goods and services, together with the lodging, or board and lodging, as well as other goods and services in the ordinary course of conducting the enterprise. As a hospice will usually be a “*welfare organisation*”, the supply of lodging, or board and lodging will not only constitute the supply of commercial accommodation, but also a “welfare activity” carried on in the course or furtherance of the hospice's enterprise.

Refer also to 4.3.7 in regard to input tax which may be deducted by welfare organisations.

Chapter 6

VAT treatment of supplies made by accommodation establishments

6.1 Exempt supplies

6.1.1 Introduction

The VAT treatment of exempt supplies is that no output tax is levied on the supply, and no input tax may be deducted on any goods or services acquired for the purpose of making these supplies, even if that person is a vendor for other types of supplies. Vendors that make both taxable and exempt supplies must only charge VAT and account for output tax on taxable supplies made. Similarly, input tax may only be deducted where goods or services acquired are directly attributable to the making of those taxable supplies. Where direct attribution is not possible, an apportionment of input tax will have to be made which represents a fair and reasonable proportion of the extent of taxable supplies. (Refer to Chapter 8 of the *VAT 404 – Guide for Vendors* and Binding General Ruling 16 (Issue 2) for more details in regard to apportionment and direct attribution.)

These principles will apply in respect of the different types of exempt supplies or non-taxable accommodation discussed in **6.1.2** to **6.1.6** below and will not be repeated under those headings.

6.1.2 Accommodation in a dwelling

In contrast to the definition of “commercial accommodation”, the definition of “dwelling” does not refer to an activity but a physical place (building, premises or structure) which is used as a place of residence of a natural person. Specifically excluded from the definition of “dwelling” is a building, premises or structure that is used for the activity of supplying commercial accommodation. The supply of a dwelling (or accommodation in a dwelling) under an agreement for the letting and hiring¹⁷ thereof is exempt from VAT under section 12(c)(i). Refer to **2.6** which provides the characteristics of a dwelling as well as guidelines on how to distinguish the supply of a dwelling from the supply of commercial accommodation. Refer also to **Chapter 5** which discusses the meaning of the term “commercial accommodation”.

No apportionment of the rental is required in respect of the furniture and fittings if the furniture and fittings are supplied together with a dwelling under a lease agreement and included in the agreed rental charge. *Therefore*, the entire rental charge for the supply of a fully or partially furnished dwelling under a lease agreement will be exempt from VAT. However, if the lessor is a vendor, and other goods or services are supplied separately by that lessor for a separate consideration to the tenant, the separate supply may be subject to VAT. For example, if the lessor is registered for VAT in respect of a garden service business and provides garden services to the tenant and the charge for these services is not included in the monthly rent payments which are payable under the lease agreement for the dwelling, the charge will attract VAT at the standard rate.

¹⁷ This is a reference to what is commonly known as an “agreement of lease”, “rental agreement”, or “lease agreement”.

6.1.3 Life rights

Also exempt under section 12(c)(i) is the supply of any “right of occupation” as defined in section 1 of the Housing Development Schemes for Retired Persons Act 65 of 1988 (which by definition includes a “housing interest”).¹⁸

In layman’s terms, this is the acquisition of a right of occupation in a retirement village by a person who is 50 years of age, or older. The supply of life rights is viewed as being the same as (or similar to) the supply of accommodation in a dwelling under an agreement for the letting and hiring thereof which was discussed in 6.1.2.

In the case of a developer conducting a housing development scheme under the said Act, the capital of the developer is the property units which are employed in the business by either –

- (a) selling the units under sectional title or share block scheme to the purchasers; or
- (b) granting the right of use (occupation) of the units by way of selling life rights to the occupiers.

In the case of (a) above, the supply constitutes “*fixed property*” which is subject to VAT at the standard rate. However, the supply of the right of occupation which is the consideration (or *quid pro quo*) paid in terms of the contract in (b) above is exempt.

6.1.4 Lodging or board and lodging supplied by employers to employees

Section 12(c)(ii) provides an exemption for “lodging or board and lodging” provided by an employer to an employee in the following circumstances:

- The employee is entitled to occupy the accommodation as a benefit under an employment contract and where that right of occupation is limited to the period of employment, term of office, or other agreed period in terms of that employment contract.
- The employer provides accommodation to an employee in a hostel or boarding establishment which is solely or mainly for the benefit of employees, and which is operated by that employer otherwise than for the purpose of making profit.

The exemption dealt with in this paragraph is different from the one discussed in [6.1.2](#) in the following respects:

- The accommodation is provided as a result of an employment contract, or as a benefit of employment *in lieu* of salary or wages.
- The wording of the exemption refers to “lodging or board and lodging”, and not to a “dwelling” (as defined). The provision therefore exempts what may potentially have otherwise been regarded as commercial accommodation.

It is common in some industries (for example, in mining) for the activity of the provision of “housing” to employees to be outsourced to a third party sub-contractor. It is normal practice in these arrangements that the employer supplies the buildings, facilities and amenities to the sub-contractor, who in turn, supplies accommodation to the employer’s workers. In such

¹⁸ The Housing Development Schemes for Retired Persons Act defines this term as follows: “‘Housing interest’, in relation to a housing development scheme, means any right to claim transfer of the land to which the scheme relates, or to use or occupy that land.”

cases, the contract between the employer and the third party, as well as any contract between the employees and the employer, or the third party must be examined to determine the taxable nature or otherwise of each supply.

6.1.5 Lodging or board and lodging supplied by educational institutions

Section 12(h)(ii) provides for a similar exemption to the one discussed in 6.1.4 for the supply of lodging or board and lodging, by an educational institution to learners or students, if all of the following conditions are met:

- (a) The supplier must be an educational institution mentioned in section 12(h)(i) which supplies exempt educational services, for example a school, university, technikon or college;
- (b) The goods or services¹⁹ supplied must be solely or mainly²⁰ for the benefit of the educational institution's learners or students;
- (c) The supplies must be necessary for, and subordinate and incidental to, the supply of the educational services mentioned in section 12(h)(i); and
- (d) The goods or services must be supplied for a consideration in the form of school fees, tuition fees or payment for lodging or board and lodging.

Whilst the lodging or board and lodging must be necessary for and subordinate and incidental to the educational services, it is not a requirement that the goods or services must be supplied at the same location. For example, accommodation might be provided at one location, but lectures may take place at another location belonging to the same educational institution. It also does not matter if the charges for lodging or board and lodging or other items such as study material are itemised separately from the bare tuition fee. The exemption will apply as long as those goods and services are necessary for, subordinate and incidental to the educational services.

The supply by an educational institution of domestic goods and services to educators (teachers or lecturers) is not solely or mainly for the benefit of its learners or students. If such a supply is made for no consideration, or for a consideration which does not cover all the direct and indirect costs of making those supplies the value of the supply will be deemed to be nil²¹ and the educational institution will not be entitled to deduct any input tax in this regard (even if the institution is a vendor in respect of other taxable supplies made).

Examples of such taxable supplies include the following:

- Supplies made by the educational institution itself which are not necessary for, subordinate and incidental to the educational services, or which are not solely or mainly for the benefit of students. For example, supplies made via vending machines and other coin-operated entertainment devices, rental of sporting facilities and halls for private functions, advertising services rendered in return for sponsorships or other forms of payment, or entrance fees charged to attend sporting events.

¹⁹ Constituting accommodation, meals and various other supplies in the nature of “domestic good and services” supplied together with the accommodation.

²⁰ The word “mainly” is interpreted to mean greater than 50%.

²¹ Section 10(21)

- The supply of fixed property under a lease agreement to independent vendors operating on the premises of the educational institution (for example a university bookshop or a restaurant).

6.1.6 Other non-taxable supplies of accommodation

In situations other than the ones discussed in 6.1.2 to 6.1.5 above, it may be found that the accommodation supplied is “commercial accommodation” and that the person making the supply is liable to register for VAT, or has registered voluntarily. However, there are some other instances in which the accommodation supplied will not be taxable. For example, where the supplier does not exceed or is not reasonably likely to exceed the R120 000 minimum threshold to qualify as an enterprise supplying commercial accommodation, or where the R120 000 threshold is met and the person has chosen not to register voluntarily for VAT.

6.2 Supplies to employees of the accommodation establishment

6.2.1 Accommodation

The exempt supply of lodging or board and lodging by employers to employees was discussed in 6.1.4. In these instances no VAT should be levied on any charge made by the accommodation establishment to the employee in respect of the accommodation. Any VAT incurred on goods or services acquired in order to supply that accommodation will constitute a cost to the accommodation establishment as it may not be deducted as input tax. The accommodation supplied to the employee in such cases does not constitute a taxable fringe benefit for VAT purposes²² and therefore the employer is not liable to account for any output tax thereon.

The supply of accommodation however, to an employee in any room or other unit used to provide commercial accommodation which has not been set aside mainly for accommodation by employees, will attract VAT at the standard rate.²³ When the commercial accommodation is supplied for no charge, or for a charge which is less than the open market value, a taxable fringe benefit will arise on the difference between the charge and the open market value (which is the usual charge for that accommodation). In such cases, the employer must declare output tax on the fringe benefit.

6.2.2 Meals and refreshments

If meals or refreshments are supplied by an accommodation establishment for no charge to the employee, a fringe benefit arises, but if the value of the benefit for income tax is nil, the same value is applicable for VAT purposes. The employer is therefore not liable to account for any output tax on the meal supplied to the employee in this case.

VAT should be levied at the standard rate when a charge is made to employees in respect of meals or refreshments. Usually an accommodation establishment that supplies meals and refreshments to guests will be entitled to deduct input tax in respect of all goods or services acquired in this regard, even though a certain proportion of those purchases may be applied in providing meals to its staff. Refer to **4.3.2(c)** in respect of the acquisition of goods or

²² Refer to the proviso to section 18(3) of the VAT Act which excludes the application thereof to exempt supplies under section 12.

²³ Subject to the application of the special value of supply rules where the employee stays for more than 28 days.

services which can be attributed exclusively to the provision of meals or refreshments to staff.

6.3 Other supplies

Vendors which supply commercial accommodation usually supply other entertainment goods and services in conjunction with, or in addition to, the supply of accommodation and domestic goods and services. These other supplies will generally attract VAT at the standard rate and the general time and value of supply rules will apply in most cases. However, for certain supplies, special rules may be applicable. The VAT implications of the supply of some of these other goods or services are discussed in 6.3.1 to 6.3.6 below.

6.3.1 Entrance fees

VAT should be levied on any entrance fee or cover-charge paid by any patron to an entertainment venue. When the entrance fee is charged by an independent entertainer²⁴ that is registered as a vendor, the entertainer must account for output tax on the entrance fee and not the accommodation establishment. However, there are a variety of contractual arrangements which may apply in such cases and the VAT treatment will depend on who stages the event, what supplies are made between the parties (or other outside contractors), and whether the parties to the agreement are VAT vendors or not. The contract between the entertainer and the establishment providing the venue will determine for whose benefit the entrance fee is charged and should provide details of any other supplies which may be necessary to stage the event.

For example, a hotel may stage an event and the entertainer's performance fee may be a certain percentage of the entrance fees charged and/or bar sales. In that case, the hotel will charge and account for the VAT collected from the patrons of the event and for the bar sales. If the entertainer is a vendor, he/she must account for output tax on the performance fee. The hotel must request a tax invoice from the entertainer in respect of the performance fee paid, and the hotel will be entitled to deduct the VAT so paid as input tax (subject to the rules discussed in Chapter 4).

Alternatively, the entertainer may stage the event and hire the venue and sound equipment from the hotel. In such a situation, the entertainer will charge and account for the VAT on any entrance fees collected from patrons and the VAT charged on the fee for hiring the venue and any equipment may be deducted as input tax by the entertainer (subject to the rules discussed in Chapter 4). The owner of the venue will be required to account for output tax on the supply of the venue to the entertainer.

6.3.2 Coin-operated machines and amusements

VAT is levied at the standard rate on any entertainment supplied *via* machines or devices which are operated by means of inserting a coin, paper currency, token or by any other means. However, a special time of supply rule applies so that the supplier's liability for VAT only arises at the time the coins, paper currency, tokens or other means are removed from the machine.

²⁴ Not being an employee of the accommodation establishment and in a case where the entrance fee is charged for the entertainer's benefit.

This rule applies irrespective of whether goods or services are supplied. Examples of goods supplied via vending machines or other coin-operated devices include cigarettes, cool drinks and sweets. Examples of services supplied via these devices include video games, table amusements such as pool and snooker, gambling, and squash court lighting.

Payment that is effected directly to the supplier through the use of a debit card, credit card, smart card, or other means of electronic payment and do not require anything to be removed from the machine or device, will be subject to the general time of supply rule and not the special rule.

A diversity of contractual arrangements may be used by the owners of vending and other devices which are capable of accepting coins, paper currency, tokens or other means as payment. In order to determine the VAT implications in any specific situation it is necessary to establish the terms of the agreement between the owner of the device and the person on whose premises the device is operated.

6.3.3 Hiring of facilities and miscellaneous sales

Rentals or other charges for the provision of facilities such as entertainment halls, projectors, laptop computers, sound equipment and microphones attract VAT at the standard rate. The same applies for the sale of miscellaneous items such as curios and other paraphernalia. The general time and value of supply rules apply to these supplies. However, when these sales are conducted by independent persons operating on the premises of the accommodation establishment, the sales will be taxable only if the independent person is a vendor.

Rental charged by the accommodation establishment for office space or shop premises will attract VAT in the normal manner regardless of whether the tenant is a vendor or not. In the case of a rental agreement which provides for periodic payments, a special time of supply rule applies to each of the successive supplies which shall be deemed to take place at the earlier of the time that an invoice is issued by the landlord, the time that a rental payment is due or the time when the rental payment is received.

6.3.4 Guest transportation

It is common practice within the accommodation industry for hotels and guesthouses to offer their customers a courtesy transport service. For example, an airport shuttle transport service may be provided to hotel guests where they may be dropped off or collected from the airport.

(a) Transportation supplied by the accommodation establishment itself

Any charge made by an accommodation establishment for guest transportation is exempt from VAT (being the supply of transportation to fare-paying passengers). No VAT should therefore be charged by the accommodation establishment. Any VAT incurred on any goods or services acquired in order to supply the transportation service, for example, the acquisition of buses and mini-buses, spares and tyres, repairs and the maintenance of vehicles will not qualify as input tax and will constitute a cost to the accommodation establishment. The exemption will however, not apply to the supply of a free shuttle service since section 12(g) does not apply to road transport services that do not have fare-paying passengers.

(b) Transportation supplied by a subcontractor or independent third party

If the transportation is supplied by a subcontractor to the accommodation establishment, which in turn, makes a supply of transportation to the guest (usually at a marked-up price), such supply will be exempt from VAT. If the accommodation establishment merely acts as an agent for collection in respect of transportation provided by another person, the accommodation establishment will also not levy any VAT on the charge made to the guest. In this situation the accommodation establishment does not make a supply to the guest as the charge by the third party is usually passed on to the guest in the form of a disbursement. The third party's charge will usually be exempt from VAT.

(c) Game viewing

Game farms and safari lodges often provide a service to guests where they can go on a game drive to view the wildlife on a farm or nature reserve. This type of service is not regarded as an exempt passenger transportation service and is subject to VAT at the standard rate. Input tax may be deducted on the acquisition of a “*game viewing vehicle*” used to transport guests on game viewing expeditions if the person providing the taxable game viewing service is a vendor. However, if a minibus or other passenger vehicle falling within the definition of “motor car” is acquired and used for the same purpose, the deduction of input tax will be denied.

Game viewing services are not regarded as domestic goods and services and any charge for those services may not be subject to the special value of supply rule which may be applicable in cases where the guest stays for more than 28 days.

6.3.5 Tips for baggage handling or other services

Tips paid directly to porters and waiters which are employed by the accommodation establishment are regarded as payment for services rendered directly by the employee to the guest. As that person will not usually be registered for VAT, no VAT will be included in the payment. However, any service charge included in a hotel or restaurant bill which is levied by the accommodation establishment itself, will attract VAT at the standard rate in the normal manner, regardless of whether any amount is later passed on to the establishment's employees or not.

6.3.6 Laundry services

Hotels and other accommodation establishments usually supply laundry and dry cleaning services. These services may be supplied by the establishment itself using its own facilities, or may be supplied via a subcontractor. A further possibility is that the accommodation establishment merely acts as an agent for the payment of the laundry service which is rendered by a third party to the guest.

(a) Laundry services provided by the accommodation establishment itself

Any charges for laundry, dry cleaning, ironing, mending and similar services attract VAT at the standard rate. These services constitute domestic goods and services and any charge in this regard may be subject to the special value of supply rule where the guest stays for more than 28 days and an all inclusive fee is charged.

(b) Laundry services provided by a subcontractor or independent third party

A supply by a subcontractor is usually characterised by the fact that the accommodation establishment charges its own rates which differ from the rates charged by the subcontractor. For VAT purposes, the accommodation establishment is the supplier of the laundry services and is required to levy VAT at the standard rate on any charges which it makes to the guest. The accommodation establishment will be able to deduct input tax on any VAT-inclusive charge made by the subcontractor. However, an accommodation establishment may simply act as an agent for an independent third party providing the laundry services. This arrangement is usually characterised by the fact that the accommodation establishment will recover the same amount from the guest as is charged by the third party, and that the laundry lists contained in the guest's room will bear the name of the third party.

In this situation the accommodation establishment is not supplying any goods or services and will not account for VAT unless there is an agency fee. The charge by the third party, which may include VAT, is passed on to the guest in the form of a disbursement.

Chapter 7

Invoicing, time and value of supply

7.1 Invoices and tax invoices

7.1.1 Introduction

An “invoice” is broadly defined as any document which notifies the client or customer of an obligation to make payment. A clear distinction should be drawn between an invoice which determines in many cases the time that a supply takes place, and a tax invoice which is a specialised document required by legislation which reflects certain particulars for the purpose of deducting input tax.

Although documents will often serve a dual role, namely that of an invoice and a tax invoice, it should be noted that an invoice does not necessarily constitute a tax invoice. For more information on the general rules with regard to tax invoices refer to Chapter 13 of the *VAT 404 – Guide for Vendors*.

An accommodation establishment which is registered as a vendor must issue a tax invoice to the recipient for the supply of accommodation or other goods or services unless the total consideration for the supply is in money and does not exceed R50. If the recipient is a vendor they, in turn, will require a tax invoice so that input tax may be deducted if, for example, the accommodation or other goods or services were acquired for the personal subsistence of an employee.

A vendor may, in respect of tax periods from 1 April 2016, make a deduction based on alternative documentary proof (other than a tax invoice) under section 16(2)(g). However, in order to qualify for a deduction, the following two requirements must be met:

- The circumstances as prescribed by the Commissioner by Public Notice must apply; and
- The vendor must be in possession of documentary proof containing the information acceptable to the Commissioner, at the time a return in respect of the deduction is furnished.

7.1.2 Debit notes and credit notes

A debit note will normally be issued by the supplier when the tax invoice for the supply has already been issued and the previously agreed consideration is subsequently increased. Conversely, a credit note will normally be issued by the supplier when the tax invoice for the supply has already been issued and the previously agreed consideration is subsequently reduced. A credit note is also issued by the original supplier when faulty goods are returned by the customer. Debit and credit notes therefore provide a mechanism to support the necessary VAT adjustments required or allowed where an event has the effect of altering the original consideration agreed upon for a past taxable supply, after the tax invoice has already been issued. Refer to Chapter 14 of the *VAT 404 – Guide for Vendors* for more information on debit notes and credit notes.

7.1.3 Tax invoices issued by agents

The normal rule is that any tax invoice, credit note or debit note relating to a supply by, or to the agent, on the principal's behalf should contain the principal's particulars. However, the

VAT Act provides that if an agent (being a vendor) makes a supply on behalf of another vendor (the principal), the agent may issue a tax invoice or a credit or debit note relating to that supply as if the supply had been made by the agent. In this case, the agent's details may be reflected on the tax invoice, credit note or debit note and the principal must not issue another tax invoice or credit or debit note in respect of that same supply. The VAT Act also makes provision for the agent to be provided with a tax invoice, credit note or debit note as if the supply is made to the agent and in fact the supply is made to the agent on behalf of another person who is the principal for the purposes of that supply.

An agent must maintain sufficient records when a tax invoice, credit note or debit note has been issued by or to the agent in the circumstances described above, so that the name, address and VAT registration number of the principal can be ascertained.

In addition, the agent must notify its principal each month in writing of –

- a description of the goods supplied;
- the quantity or volume of the goods supplied; and
- either –
 - the value of the supply, the amount of tax charged and the consideration for that supply; or
 - the consideration for the supply (if the amount of tax charged is calculated by applying the tax fraction to the consideration), and either the amount of tax charged, or a statement that the amount includes the tax and the rate at which the tax was charged.

In these circumstances, the agent is required to retain the original tax invoices, credit notes or debit notes (if these documents are to be retained on the principal's behalf) and sufficient records should be maintained to enable the name, address and VAT registration number of the principal to be ascertained.

Unless it has been agreed that the travel agent will issue tax invoices on behalf of the accommodation establishment, when the booking and arranging of accommodation is performed by a travel agent any document issued by the travel agent to the guest will not constitute a tax invoice for the goods or services supplied by the accommodation establishment.

7.1.4 Tax invoices issued to guests

An accommodation enterprise will often issue the guest with a tax invoice upon departure from the accommodation establishment. In a case where payment is to be effected by a travel agent on behalf of the guest, the accommodation establishment must not issue another tax invoice to the travel agent.

7.1.5 Disbursements

An accommodation establishment may sometimes be requested to acquire goods or services on behalf of a guest. In this case, where the accommodation establishment acts as agent for the guest, the accommodation establishment should reflect any disbursements (amounts paid out on behalf of the guest) separately from the goods or services supplied by the accommodation establishment itself on the tax invoice to the guest. No VAT should be charged by the accommodation establishment on these disbursements. The tax invoices

relating to these disbursements should be furnished to the guest so that input tax may be deducted (if entitled to do so). (Refer also to **Chapter 3**.)

7.2 Time of supply

7.2.1 General

As there is no special time of supply rule applicable for the supply of commercial accommodation, the general time of supply rule will apply. According to the general rule, a supply occurs at the earlier of the following events:

- At the time that an invoice is issued; or
- At the time any payment is received by the supplier.

The accommodation establishment may also however, supply goods or services where a special time of supply rule is applicable. In these circumstances the special rule must be applied and not the general rule. Examples include certain supplies between connected persons and goods or services supplied via coin-operated devices such as vending machines, pool tables, etc.

One of the most important points to consider regarding the time of supply for accommodation concerns the payment of deposits and prepayments by guests (or their agents) in connection with bookings. Whether the receipt of an amount in connection with a booking triggers the time of supply or not will depend on various factors. This aspect is discussed in some detail in 7.2.2 below.

7.2.2 Deposits and prepayments for advance bookings

The definition of “consideration” was discussed in 2.3 where it was mentioned that a “deposit” given in respect of a supply of goods or services is not regarded as payment made for the supply unless and until the supplier applies the deposit as consideration for the supply or the deposit is forfeited.

What this means in the context of the supply of commercial accommodation, is that if a guest pays a deposit to an accommodation establishment which is to be held as security for the performance of an obligation, it is not treated as consideration for a supply, unless the time of supply has already been triggered by the issuing of an invoice at that time. Further, what this implies is that for the amount to be regarded as a true “deposit” as envisaged in the definition of “consideration”, that payment should not have been in response to any invoice issued for the supply of accommodation by the establishment,²⁵ but rather some other document. For example, a contract or letter requesting the deposit payment and perhaps setting out the rules of the accommodation establishment, the terms and conditions applicable to deposit payments, and any possible forfeiture of part, or all of the deposit.

A typical example is that after enquiries have been made by the customer and a provisional booking is made by the accommodation establishment, a standard letter is faxed or e-mailed to the customer. The letter would contain the establishment’s banking details into which the “deposit” may be paid, details of the provisional booking, certain basic contractual details

²⁵ The reason is that the issuing of the invoice would trigger the time of supply for the accommodation. If the payment is in response to the issuing of the invoice, this constitutes a payment or prepayment of the consideration (or part thereof) for the supply of the accommodation.

about the deposit and any forfeiture of the deposit, some of the rules of the establishment, directions to the establishment, etc. At this point there are usually no contractual rights and obligations – only an expectation that a contract may be concluded. Once the so-called “deposit” is paid or a prepayment has been made at the request of the establishment, that event will normally signify the confirmation of the booking and the conclusion of the contract which crystallises the supply and brings into effect the contractual rights and obligations.

The accommodation establishment will have to account for VAT if the deposit or any part thereof is later forfeited at the time that the amount is –

- forfeited (usually when the guest cancels the booking or does not arrive); or
- applied as payment or part-payment of the consideration for a supply of goods or services.

But if the “deposit” is in fact part payment for the supply of the accommodation in the first instance, and not a security deposit, the time of supply for the accommodation will be triggered under the general time of supply rule as discussed in 7.2.1 and a tax invoice must be issued within 21 days of that event.

In many cases these so-called “deposit” payments which accommodation establishments require to confirm a booking by a guest are really prepayments of consideration for the supply of commercial accommodation. The liability to account for VAT in these cases will therefore be triggered at the time that any invoice is issued in respect of the full or part-payment of the consideration, or when the full payment or any part thereof is received.

Deposits are usually not subject upfront to VAT in two different situations, namely:

- Transactions which are generally not intended to lead to a taxable supply. For example, if a hotel charges a key deposit, the understanding is that the guest will use the key during the time that he/she is a guest at the establishment, and upon checking out and returning the key, the deposit will be refunded. Only if the guest fails to return the key will the deposit be simultaneously forfeited and treated as being consideration for a taxable supply.
- When a fully refundable security deposit is lodged with the supplier for a supply which will take place in the future, but the person paying the deposit has the option to withdraw from the contract at no further cost.

In summary, although it may appear to the guest or the accommodation establishment that the prepayment (the so-called “deposit”) is only set-off and applied by the accommodation establishment as consideration against the amount owing by the guest when checking into the establishment, or at the end of the stay, in many cases this is not the case. It is therefore important for the accommodation establishment to determine whether a deposit is a prepayment of part or all of the consideration for the supply of commercial accommodation, or whether the amount constitutes a security deposit, which is usually a refundable amount. VAT is only paid on a security deposit at the time that any part thereof is actually applied as consideration for a taxable supply, or if the amount is forfeited and regarded as payment for a taxable supply of services.

Example 16 – Time of supply: deposit vs consideration for a taxable supply*Facts:*

Hotel B accounts for VAT on a monthly basis. On 30 December 2015, a guest pays a R1 000 “deposit” to the hotel in respect of a booking for accommodation starting on 5 January 2016 and ending on 15 January 2016. The hotel does not issue an invoice in respect of the deposit payment, but includes it on the invoice issued at the end of the guest's stay. The invoice reflects the “deposit” amount set-off against the total amount of the hotel bill being R11 400 (including VAT) and the guest pays the balance of R10 400 upon departure. Hotel B is registered under Category C tax period (monthly).

Result:

The contractual terms and conditions under which the payment of R1 000 is made, as well as the accounting and legal characterisation of that receipt will determine whether VAT must be paid at the time of the receipt, or at the time that the amount is set-off against the consideration payable at the time of booking into the accommodation establishment, or upon departure.

In this example, if the amount is characterised as a refundable security deposit, VAT will only be accounted for on the R1 000 deposit in the January 2016 tax period, because this is when the amount is applied as consideration. But if the amount is recognised for accounting purposes as a prepayment of the consideration which immediately reduces the original obligation of R11 400 by R1 000, VAT must be accounted for in the December 2015 tax period as follows:

- If registered on the invoice basis of accounting, Hotel B must account for VAT on the full consideration of R11 400 since the prepayment or part payment of the consideration will trigger the time of supply for the commercial accommodation.²⁶
- If registered on the payments basis of accounting, Hotel B must account for VAT on the part payment of R1 000 in the December 2015 tax period and the VAT on the balance of the consideration in the January 2016 tax period.

7.2.3 Payment through agents

The intercession of an agent does not affect the time of the supply of accommodation. Two situations which may be encountered where payment for the accommodation is made via a travel agent are discussed below.

(a) Invoicing of travel agent by accommodation establishment

After completion of a guest's stay, the accommodation establishment may submit an invoice to the travel agent in respect of the accommodation. The travel agent recovers the full amount from the guest and settles with the accommodation establishment net of any commission. The time of supply of the accommodation is the date upon which the accommodation establishment issues its invoice, as this date usually precedes the date of payment. The time of the supply of the travel agent's services will usually be the date on which the agent settles with the accommodation establishment, as payment of the commission has taken place on that date by way of set-off. Where the travel agent issues a

²⁶ The accommodation establishment should ensure that it does not account for the consideration again in the January 2016 tax period when it issues the invoice or the tax invoice for the supply.

document, for example, a commission statement or remittance advice notifying the accommodation establishment of the commission due, before the date of settlement with the accommodation establishment, the time of supply will take place on the date of issue of the relevant document.

(b) Invoicing of guest by travel agent

Before the guest's stay, the travel agent may invoice the guest in respect of the accommodation. This will often occur in the context of tour package arrangements. The travel agent will usually remit the amount due to the accommodation establishment in respect of the accommodation net of any commission.

The time of the supply for the supply of accommodation by an accommodation establishment if the travel agent acts as an agent of the accommodation establishment will be the earlier of the issue of an invoice to the guest by the travel agent or the receipt of the guest's payment by the travel agent. The time of supply of the travel agent's services will usually be the date on which the travel agent remits the guest's payment to the accommodation establishment. Where the travel agent deducts the commission and remits the net amount to the accommodation establishment, payment for the travel agent's services takes place by way of set-off. Since the travel agent in this case does not normally issue an invoice for the commission beforehand the time of supply for the travel agent to account for the commission will be the date that the payment has been set-off, as this constitutes payment of the consideration for the supply.

7.2.4 Coupons and vouchers

Hotels and hotel chains may issue a variety of coupons or vouchers to guests or prospective guests. Two different types of coupons or vouchers may be distinguished.

The first type entitles the bearer to receive goods or services to the extent of a monetary value stated on the face of the coupon or voucher. The issuing of these coupons or vouchers does not attract VAT. The time of supply of the goods or services is determined by applying the time of supply rule applicable for that specific type of supply.²⁷ The redemption of the voucher constitutes payment by the bearer.

The second type entitles the bearer to receive goods or services specified on the voucher. In the context of hotels and hotel chains, the coupons and vouchers are often used to permit guests to stay at various hotels at different locations for a predetermined number of days. The guest usually pays in advance for the voucher or coupon and the invoicing or payment in respect thereof determines the time of the supply of the specified goods or services. The redemption of a voucher by the guest does not give rise to any further VAT implications since the value of the goods or services supplied is deemed to be nil.²⁸ The principles described in 7.2.3 apply equally where payment for the coupons or vouchers takes place through travel agents or other intermediaries.

²⁷ Usually the general time of supply rule will apply being the earlier of the time that an invoice is issued, or the time that payment is received by the supplier.

²⁸ Section 10(19)

7.3 Value of supply

7.3.1 General rules

VAT is charged on the value of a supply of any goods or services supplied in the course or furtherance of a vendor's enterprise. In simple terms the value of a supply is the price of the goods or services before adding the VAT which must be charged by the supplier. The VAT must be calculated by multiplying the price by the applicable rate of VAT. Usually the standard rate of VAT (currently 14%) applies in respect of the supply of accommodation and any domestic goods and services, although there are a few exceptions. For example, accommodation provided as part of an international journey on ships and trains will be subject to VAT at the zero rate.

The circumstances under which supplies of accommodation are not taxable are discussed in 6.1.2 to 6.1.6.

7.3.2 Special rules – supply of commercial accommodation for an all-inclusive charge

When commercial accommodation is supplied to a person for a period of 28 days or less, the full amount charged for the accommodation and any domestic goods and services (or any other supplies) are subject to the VAT at the standard rate. However, if the person stays for an unbroken period of 29 days or more, only 60% of the all-inclusive charge for the accommodation and any domestic goods and services included in the all-inclusive tariff for the accommodation is subject to VAT at the standard rate.

(a) Unbroken period in excess of 28 days

Sometimes it can be established by the accommodation establishment at the beginning of the period that the resident or guest will stay for an unbroken period in excess of 28 days, but in some cases, this is only established after a period of time. Alternatively, there may be uncertainty as to whether the special value of supply rule will apply. For example, if a person books into a guesthouse for an initial period of 28-day or less, but ends up staying for longer than 29 days (or *vice versa*).

The application of the special valuation rule in such cases is that if there was no agreement that the stay would be for longer than 28 days, but the resident or guest eventually stays for longer than 28 days, VAT is calculated on 60% of the all-inclusive charge with effect from the first day. If any payments have already been made and VAT has been calculated on the full all-inclusive charge, the consideration would have to be altered and an adjustment made. If any tax invoices have been issued on the basis of the previously agreed consideration, a credit note should be issued to correct the position.

In the event that there is an initial agreement that the resident or guest will stay for longer than 28 days, but the person vacates the accommodation before the 29th day, the supplier will be required to make the necessary adjustments so that the special value of supply rule does not apply.

(b) All-inclusive charge

Refer to **2.2** for a discussion on the meaning of this term. When the all-inclusive charge includes supplies which do not constitute “domestic goods and services” as defined in a case where the accommodation is supplied for an unbroken period of more than 28 days, a

split will have to be made in the consideration. The split is required as the value of the other goods or services supplied will not qualify to be taxed under the special valuation rules.

In cases where the special valuation rule applies, the consideration in money is deemed to be 60% of the all-inclusive charge. When completing the VAT 201 return for the tax period concerned, the total amount (excluding VAT) in respect of commercial accommodation and domestic goods and services supplied for a period in excess of 28 days must be inserted in Block 5. As a VAT-exclusive amount is required for the purposes of completing the VAT 201 return, the VAT calculation and how the vendor completes the return will depend on whether the all-inclusive charge is a VAT-inclusive or VAT-exclusive amount.

The calculation is fairly simple when the all-inclusive charge is VAT-exclusive. All that is required is that the VAT-exclusive amount is multiplied by 60%, and then by 14%. However, if the all-inclusive charge by the accommodation establishment is VAT-inclusive, the VAT is calculated as follows:

$$\text{VAT} = \text{VAT-inclusive charge} \times (14 / 114 \times 60\%).$$

Example 17 – Calculation of VAT on all-inclusive prices

Facts:

A hotel has just opened for business and has registered as a vendor. The hotel charges its customers R2 000 per day (excluding the charge for VAT). The charge is an all-inclusive amount for the accommodation and includes breakfast and other domestic goods and services that come with the room. The hotel's only customer for its first tax period stays for an unbroken period of 30 days.

Result:

Since the customer stays for an unbroken period of more than 28 days the all-inclusive daily rate charged by the hotel is deemed to be = $(R2\,000 \times 60\%) = \mathbf{R1\,200}$

$$\text{VAT on the daily rate} = R1\,200 \times 14\% = \mathbf{R168}$$

When the hotel's bookkeeper completes Blocks 5, 6 and 9 of the hotel's VAT 201 return for the tax period concerned, these blocks will be calculated as follows:

$$\text{Value of supply} = R2\,000 \times 30 \text{ days} = R60\,000 \text{ (amount excluding VAT) } \mathbf{(Block\ 5)}$$

$$\begin{aligned} \text{Taxable value (excluding VAT)} &= R60\,000 \times 60\% \\ &= R36\,000 \mathbf{(Block\ 6)} \end{aligned}$$

$$\mathbf{VAT} = R36\,000 \times 14\% = \mathbf{R\ 5\,040\ (Block\ 9)}$$

The total amount payable by the hotel's customer (inclusive of VAT) would therefore be R65 040 (R60 000 + R5 040).

Example 18 – Unbroken period of stay exceeds 28 days*Facts:*

The same facts as in **Example 17** except the customer books the hotel room for an unbroken period of 30-days and pays upfront for all 30 days but leaves the hotel after only staying for 28 days. In terms of the contract between the hotel and the customer, the customer is not refunded the charge for the additional 2 days after he left the hotel.

Result:

Since the customer has contracted with the hotel and paid for the supply of commercial accommodation and domestic goods and services for an unbroken period of more than 28 days the hotel may continue to charge VAT on 60% of the all-inclusive daily charge paid by the customer.

Example 19 – Unbroken period of stay does not exceed 28 days*Facts:*

The same facts as in **Example 17** and **18** except the customer does not pay upfront for the supply of the hotel room and leaves the hotel after only staying for 28 days. In terms of the contract between the hotel and the customer, the hotel is only entitled to charge the customer for the days actually spent at the hotel.

Result:

Since the hotel has only supplied commercial accommodation and domestic goods and services for an unbroken period of 28 days, the hotel must charge VAT on the full amount of the all-inclusive charge paid by the customer.

7.3.3 Complimentary accommodation

When a vendor supplies commercial accommodation for no consideration as part of a promotion of the taxable supplies of the accommodation establishment, the value of the supply is deemed to be nil and no VAT must be levied or accounted for by the relevant establishment.

This rule will, however, not apply if the accommodation is supplied to a connected person in relation to the supplier in a situation where the recipient would not be entitled to deduct the full amount of VAT as input tax, had the open market value been charged.²⁹ In these cases, VAT must be accounted for by the supplier on the open market value of the supply which is the price usually charged for that accommodation.

For more information on supplies made for no consideration refer to Interpretation Note 70 “Supplies Made for No Consideration”.

²⁹ Refer to section 10(4).

Chapter 8

Restaurants and catering businesses

8.1 Introduction

For the purposes of this chapter, the term “catering” means the business of supplying food and beverage which have been prepared for consumption at social or business events. This chapter deals with the VAT implications of supplies made by catering businesses in different circumstances, for example –

- at restaurants and workplace canteens;
- at take-away shops;
- at wedding receptions, parties, business functions, sporting events, exhibitions and conferences;
- at schools, universities and other institutions which supply training and education;
- at hospitals, clinics, nursing homes and other medical facilities;
- on various modes of transport such as aircraft, ships, trains and buses.

Catering, in general, is not subject to any special provisions such as zero-rating or exemption. However, certain supplies of catering may be zero-rated or exempt by reason of the location of the supplies or the type of enterprise and circumstances under which the supplies are made. (Refer to **Chapter 4** for more details, as well as the detailed discussion on the general rules applicable for supplies of entertainment.)

8.2 Restaurants, take-aways and franchises

The supply of prepared food and beverage by restaurants, take-aways and fast-food franchises is subject to VAT at the standard rate. Restaurants, take-aways and fast-food franchises will pay VAT on purchases of food, beverage and other supplies for the business. This could include purchases of liquor, condiments, crockery, cutlery and furniture. VAT will also be paid by the caterer on expenditure such as the rental of business premises and on advertising. This VAT will usually qualify as input tax and as such will be fully deductible against output tax.

The supply of food and beverage by the restaurant, take-away or fast-food franchise to employees for no consideration is dealt with in 6.2.2. Supplies of food and beverage to third parties at reduced prices, for example, during a promotion, are subject to the general value of supply rule and accordingly are subject to VAT at the standard rate on the reduced price.

Many restaurants, take-aways and fast-food outlets are operated on a franchise basis. An initial fee is paid by the franchisee to the franchisor in order to acquire the franchise, while a regular payment is made by the franchisee to the franchisor which is usually a monthly amount based on the franchisee's turnover. The franchisor must levy VAT both on the initial fee and on each franchise payment thereafter. The franchisee will therefore incur VAT both on the initial fee and on the subsequent franchise payments. The VAT paid on the franchise payments may be deducted as input tax provided that the franchisee is in possession of valid tax invoices.

8.3 Catering in factories, offices and other workplaces

8.3.1 Catering provided by the organisation itself

As discussed in 4.3.2.3 the VAT treatment of the canteen operation will depend largely on whether the prices charged to patrons or employees cover the costs of supplying the food and beverage as well as the operating costs of the canteen.

If the prices charged cover the direct and indirect costs or is equal to the open market value of the food and beverage, the operator of the canteen is regarded as being in the business of supplying entertainment and VAT must be charged at the standard rate on the price of any food or beverage supplied.

8.3.2 Outsourcing of the catering function

A catering contractor that operates catering facilities on someone else's premises as a principal is usually considered to be in the business of supplying entertainment. Therefore, if the catering contractor charges a price which exceeds the direct and indirect costs of supplying the entertainment or the is equal to the open market value of the entertainment, the VAT incurred on the acquisition of any goods or services acquired in order to provide the meals will qualify as input tax in the hands of the catering contractor.

VAT should be levied at the standard rate by the contractor on –

- any charges made to patrons for the supply of food or beverage;
- any fee charged to the employer for the service of supplying the food and beverage to employees; and
- any other amounts received from the employer in respect of services provided by the caterer, or as a subsidy in respect of employee meals.

The employer who is usually (but not always) the owner of the catering facilities, will generally not be able to deduct input tax on the goods and services supplied by the catering contractor or any payment to subsidise employee meals, since the employer in these circumstances is not in the business of supplying entertainment (catering).

Any charges by the employer to the caterer for the right to use the catering facilities or premises (for example rent, water and electricity) will attract VAT at the standard rate according to normal VAT principles if the employer is a vendor. The caterer (if registered as a vendor) will be entitled to deduct the VAT so charged as input tax, subject to the usual documentary requirements.

8.3.3 Catering provided by an agent

A catering contractor that operates canteen facilities as an agent on behalf of the employer does not, for VAT purposes, supply the food and beverage provided in the canteen and is not responsible to account for the input tax and output tax in that regard. The employer (principal) in such circumstances is responsible to account for any VAT on supplies made by the canteen and may deduct input tax on any food or other ingredients purchased by the caterer on behalf of the principal to provide the food or beverage served in the canteen, as those purchases are for the account of the principal.

Any agency fees charged by the catering contractor to the principal for the services of arranging, overseeing or managing the catering function will attract VAT at the standard rate if the catering contractor is a vendor.

It will depend on the circumstances of the particular case whether the owner of the catering facilities will be entitled to deduct an input tax deduction on any VAT on the catering contractor's fees or on any other entertainment expenses incurred in order to provide the canteen facilities. If a price is charged by the employer (principal), which is sufficient to cover the direct and indirect costs of making the supply of entertainment or is equal to the open market value of the entertainment, input tax may be deducted on any VAT so incurred. The price charged would in these circumstances include VAT at the standard rate. If the costs are not covered by the price charged, no VAT is levied on the supply of the food and beverage and no input tax may be deducted on the food, ingredients, catering contractor's fees and other costs associated with providing the canteen facility.

8.3.4 Caterers acting in a dual capacity

In cases where the catering contractor supplies the prepared food and beverages to the employer and also agrees to serve the users of the canteen on the owner's behalf, the catering contractor is acting in a dual capacity. The caterer acts as principal in purchasing the ingredients and preparing the meals and other refreshments for sale to the client (employer), but also acts as the agent in serving or perhaps selling the food and beverage on behalf of the employer (principal).

To the extent that the catering contractor acts as principal in preparing the meal and refreshments and assuming that the catering contractor is in the business of supplying entertainment and charges a price to the employer which exceeds the direct and indirect costs of supplying the entertainment or is equal to the open market value of the entertainment, the catering contractor will be entitled to deduct as input tax any VAT incurred on the acquisition of the food and other ingredients.

The catering contractor should also levy VAT at the standard rate on any charge to the principal for the service serving the food and beverage to staff or other customers, or for managing the catering function on behalf of the principal.

The VAT treatment of the employer (principal), who is the supplier of the food and beverage to employees, will in turn, depend on whether the prices charged covers the employer's direct and indirect costs of supplying the meals. (Refer to **8.4.1**.) In this situation, the catering contractor's agency or management fees relating to the operation of the canteen facility must be taken into account as a direct cost for the purposes of determining whether the direct and indirect costs are covered.

8.4 Catering in exempt educational institutions

8.4.1 Catering provided by the organisation itself

Any educational institution which runs its own catering facility is acting as a principal. The supply of food and beverage by the catering division of the educational institution is exempt from VAT where the food and beverage are supplied mainly for the benefit of pupils or students of the educational institution where the charge for those supplies is included in the school fees, tuition fees or payment of lodging or board and lodging charged for the exempt education.

If the catering facility operates as an independent branch or division of the educational institution so that prices are charged separately from any school fees, tuition fees or payment for lodging or board and lodging, the principles described in 8.3.1 will apply. This will also be the case where the institution supplies education or training which is not exempt.³⁰ In these cases, the educational institution will usually be liable to register for VAT, but the liability for registration and the VAT treatment of supplies made by the educational institution from the canteen operation will depend on whether the prices charged are sufficient to cover all the direct and indirect costs of operating the canteen or are equal to the open market value of the food and beverage provided.

8.4.2 Outsourcing of the catering function

As mentioned in 8.3.2, if a catering contractor operates on someone else's premises as a principal, the catering contractor is usually considered to be in the business of supplying entertainment. Therefore, if the catering contractor charges a price which exceeds the direct and indirect costs of supplying the entertainment or is equal to the open market value of the entertainment, the VAT incurred on the acquisition of any goods or services acquired by the catering contractor in order to provide the meals will qualify as input tax.

The VAT treatment of supplies made in these circumstances will therefore be the same as discussed in 8.3.2.

8.4.3 Catering provided by an agent

The VAT treatment of supplies made in these circumstances will be the same as discussed in 8.3.3 in regard to catering in factories, offices and other workplaces. However, an exception is that the supply of food and beverage by an educational institution will be exempt from VAT if the food and beverage supplied are for the benefit of its learners or students and the charge for those supplies is included in the school fees, tuition fees or payment for lodging or board and lodging charged. In such a case, the educational institution will not be able to deduct input tax on the goods and services supplied by the catering contractor, as the supply of the entertainment (food and beverage) is regarded as exempt.

8.4.4 Caterers acting in a dual capacity

The VAT treatment of supplies made in these circumstances will be the same as discussed in 8.3.4 in regard to catering in factories, offices and other workplaces and in 8.4.3 above.

8.5 Catering in hospitals and other medical facilities

Supplies made in public hospitals, clinics, nursing homes or other medical facilities operated by the provincial government fall outside of the VAT system. Therefore any supplies of entertainment or medical services to patients in these circumstances will not attract VAT. As government is generally not permitted to register as a vendor, the VAT incurred on any goods or services acquired in order to provide food and beverage to patients in these circumstances is a cost to the institution.

In the case of hospitals, clinics, nursing homes or other medical facilities operated by a person other than the provincial government (for example, private companies or municipalities), any supplies of entertainment or medical services to patients will be taxable

³⁰ Education and training which does not fall within the educational services contemplated in section 12(h).

at the standard rate and the corresponding principles according to the scenarios described in 8.3 and 8.4 above will apply.

8.6 Catering on ships and aircraft

In most cases, the price of the ticket for passage on a ship or a flight on an aircraft will include certain food and beverage, and in some cases, it will also include other on-board entertainment during the course of the journey.

In these cases, the VAT treatment of the supplies follows the VAT treatment of the transport service so that –

- when the transport service is within the Republic, the transport service will be subject to VAT at the standard rate, as will the food and beverage or other entertainment provided on board that transport; and
- when the transport service is part of an international journey (that is, from a place situated in the Republic to a place outside the Republic (or *vice versa*) or between two places outside the Republic), the transportation service is subject to VAT at the zero rate, as will the food and beverage or other entertainment provided on board that transport.

Similarly, the separate supply of any food, beverage, and other refreshments or entertainment by the operator of the ship or aircraft during the course of a flight or voyage which is not included in the ticket price will be –

- subject to VAT at the standard rate if the supply takes place within the Republic; and
- subject to VAT at the zero rate if supplied outside the borders of the Republic during the course of an international voyage.

The supply of prepared meals and other consumables to an operator of a foreign going ship or foreign going aircraft is subject to VAT at the zero rate if that ship or aircraft is going to a destination in an export country and the goods or services are for consumption by the crew and passengers. A ship or aircraft is considered to be foreign-going if –

- the ship or aircraft is engaged in the transportation for reward of passengers or goods wholly or mainly between ports or airports in the Republic and ports or airports in export countries;
- the ship or aircraft is registered in an export country and is used primarily in an enterprise conducted outside the Republic by a person who is not a vendor and not a resident of the Republic; or
- the ship is a foreign naval ship.

The owner or operator of a ship or aircraft is entitled to deduct any VAT incurred on goods or services acquired in order to provide entertainment during the journey as part of the taxable transport service provided that the owner or operator is a VAT vendor.

8.7 Catering on trains and buses

Public transport on buses and trains within the Republic is exempt from VAT, whereas international transportation on buses and trains is subject to VAT at the zero rate. The VAT treatment of entertainment supplied by the operator of a train or bus will therefore depend

upon whether the operator makes taxable supplies in the form of international transportation or not.

A vendor may be entitled to deduct input tax on any VAT incurred on goods or services acquired for the purposes of providing entertainment to any passenger or crew member as part of the supply of international transportation. The supply of entertainment in this case is also zero-rated where there is a single composite charge for the transport and the entertainment.

In the event that there is a single composite charge by way of a single ticket for the supply of the exempt transportation services within the Republic which includes meals, refreshments, beverages, or other entertainment, the supply of this entertainment is regarded as being part of the supply of the transport and therefore receives the same VAT treatment as the transport. However, if meals, beverages or other entertainment are supplied separately during the course of the transport, the supply will be subject to VAT at the standard rate if they take place within the borders of the Republic and zero-rated if supplied outside the borders of the Republic. A deduction of input tax may be made by the operator in this regard, provided that the price charged is sufficient to cover the costs of supplying that entertainment or is equal to the open market value of the entertainment.

Supplies of entertainment such as catering services, prepared meals or other food and beverages by a catering contractor to the owner or operator of a bus or train will be subject to VAT at the standard rate. Whether or not the operator will be entitled to deduct an input tax credit in respect of these entertainment expenses will depend on whether the transport operator acquires those goods and services for the purposes of making taxable or exempt supplies.

8.8 Catering at seminars and other events

VAT must be levied at the standard rate on any fee charged to participants of a seminar or similar event. When the fee charged for participation includes the provision of food and beverage by the organiser to participants during the course, immediately before or immediately after the seminar or convention and this fee covers the cost of providing the food and beverage, the organiser will be entitled to deduct any VAT incurred on goods or services acquired in order to provide those meals and refreshments as input tax.

The addition of the words “immediately before or immediately after” to section 17(2)(a)(iv) require that the food or beverage must be supplied by the organiser as an integral part of the seminar or similar event. If the organiser, for example, hosts a formal dinner for the participants of a seminar on the night of the day after the seminar has ended this will not meet the requirements of section 17(2)(a)(iv).

The VAT treatment of meals, beverages or other refreshments which are supplied to participants of the seminar by the organiser for a charge which is separate from the fee for the seminar, will differ according to whether or not the costs of the meals or refreshments are covered by the price for the meals and refreshments.

In a case where the costs are not fully covered or the refreshments are supplied for no consideration, VAT is not levied by the organiser on the supply of the refreshments. The organiser will, in these circumstances, not be entitled to deduct input tax in respect of the VAT incurred on the acquisition of any goods or services acquired to provide the

refreshments. On the other hand, if the costs are covered by the price charged, VAT is levied at the standard rate on the supply. In these circumstances the organiser will be entitled to deduct input tax in respect of the VAT incurred to provide the refreshments.

Supplies of catering services, prepared meals or other food and beverage by a catering contractor to the organiser of a convention or seminar will be subject to VAT at the standard rate. Whether or not the organiser will be entitled to deduct input tax on the acquisition of the meals and beverage will depend on the particular circumstances of the organiser as discussed above.

8.9 Other supplies of catering

The VAT implications for caterers in circumstances not specifically addressed in this chapter will depend on the capacity in which the catering contractor is acting. The principles described in 8.4 and 8.5 pertaining to catering contractors will apply to most catering situations.

The VAT implications for the catering contractor's client will differ depending on the circumstances of each particular supply. When catering services are provided to private individuals not registered for VAT (for example, at weddings or parties), any VAT charged by the caterer will have to be borne by the client as an integral cost of holding the event. Similarly, when catering services are provided to vendors to enable them to entertain clients, customers or associates, the VAT charged by the caterer will usually not be deductible as input tax. In such cases, the VAT will form a part of the cost of holding the event unless a consideration is charged for the provision of the food, refreshments or beverages to the guests which covers the cost of making those supplies.

Chapter 9

Clubs, associations and similar bodies

9.1 Associations not for gain and welfare organisations

An association not for gain means any religious institution, society or organisation, including an educational institution of a public character, which is carried on otherwise than for profit and in terms of its written constitution, amongst other things, is required to use any property or income solely in the furtherance of its aims. (Refer to the **Glossary**.)

Many clubs, associations or societies which supply entertainment will therefore fall within the definition of an “association not for gain” for VAT purposes and could include –

- societies, for example, those formed for the promotion of culture and arts;
- charities;
- sports and recreational clubs; and
- public interest groups.

An association not for gain may apply for voluntary registration if the total value of taxable supplies has exceeded R50 000 in the past 12-month period (or R120 000 in the case of supplies of commercial accommodation) or there is a reasonable expectation that the total value of taxable supplies will exceed R50 000 within 12 months from the date of registration.³¹

A welfare organisation is a special type of association not for gain that has two additional benefits under the VAT system, namely –

- the minimum threshold for voluntary registration does not apply, as a welfare organisation is not required to supply goods or services for a consideration to qualify for voluntary VAT registration; and
- input tax may be deducted on certain entertainment expenses which are usually disallowed for other vendors.

For further information relating to public benefit organisations, associations not for gain and welfare organisations, refer to the *Tax Exemption Guide for Public Benefit Organisations in South Africa*, and the *VAT 414 – Guide on Associations not for Gain and Welfare Organisations*.

9.2 Donations, membership fees and entrance fees

The provision of membership benefits or entertainment by any club, association, society or other body of a sporting, cultural, political, religious, philanthropic or philosophical nature in return for the payment of a consideration constitutes the carrying on of an enterprise. The function, purpose or legal form of the organisation is irrelevant in determining whether the supplies which it makes, attract VAT or not.

³¹ The circumstances under which it can be reasonably expected that the R50 000 threshold will be met are set out in Regulation R447 published in Government Gazette No 38836 on 29 May 2015

Any entrance fees, admissions charged or subscriptions received will therefore be subject to VAT at the standard rate if the organisation is a vendor. For VAT purposes, no distinction is made between membership subscriptions paid by local members (residents) and those paid by non-residents, because in both cases the services are regarded as being consumed in the Republic.

Subscriptions (membership fees) paid to clubs, associations or societies are sometimes described as donations, but this is usually not the case. This is because to qualify as a donation, the payment must –

- be entirely voluntary;
- secure nothing of value for the donor (or a connected person) in return (including membership of the organisation); and
- be entirely at the discretion of the donor as regards the amount, timing and regularity.

Associations not for gain and welfare organisations often receive donations and will not declare output tax on those receipts as they will generally not constitute consideration received from the donor in respect of a supply of goods or services. However, for a payment to be accepted as a donation it must be clear to both the donor and the donee that entrance into an event, or any other supply of goods or services, is not conditional upon any payment. In other words, the payment must be totally at the discretion of the donor and must not be a prerequisite for the supply to be effected.

The payment of an entrance fee, or if a person is made to think that payment is a requirement to gain entry to an event or for the supply of other goods or services; will not constitute a donation, but an admission charge or other consideration which is subject to VAT at the standard rate. For example, where a "free will" collection is taken inside a concert hall or sports ground, this may under certain conditions amount to a donation and not an admission charge. The conditions are that the person receiving the benefit of the payment is an association not for gain and that the payment constitutes a "*donation*".

For further information regarding donations, refer to the *VAT 414 – Guide for Associations not for Gain and Welfare Organisations*.

The general time of supply rule is applicable to any membership benefits supplied by clubs, associations, societies and similar bodies. Therefore, such supplies are deemed to take place when an invoice is issued or any payment is received, whichever is the earlier. Generally the payment of membership fees will take place annually but the payments may also be periodic. The tax period in which the liability arises to account for VAT on membership fees will therefore depend on the facts of the case.

Example 20 – Time of supply: Membership subscriptions

Facts:

Club A and Club B are both sports clubs. Club A issues renewal notices in December 2015 for membership fees due in respect of the 2016 calendar year. The renewal notice takes the form of an invoice and indicates to the member that an obligation to make payment for the 2016 membership fees already exists. Club A usually receives payment from all members by the end of February each year.

Club B sends notices in December 2015 to existing members requesting written confirmation on an attached response slip that the person commits to be a member in the 2016 calendar year. Once the response slips are received, Club B issues the person with an invoice.

If payment is received without a response slip, or together with the response slip, a tax invoice is issued.

Result:

The issuing of the renewal notices by Club A constitutes the issuing of invoices and therefore triggers the time of supply for membership fees in December 2015 since an obligation to make payment has already arisen. Club A must therefore account for the VAT on the membership fees in the tax period covering December 2015. If Club A is registered on the payments basis, it will only account for VAT to the extent that the membership payments are actually received.

The notice issued by Club B in December 2015 for the purpose of obtaining written confirmation for membership in the 2016 calendar year does not constitute an invoice. Therefore Club B has no obligation in December 2015 to account for VAT on membership fees for the 2016 calendar year. Only once Club B issues invoices to members who have confirmed their membership or members have made payment for their membership for 2016 (regardless of whether an invoice has been issued) will Club B be liable to account for the VAT on the membership fees. Alternatively, if Club B is registered on the payments basis, it will only account for VAT to the extent that the membership payments are actually received.

Any entrance fee or admission charged may cover a single event or a series of events and any fee for the supply of the right of admission to any function or event which takes place in the Republic is subject to VAT at the standard rate. The price of a ticket for admission to any event, or series of events which take place outside of the Republic will be subject to VAT at the zero rate. For example, if a person purchases a ticket to attend a rugby match which takes place in the Republic, VAT must be charged at the standard rate. However, if the match takes place in a foreign country, the ticket price to attend the match will be subject to VAT at the zero rate as the supply will be taxed according to the VAT or GST rules in the country in which the event is held. If an administration fee is charged for the issue of the ticket however, this fee will be subject to VAT at the standard rate.

If a person has to buy a programme to get into a sporting event, concert or other entertainment, the payment for the programme is the consideration for the admission.

Examples of events where VAT must be charged on admissions or entrance fees include –

- cinemas, theatres and other places of entertainment;
- amusement arcades and funfairs;
- discotheques and dances;
- horse racing meetings and other sports events;
- botanical gardens; and
- zoos and game reserves.

The general time of supply rule is applicable to admissions so that the supply is deemed to take place when an invoice is issued or any payment is received, whichever is the earlier. As invoices are not usually issued in respect of admissions, payment of the admission, or part thereof, will usually determine in which tax period the supply takes place. When tickets, tokens, vouchers or programmes are issued upon payment of the admission charge which entitles the bearer to admittance to the premises, function or event, the date of that payment will determine the tax period in which the supply of admission is made. The time of supply of admissions to a series of events, for example, where a season ticket is issued, will take place on payment or part payment for the season ticket.

The general value of supply rules apply to admissions, so that VAT is levied at the standard rate on the price of the admission before the addition of VAT. Alternatively, the amount of VAT charged may be calculated by applying the tax fraction (14/114) to the VAT-inclusive price of admission.

9.3 Other charges for goods and services

Subject to the general rules that require supplies of entertainment to be made for a consideration which covers all direct and indirect costs or is equal to the open market value of the entertainment (refer to **4.2** and **4.3**), all other types of supplies of entertainment will be subject to VAT at the standard rate if the club, association or similar organisation is a vendor.

Examples include –

- supplies of prepared food and beverages such as bar sales, catering at sports events and club social functions;
- charges for participating in sports and games such as court fees, squash court and snooker table light meters, green fees, entrance fees, gaming machines and gambling tables; and
- any fee payable to enter any competition or to participate in a betting transaction or any other game of chance.

Chapter 10

Miscellaneous issues

10.1 Introduction

This chapter deals with other issues relevant to the broad topic of entertainment transactions which are either not dealt with in the previous chapters, or where additional information on the topic is useful to clarify the VAT treatment.

10.2 Conferences and trade fairs

Although the majority of work may be done before the arrival of the foreign visitors in South Africa, if a South African vendor arranges a trade fair or conference in South Africa for a foreign organisation which is attended by representatives of foreign businesses, this work is of a preparatory nature which does not, in itself, constitute a supply of services but culminates in the supply of a service, being the arranging of the trade fair, for the benefit of the foreign visitors during their visit to South Africa.

Consequently, the supply of any goods or services which are consumed locally by non-residents are not zero-rated. A VAT refund may only be obtained on any goods which are physically removed from the Republic by the foreign visitor on departing.

If a non-resident is the supplier of the goods and services to participants, the non-resident will be required to register and to levy VAT on those supplies to the extent that the non-resident is conducting an enterprise within the Republic.

10.3 Employee housing

The supply of accommodation in a “*dwelling*” by an employer to an employee is exempt from VAT. The supply is also not a fringe benefit for VAT purposes and therefore the employer in these circumstances must not account for output tax on the supply.

In cases where an employer regularly purchases dwellings belonging to employees (for example, where the employees are relocated and therefore have to sell their dwellings) and subsequently sells those dwellings, the employer will be regarded as conducting an enterprise involving the purchase and sale of fixed property. VAT must therefore be levied on the sale at the standard rate. This is the case even where the employer, apart from the purchasing and selling of employee dwellings, is solely engaged in making exempt supplies. If however, the employer purchased the dwellings for the purpose of holding these properties and not selling them, then the employer will not be conducting an enterprise involving the purchase and sale of fixed property.

10.4 Subletting of dwellings

The supply of a number of dwellings in terms of a lease agreement where the dwellings are leased to a tenant by a landlord is exempt from VAT. If the tenant subsequently sublets the individual dwellings to other tenants, the supply is similarly not subject to VAT. However, where the tenant (sub-lessor) sublets the property for any other purposes, other than for use as a dwelling (for example, for use as an office), the supply may be subject to VAT at the standard rate if the sub-lessor is a vendor.

10.5 Sale of furnished flats

The VAT treatment of the sale of furnished flats will depend on whether the flat was used for taxable or exempt supplies.

The letting of fully furnished and serviced flats is subject to VAT at the standard rate if the owner is registered for VAT purposes as a supplier of commercial accommodation (which includes the supply of domestic goods and services). Consequently the sale of the furnished flat is subject to VAT at the standard rate in this case. However, if the furnished flat was rented as a dwelling, which is an exempt supply, the sale of the flat will not be subject to VAT, but transfer duty will be payable by the purchaser.

10.6 Promotional gifts

Generally, when a vendor acquires various items to use as gifts and promotional items for clients, the vendor will be allowed to deduct input tax thereon, even if they are supplied to clients for no consideration.³² Examples could include things such as diaries, pens, mouse pads, clothing and product samples which are acquired for the purposes of directly or indirectly promoting the taxable supplies of the vendor's enterprise. However, if the nature of the item falls within the ambit of "*entertainment*", input tax is denied if that vendor does not normally supply those items in the ordinary course of the enterprise. For example, items such as wine, chocolates, hampers, tickets to functions, computer games and music CDs. This rule will apply, even if an entertainment item displays the vendor's logo or branding. (Refer to **Example 8**)

Input tax may be deducted on the manufacture or purchase of the free samples or other promotional items if the vendor makes supplies of the entertainment concerned in the ordinary course of an enterprise. For example, where a wine merchant launches a new wine and offers wine tasting or provides free samples of wine to the public, input tax may be deducted on the acquisition of the bottles of wine supplied to clients, or potential new clients in promoting the product. An apportionment of input tax must be made if the distribution of promotional gifts to clients relates to both taxable and exempt supplies made by the vendor.

10.7 Stadiums

Stadiums are usually owned or leased by provincial sporting bodies, sports clubs, municipalities, or property holding entities connected to sporting bodies. These persons make stadium space available either by the sale of hospitality boxes or by the letting of the stadium space or a part thereof to other persons for the purposes of holding a sporting event, theatrical production, cultural or political event, musical show, or for other vendor outlets. In any of these cases, if the person concerned is a vendor, the supply is subject to VAT at the standard rate.

Vendors that have bought or leased a hospitality box for the purpose of entertaining directors, employees or clients may not deduct input tax thereon, nor on any food or beverages if there is no charge or if the charge does not cover the cost of providing that entertainment. (Refer to **Chapter 4**.)

³² Refer to Interpretation Note 70 "Supplies for No Consideration" for more details in this regard.

10.8 Supplies by educational institutions**10.9 Catering for film production crew**

The question arises as to whether input tax may be deducted on expenses incurred in regard to catering provided for crew members, clients and production staff during the production of an advertisement, television programme or film if a film production company (vendor) shoots an advertisement, television programme or film in the Republic.

In terms of proviso (ii) to section 17(2)(a), a vendor is entitled to an input tax deduction where the goods or services are acquired in respect of the personal subsistence of employees or office holders, who, by reason of their duties, are obliged to spend at least one night away from their usual place of residence and usual working-place. Foreign crew members will only be regarded as employees if an employment contract has been entered into between the parties concerned. The film production company is entitled to an input tax deduction in respect of personal subsistence incurred by local crew members who are away from their usual place of residence and their usual working-place whilst involved in the production of a film or making of an advertisement on location.

Glossary

Association not for gain

Any religious institution, society or organisation which is carried on, otherwise than for profit and in terms of its written constitution which governs it –

- is required to use any property or income solely in the furtherance of its aims;
- is prohibited to transfer any portion of property or income to any person, except as reasonable remuneration for services provided; and
- is obliged, at its winding-up or liquidation to give or transfer its assets after satisfaction of debts, to another similar society.

It can also be an educational institution of a public character which –

- is carried on not for profit;
- is in terms of its memorandum which governs it required to use any property or income solely in the furtherance of its aims; and
- is prohibited to transfer any portion of property or income to any person, except as reasonable remuneration for services rendered.

A welfare organisation is a type of association not for gain.

Commercial accommodation

The supply of lodging, or board and lodging –

- together with domestic goods and services, in any house, flat, apartment, room, hotel, motel, inn, guesthouse, boarding house, residential establishment, holiday accommodation unit, chalet, tent, caravan, camping site, houseboat, or similar establishment;
- in a home for the aged, children, physically, or mentally handicapped persons; and
- in a hospice.

If a person carries on an enterprise or activity supplying commercial accommodation, the total value of taxable supplies made by that person must exceed (or must reasonably be expected to exceed) R120 000 in any 12-month consecutive period in order for the commercial accommodation activities to be deemed an enterprise.

A dwelling supplied in terms of an agreement for letting and hiring thereof is not regarded as commercial accommodation.

Also refer to “*domestic goods and services*”.

Consideration

This is generally the total amount of money (including VAT) received for a supply. For barter transactions where the consideration is not in money, the consideration will be the open market value of goods or services (including VAT) received for making the taxable supply. Section 10 determines the value of supply or consideration for VAT purposes for different types of supplies.

Any act of forbearance whether voluntary or not for the inducement of a supply of goods or services will constitute consideration, but it excludes any donation made to an association not for gain. A “deposit” is also not consideration unless and until it is applied as such. Deposits are usually paid to secure a future supply of goods or services or as security for borrowed goods until their safe return to the owner.

A security deposit only constitutes “consideration” as defined, if it is later applied as such. Any prepayment for a supply constitutes consideration and is different from a security deposit.

A supply for no consideration has a value of “nil”, except in certain cases when the supply is between connected persons.

Domestic goods and services

Includes –

- cleaning and maintenance;
- electricity, gas, air conditioning or heating;
- a telephone, television set, radio or other similar article;
- furniture and other fittings;
- meals;
- laundry;
- nursing services; or
- water,

when supplied together with commercial accommodation.

If a person stays for longer than 28 days in any hotel, guesthouse, inn, boarding house, retirement home, or similar establishment, only 60% of an all-inclusive charge for accommodation and domestic goods or services will be subject to VAT.

Donation

A payment made voluntarily to any association not for gain for the carrying out of its objectives. The person making the payment must not receive any identifiable direct valuable benefit as a result of the gift.

Dwelling	Except where used in the supply of commercial accommodation, any building, premises, structure or any other place, or any part thereof, used or intended for use predominantly as a place of residence for any natural person, including all fixtures and fittings.
Entertainment	Means the provision of any food, beverages, accommodation, entertainment, amusement, recreation or hospitality of any kind by a vendor whether directly or indirectly to anyone in connection with an enterprise carried on by that vendor.
Enterprise	Any enterprise or activity which is carried on continuously or regularly by any person in the Republic or partly in the Republic and in the course or furtherance of which goods or services are supplied to another person for a consideration. Where a person intends carrying on an enterprise of supplying commercial accommodation, the total value of taxable supplies made or reasonably expected to be made by that person in a 12-month period must exceed R120 000.
Exempt supplies	An exempt supply is a supply on which no VAT may be charged under section 12 (even if the supplier is registered for VAT). Persons making only exempt supplies may not register for VAT and may not recover input tax on purchases to make exempt supplies. <u>Examples:</u> • Certain financial services. • Supplies by any "<i>association not for gain</i>" of certain donated goods or services. • Rental of accommodation in any "<i>dwelling</i>" including employee housing. • Certain educational services. • Services of employee organisations for example trade unions. • Certain services to members of a sectional title, share block, retirement housing scheme or home owners association funded out of levies. (Not applicable to timeshare schemes.) • Public road and railway transport for fare-paying passengers and their luggage. • Childcare services in a crèche or after school care centre.
Game vehicle	viewing A vehicle constructed or permanently converted for the carriage of seven or more passengers for game viewing in national parks, game reserves, sanctuaries or safari areas and used exclusively for that

purpose.

Goods

The term “*goods*” includes –

- corporeal (tangible) movable things, goods in the ordinary sense (including any real right in those things);
- fixed property, land & buildings (including any real right in the property for example; servitudes, mineral rights, notarial leases etc);
- sectional title units (including timeshare);
- shares in a share block company;
- electricity;
- postage stamps; and
- second-hand goods.

The term “*goods*” excludes –

- money for example; notes, coins, cheques, bills of exchange, etc (except when sold as a collectors item);
- value cards, revenue stamps, etc. which are used to pay taxes (except when sold as a collectors item); and
- any right under a mortgage bond.

Grant

An amount which a public authority (for example, government departments and certain public entities) or a municipality has budgeted for, and pays over to other institutions or persons. The relevant department, public entity or municipality may not, however, receive any goods or services in return for these payments.

Input tax

This is the tax paid by the recipient to the supplier of goods or services. Input tax may only be deducted by the recipient vendor if the goods or services are acquired for making taxable supplies and if the vendor is in possession of a valid tax invoice, or such other prescribed document, for the supply. An apportionment of input tax must be made if goods or services are acquired only partly for making taxable supplies. In the case of an importation, the vendor must be in possession of a valid bill of entry and proof that the VAT has been paid to Customs.

In certain instances, input tax may also be deducted on non-taxable supplies of second-hand goods acquired by the vendor, but the vendor must retain a proper record of the details of the transaction on form VAT 264. Should the second-hand goods acquired constitute fixed property, the transfer of which requires registration in a Deeds Registry, input tax may only be deducted once the property has been registered in the name of the vendor claiming a deduction.

As a general rule, input tax may not be deducted on supplies of “entertainment”, motor cars and club subscriptions. Input tax may also not be deducted where goods or services are acquired for the purpose of making exempt supplies, for private use or for other non-taxable activities.

Non-taxable supplies

This term refers to supplies which are not listed as exempt supplies in section 12. These supplies are normally referred to as being “out-of-scope” as they fall outside the scope of the definition of “enterprise” or the VAT Act. Out-of-scope supplies are treated in the same manner as exempt supplies in that no VAT is charged and no input tax may be deducted in respect of any goods or services acquired to make those supplies. Refer to Interpretation Note 70 “Supplies Made for No Consideration” for more information in this regard.

Output tax

The tax (VAT) charged by a vendor on a taxable supply of goods or services.

Person

The entity which is liable for VAT registration and includes –

- sole proprietor for example a natural person;
- company/close corporation;
- partnership/joint venture;
- deceased/insolvent estate;
- trusts;
- incorporated body of persons for example an entity established under its own enabling Act of Parliament;
- unincorporated body of persons, for example club, society or association with its own constitution;
- foreign donor funded project; and
- municipalities/public authorities.

SARS

The acronym for the South African Revenue Service

Services

The term “*services*” is very broad and includes –

- the granting, assignment, cession, surrender of any right;
- the making available of any facility or advantage; and
- certain acts which are deemed to be services under section 8.

The term excludes –

- a supply of goods;
- money; and

- any stamp, form or card which falls into the definition of “goods”.

Examples:

- Commercial services – electricians, plumbers, builders.
- Professional services – doctors, accountants, lawyers.
- Advertising agencies.
- Intellectual property rights – patents, trade marks, copy rights, know-how.
- Restraint of trade.
- Cover under an insurance contract.

Supply

This term is defined very widely. It includes performance in terms of a sale, rental agreement, instalment credit agreement and all other forms of supply, whether voluntary, compulsory or by operation of law, irrespective of where the supply is effected.

Taxable supplies

Supplies (including zero-rated supplies) which are chargeable with tax under the VAT Act. There are two types of taxable supplies, namely –

- those which attract the zero rate (listed in section 11); and
- those on which the standard rate of 14% must be charged.

A taxable supply does not include any exempt supply listed in section 12 of the Act, even if supplied by a registered vendor.

Time of supply

The general rule with regard to the time of supply is that the supply takes place at the earlier of the time that an invoice is issued in respect of that supply or the time that any payment of consideration is received by the supplier. There are however special rules applicable in certain instances. Refer to the *VAT 404 - Guide for Vendors* for more information in this regard.

VAT

The acronym for value-added tax.

Vendor

This includes any person who is registered, or is required to be registered for VAT. Any person that makes taxable supplies in excess of the R1 million compulsory VAT registration threshold prescribed in section 23 is a vendor, whether that person has actually registered for VAT or not.

A person can also register voluntarily as a vendor if the value of taxable supplies made is in excess of R50 000, or can reasonably be expected to exceed this amount (refer to R.447 published in *Government Gazette* 38836 dated 29 May 2015) in any 12-month

consecutive period. For persons that supply “commercial accommodation”, the voluntary registration threshold is R120 000 (before 1 April 2016, the threshold was R60 000). A person who continuously carries on an activity of a nature which results in taxable supplies to be made only after a period of time, can also register voluntarily for VAT. Refer to R.446 published in *Government Gazette* 38836 dated 29 May 2015 for the nature of activities under which this would apply.

A welfare organisation may register as a vendor to the extent that it carries on “welfare activities” even if it makes supplies to carry out those welfare activities for no consideration.

Welfare organisation

This is any public benefit organisation that has been approved by the Commissioner under section 30(3) of the Income Tax Act which carries on a welfare activity determined by the Minister to be of a philanthropic or benevolent nature, under the following headings:

- (a) Welfare and humanitarian;
- (b) Health care;
- (c) Land and housing;
- (d) Education and development; and
- (e) Conservation, environment and animal welfare.

The VAT Act contains specific benefits which apply to welfare organisations. The main benefit is that it can register for VAT and obtain a refund of VAT that it incurs to the extent that it carries on welfare activities, even if those supplies are made for no consideration.

Annexure A – Historical VAT treatment of accommodation (before 1 October 2001)**1. Introduction**

This annexure is provided as background information to provide a historical record of the legal framework which a person may be required to consider in understanding how the law has developed over the years into the current rules. It provides a summary of the legal framework as it was before significant changes were introduced by The Revenue Laws Amendment Act 19 of 2001 (with effect from 1 October 2001) and the Second Revenue Laws Amendment Act 60 of 2001 (with effect from 7 November 2001) which affected the VAT treatment of different types of supplies of accommodation.

2. Commercial rental establishments

The VAT Act distinguished between five different types of commercial rental establishments, namely:

(a) *Hotel and similar types of accommodation establishments* – this included hotels, motels, inns, boarding houses, hostels or similar establishments in which lodging was regularly or normally provided to five or more persons at a daily, weekly, monthly or other periodic charge. The characteristics of this type of accommodation being that –

- lodging is provided by the establishment;
- facilities exist for more than one group of people at a time;
- the owner or employees of the establishment are generally in attendance at the site; and
- generally a guest would stay in the accommodation for a relatively short period of time.

The operation of non-profit-making hostels by employers and local authorities were specifically excluded from qualifying as commercial rental establishments. The supply of any accommodation units in these establishments were therefore not regarded as taxable supplies.

(b) *Commercial letting enterprises* – these consisted of accommodation units such as houses, flats, apartments, rooms, caravans, houseboats, caravan or camping sites which are made available and which meet all of the following conditions:

- (i) Five or more of such units were required to be let or held for letting as residential accommodation in the course of the business undertaking.
- (ii) Total annual receipts and accruals from the letting of all such units had to exceed R24 000 or there had to be reasonable grounds for believing that the total annual receipts and accruals will exceed that amount.
- (iii) The accommodation units had to be regularly or normally let or held for letting as residential accommodation for continuous periods not exceeding 45 days in the case of each occupant.

The first two requirements were intended to exclude business undertakings where the business of letting was more likely to be of a casual nature whereas the third requirement

was intended to exclude business undertakings providing residential accommodation on a long term basis.

Where a separately identifiable part of a business undertaking did not meet these requirements, for example, where accommodation units were usually let or held for letting for periods in excess of 45 days, those supplies were not regarded as taxable supplies.

- (c) *Other letting enterprises* – These included establishments which supplied accommodation units such as houses, flats, apartments or rooms which did not qualify as one of the accommodation establishments discussed under paragraphs (a) or (b) above. This applied in the cases of persons letting or holding for letting up to four different houses, flats, apartments or rooms. Each house, flat, apartment or room had to be tested against the requirements as set out in (ii) and (iii) in paragraph (b) above. A person who let these types of accommodation units on a casual or sporadic basis could not qualify as a commercial rental establishment and the units supplied under such circumstances were not regarded as taxable supplies.
- (d) *Medical or care facilities* – Accommodation supplied in any hospital, nursing home, hospice, convalescent home or rest home fell within the classification of accommodation supplied in a commercial rental establishment. However, if the medical or care facility was operated by a public authority or local authority/municipality, the supply of the accommodation fell outside the scope of VAT, as public authorities and local authorities/municipalities were not regarded as commercial rental establishments.
- (e) *Prison accommodation provided by third parties* – With effect from 24 November 1999 (and until the VAT Act was further amended with effect from 1 October 2001), the definition of “commercial rental establishment” included prisons or other places of detention which were managed by persons other than public authorities, but in terms of agreements with public authorities.

3. Residential rental establishments

In addition to the five types of commercial rental establishments discussed above, the law also provided for a sixth type of commercial rental establishment known as a “residential rental establishment”³³ which term was separately defined. The essential characteristics of a residential rental establishment were that –

- the establishment had to qualify as a commercial rental establishment as discussed under paragraphs (a) and (d) above; and
- 70% or more of the residents had to reside, or be expected to reside in the establishment for periods in excess of 45 days.

4. Application of the special value of supply rules

Before 1 October 2001, the valuation rules for supplies of accommodation and other domestic goods and services under section 10(10) were as follows:

- *Commercial rental establishments*

³³ Typical examples included residential hotels, boarding establishments, hospices, convalescent homes and old age homes.

If the accommodation (including domestic goods and services) was provided for a period of 45 days or less, VAT was levied at the standard rate on the full value of supply. Where the supply was for a period exceeding 45 days, only 60% of the value attributable to the portion exceeding 45 days was subject to VAT at the standard rate. If the accommodation was provided at an all-inclusive charge, a split between the charges for accommodation and domestic goods and services on the one hand, and meals and other services on the other hand was required. At least 20% of the value of supply had to be attributed to the “meals and other services” unless the Commissioner directed otherwise. The purpose being that the value attributable to “meals and other services” would always be taxed in full at the standard rate even when the accommodation was supplied for a period exceeding 45 days.

- *Residential rental establishments*

Accommodation and domestic goods and services that were supplied by agreement for a period of 45 days or longer, or for successive periods which in aggregate exceeded 45 days, only 60% of the value was subject to VAT from the first day on which the supply commenced.

5. Media Release No 45 of 2001: Changes to VAT on long term accommodation in hotels, boarding houses, retirement homes and similar establishments

The media release which was issued in 2001 to communicate the changes effected by the amendments to the law is quoted verbatim below:

The special concession contained in the Value-Added Tax Act, 1991, granting relief to those individuals who are permanently in hotels, retirement homes or similar establishments has been amended effective from 01 October 2001.

Currently, the effective rate of VAT for such accommodation is reduced from 14% to 9.52% by using a rather complicated formula. This amendment to the VAT Act effectively eliminates this complicated formula and grants further relief. From 01 October 2001, the effective rate will be reduced to 8,4% on the VAT exclusive charge.

This amendment to the VAT Act is intended to compensate for the fact that individuals who live in their own or rented homes do not pay VAT on bond interest, municipal rates and rent as these charges are exempt from VAT.

As from 1 October 2001, where a person stays for longer than 28 days in any hotel, retirement home or similar establishment, only 60% of an inclusive charge for accommodation and domestic goods and services will be subject to VAT. Domestic goods and service means the supply of accommodation and, where supplied as part of the right of accommodation, meals, furniture, fittings, telephone, television, radio, cleaning, maintenance, electricity, gas, air conditioning and heating. If domestic goods and services, or any other goods and services are charged separately from the accommodation charge, they will attract VAT at 14%.

Where a resident stays for a period not exceeding 28 days, the charge is taxed in full.

The VAT rules relating to the supply of flats or cottages under rental or life-right schemes have not changed. The sale of a life-right and any monthly levy charged or, alternatively the rental of the unit is exempt from VAT. No input tax may be claimed in respect of exempt supplies.

The instructions contained in VATNEWS No 8 and 13 are withdrawn. Any portion of the monthly levy payable under a life-right, share block or sectional title scheme which relates to meals is not exempt from VAT.

Contact details

The SARS website contains contact details of all SARS branch offices and border posts.

Contact details appearing on the website under “Contact Us” (other than branch offices and border posts) are reproduced below for your convenience.

SARS Head Office

Physical Address

South African Revenue Service
Lehae La SARS
299 Bronkhorst Street
Nieuw Muckleneuk
0181
Pretoria

Postal Address

Private Bag X923
Pretoria
0001
South Africa

SARS website

www.sars.gov.za

Telephone

(012) 422 4000

SARS Fraud and Anti-Corruption hotline

0800 00 28 70

SARS Large Business Centre (LBC) Head Office

Physical Address

Megawatt Park
Maxwell Drive
Sunninghill
Johannesburg

Postal Address

Private Bag X170
Rivonia
2128
South Africa

Telephone

(011) 602 3000

email

LBC@sars.gov.za

For the contact details of each LBC sector go to “Contact Us” on SARS’ website the go to “SARS Large Business Centre”.

SARS Complaints Management Office (CMO)

Telephone

0860 12 12 16

Via eFiling, see our step-by-step guide.

Visit your nearest SARS Branch.

Website

www.sars.gov.za/cmo

email

csmo@sars.gov.za

e-Filing

Sharecall

0860 709 709

Cellular

082 234 8000

Fax
(011) 361 4444

email
info@sarsefiling.co.za

Website www.efiling.gov.za

National Call Centre

Please note:

- All the e-mail addresses and fax numbers displayed below **are** routed to the central SARS National Call Centre.
- If you are **not** a tax practitioner, and you have eFiling queries, you can contact the channel for the specific tax type you are dealing with (for example, VAT, PAYE, Income Tax etc) for assistance.

Query Type	Telephone	Fax	email
Income Tax	0800 00 7277	031 328 6011 021 413 8901	it.cc@sars.gov.za it.wc@sars.gov.za
Value-Added Tax (VAT)	0800 00 7277	021 413 8902	vat.wc@sars.gov.za
Pay As You Earn (PAYE)	0800 00 7277	031 328 6013	paye.cc@sars.gov.za
Tax Clearance Certificates	0800 00 7277	031 328 6048 021 413 8928	tcc.kzn@sars.gov.za tcc.wc@sars.gov.za
Customs: General	0800 00 7277	031 328 6017 021 413 8909	customs.qry@sars.gov.za cqry.wc@sars.gov.za
Tax Practitioners	0860 12 12 19	011 602 5049	pcc@sars.gov.za
Tax Practitioners: eFiling	0860 12 12 19	011 602 5312	pccefiling@sars.gov.za