



# Overview of VAT in Africa

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# Preface

To survive the current world recession, businesses have to manage their opportunities and risks carefully in order to remain competitive.

According to the 'Africa Competitiveness Report 2009', released by the World Economic Forum, the World Bank and the African Development Bank on 10 June 2009, African businesses can become far more competitive, but limited access to financial services, underdeveloped infrastructure, limited healthcare and educational services as well as poor institutional frameworks make African countries less competitive in the global marketplace.

Unfortunately, businesses do not have much control over government policies regarding these issues that affect their competitiveness and ability to survive the economic downturn.

However, one of the potential risks facing all businesses that can be managed is tax. Value added tax (VAT) has become the major consumption tax in Africa. The incorrect application of VAT can have severe and immediate cost implications for one or both parties involved in a transaction. Furthermore, harsh penalties are often levied by VAT authorities in the event of non-compliance.

In order to effectively manage VAT opportunities and risks when trading in Africa, a proper understanding of the VAT rules applying in Africa is essential. PricewaterhouseCoopers has an extensive Indirect Tax network in Africa, which can assist businesses in this regard.

To provide an overview of VAT in Africa to businesses engaged in trading, or intending to conduct business in Africa, this guide has been compiled by PricewaterhouseCoopers Indirect Tax specialists in the following African countries: Botswana, Cameroon, Chad, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Ghana, Kenya, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Nigeria, Senegal, South Africa, Tanzania, Tunisia, Uganda, Zambia and Zimbabwe.

The guide outlines the VAT principles regarding VAT rates, registration with the relevant authorities, output tax, exemptions (where no VAT is charged and no input tax is allowed), zero-rating (where VAT is charged at 0% and input tax is allowed), input tax, imports and exports, VAT accounting and record keeping issues, as well as the basic principles relating to other indirect taxes. Specific advice on any VAT or other indirect tax-related issues can be obtained from our VAT specialists in the different countries, whose contact details are provided at the end of each country chapter.

The guide is based on the law in force as at 30 June 2009 and is an update of the two previous guides issued by PricewaterhouseCoopers relating to VAT in Africa, namely 'VAT in Southern and Eastern Africa' (October 2005) and 'Overview of VAT in Africa' (May 2007).

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## Table of contents and VAT rates

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\* The standard rate in Tanzania is 18% with effect from 1 July 2009

# Botswana



## Introduction

Value added tax (VAT) was introduced in Botswana with effect from 1 July 2002 to replace sales tax. Botswana's VAT legislation is contained in the Value added tax Act, 2000.

The VAT system is administered by the Commissioner General of the Botswana Unified Revenue Service (BURS). BURS is an amalgamation including Inland Revenue, under whose purview VAT and the Department of Customs and Excise fall.

## Rates and scope

### Rates

The standard VAT rate of 10% applies to all supplies that do not qualify for an exemption or that are zero-rated. There is no other higher or lower VAT rate that applies.

### Scope

VAT is imposed on taxable supplies and the importation of goods into Botswana. Any supply that is not listed as an exempt supply is a taxable supply, other than the following:

- a supply of services by an employee to an employer by way of employment;
- the payment by the state of a subsidy under a subsidy scheme to defray expenses, or the payment of a bursary;
- the provision of goods on consignment and the transfer of goods to a person in a representative capacity; and
- the supply of goods where the input VAT claim was originally denied, e.g. passenger vehicles.

A taxable supply includes a supply between related parties for no consideration, or a supply of goods for use only as trade samples, or supplies involving change of use.

## VAT registration

### Compulsory registration

An enterprise (including a sole proprietorship, partnership or joint venture) that makes taxable supplies of 250,000 Botswana Pula or more per annum, or expects that this limit will be exceeded during the following 12 months, is required to register for VAT purposes. Auctioneers are also required to register, irrespective of the extent of their annual taxable turnover.

A taxable activity is an activity that is carried on continuously or regularly in Botswana or partly in Botswana (whether or not for a pecuniary profit) that involves in whole or in part the supply of goods or services (other than an exempt supply) to another person for a consideration.

### Voluntary registration

The Commissioner General of BURS has the discretion to register a person with a turnover below 250,000 Botswana Pula, if an application is made. A person who has been so allowed to register voluntarily may not exercise the option to deregister until two years after the date of registration.

### Group or branch registration

There is no group registration in Botswana.

Divisions or branches of a company may register separately, subject to certain conditions, e.g. maintenance of separate accounting systems and if transactions can be distinguished between the different locations.

## Nonresidents

The same rules of registration apply to nonresidents if they are deemed to conduct a taxable activity in Botswana that is, or is expected to be, in excess of an annual value of 250,000 Pula.

There is no specific VAT requirement that a nonresident applying for VAT registration in Botswana must appoint a fiscal representative in Botswana. However, for income tax purposes every company carrying on business in Botswana must be represented by a public officer residing in Botswana.

The VAT registration application forms request particulars and confirmation of a bank account with a bank in Botswana.

### Application for registration

Failure to apply for registration when required is an offence and attracts high penalties, which may include fines and/or imprisonment. Any entity that should register will be deemed to have been registered and will then be liable for the VAT. The registration number format is based on the income tax file reference of the entity.

### Deregistration

An enterprise whose taxable turnover falls below 250,000 Botswana Pula and is expected to remain below this level may apply for deregistration.

## Output tax

### Advertising and prices

Prices quoted or advertised must always be VAT-inclusive. A pre-tax price may be quoted, but the amount of VAT due and the VAT-inclusive cost must then be shown equally prominently.

Any price charged by a registered person in respect of a taxable supply is deemed to include the VAT charged on the supply, whether or not VAT has been included in the price.

## Calculation of output tax

VAT is payable at the rate of 10% on the value of:

- every taxable supply by a registered person; and
- every import of goods or of services, other than an exempt import.

Output tax is calculated by applying the tax fraction (10/110) to the VAT-inclusive price charged.

## Exemptions and zero-rating

### Exempt supplies

No VAT is charged on exempt supplies, and VAT paid on inputs acquired for purposes of making exempt supplies may not be deducted as input tax. A person making only exempt supplies is not carrying on an enterprise and may not register for VAT purposes.

Exempt supplies include, but are not limited to, supplies of the following goods or services:

- financial services, including loans, credit, credit guarantees or any security for money, but excluding transactions rendered at a fee or commission;
- educational services including courses, school bus services and meals provided by an exempt educational institution to its students;
- medical services provided by a Government-operated or -aided medical facility;

- long-term residential letting and hostel accommodation on a nonprofit basis;
- leasing or renting of land for erecting a dwelling;
- certain prescription drugs;
- sectional title management levies;
- domestic passenger transportation by road or rail other than transportation of tourists;
- cash grants made by or received from the state;
- supply of condoms; and
- donations.

### Zero-rated supplies

Adequate documentation must be retained to satisfy the Commissioner General that the supply qualifies for zero-rating. The zero-rated supplies include (but are not limited to) supplies of the following goods or services:

- exportation of goods;
- goods that are outside Botswana at the time of the supply;
- goods supplied under a rental agreement or charter party exclusively in an export country;
- goods or services supplied to a branch or main business outside Botswana, which can be separately identified and for which an independent system of accounting is maintained;
- international transport services;
- services supplied directly in connection with land outside Botswana;
- services supplied directly in respect of movable property situated outside Botswana, and goods temporarily imported;

- certain services supplied directly to a nonresident, nonregistered person, other than through an agent relating to foreign-going aircraft or a container temporarily imported;
- repair of a railway train operated by a nonresident, nonregistered person;
- services physically rendered outside Botswana;
- services supplied to a nonresident who is outside Botswana when the services are rendered, except services rendered directly in connection with property situated in Botswana or the refraining from undertaking an activity in Botswana;
- services relating to intellectual rights for use outside Botswana;
- taxable activity supplied to a registered person as a going concern;
- sorghum or maize meal supplied for human consumption, but not when furnished as a meal or as cooked or prepared food;
- goods or services for the personal or official use of the President or any dependent member of his family;
- millet grain, millet meal, wheat grain, maize cobs, flour, sugar and Setswana beans in their natural state and not mixed with other products;
- pesticides;
- fertilisers; and
- tractors when acquired by a person operating a farming business.



## Input tax

### Input tax allowed

Input VAT incurred on goods and services acquired solely for the making of taxable supplies is generally deductible as input tax. The Authorities are very particular that valid tax invoices be held for a claim and that the claim be made in the correct VAT period.

### Input tax expressly denied

VAT paid in respect of the following goods or services cannot be deducted as input tax:

- passenger vehicles designed or adapted to seat up to nine persons (including double-cab vehicles but excluding safari vehicles), except when acquired by a dealer or vehicle-letting business;
- entertainment expenditure (including hotel accommodation and meals for business purposes and for staff welfare, e.g. tea and coffee), except where acquired by an entertainment business, or where entertainment is supplied to passengers in the course of a transportation service; and
- membership subscriptions relating to sports, social or recreational organisations.

Input tax is also denied if the required tax invoice or other supporting documentation is not held by the registered person, the input tax is not claimed in the correct VAT period or the input tax is in connection with exempt supplies.

The input VAT claim should generally be made during the tax period in which the invoice was issued. If it was received late, the claim can be made as follows:

- in the case of a one-month tax period – up to the next three tax periods; and
- in the case of a two-month tax period – in the next tax period.

### Partial exemption

In determining whether VAT may be deducted as input tax when mixed supplies are being made, direct allocation must first be applied to determine whether VAT may or may not be deducted as input tax.

Where VAT incurred relates to the making of both exempt and taxable supplies, an apportionment method acceptable to the Commissioner General must be used to allocate the input tax credit between the exempt and taxable supplies. The default method is based on turnover. Where taxable supplies are 90% or more of total supplies, all VAT incurred on acquisitions may be claimed as input tax.

### Adjustments

When assets on which VAT has been claimed as input VAT are transferred to the making of non-taxable supplies, an output VAT based on the higher of the transferred value or fair market value is payable. Examples of change of use are:

- transfer or sale of a company computer to an employee; or
- transfer of assets in a bank from a taxable to an exempt division.

### Preregistration or post-deregistration VAT

VAT on expenses, including imports other than capital goods, incurred up to four months prior to the registration date may be claimed in the first VAT period.

A person whose registration is cancelled is deemed to have made a taxable supply of goods on hand, including capital goods, unless input tax was denied. The goods on hand must be valued at the fair market value.

## Imports

### Goods

All goods imported into Botswana are subject to VAT, except goods expressly exempted from VAT on importation. The VAT liability on imports arises when the goods are cleared through Customs. Goods held in a bonded warehouse are not subject to VAT until they are cleared for use.

VAT on imports may be deferred where adequate security is provided by the importer for VAT due or where the Commissioner General is satisfied that the importer has a clear VAT payment record. The maximum deferment period is 25 days after the end of the month during which the goods were imported.

The value of the imports for VAT purposes must include all taxes and duties payable, as well as the cost of insurance and freight. The value of goods that are imported from South Africa, Lesotho, Namibia and Swaziland includes, for VAT purposes, insurance and freight costs.

### Services

Only services imported for use or consumption in Botswana for a purpose other than to make taxable supplies are subject to VAT.

A person making only exempt supplies is thus liable for VAT on imported services, and a person making both taxable and exempt supplies will be liable for VAT to the extent that the services are acquired for non-taxable purposes.

Payment of VAT must be made within 30 days from the earlier of the date the services were received or payment was made.

## Exports

### Goods

The zero rate applies where the supplier has entered the goods for export in accordance with customs duty principles and the goods have been exported from Botswana by the supplier.

### Services

The supply of various services to persons who are not residents of Botswana and are not registered for VAT purposes in Botswana is zero-rated.

### Refunds to foreigners

The Minister may authorise the granting of a refund to a nonresident individual where the VAT paid on goods exported by that person as accompanied baggage exceeds 500 Botswana Pula.

The Minister may authorise a refund of tax to diplomats, diplomatic missions and to persons under certain international laws and conventions.

## Place, time and value of supplies

### Place of supply

There are no place-of-supply rules in the Botswana VAT legislation.

### Time of supply

The general rule is that a supply of goods or services occurs when:

- an invoice for the supply is issued by the supplier; or
- any payment for the supply is received,

whichever is the earlier.

Under some of the specific rules, the time of the supply is as follows:

- related persons – when goods are removed or made available, or when services are performed, unless the time of supply has already taken place in accordance with the general rule;
- credit agreement – when the goods are delivered or the time any payment for the supply is received, whichever is the earlier;
- lay-by agreement – when the goods are delivered to the purchaser;
- change of use – when the goods or services (acquired for taxable use) are transferred to a non-taxable activity;
- repossession of goods under credit agreement – when the goods are repossessed or the day after the last day of any period during which the debtor may be reinstated;
- machine, meter or other device operated by coin, note or token – when the coin, note or token is taken from the machine, meter or other device by or on behalf of the supplier;
- goods or services supplied to a branch or main business outside Botswana – when the goods are delivered to, or the services performed for, the branch or main business;
- rental agreement or services supplied under an agreement providing for periodic payments – successive supplies occur when a payment becomes due or is received, whichever is the earlier;
- construction services paid for in instalments or periodically – successive supplies occur when a payment becomes due, is received or an invoice relating only to that payment is issued, whichever is the earlier;
- token, voucher or stamp – when the token, voucher or stamp is issued;
- goods removed from a VAT manufacturing warehouse, or services rendered by an international financial services centre company – when the goods are removed from the warehouse or when the services are rendered;
- forfeiture of deposit (other than a deposit on a returnable container) – when the deposit is forfeited;
- immovable property – when the transfer deed is registered with the Registrar of Deeds or when payment is received, whichever is the earlier; and
- an electrical connection under the Botswana Power Corporation's Rural Electrification Scheme or housing by the Botswana Housing Corporation under the Tenant Purchase Scheme, pursuant to a hire-purchase agreement – when payment is due or is made under that agreement, whichever is the earlier.

### Value of supply

The general rule is that the value of a supply is the amount of the consideration for the supply. Consideration includes the total monetary amount or fair market value of goods or services given in kind, and also includes deposits on returnable containers, duties, levies and fees.

If the price includes VAT, the value is determined by deducting an amount equal to the tax fraction of the price:  
$$\text{Value} = \text{VAT-inclusive price} \times \frac{10}{110}$$
  
x VAT inclusive price).

Under some of the specific rules, the value of the supply is as follows:

- related persons (if the supply is made for less than the fair market value) – fair market value, i.e. the value that the supply would generally fetch if freely offered and made between persons who are not related parties;
- supply made for less than the fair market value of the supply to a charitable organisation, institution of religious worship, educational institution, old-age home, orphanage, children's home, or institution of a similar nature – fair market value of the supply;
- credit agreement – cash value of the supply;
- repossession of goods under a credit agreement – an amount equal to the balance of the cash value of the supply of those goods to the debtor that has not been recovered at the time of the supply;
- grant of a right to receive goods or services for a monetary value stated on a token, voucher or stamp – an amount equal to the amount by which the consideration exceeds the monetary value of the token, voucher or stamp;

- token, voucher or stamp such as discount coupons – value of the supply of such goods or services by the supplier includes the monetary value stated on the token, voucher or stamp, less the tax fraction of the monetary value if the token, voucher or stamp is surrendered for a taxable supply;
- mixed supplies (taxable and exempt) – value of the supply is the part of the consideration that is properly attributable to the taxable supply portion;
- transfer of goods or services to a branch or main business outside Botswana – the lesser of the cost or fair market value of the supply;
- supply made for no consideration – the value is nil;
- bets – amount received in respect of the bet, reduced by an amount equal to the tax fraction multiplied by the amount received in respect of the bet;
- goods removed from a VAT manufacturing warehouse – the fair market value of the supply; and
- consideration paid or payable in kind – the fair market value of the consideration.

### VAT compliance

#### Accounting basis and tax period

Botswana's VAT operates on an invoice basis. This means that output tax must be declared and is payable on the basis of invoices issued, not on the basis of payments received. Liability for output tax occurs when an invoice is issued or when payment is received, whichever is the earlier.

Businesses that have an annual turnover of less than 12 million Botswana Pula will be required to submit a return every second month. Businesses with a higher turnover must submit monthly returns.

### Returns and payment of VAT

The VAT return must be filed within 25 days after the end of the tax period. A period of less or more than a calendar month may be applied with prior approval from the Commissioner General (such as where accounts end on the last Friday of the month).

The VAT payable, as calculated in the VAT return, must be paid when the VAT return must be submitted. In certain circumstances arrangements can be made to make the payment later so as to avoid penalties for the late submission of the VAT return.

### Interest and penalties

Interest at 2% per month or part of month, compounded, is levied on late payment.

A penalty of the higher of 50 Botswana Pula per day or 10% per month or part of a month outstanding of the VAT payable may be imposed for late submission and/or late payment. In practice, only the penalty for late submission is imposed at present.

### Refunds

Where input tax exceeds output tax, a refund may be claimed. This may occur in the case of an export business, or where large capital purchases have been made.

The refund must be paid within two months after the month end date of filing a return showing an excess of input tax over output tax, and the amount claimed must be verified as correct.

If the registered person is engaged mainly in export activities or is defined as a VAT manufacturing warehouse or an international financial services centre company, the VAT refund claim must be processed within one month from the month end date of filing the return.

Failure to refund the amount due within the prescribed period will make the Commissioner General liable for interest at 1% per month for the period the refund was overdue. Excess input tax may also be offset against the person's other tax liabilities (e.g. income tax).

### Objections and appeals

Objections and appeals may be submitted where persons wish to dispute a decision of the VAT administration. Objections should be addressed to the Commissioner General, contain the specific grounds of objection and should be made within 30 days of the assessment.

### Time limits

The maximum period for claiming input tax is as follows:

- where a person's tax period is a period of one month – up to the next three tax periods;
- where a person's tax period is a period of two months – in the next tax period; and
- where a person has paid VAT irrespective of any imports of goods – in the next tax period.

## VAT records

### Tax invoices

No input tax may be claimed unless the claim is supported by a tax invoice. Only VAT-registered persons may issue tax invoices. The following particulars must appear on a tax invoice:

- the words 'Tax Invoice' must be displayed prominently;
- date of issue;
- serial number;
- name, address and VAT registration numbers of supplier and recipient;
- clear description of goods or services supplied, including quantity and volume; and
- consideration for the supply, the VAT due and the consideration including the VAT.

No tax invoices are required for a supply made in cash for less than 20 Botswana Pula. Tax invoices may be in either English or Setswana.

Where a taxable supply has been made by a person as an agent for another person and the recipient of the supply is a registered person, the agent may issue a tax invoice in relation to the supply as if the agent had made the supply.

Where a taxable supply has been made to a person as an agent of the principal and the principal is a registered person, a tax invoice in relation to the supply may be issued to the agent, at his request.

Where any amount is expressed in a currency other than Botswana Pula, the amount will be converted to Pula at the exchange rate applying between the currency and the Pula at the time the amount is taken into account.

### Credit notes and debit notes

Tax credit and tax debit notes must also be issued and be clearly designated as such, providing much the same detail as for a tax invoice, where a supplementary charge is made or when a reduction in the amount charged or due is agreed between a seller and a buyer.

In addition, the credit or debit note must contain the reason(s) for issuing, reference to the previous invoice now being corrected and the words 'Tax Debit Note' or 'Tax Credit Note' in a prominent place on the document.

### Additional export documentation

The normal customs documentation forms (SAD 500), invoice, etc. should be stamped by the Department of Customs for proof of export.

### Record keeping

A registered person must maintain the following records in Botswana, in the English or Setswana language –

- original tax invoices, tax credit notes and tax debit notes received;
- copies of all tax invoices, tax credit notes and tax debit notes issued;
- customs documentation relating to imports and exports;
- accounting records; and
- any other records as may be prescribed by the Commissioner General.

The records must be retained for at least seven years after the end of the tax period to which they relate.

Failure to maintain proper records constitutes an offence. On conviction, the person may be liable to a fine or imprisonment.

## Specific VAT rules

### Bad debts

VAT paid in respect of a supply, which eventually has to be written off as a bad debt, can effectively be reclaimed by a VAT-registered person. The debt has to be written off in the enterprise's books and the relief cannot be claimed until at least 12 months after the VAT was originally paid.

If VAT relief was allowed and the bad debt is subsequently recovered, VAT must again be accounted for by the registered person.

### Land and buildings

An exemption from transfer duty applies if VAT is paid on a transaction involving the sale or transfer of land and buildings. Transfer of residential property is not subject to VAT. Transfer duty paid can be claimed as input tax (subject to normal input tax rules).

### Leasing

Lease or hire purchase capital repayments are not subject to VAT. Interest is exempt from VAT.

### Promotional gifts

Basically all promotional gifts can be taken at fair market value to impute an output VAT. Cash donations to an association not for gain are not subject to VAT.

### Secondhand goods

Where a registered person supplies secondhand goods that are taxable, VAT has to be charged on such supplies.

Input tax is claimable on secondhand goods acquired from a nonregistered person, provided the following conditions are satisfied:

- the goods must be acquired from a person resident in Botswana;
- the amount of the claim may not exceed the tax fraction of the lower of the amount to be paid or the fair market value including tax; and
- records of the transaction as required by the Director must be kept, e.g. the full names and address of the supplier, taxpayer identification number, the date on which the goods were acquired by the registered person, the quantity/volume and description of the goods, etc.

The input tax credit allowed cannot exceed the amount of tax charged on the subsequent sale of the goods.

In respect of secondhand goods purchased from a registered person, the recipient would normally be charged VAT and be entitled to an input tax deduction under the normal rules.

Where a notional input tax credit has been claimed in respect of secondhand goods purchased from a nonregistered person and these goods are subsequently exported at the zero rate, the amount so claimed must be declared as output tax due and shown in the return for the relevant period as an output tax adjustment.

### Tourism industry

A basic rule of VAT in Botswana is that VAT is applied on consumption in Botswana.

Where a nonresident sells a tourism package which includes services to be rendered to a tourist in Botswana, the domestic goods and services component will be subject to VAT.

If a Botswana travel agent supplies a domestic tour package to a person, whether resident or nonresident, the full package will be taxable at 10%.

Where such a package includes services to be provided both within and outside Botswana, only the domestic component of the services will be taxed.

### Currency conversion

For VAT purposes the invoice in foreign currency is converted to Botswana Pula at the exchange rate applicable on the date of the invoice. Subsequent differences in exchange on date of payment are not subject to VAT.

### Transfer of a business

The sale of a business as a going concern is treated as a zero-rated supply. The sale of part of a business can also qualify for zero-rating.

For the zero-rating to apply, all goods and services necessary for the business operation must be transferred, the activity must be ongoing at the time of transfer, both parties to the transaction must be registered for VAT and details of the transaction must be reported in writing to the Commissioner General within 21 days.

### Warranty repairs

Where goods or services are supplied by a VAT-registered person in Botswana in terms of a guarantee provided by a person who is not VAT-registered and is a non-resident, and the non-resident meets or reimburses the costs of the goods or services provided by the VAT-registered person, the supply may be treated as zero-rated.

Where goods or services are supplied by a VAT-registered person in Botswana in terms of a maintenance plan or agreement with a person who is not VAT-registered and is a non-



resident, and the non-resident meets or reimburses the costs of the goods or services provided by the registered person in terms of that maintenance plan or agreement, the supply may be treated as zero-rated.

Other indirect taxes

Import duties

There are no import duties on goods brought from within the Common Customs Union, which includes South Africa, Namibia and Swaziland. Import

duties are levied on numerous goods brought in from other countries, at varying rates.

Excise duties

Excise duties are levied at varying rates on cigarettes, perfume and liquor.

Contact details – PricewaterhouseCoopers, Botswana

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# Cameroon





## Introduction

VAT was introduced in Cameroon by the Law of Finance No 98/009 of 1 July 1998 to replace the Turnover Tax (TOT). The VAT authority in Cameroon is the General Directorate of Taxation.

## Rates and scope

### Rates

The standard or general VAT rate is 17.5%, unless the zero rate (0%) applies.

However, the standard VAT rate effectively increases up to 19.25% due to the application of additional council taxes.

### Scope

The following transactions are subject to VAT:

- supply of goods, i.e. the transfer of power to dispose of tangible property as owner, even if such transfer is effected at the behest of a public authority, exchanges, assets brought into business and hire purchase sales;
- supply of goods to oneself, i.e. transactions carried out by taxpayers either for the benefit of their enterprise or for other professional needs, excluding supplies made for the normal needs of the manager of a private enterprise for himself and supplies made to himself by any group for the personal needs of its members, where such supplies concern premises constituting the main place of residence;
- provision of services to third parties, i.e. all activities relating to industry rental contracts or work contracts by which a person undertakes

to perform a given job in return for payment and, generally, all transactions other than supplies of tangible property;

- services rendered to oneself shall mean services performed by taxpayers to satisfy either the needs of their enterprise or other needs related to their normal professional activities;
- transactions related to the importation of goods;
- real estate activities and transactions of any kind carried out by real estate developers;
- sales of secondhand articles and materials by professionals;
- transfers of assets that are not exempt;
- transactions carried out by enterprises approved under the Free Zone regime;
- sales of petroleum products imported or produced in Cameroon; or
- games of chance and games of entertainment.

Taxable operations include transactions carried out within the context of an economic activity against payment. An economic activity means all activities relating to production, importation, provision of services and distribution, including mining activities, agriculture, agro-industry, forestry, handicraft and activities of liberal or related professions.

The following supplies fall outside the scope of the VAT system:

- discounts, rebates and commissions, provided that they appear on an initial invoice or on a rectified bill;

- free distribution of goods for advertising or sales promotion purposes;
- disbursements that are merely refunds to the buyer or customer of the exact amount invoiced; and
- cash receipts, such as interest in arrears or damages for non-performance of contract terms, which are not payments for any business transaction.

## VAT registration

### Compulsory registration

Any natural person or corporate body that is liable, as a statutory taxpayer, for the payment of a tax, duty or levy provided for in the General Tax Code, must file an application for registration with the competent tax authority of this area, within 15 days following the start of his activities, and attach to such application a site plan.

The persons liable for VAT are as follows:

- natural persons or corporate bodies, including regional authorities and bodies governed by public law, which automatically, habitually or occasionally carry out taxable transactions;
- natural persons are liable for VAT regardless of their status, their situation in relation to other taxes and the nature or form of their activities; and
- natural persons are liable only where they realise a minimum annual turnover of 15 million francs.

## Nonresidents

Nonresidents must appoint a solvent representative accredited by the tax authority. A bank account in Cameroon is not required.

## Application for registration

Any natural person or corporate body liable, as a statutory taxpayer, for payment of a tax, duty or levy or an instalment thereof, by virtue of the provisions of the General Tax Code, must file an application for registration with the competent tax authority of the area, within 15 working days following the start of the activities, and attach to such application a site plan.

## Deregistration

In the event of an establishment being closed down as a result of death, a court ruling or petition in bankruptcy or owing to expulsion or expropriation, a business licence shall be due only up to the end of the current month.

## Output tax

Prices must be advertised inclusive of VAT. For the calculation of VAT or excise duty, the basis of assessment must be rounded down to the nearest thousand francs.

## Exemptions and zero-rating

### Exempt supplies

The following transactions are exempt, provided they are subject to specific taxes exclusive of tax on turnover:

- sale of mining products;
- real estate transactions of all kinds carried out by nonprofessionals;
- interest on external loans;

- interest on deposits in credit and financial institutions by nonprofessionals;
- transfer of rights to real estate and transfer of business assets subject to a transfer duty or equivalent duty;
- international traffic transactions concerning:
  - ships and boats used for industrial or commercial activities on the high seas;
  - lifeboats and assistance boats;
  - aircraft and ships used for maintenance and refuelling operations;
- certain interstate transit operations and services related thereto, in accordance with the Economic and Monetary Community of Central Africa (CEMAC) Customs Code;
- the importation or sale by the state of fiscal stamps, postage stamps and stamped papers;
- sums paid by the Treasury to the Central Bank, which has the currency-issuing privilege, and also the proceeds from the transactions of this Bank in connection with the issue of notes;
- costs and boarding fees collected by authorised schools and university institutions;
- essential goods listed under Annexure 1, notably:
  - pesticides, fertilisers and inputs, as well as other agricultural, livestock and fishery inputs used by producers;
  - small fishing equipment, seeds, agricultural machinery and tools, their inputs and spare parts for plants for manufacturing the said machinery and tools;
- sales of oil products for refuelling the aircraft of companies that have a registered office in Cameroon;
- the social consumption of water of up to 10 m<sup>3</sup> per month;
- the social consumption of electricity of up to 110kW per month;
- the composition, printing, import and sale of newspapers and periodicals, except proceeds from advertising, certain inputs and capital goods for these transactions, acquired by press, newspaper and periodicals companies;
- imports of certain exempted goods under the CEMAC customs code;
- tests, consultations, health care, hospitalisation, medical and biological analysis and the provision of prostheses in health facilities;
- life and health insurance contracts and commissions;
- HIV/AIDS control equipment, under certain conditions; and
- subject to reciprocity, headquarter agreement and quotas laid down by the competent authorities, all goods and services destined for the official use of foreign diplomatic and consular missions and international organisations.

### Zero-rated supplies

The zero rate shall apply to exports of taxable goods, supplies and services on behalf of enterprises located within industrial free zones and special industrial zones.

## Input tax

### Input tax allowed

VAT levied for prepayment on a taxable transaction shall be deductible from

the final tax paid on such transaction, as concerns registered taxpayers assessed on the basis of actual earnings and the simplified taxation system.

## Input tax expressly denied

VAT incurred on the following expenses is expressly denied as input tax deductions:

- expenses for housing, lodging, catering, receptions and shows, and the costs of hiring a private car or passenger transport vehicle;
- importation of goods used for business purposes but which are unused and re-exported as is;
- goods and services purchased by the enterprise but which are used by third parties, the management or employees of such enterprises; and
- services relating to goods exempted from the right to deduction.

## Partial exemption

For taxpayers not exclusively carrying out transactions giving a right to deduction, the deduction must be made proportionately. Such deduction shall apply to fixed assets and to goods and services. It shall be calculated from the fraction of turnover pertaining to taxable transactions.

The fraction is calculated as follows:

- the numerator – the amount of the income corresponding to the transactions liable for VAT, including exports,
- the denominator – the amount of all income realised by the taxpayer.

In the case of hauliers engaged in interstate freight forwarding operations and related services in the CEMAC

region, the specific turnover of these operations must appear in both the numerator and denominator.

A deduction is acceptable only following verification of the proportional deduction.

## Adjustments

Where the tax authority notices a shortcoming or an inaccuracy or omission in the data used as a basis to calculate any taxes, duties or sums due under the General Tax Code, the corresponding adjustments shall be made following the adversary procedure. The onus of proof will lie with the tax authority.

## Imports

### Goods

VAT is payable on the importation of goods.

### Services

For suppliers to the state, regional and local authorities and public administration establishments, the VAT is deducted at source at the time of payment of bills and transferred to the taxation service, or failing that, to the competent accounting station under the same conditions and time limits applicable to other transactions.

## Exports

### Goods

The exportation of products shall entail a right to deduction and, where applicable, a tax credit where VAT on such product was prepaid.

## Services

In the case of services provided directly at the manufacturing, processing or packaging stages of exported products, as well as to the transportation and transit operations relating thereto, the deduction shall not be final until proof of actual exportation and prepayment of VAT is shown.

## Refunds to foreigners

In application of the principle of territoriality of VAT in Cameroon, foreign entities do not qualify for a refund.

## Place, time and value of supply

### Place of supply

Transactions carried out in Cameroon and not listed among the exemptions are liable for VAT even when the residence or head office of the real taxpayer is situated outside Cameroon.

### Time of supply

The tax shall be due as follows:

- on the supply of goods – when the chargeable event takes place;
- on receipt of the price, payment by instalments or advances made for real estate to low-cost housing and the development of industrial zones, as well as phases of services and works. Such liability shall also concern state suppliers, government services with an annex budget, public establishments and corporations, as well as regional and local authorities;
- on transfers of fixed property – on the date of conveyance or transfer of the property;

- on importation or entry of goods and merchandise into Cameroon – at the time of registration of the statement of home use entry; and
- on consumer credit or leasing transactions carried out by a financial establishment – on the date when the interest or lease payments fall due.

### Value of supply

The value of supply is as follows:

- supply of goods, for any amount or value – all benefits, goods and services received or to be received, in return for the supply;
- provision of services – all sums and benefits received and, where applicable, the value of material consumed during the execution of the services;
- exchange of goods – the value of the products received in return for payment for the goods plus, where applicable, the value of the additional payment;
- for construction works – the amount stipulated in the contract, bill or invoice; and
- supplies to oneself – the purchase price, exclusive of taxes, of goods bought and used as is, or the cost price of the extracted, manufactured or processed goods.

## VAT compliance

### Returns and payment of VAT

VAT credits may be offset and, where applicable, refunded, under certain conditions. Tax returns may be filed by electronic means, subject to certain conditions.

### Interest and penalties

The inadequacies, omissions or inaccuracies affecting the tax base or data that have led the tax authority to make adjustments, result in the application of a 1.5% interest in arrears per month up to a maximum of 50%, calculated on the basis of charges to be borne by the taxpayer following the notification of the last procedural deed, in case of control. The interest in arrears is calculated with effect from the first day of the month following that during which the return showing an inadequacy, omission or inaccuracy was filed up to the last day of the month of notification of adjustment. The maximum amount of the interest in arrears will be 50%.

### Refunds

VAT credits may be refunded, on condition that their beneficiaries do not owe any taxes and duties whatsoever which can be swapped, and that the credits are justified.

### Objections and appeals

Petitions seeking to obtain a tax remission or reduction must be addressed to the territorially competent head of the Tax Collection Office. They must contain all information necessary for the identification of the tax in question and include a copy of the notice of issue for collection. They shall not be liable for stamp duty.

After examination, the tax authority will, in writing, notify its decision for remission, reduction or rejection. In case of remission or reduction, the decision shall be notified by:

- the Head of the Provincial Tax Collection office or the official in charge of the 'large enterprises' service within the limit of 30 million

francs for the principal taxes and levies and of 30 million XAF for penalties and additional charges;

- the Director of Taxation within the limit of 100 million francs for the principal taxes and levies and 100 million francs for penalties and additional charges; and
- the Minister in charge of Finance for principal taxes and levies of an amount exceeding 100 million francs, as well as for penalties and additional charges of an amount exceeding 100 million francs.

However, where the applicant is not satisfied with the decision taken by the competent authority, he may appeal to a higher authority, up to the Minister in charge of Finance.

### Time limits

Sums due from the taxpayers for taxes and duties assessed by virtue of the General Tax Code are barred after a period of four years following the due date, where no instrument has been issued to end the limitation. This limitation may not be invoked in the case of taxes deducted at source or those for which the person liable is only a collector.

The maximum period for claiming input tax credits is two years.

## VAT records

### Tax invoices

Receipts must be issued for all payments. Such receipts are exempt from stamp duty. A duplicate thereof may be issued to the taxpayer who so requests.

A tax invoice may be issued in French or English and may not be in a foreign currency.

### Credit notes and debit notes

Cash receipts such as interest or damages for nonperformance of contract terms, which are not payments for any business transaction, are excluded from the basis of assessment.

### Additional export documentation

Additional export documentation required includes a CEMAC origin certificate for supplies of the CEMAC zone and a health certificate for supplies of animal origin.

### Recordkeeping

The accounts of a subsidiary or branch of an undertaking established outside Cameroon may not be invoked in litigation with the tax authority unless they show the profits made by the same subsidiary or agency.

Records must be kept for a period of ten years. Where accounting is done by computer, the tax authority may seek technical assistance from experts in order to conduct tests on the equipment used by the enterprise and check the following:

- the accounting system used;
- all of the information, data and processing directly or indirectly used to produce the accounting or tax results or draft the documents that are mandatory under the General Tax Code; or
- documents concerning analysis, programming and execution of processing.

Taxpayers must produce, at the request of the Tax Authorities, all mandatory accounting documents and records, supplemented, where necessary, by the accounting items applicable to the nature of the activity undertaken, in order to establish authenticity of the information mentioned in a tax return.

## Specific VAT rules

### Bad debts

For taxes that cannot be collected due to a change in the situation of the taxpayer at the time of assessment, the collector of taxes will submit the lists of irrecoverable taxes to the Director of Taxation.

The lists must, for each irrecoverable tax, indicate the nature of tax, reference of the issue for collection and the amounts uncollected, as well as any information or details showing clearly that such taxes have become irrecoverable. They will be submitted along with documents to support the measures taken to recover the said taxes. The collectors of taxes who are personally and financially responsible for tax recovery may be discharged and freed from performing such duty where the bad debts are officially listed. The Minister in charge of Finance shall issue a registered certificate for all taxes considered as bad debts.

### Land and buildings

Real estate transactions of any kind carried out by real estate developers are taxable. For transfers of property, liability for payment of VAT is due on the date of conveyance or transfer of the property.

### Leasing

VAT credits may be refunded within three months of the filing of the application to industrialists and leasing institutions that have carried on investment activities specified under provision 105 of the General Tax Code.

### Promotional gifts

Free distribution of goods for advertising or sales promotion purposes is excluded from the basis of assessment.

### Small retailer scheme

Subject to a discharge tax exclusive of payment of the business licence, personal income tax and VAT (category A).

### Tourism industry

Tourism is subject to a discharge tax exclusive of payment of the business licence, personal income tax and VAT (category C).

## Other indirect taxes

### Import duty

The basis of assessment for imports is determined by adding the amount of customs and excise duties to the taxable value.

For goods entering the territory of a CFA or CEMAC member state, the basis of assessment is the ex-works value, excluding forwarding costs. The basis of assessment for the excise duty on imports shall be determined by adding the amount of the customs duty to the taxable value.

For goods and merchandise entering the territory from a CEMAC member state, the basis of assessment shall be the ex-works value, excluding forwarding costs.

**Excise duty**

Excise duty rates are as follows:

- general rate – 25%
- reduced rate – 12.5 %

Excise duty is levied on alcoholic products, fermented beverages, fizzy drinks (US sodas), mineral water, natural juice and motor vehicles with a capacity of more than 2 000cc.

**Stamp duty**

Stamp duty in CEMAC countries, is established independently of registration fees on all papers to be used for civil and legal instruments and documents that may be brought before courts of law as proof.

Stamp duty is fixed according to the nature of the instruments subject thereto. It is paid by use of stamp paper, a stamping machine, adhesive stamps or by endorsement for stamp duty, or against declaration or on production of statements or extracts, or at a fixed rate.

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# Chad





## Introduction

Value added tax (VAT) was introduced in Chadian legislation on 1 January 2000 by Law No 024/PR/99 to replace Turnover Tax.

There are specific VAT rules relating to petroleum conventions.

## Rates and scope

### Rates

There are two rates:

- the standard rate is 18% on a without-taxes basis and applies to all taxable operations; and
- the 0% rate applies to exports and related international transportations.

### Scope

An operation performed in Chad, which constitutes an economic activity and for which payment is made, unless included in the list of exemptions, is liable for VAT, even if the residence of the natural person or the registered office of the legal entity is located outside Chad.

The tax basis corresponds to the amount of money paid for the provision of goods or services.

For importations, the tax base corresponds to the customs valuation (price of sale of goods plus costs of insurance and transportation, etc. until arrival in Chad), plus the possible excise duties.

## VAT registration

### Compulsory registration

Every person who is liable for paying VAT has to make a declaration of existence and register with the Directorate of Large Companies ('Direction des Grandes Entreprises') within 15 days following the beginning of its activity.

### Group and branch registration

A foreign company can establish economic activities in Chad either by setting up a branch, or through a Chadian legal company (subsidiary).

Consequently, the branch will be registered in the Trade and Personal Credit Register and will have a legal representative who will perform several administrative formalities (administrative authorisation for pursuing a commercial activity, foreign merchant's card, etc.).

### Nonresidents

Financial operations carried out between Chad and a foreign country are subject to either a declaration or an authorisation.

The setting up of every direct investment in Chad is subject to a prior declaration to the Ministry of Finance by:

- natural or legal persons having their usual residence or head office in a foreign country;
- companies in Chad that are controlled directly or indirectly up to 10% by a foreign firm; or
- foreign companies' establishments in Chad.

VAT shall be applied where the service is provided or utilised, or where the product is manufactured or first put on the market.

Where such place is different from the head office or the main establishment, the taxpayer shall be bound to appoint a solvent representative accredited by the tax authority of the said place, resident in Chad, and who shall be jointly and severally liable for VAT.

In case of failure to appoint a representative, VAT and, where applicable, the attendant penalties shall be borne by the client on behalf

of the taxpayer having no fixed or permanent professional establishment in Chad.

It is not required to have a bank account in Chad.

### Deregistration

Any termination, transfer or modification of the activity is subject to a declaration.

## Output tax

The taxpayer must deliver an invoice for every taxable operation entered into with other taxpayers. The invoice must show, inter alia, the amount without taxes, the applicable VAT rate and VAT amount, and the amount inclusive of VAT.

If some operations of the taxpayer are not subject to VAT, the invoice must separate the operations that are subject to VAT and the ones that are not.

## Exemptions and zero-rating

### Exempt supplies

The following supplies fall outside the scope of the VAT system:

- sales of products that are directly made by farmers, cattle farmers or fishermen to consumers from their culture, their farming or their fishing and are not converted;
- import and sale operations of newspapers and periodicals other than advertising revenue;
- social, medical, educational, sports, philanthropic or religious services or operations provided by nonprofit organisations in which management is voluntary and unselfish, and when these operations are attached directly to the collective defence of moral or material interests of their members; however, operations carried out by these organisations

- are liable for VAT when they occur in a competitive sector;
- operations relating to the rental of non-building land and bare premises;
- services concerned with the legal practice of medical or paramedical professions, except for the expenses of accommodation and catering;
- educational establishments working within the framework of an approval provided by the Department of National Education and using an approved price;
- the fuelling of an aircraft departing for a foreign country;
- the sales, transfers or services carried out by the state, the local authorities and public establishments that are neither industrial nor commercial;
- certain essentials that are exempt from Turnover Tax and supplemented in accordance with the CEMAC list (bread, milk, spectacles, etc.);
- certain equipment and goods specifically intended only for oil and mining research;
- interest-bearing foreign loans;
- interest-bearing deposits made by nonprofessionals with credit institutions or financial establishments;
- examinations, consultations, care, hospitalisation, medical analysis and biological works, as well as supplies of prostheses carried out by medical establishments;
- some operations subject to specific taxes (such as insurance), import of items for oil and mining research exempt in terms of the CEMAC Code, and transfer of real estate and corporate goods liable to taxes on transfer, except operations carried out by a property or leasing agent;

- sums paid to the Central Bank;
- rental of empty premises used for housing;
- equipment used for the production and distribution of water and electricity;
- drinking water and electricity provided by the STEE or a state-owned company;
- interest related to credits amounting to XAF1 to XAF1 million agreed by financial establishment for interests related to building and for microcredit with a schedule of reimbursement of at least six months and monthly payments of XAF100,000 or less; and
- games of chance and entertainment.

### Zero-rated supplies

There is a 0% rate for exports and related international transportation. This 0% rate only applies to exports that have a statement duly stamped by the Customs Services.

### Input tax

#### Input tax allowed / tax allowance

Only registered taxpayers that are subject to the simplified tax system ('Système simplifié d'imposition') or to the effective system ('Système du réel') are entitled to a tax allowance.

These taxpayers carry out taxable operations, usually or occasionally, in an independent manner. VAT can only be deducted if the goods and services are necessary for the activity.

#### Input tax expressly denied

Non-taxpayers and persons who are subject to the general and full discharge of tax ('Impôt Général Libérateur' – income tax for small entities), except if they have chosen the simplified tax system, are not allowed to deduct VAT.

For some operations the VAT deduction is expressly denied, for example:

- housing, lodging, accommodation, reception, spectacles, hiring of vehicles and transport of people, except for tourism, accommodation and spectacle-manufacturing professionals;
- housing expenses;
- services linked to goods for which a VAT deduction is denied;
- petroleum products, except fuels that are bought for resale or for the production of electricity that will be resold;
- goods yielded without remuneration or at ludicrous remuneration; and
- vehicles or engines designed for the transport of people or for mixed use, which constitute fixed assets.

### Partial exemption

Some firms are subject to a partial exemption because they carry out both operations that are subject to a VAT deduction and operations that are not. When performing taxable and non-taxable (exempt) operations, the deductible VAT is calculated upon a prorata determined as follows:

- taxable operations + exports
- taxable operations + exempt operations + exports

The taxpayer may also choose to divide into sectors for VAT purposes (subject to conditions), namely a taxable sector (where VAT paid to providers is fully deductible) and an exempt sector (where VAT paid is not deductible). The VAT paid to providers for goods and services necessary for both sectors is deductible upon a proportional share calculated as indicated above.

For the calculation of this proportional share, the following elements are not taken into account:

- delivery to oneself;
- grants for non-taxable equipment;
- sales of assets;
- indemnities that are not consideration for a taxable operation; and
- reimbursement of disbursements.

### Adjustments

When VAT has been deducted on fixed assets and there is either a change in the law or a change of use before the fourth year following the year in which the assets were purchased, the taxpayer must pay back a part of the VAT previously deducted, calculated as one fifth per year spent since purchasing the asset.

The full amount of VAT deducted must be paid back where services and goods that are not fixed assets are subsequently used for non-taxable operations.

### Imports

For the import of goods, the VAT base consists of the value of the goods as defined by the CEMAC customs code plus customs duties and excise taxes, except the VAT and the 4% tax deduction at source.

Usually, the value of the goods is the 'cost, insurance and freight' value, upon arrival in Chad, with the exclusion of VAT and tax deductions at source. VAT on imports will be paid at the same time.

### Exports

There is a 0% rate for exports and related international transportations. This rate only applies to exports where the documentation has been duly stamped by the Customs Services.

To the best of our knowledge, there are no specific rules relating to refunds to foreigners.

## Place, time and value of supply

### Place of supply

An operation (subject to exceptions) is deemed to be performed in Chad in the case of:

- sales, when the delivery of the goods occurs in Chad;
- services, when the service is used in Chad or when the service provider is established in Chad; and
- international transportation, when the carrier is established in Chad, wherever the transportation is performed.

### Time of supply

The time when payment of VAT must be made for a supply is as follows:

- on the sale, delivery and self-delivery – delivery of the goods;
- on the provision of services and business with state and local collectives – payment of the price or instalment; and
- imports – at the time of customs clearance.

### Value of supply

The value of supplies, constituting the taxable base, is as follows:

- provision of services – price of the services or all sums, values, goods or services that have been received or that will be received as consideration;
- property works – amount of the detailed account of the work, markets, invoices or deposit and the works given to the subcontractor by the contractor;
- deliveries and other kinds of exchange of goods carried out in Chad – customer sale price or all sums, goods or services received as consideration;
- markets financed by the state, loans, subventions or donations

– amount of all taxes, fees and withholding included, except VAT and the 4% provisional instalment;

- delivery to oneself – purchase price of goods, manufacturing cost of extracted, made or transformed goods or services, with a share of the overheads;
- imports – value of the goods as defined by the CEMAC customs code, and on this value, the custom duties, excise taxes and other possible taxes, except the VAT of 4% withholding, are added. Usually, the value of the goods is the value of 'cost, insurance, freight', excluding VAT and the withholding;
- secondhand goods – either the full price without taxes if the seller bought the goods from another seller subject to VAT, or the purchase price increased by the markup without taxes if the seller bought the goods from another seller who is not subject to VAT; and
- returnable packing (that can be identified, returned and reused) – the deposit value when it is lost or late returned.

The following amounts also form part of the value of a supply:

- all taxes, fees, duties and withholding except the VAT of 4% withholding;
- incidental expenses for the delivery of goods and services invoiced to customers;
- indemnities other than damages;
- grants that are consideration for a taxable operation or that are the additional price for such an operation or that are assigned to compensate for the insufficiency of the business activity receipts; and
- refunds of the expenses made by a supplier for one of its customers, which are not disbursements.

The following items do not form part of the value of the supply:

- price reductions that are directly granted to the customer;
- sums received for the deposit of returnable packaging; and
- receipts without consideration (i.e. damages).

## VAT compliance

### Accounting basis and tax periods

The amount of VAT payable corresponds to the VAT collected minus the deductible VAT. The balance has to be paid when submitting the return to the Tax Administration. Even if there is neither taxable nor deductible VAT for a month, the form should be filled in and submitted.

At the end of the fiscal year, when the turnover is determined, the prorate of deductibility has to be recalculated accordingly and deductible VAT regularised. If the taxpayer has chosen to divide into sectors for VAT purposes, it is possible to adjust the sectors according to exempted/non-exempted activities performed.

### Returns and payment of VAT

VAT returns must be submitted:

- within 10 days of the month following the carrying out of the taxable operations for taxpayers with a VAT-exclusive turnover of more than XAF500 million; and
- within 15 days of the months following the carrying out of the taxable operations for the rest.

If there are no taxable operations during the month, a blank tax return with the wording 'néant' (nothing) must be returned to the tax administration.

### Penalties

Usually, late payment of VAT is subject to a late penalty amounting to 5% per month or part of a month, with a maximum of 50%.

### Refunds

To the best of our knowledge, there are no refunds of the excess in practice. If the amount paid exceeds the VAT payable, the credit can be offset against the VAT payable during the 12 months following the origination of this credit.

### Time limits

If there is any insufficiency, mistake or omission, the Tax Administration can claim the VAT owing within a period of three years from the time the VAT became due.

If the credit (resulting from excess input tax) is not offset against the VAT payable during the 12 months following the origination of the credit, it will be lost. Such a loss is an expense that is deductible under corporate tax.

## VAT records

### Tax invoices

Invoices delivered by the taxpayer to the customer must indicate:

- the name, address and tax identification number of the taxpayer;
- the identification number of the taxpayer at the company register;
- the share capital of the taxpayer when applicable;
- the legal nature of the company;
- the name, address and tax identification number of the company's customer;
- the date and number of the invoice;

- the wording 'facture' (invoice) or 'avoir' (credit);
- description of the goods or services rendered;
- amount net of tax;
- VAT rate and VAT amount or a statement that the operation is VAT exempt; and
- amount inclusive of VAT.

### Additional export documentation

Since 2002, exporters have to show written proof in the form of the receipt of the country to which the goods were exported and proof of the repatriation of the money by the foreign exchange transaction service.

### Record keeping

In the case of the simplified tax system, taxpayers must have regular and available bookkeeping in Chad with the following documents:

- purchases ledger;
- stock book;
- revenues book;
- payroll and labour expenses book;
- overheads list; and
- fixed assets list.

Under the normal system, taxpayers must keep the following documents:

- referenced and initialled daybook;
- sales book;
- purchases ledger; and
- stock book.

All these documents must be kept for a period of ten years.

## Specific VAT rules

### Land and buildings

The following supplies fall outside the scope of the VAT system:

- operations relating to the rental of non-building land and bare premises;
- rental of bare premises used for housing; and
- transfer of real estate and corporate goods liable to taxes on transfer, except all operations carried out by a property or leasing agent.

### Leasing

The VAT base for leasing operations consists of the amount of rentals invoiced by leasing companies and, at the end of the contract, the transfer price included in the agreement (sale) if the tenant is the buyer, or the selling price if the buyer is someone else.

### Secondhand goods

For secondhand goods, the VAT base consists of:

- the full price without any taxes if the taxpayer bought the goods from another taxpayer; or
- the purchase price paid by the

taxpayer plus the margin without any taxes if the taxpayer bought the goods from a non-taxpayer.

### Transfer of business

The transfer of real estate and corporate goods is liable to taxes on transfer. However, operations carried out by a property or leasing agent fall outside the scope of the VAT system.

## Other indirect taxes

### Import duty

The tax base of customs duties corresponds with the customs valuation, namely the selling price of the goods plus cost of delivery to Chad (costs of insurance, transportation, etc.).

The rates of customs duties depend on the nature of the goods, ranging from 5% to 30%. These rates can be summarised as follows:

- goods of first need – 5%;
- raw material and equipment goods – 10%;
- intermediate and various goods – 20%; and
- current consumer goods – 30%.

### Excise duty

Excise duty applies to goods of great consumption: cigarettes, drinks (water, beer and wines), cosmetics and luxury products. Excise duty rates depend on the nature of the goods, ranging from 5% to 30%. According to the Tax Administration, the tax base is as follows:

- goods manufactured in the CEMAC zone – price of the goods delivered at the factory; and
- other goods – same valuation as for customs duties.

### Transfer duty

Fixed or proportional transfer duties are due on the transfer of ownership, of life estate, upon personal property and on real property, either between live persons or because of death. They are also due on contributions to companies, because of marriage and in the case of the division of property.

### Stamp duty

Stamp duties are due on each civil or judicial document that is intended to be used as evidence.

## Contact details – PricewaterhouseCoopers, Chad

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# Congo





## Introduction

The VAT system was introduced in the Congo on 12 May 1997 to replace turnover tax.

The VAT authority in the Congo is the Directorate of Large Businesses ('la Direction des Grandes Entreprises'), divided into the Unit for Large Businesses of Pointe-Noire and the Unit for Large Businesses of Ouessou.

## Rates and scope

### Rates

The standard rate of 18% applies to all taxable operations not covered by the zero rate or the reduced rate that can apply to categories of goods specified in Annex V to the Congolese VAT Law. Additional tax is payable, to the advantage of local communities, at the rate of 5% of the amount of VAT.

### Scope

VAT is a tax that consumers pay on the importation of goods or the consumption of goods and services. For taxpayers, it would be a neutral tax. In general, all economic activities conducted for consideration by a taxpayer in the Congo are subject to VAT, regardless of their purpose.

## VAT registration

### Compulsory registration

Both legal entities (in the private and public sectors) and individuals can be considered liable for VAT if they carry on taxable operations within the scope of VAT, on an independent basis, habitually, within the economic activity for a valuable consideration.

Apart from the general principle of liability, which must be applied to each case, liability is automatic where annual turnover exceeds the following thresholds:

- XAF30 million for sales of goods;
- XAF10 million for service providers; and
- XAF20 million for craftsmen.

The following businesses and professions are automatically liable even if their annual turnover does not exceed the above thresholds:

- bakeries;
- public works enterprises;
- wholesalers;
- importers; and
- chemists.

An operation consisting of imports, delivery of goods or the provision of services forming part of an economic activity carried on for a consideration by a taxpayer is taxable if it is an operation falling under an economic activity and is carried out for a valuable consideration by individuals or entities.

The performance of an operation for a consideration implies that the acquirer of the goods or the beneficiary of the services provides a consideration, regardless of its nature (money, goods, services, etc.) and value. In this respect, it is irrelevant whether the operation is carried out for profit or speculatively, or whether it results in a profit or loss. Thus, the delivery of goods or provision of services is liable for VAT even if made at cost.

### Voluntary registration

Voluntary registration is not allowed if a business's annual turnover does not exceed the threshold for compulsory registration.

### Group registration

Group registration is not allowed. Legal entities that are closely connected must register individually for VAT.

## Nonresidents

In principle, nonresident businesses are required to appoint a tax representative in order to register for VAT in the Congo.

The application of the territoriality criteria defined by the law means that services provided by a foreign company on Congolese territory are liable for VAT. The foreign service provider must designate a single tax representative liable for VAT in order to prepay, declare and transfer the tax due on the service on the service provider's behalf. The VAT must be paid by the tax representative of the liable foreign company, which records it in a VAT account on behalf of third parties, declares it and transfers it.

A foreign service provider cannot be sued for payment of the tax due on taxable operations performed in the Congo, which must be construed as meaning that the foreign service provider's tax representative, or its customer in the absence of designation, will have sole liability for payment of the tax on the operations conducted with this person.

The single tax representative must, subject to the penalties specified in such matters, both declare the operations performed by the service provider in its favour and ask the service provider about any operations performed in the Congo in favour of one or more third parties. A foreign service provider cannot claim any right to deduct the VAT charged to it.

A branch belonging to a foreign company and non-established businesses (carrying on their activity under the short-term licence regime, the so-called 'Autorisation Temporaire d'Exercer des activités commerciales') must register for Congolese VAT.

## Application for registration

If one of the liability thresholds is reached during the financial year or is envisaged for future years in the case of new businesses, the parties concerned are obliged to carry out all the administrative registration formalities at the 'Unité des Grandes Entreprises' in order to comply with the statutory provisions.

The main formalities, which must be performed within a fortnight of exceeding the threshold or of the start of the activity, are drawing up and filing a declaration of existence and applying for VAT liability.

This application, made on a form provided by the tax department, accompanies the declaration of existence and application for VAT liability (companies or individuals). The VAT department acknowledges receipt of the application, issues a registration certificate making the party liable for VAT and allocates a tax identification single number (NIU) to the taxpayer.

New taxpayers undertaking a commercial activity in the Republic of Congo are required to apply for an Identification Number (ID number). This reference must be mentioned on all invoices and on documentation provided to the Tax Administration.

Failure to get this ID number results in the company not being entitled to deduct the VAT paid to its suppliers, to proceed with the clearance at the customs house or to receive payment from the Tax Administration.

In order to obtain this Tax Identification Number, the company has to pay a legal fee amounting to XAF10,000.

## Deregistration

All taxpayers must inform the Tax Administration about the termination of their businesses. As there is no

standard form, this declaration must be made on plain paper by the taxpayer within ten days of the event concerned in the case of individuals and three months in the case of entities.

## Output tax

In practice, suppliers of goods and services show prices excluding VAT. They must add VAT to their net prices. They must record this output VAT for goods on the date their invoices are issued and for services on the date they receive payment. The amount of VAT is determined by applying the rates to the net selling price of goods and/or services, excluding the tax itself.

## Exemptions and zero-rating

### Exempt supplies

The exemption is automatic in (inter alia) the following cases:

- sales of products coming under farmers', fishermen's, breeders' and hunters' activities;
- social, educational, sports, cultural, philanthropic or religious operations conducted for their members by organisations operating in a non-competitive sector, not for profit, and that are managed on a voluntary and disinterested basis;
- operations involving stamps (revenue and postage) or the issue of banknotes;
- imports of certain exempt goods;
- services covered by the legal conduct of the medical and paramedical professions;
- school exercise books and textbooks;
- certain medicines;
- certain agricultural and plant fertilisers; and

- monies paid by the Treasury to the Central Bank, which has the exclusive issuing right, and income from the Bank's operations, generating the issue of banknotes.

The following operations, which are subject to specific taxation, are exempt from VAT:

- sales of mining products;
- banking operations;
- operations connected with insurance and reinsurance policies and services relating thereto performed by brokers and other insurance intermediaries;
- transfers of property assets subject to registration duties;
- interest on loans made abroad and on nonprofessional bank accounts; and
- random games and entertainment.

Congolese oil companies do not have to pay VAT on the operations that they carry on with certain of their oil sub-contractors. However, this exemption only covers:

- operations linked with oil activity;
- oil subcontractors approved by the Tax Administration; and
- operations carried out with oil companies or between approved subcontractors. In return, the latter are entitled to reimbursement of the VAT that they have paid for exempt operations.

Provided that the oil company lists the foreign contractor as an oil services contractor, the latter will benefit from an exemption from VAT for deliveries of goods and services related to the oil industry.

For deliveries of goods and services that are not related to the oil activity, the foreign contractor shall pay VAT to



his suppliers but is allowed to claim for a refund of VAT paid (except in relation to private and domestic use). Failing to receive a refund of VAT from the Tax Administration, the foreign contractor is allowed to deduct the VAT credits from any other tax payment, especially corporate income tax or personal income tax. The foreign contractor must set up a bank account in the Congo.

## Zero-rated supplies

The zero rate applies to the eucalyptus sector, to local sale of produced woods, exports and international transport and accessory international transport. Exports are considered as goods consignments beyond Congolese customs territory. The zero rate applies whether the goods are delivered directly by the exporter or via an agent.

However, the application of the zero rate is subject to the export being the subject of a declaration approved by the Customs Department and the exporter appending the customs references of the goods that it has exported during the month up to the declaration. International transport is defined as all transport to or from a foreign country, whether passenger or goods transport and irrespective of the means used (air, sea, road, etc.).

In addition, in practice the authorities accept that operations incidental to the international transport of goods made in the Congo are zero-rated, provided that the goods are exported.

Zero-rated operations are considered liable for VAT and therefore grant an entitlement to the deduction of paid VAT. Likewise, these operations are taken into account in the calculation of the taxable turnover and must therefore be included in both the denominator and numerator of the calculation of any deduction percentage.

## Input tax

### Input tax allowed

VAT charged in advance on the price of a taxable operation is deductible from the VAT applicable to such operation. The concordance between the payment and deduction of VAT implies that the deduction right is created when the tax becomes payable by the taxpayer.

In order to observe this concordance, taxpayers who have opted for the debit system must specify this option on their invoices so that their customers can exercise their deduction right as soon as they receive the invoice instead of when it is paid.

To be deductible, the VAT must be shown on the following accounting documents:

- generally – invoices issued by suppliers legally authorised to enter them;
- for imports – import documents; and
- for self-deliveries – a special declaration made by the taxpayer itself.

As soon as the deduction right is created, the taxpayer may exercise it and enter the amount of deductible VAT on the monthly return filed by the 15th of the following month.

### Input tax expressly denied

Tax paid on the purchase of goods and services not directly intended for economic activity does not generally give an entitlement to deduction.

Input tax is specifically denied in respect of:

- housing, accommodation and meal and entertainment expenses, including all expenses

relating directly or indirectly to the taxpayer's residence, e.g. caretaking expenses;

- imports of goods and services forwarded 'as is';
- purchase of oil products, except oil purchased by importers and wholesales in order to sell or produce electricity for sale;
- vehicles and craft designed or fitted out for passenger transport or for mixed use that constitute fixed assets, except:
  - utility road vehicles (i.e. not private cars) used by companies exclusively to transport their staff, where the vehicle has more than eight seats in addition to the driver's seat;
  - fixed assets of vehicle hire companies and public passenger transport companies; and
  - goods transferred without payment or for payment well below the normal price, apart from low-value goods, including goods transferred as commission, salary, a gratuity or gift, regardless of the capacity of the beneficiary or the form of the transfer (except where the unit price excluding taxes is below XAF5,000).

## Partial exemption

Under the allocation rule, taxpayers exercise their deduction right according to the allocation of the goods (depreciable fixed assets) for which the VAT has been paid.

## Adjustments

The adjustment system consists of payment by the taxpayer of a fraction of the tax initially deducted for fixed assets if the asset concerned is removed from the balance sheet or if its position with respect to the

deduction right changes. However, the tax department has specified that there is no need for an adjustment in the event of deliberate destruction or scrapping of the asset.

A deduction of 100% of the VAT on the purchase of a fixed asset is subject to the asset being retained as such by the company until the end of the third year following its acquisition.

Example: A fixed asset is bought in Year 0.

Excluding VAT:	100
VAT:	18
Total including VAT:	118
Deduction right:	18

If the asset is sold after Year 4, no adjustment is required. However, if the position of the asset changes with respect to the deduction right, the taxpayer must pay a fraction equal to the tax initially deducted, less one fifth per year or part thereof since acquisition.

Therefore, if the same asset is sold in the middle of Year 2, the following adjustment is required:  $18 - (3/5 \times 18) = 7.2$

Imports

Goods

VAT is payable on the importation of goods when cleared for home consumption. The tax base varies as follows:

- for goods imported from inside CEMAC, the tax base is the ex-works value minus transportation expenses; and
- for goods imported from outside CEMAC, the tax base is the customs value plus excise duties

and others taxes.

To be deductible, the VAT paid on imports must be shown on the import documents.

Services

Services provided abroad and used in the Republic of Congo are subject to VAT. When a taxable person

established in the Congo receives services from a supplier domiciled abroad that is not registered for Congolese VAT, the recipient of the supply must account for the VAT when the invoice is paid.

Exports

Goods

Goods exported from the Congo are zero-rated. Exports are considered as goods consigned beyond the Congolese customs territory. The zero rate applies whether the goods are delivered directly by the exporter or via an agent.

However, the application of the zero rate is subject to the export being the subject of a declaration approved by the Customs Department and the exporter appending the customs references of the goods that it has exported during the month prior to the declaration.

Services

The provision of services by a Congolese company abroad to a foreign company is subject to VAT if the service is used by the foreign company for an activity conducted in the Congo, whereas a service provided in the Congo but used abroad is not subject to VAT.

Refunds to foreigners

In practice, VAT incurred by foreigners is not refunded.

Place, time and value of supply

Place of supply

VAT is supposed to apply to all business conducted in the Congo, i.e. with respect to sales, under the conditions for the delivery of goods in the Congo and, with respect to services, where the service rendered is used in the Congo.

As a result of these statutory provisions, the place of establishment of the parties to the contract, the place of invoicing or conclusion of the operation and the place of performance of the service do not have any effect on the application of VAT – only the place of consumption of the operation should be taken into account.

Time of supply

The time of supply can be summarised as follows:

- goods – when the right to dispose of the goods as owner is transferred. If the sale contract stipulates that the supplier retains ownership of goods, the VAT is due when the goods are handed to the buyer;

- imports and oil products – when they are made available for consumption;
- services – when the consideration is received. For self-deliveries and self-provision of services, the time of supply is the first use or first commissioning; and
- other cases – collection of the price.

## Value of supply

The taxable value of a supply is the total of all monies, funds, goods or services received in return for the operation, including subsidies and all expenses, taxes and deductions of any nature, excluding the VAT itself, which in practice means all payments in cash or in kind received by the supplier or service provider in return for the goods or the service concerned.

The taxable value of supply must be determined according to the nature of the taxable operation performed, particularly taking account of the elements summarised below:

- goods deliveries – all sums or benefits, goods or services received by the supplier forming the consideration for the delivery, as well as all expenses, taxes of any nature, excluding VAT itself, and ASDI;
- deliveries to oneself – cost price of mined, produced or manufactured goods;
- provision of services – all monies and benefits received and the value of any goods incorporated in the provision of the service;
- swaps – value of the products or services received as payment for the goods delivered or services supplied, plus any money received;
- secondhand goods trade – the vendor's profit margin;
- property works – contract, invoice or bill price;

- travel agency services (provided by transport companies, hoteliers, restaurateurs, entertainment companies and other taxpayers who physically provide the services used by the customer) – difference between the total price, including all taxes, demanded from the customer and the price actually billed to the organisations concerned by suppliers and service providers contributing to the physical provision of the service received by the customer;
- state contracts financed by national budgets, contracts concerning public sector industrial, commercial, scientific, technical and administrative corporations, semi-public companies, public sector authorities and organisations with or without legal personality – contract price including all taxes, except for VAT itself;
- imports inside CEMAC – ex-works value, excluding transportation fees; and
- imports outside CEMAC – customs value of the goods plus customs or excise duties.

However, in principle, all operations where the consideration is not taxable should be excluded from the tax base, such as the following:

- price discounts, rebates and reductions;
- outward payments;
- tips;
- operations carried out by agents and brokers;
- payments not made in return for a taxable operation; and
- payments received as deposits for recoverable packaging.

## VAT compliance

### Returns and payment of VAT

The monthly VAT return is a VAT summary statement for the month concerned showing the taxpayer's debit or credit position with respect to the Treasury. The return for a given month must be made on a special form by the 15th day of the following month accompanied by the payment instrument.

If no operations are carried out during a particular month, the form of the return still has to be filed but will be marked 'nil'.

Adjustments concern additional deductions made as a result of errors or omissions in a previous return, refunds requested in the following month (whether or not the refund has been granted by the tax department) or, on the contrary, refunds made for VAT wrongly deducted on a previous return.

The VAT to be paid is equal to the difference between the gross VAT paid during the month (tax base x 18%) and the deductible VAT, plus any VAT credit recorded for the previous month. This comparison, therefore, produces net VAT payable or a VAT credit. In the first case, the net VAT payable must be paid when the return is filed. In the second case, the VAT credit should be entered on a special line of the form of the return for the following month or, in certain specific cases, may be the subject of a refund application.

### Interest and penalties

The penalties which may be applied by the Tax Department, depending on the offences committed, are summarised below:

- monthly return filed late – 5% of the tax due or, if no tax is due, XAF50,000;

- declaration of existence filed late or not filed – loss of the deduction right for the whole undeclared period and XAF200,000;
- non-declaration or late declaration of changes in the conditions of conduct of the profession – XAF200,000 per month overdue;
- late payment of the tax due for a month – 5% per month overdue (or part thereof), with a minimum of 50% of the tax due if the taxpayer has acted in good faith, otherwise 100% of the tax due;
- monthly return filed after the eight-day formal notice period – 15% of the evaded tax per month (or part thereof) up to a maximum of 50% or XAF200,000 if no tax is due;
- omission or inadequacy observed in monthly returns – 2% per month with a minimum of 10% and a maximum of 50% of the evaded tax if the taxpayer has acted in good faith, or 100% if the taxpayer has not acted in good faith, or 200% if the taxpayer has acted fraudulently;
- sales without issuing invoices – 200% of the tax due, 400% of the tax due in case of a second offence;
- false invoices – 200% of the tax due; the offender is responsible for paying the tax due and the penalty of 200%;
- failure to reply to requests for clarification or substantiation – automatic taxation, 25% with a minimum of 1% of the revenue earned during the period;
- failure by automatically liable taxpayers to file a declaration of existence – automatic taxation plus 25%, with a minimum of 1% of the revenue earned during the period;
- obstruction of a tax audit – automatic taxation;
- taxpayer's inability to produce all books, exhibits, documents and supporting items making it possible

to determine the business's revenue accurately – automatic taxation;

- failure to translate books or other documents into French is subject to the payment of XAF2 million; and
- failure to comply with obligations regarding declarations, invoicing or spontaneous payment of VAT is subject to the following penalties after formal notices to comply and pay:
  - seizure;
  - sale;
  - publication of defaulters' names in a legal notices paper;
  - temporary suspension of the business licence, plus a bar on conducting business during the period;
  - temporary exclusion from public contracts; and
  - closure of the company.

In the event of a repeated offence, the Tax Department can order the taxpayer's definitive exclusion from public contracts, attachment and a prison term of five to 15 days.

### Refunds

Certain categories of profession and certain types of operation are entitled to refunds, such as oil businesses and exporters of goods.

### Objections and appeals

Taxpayers' monthly returns are audited by employees at the 'Unité des Grandes Entreprises' with at least the grade of inspector. These audits, conducted on the basis of documents or on site, may lead to an adjustment. Taxpayers may be represented by a third party, a tax adviser of their choice, at these audits, which can be initiated at any time without notice.

The audit of the returns may lead to a notification of an adjustment by the Department, which must inform the taxpayer, in addition to the errors discovered, of the amount per tax and per year of the duties, taxes and penalties resulting from the proposed adjustments.

Taxpayers who receive an adjustment following an audit have a period of 30 days to make their comments. The Department must give its definitive response on receiving these comments and must provide grounds for any elements that it rejects.

### Time limits

The limitation period for rectifying errors and omissions in the tax base is four years from the year for which the tax is due.

The deduction right must be exercised within 12 months following the fiscal year during which the VAT became payable. This 12-month period applies solely to exercising the deduction right and not to VAT credits. Thus, a VAT credit generated during a given month may be off set against the VAT collected in subsequent months without any time limit.

## VAT records

### Tax invoices

All taxpayers must issue invoices for the goods that they deliver or the services that they provide to another taxpayer and for advances received for the provision of services where tax is payable as a result. Generally speaking, the invoice, written in the French language, should show:

- the name, address and the single identification number of the taxpayer issuing the invoice;
- the name, address and the single tax identification number of the customer;

- a number identifying the invoice;
- the date of the invoice;
- a description and the quantity of the goods or the extent of the services;
- the tax rate and the corresponding tax;
- the price excluding tax; and
- the total amount with taxes included.

The price must be indicated in (XAF) CFA francs. Electronic invoicing is not yet allowed in the Congo.

A service provider who has opted for payment on debits must expressly state this option on the invoice. In addition to these strict VAT obligations, there are other obligations under economic regulations (including the trade register number and bank account number).

Operations performed with non-taxpayers are invoiced at the amount including tax unless they can claim a dispensatory tax system authorising invoicing excluding tax.

Any party entering VAT on an invoice or any equivalent document is liable for the VAT simply as a result of charging it. If the invoice or document does not correspond to the delivery of goods or the provision of a service or refers to a price not actually paid by the purchaser, the VAT is due by the invoicing party.

## Credit notes and debit notes

A supplier must issue a credit note or a debit note in the following cases:

- if the amount payable for a supply has changed, because the supply is cancelled, the nature of the goods or services has been fundamentally changed or the accepted price has been changed; or

- if part of or all the goods are returned to the supplier; and
- if a tax invoice has already been issued for the supply, which is now incorrect.

## Record keeping

Taxpayers must keep regular accounts, including:

- a paginated and initialled journal;
- a general ledger;
- a purchases journal; and
- an inventory book.

The accounts must be available in the Congo, presented in French and made out in CFA francs. Accounting documents and supporting documents for operations performed by the taxpayer must be retained for ten years from being recorded.

## Specific VAT rules

### Land and buildings

Insofar as transfers of real estate assets are subject to registration duties, VAT is not applied to the sale of a house.

Rental of empty residential houses between individuals, between legal entities and between individuals and legal entities are not subject to VAT.

However, rental of all types of premises for use as commercial, business or residential premises made by real estate professionals and rental of fully fitted premises (e.g. furnished residential premises), regardless who the landlord is, are subject to VAT. In practice, tenancies are subject to VAT if the landlord is already liable for VAT for his/her/its other activities.

VAT applies to rent, rent supplements and advance rent. The deposit is not subject to VAT unless it corresponds to rent paid in advance. Service charges, for which the tenant is billed in addition to the rent, are exempt from VAT if they correspond to simple reimbursement of expenses but are subject to VAT if a flat sum is charged.

## Leasing

Leasing is a service subject to VAT. VAT applies to rent billed by the supplier of such services.

## Promotional gifts

Goods transferred without payment or for payment well below the normal price, apart from low-value goods, do not give an entitlement to deduction. This includes goods transferred as commission, salary, a gratuity or gift, regardless of the capacity of the beneficiary or the form of the transfer.

However, the deduction is allowed for goods of which unit price without taxes does not exceed XAF5,000.

## Secondhand goods

Sales of secondhand fixed assets (whether used by companies for the purposes of their business or not) are not subject to VAT and must therefore be declared as non-taxable operations in the monthly return.

If such goods are sold within three years of their acquisition, the taxpayer must pay an adjustment. As an exception to this rule, all operations carried out by dealers in secondhand goods come within the scope of VAT under ordinary conditions.

Note that the exemption for sales of secondhand goods is not applicable to sales made by professional secondhand traders.



## Transfer of a business

The transfer of a business (transfer of goodwill), which is subject to registration fees, is exempt from VAT.

## Other indirect taxes

### Import duty

Customs tax rates vary according to the category of the imported goods, and are as follows:

- Category 1: Goods of primary necessity – 5%;
- Category 2: Raw materials and construction equipment – 10%;
- Category 3: Intermediary products – 20%; and
- Category 4: Common consumer goods – 30%.

For products coming from other CEMAC Member Countries (Cameroon, Central African Republic, Equatorial Guinea, Gabon and Chad), there is a general preferential rate that has been reduced to 0% since 1 January 1998.

### Excise duty

Some products, such as tobacco, perfume, camcorders and jewellery, are subject to excise taxes. The rate of the excise taxes is 24%. The excise taxes have the same base as VAT.

### Transfer duty

A money transfer made from the Congo to foreign countries (outside the CEMAC Zone) is subject to the tax on transfer at the rate of 1% of the total amount.

## Stamp duty

The normal stamp duty in the Congo is currently XAF800 per page of the document subject to registration. The stamp duty is applied in addition to the registration fees. There are various rates of registration that depend on the legal status of the assets transferred, for example:

- goodwill – 10%;
- movables – 4%;
- real assets – 15%;
- registration of authorised capital – 3%; and
- transfer of shares – 5%.

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# Côte d'Ivoire





## Introduction

The VAT legislation is contained in the General Tax Code. VAT was introduced in 1960 to replace the local tax on turnover. There is no special VAT authority in Côte d'Ivoire. Every tax office deals with all taxes due by taxpayers under its jurisdiction.

## Rates and scope

### Rates

VAT is levied at a single rate of 18%, except when an exemption or zero-rating applies.

VAT is reduced to 9% on certain food products, such as milk and pastas.

This measure generates structural credits of VAT for the companies concerned, which are allowed the refunding of these credits for the operations liable for VAT at the reduced rate.

### Scope

VAT is charged on the supply of goods in Côte d'Ivoire and services rendered or used in Côte d'Ivoire.

All the economic activities are within the scope of VAT, including the activities of independent professionals (attorneys, lawyers, chartered accountants, etc.), with the exception of banking activities, which are subject to a special tax on banking operations (at a rate of 10%). However, the rate is reduced to 5% when the banking operations involve small and medium-sized businesses, for financing credit in respect of their computing and industrial equipment.

## VAT registration

### Compulsory registration

There is no special registration just for VAT purposes. A compulsory tax registration applies to business entities located in Côte d'Ivoire. This general tax registration covers VAT as well.

### Nonresidents

The client of a nonresident supplier company plays the role of local fiscal representative under the reverse-charge rule.

### Application for registration

The general tax registration application lodged with the relevant tax authorities covers VAT as well.

### Deregistration

The general tax deregistration principles apply.

## Output tax

### Advertising and prices

Advertised prices are generally stated inclusive of VAT, but it is possible to advertise prices exclusive of VAT. However, in that case it must be clearly stated in the advertisement that the prices are exclusive of VAT.

### Calculation of output tax

The tax is calculated on the basis of the price of goods or services, including all the additional charges borne by the customer, such as transportation charges, package charges and insurance.

## Exemptions and zero-rating

### Exempt supplies

The main exemptions apply to professions concerned with activities related to:

- health;
- insurance and reinsurance;
- agriculture;
- transport companies; and
- education.

### Zero-rated supplies

The export of goods and similar transactions are zero-rated supplies.

## Input tax

### Input tax allowed

VAT incurred on the acquisition of goods and services wholly attributable to the making of taxable supplies may be claimed as input VAT.

### Partial exemption

Any VAT incurred on the acquisition of goods and services that cannot be wholly attributed to the making of taxable supplies may be deducted as input VAT in part only.

The apportionment of input tax that can be claimed is determined by reference to the level of taxable use or consumption of the goods and subject to the normal rules for deducting input tax.

### Adjustments

No subsequent adjustments need to be made in respect of a change of use of the goods or services.

## Imports

### Goods

Except for exempted goods, VAT is due during the customs clearance procedure.

### Services

VAT related to services rendered by nonresident companies is collected through the reverse charge mechanism. The VAT due is declared and paid by the client located in Côte d'Ivoire.

## Exports

### Goods

Goods exported are zero-rated, but exporters are entitled to recover VAT on their inputs. Tax credits may be refundable, subject to certain conditions.

### Services

Services related to export operations are exempted from VAT. The export of services (services rendered to nonresidents) is subject to VAT, provided the services are used in Côte d'Ivoire.

### Refunds to foreigners

VAT paid by foreigners on goods exported by them is not allowed as a refund. Refunds are also not allowed to foreigners in respect of services consumed in Côte d'Ivoire.

## Place, time and value of supply

### Place of supply

VAT is due on supplies in Côte d'Ivoire, on both importation and local sales.

### Time of supply

For VAT purposes, a supply of goods is deemed to take place at the time of the delivery of the goods. VAT is due at the time of the delivery of goods on the issued invoices.

In the case of services, the operation is deemed to take place at the time of the performance of the services. VAT is due at the time of the payment of the price of the services.

### Value of supply

VAT is based on the purchase value, except for importation of some goods, for which a special customs value is used for VAT calculation.

## VAT compliance

### Accounting basis and tax periods

Entities performing activities in Côte d'Ivoire that are subject to VAT must comply with the local accounting requirements (SYSCOA accounting procedures). Tax periods are periods of one month each.

### Returns and payment of VAT

VAT related to the transactions of one month is to be declared and paid at the latest by the 15th of the following month.

### Interest and penalties

Late payment of VAT will result in interest at a rate of 10% that is increased by 1% for each additional month that the VAT is due.

### Refunds

Tax credits are refundable, subject to certain conditions.

### Objections and appeals

Claims for VAT, like claims for all other taxes, must be submitted to the head of the Tax Administration or his representative.

### Time limits

There is no special claim time limit for VAT. The general time limit for tax claims is the end (31 December) of the second year following the tax collection procedure.

## VAT records

### Tax invoices

The content of invoices is prescribed in the General Tax Code and the Tax Procedure Book, and includes:

- the purchase price exclusive of VAT;
- the rate of VAT; and
- the amount of the VAT due.

For input VAT deduction purposes, new standardised invoices with a special sticker must be issued with effect from 2005.

Electronic invoices are not allowed by the Tax Authorities. A paper copy invoice must be issued. A supplier must issue his invoices himself – an agent may not issue the invoices. Invoices should be issued in French, which is the official language. Invoices may be issued in foreign currencies. However, it is useful to draw invoices in the equivalent local currency, CFA francs.

### Credit notes and debit notes

A credit note or debit note is usually issued when a change in the consideration for a taxable supply occurs, due to the cancellation of a supply of goods and services, an alteration or variation in the nature of supply or a change in the previously accepted consideration for the supply.

The issue of a credit note or a debit note will form the basis for the requisite adjustment to the relevant VAT return.

## Record keeping

Records must remain at the tax authorities' disposal and must be kept for three years. No special requirements exist as to the form in which the records must be kept, but paper records must be provided to tax authorities when required.

## Specific VAT rules

### Bad debts

VAT paid on bad debts is not directly deductible from input VAT. However, as provisions and losses are accounted for inclusive of VAT, the deduction of provisions and losses in the P&L accounts will result in a deduction of VAT paid on bad debts.

### Land and buildings

Sale and rental of houses are generally not subject to VAT.

### Leasing

Leasing operations are subject to VAT.

### Promotional gifts

The VAT incurred on the acquisition or production of promotional gifts may be recovered as input VAT.

### Secondhand goods

Secondhand goods are subject to VAT, except for sales made by individuals. Input tax on secondhand goods is recoverable. Exports of secondhand goods are not subject to VAT.

### Tourism industry

VAT applies to the tourism industry, except for transportation activities, which are exempted.

### Transfer of a business

VAT applies to the transfer of a business.

### Warranty repairs

According to the scope of VAT, only goods sold or services rendered for a valuable consideration are subject to VAT. In the case that warranty repairs are not invoiced, VAT is not due. Services rendered to foreign companies are subject to VAT.

## Other indirect taxes

### Import duty

Import duties vary from 0% to 20%, according to the classification of the imported goods in the customs nomenclature, which is common to the UEMOA zone (an integrated economic zone including Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo).

### Excise duty

Excise duty is a consumption tax that is due on oil products sold in or imported into Côte d'Ivoire, except products already taxed and oil products intended for industrial activities or purchased by foreign embassies in Côte d'Ivoire.

### Transfer duty

Transfer duties are due in the case of registration of several transactions such as:

- real estate renting – 2.5%;
- transfer of lease – 10%;

- sale of real estate – 10% or 7.5%; and
- sale of business – 10%.

### Stamp duty

Stamp duty is due on several documents and deeds subject to registration formalities and also acknowledgment of payment in cash bills of exchange.

### Tax on alcoholic beverages

This tax is due on alcoholic and nonalcoholic beverages sold in Côte d'Ivoire. Local nonalcoholic beverages are exempted. The tax base is the product customs value. The rate depends on the type of beverage:

- wine – 25%;
- champagne – 25%;
- beer – 13%;
- spirit alcoholic beverages with less than 35% alcohol – 35%; and
- spirit alcoholic beverages with more than 35% alcohol – 45%.

### Taxes on tobacco

There are two taxes that are payable on tobacco products, a general tax and a special tax. The rate of the general tax varies from 23% to 35% according to the nature of the product. The rate of the special tax varies from 2.5% to 10%, according to the nature of the product. The special tax is designed to support sports development.

### Special tax for equipment

This tax is payable on turnover at the rate of 0.08% and is collected in the same circumstances as VAT. The tax is not invoiced to customers, but directly paid by the taxpayers on the basis of their turnover.

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# Equatorial Guinea



## Introduction

VAT was introduced in Equatorial Guinea on 28 October 2004 in the Tax Code in accordance with CEMAC regulations (Directive No 1/99CEMAC-028-CM-03 dated 17 December 1999, which harmonises the legislation of the state related to VAT and excise duties). It is locally referred to as 'Impuesto sobre el Valor Añadido (IVA)'.

## Rates and scope

### Rates

The standard VAT rates are 15%, 6% and 0%.

The rate of 0% is applicable to certain medical products and equipment. The rate of 6% is applicable to a list of basic consumables and books.

### Scope

All operations performed in Equatorial Guinea are subject to VAT, unless they are included in the list of exemptions provided by the Equatorial Guinea Tax Code.

In practice, Tax authorities do not apply VAT in the oil and gas sector as defined by the Tax Code. There is no written confirmation of this practical position.

VAT is generally chargeable on:

- goods sold or assigned for valuable consideration;
- services provided;
- self-consumed goods and services;
- imports; and
- other operations carried on by individuals or legal entities in their sphere of business, professional and individual activities, including all kind of extraction activities.

## VAT registration

### Compulsory registration

Individuals and legal entities engaged in economic activity, regardless of the nature or output, who are classified as taxpayers (or their representatives) pursuant to the Tax Code, must register with the Tax Administration and obtain a Tax Identification Number (In Spanish 'Número de Identificación Fiscal').

A branch of a company registered in terms of Equatorial Guinea legislation must also be registered with the tax administration.

### Nonresidents

Nonresidents carrying on activities (sales operations or services) in Equatorial Guinea are liable for VAT. A nonresident taxpayer must appoint a solvent and accredited tax representative residing in Equatorial Guinea, who will be jointly liable for the payment of the VAT.

If no tax representative is appointed, the VAT and its corresponding penalties must be paid by the client of the provider concerned.

## Output tax

### Advertising and prices

Suppliers' invoices must clearly state the amount of VAT, separate from prices, in order to allow the customer to deduct input VAT.

### Calculation of output tax

VAT is calculated on:

- goods – all amounts or securities and all benefits, goods and services received or pending receipt in counterpart of the delivery;
- services – all amounts and benefits received and, if applicable, the value of goods that are consumed in the execution of said services;

- imports – the customs value, including all rights and duties paid upon entry, except for VAT.

## Exemptions and zero-rating

### Exempt supplies

The Equatorial Guinea Tax Code provides for an exhaustive list of goods exempted from VAT.

The following are exempt from VAT:

- raw agricultural goods;
- the following operations, provided they are subject to some specific taxes:
  - sale of products resulting from soil and subsoil extraction activities;
  - operations transmitting real estate between individuals that do not qualify as real estate developers and that are subject to Asset Transfer Tax;
  - interest generated by foreign loans;
  - interest generated by deposits of nonprofessional clients in credit or financial establishments;
  - travellers with small imports when the value of the goods does not exceed XAF500,000;
  - banking, insurance and reinsurance operations, which are subject to a specific tax;
  - operations transferring real estate and real estate rights and mutations of goodwill that are subject to Asset Transfer Tax or other equivalent taxes;
- medical services;
- staple commodities listed in the Tax Code;
- service provided in the field of school or university teaching by public and private establishments or similar agencies;



- importation and sale of school or university books;
- sale of newspapers and periodicals;
- rental of unfurnished houses;
- social, educational, sports, cultural, philanthropic or religious services or operations;
- amounts deposited by the Public Treasury into the Central Bank in its capacity as currency issuing bank, as well as proceeds of the operations of the said currency issuing bank; and
- operations relating to the international traffic of:
  - ships or vessels used in industrial or commercial activities on the high seas;
  - salvage or rescue ships; and
  - aircraft and ships used for international transit operations and related services, in accordance with the provisions of the CEMAC customs code.

## Zero-rated supplies

The zero rate of VAT applies to certain medical products and equipment. The zero rate also applies to exports where the returns have been certified by the Customs Services.

## Input tax

### Input tax allowed

In general, the right of deduction of VAT is allowed on :

- VAT paid on invoices related to transactions that have a deduction right (the taxpayer has a taxpayer number etc);
- VAT stated on purchase invoices issued to taxpayers by sellers, whenever these are legally authorised to include the tax in the said invoices;

- VAT paid at the time of the import; and
- VAT levied on the invoices of equipment goods.

### Input tax expressly denied

Restrictions apply to the recovery of input VAT incurred on the purchase of private vehicles, as well as their spare parts and their respective repair expenses.

Input tax is also denied when:

- the invoice does not show the name of the client concerned;
- the input tax is not claimed in the correct VAT period (two years after the year of enforceability of the VAT); or
- the VAT relates to exempt or zero-rated supplies.

### Partial exemption

Taxpayers who are partially or fully VAT exempted must apply a pro rata factor to the amount of the deductible VAT. The pro rata factor will be set on an annual basis, being the ratio of:

- the amount of income for transactions subject to VAT, as the numerator; and
- the total amount of income of any kind obtained by the taxpayer, as the denominator.

### Adjustments

When a component of the fixed assets for which input tax has been deducted is no longer part of the fixed assets of the company or its removal from the assets is not supported, the company must, before the end of the fourth year of acquisition, pay VAT equal to the tax fraction previously deducted.

The fraction is equal to the difference between the total deductions made and one fifth per year or per fraction of a year since it was acquired.

In the case of an assignment, if the goods constitute a component of the purchaser's fixed assets, the latter can deduct the VAT in the amount reverted by the seller as regularisation, as long as he is also a VAT taxpayer.

The seller, as a condition for making the deduction, must issue a statement to the purchaser reflecting the amount of the deductible VAT.

## Imports

According to the Tax Code, import is understood as any entry of goods within the customs territory of Equatorial Guinea.

VAT liability on imports arises when the goods and merchandise are introduced into the national territory, as defined in the CEMAC customs code. The VAT payable is calculated on a VAT base equal to the customs value, including all rights and duties paid upon entry, except for VAT.

## Exports

The zero rate related to exports is applied only if the return has been certified by the Customs Services.

No refunds are allowed to foreigners.

## Place, time and value of supply

### Place of supply

The Tax Code is based on the principle of territoriality, according to which all operations performed in Equatorial Guinea are subject to VAT.

A sales operation is treated as performed in Equatorial Guinea when it has been carried out under the conditions for the delivery of goods, or in the case of other operations, when the service provided, right assigned or object leased is used or put into operation in Equatorial Guinea.

## Time of supply

The enforceability of VAT is determined as follows:

- sales and goods delivered, including self-consumed goods – VAT can be demanded by the Equatorial Guinean state at the time of delivery of the goods, merchandise and self-consumed goods and merchandise;
- services – VAT can be demanded at the time of recovery of the payment of services;
- import – VAT can be demanded at the time of registry of the declaration of consumption of the said goods; and
- real estate operations – VAT can be demanded on the date of transfer.

## Value of supply

The value of supply rules are as follows:

- delivery of goods – all amounts or securities and all benefits, goods or services received or pending receipt in counterpart of the delivery;
- imports – customs value, including all rights and duties paid upon entry, except for VAT;
- services – all amounts and benefits received and if applicable, the value of goods that are consumable in the execution of the services;
- exchanges – value of the products received in exchange for the goods provided, plus the amount of compensation received;
- real estate projects – amount of the operation, memoranda or invoices; and
- self-consumed goods – purchase price without VAT of the goods purchased or used but not transformed and the cost of goods extracted, produced or transformed.

## VAT compliance

### Returns and payment of VAT

All taxpayers are required to file, before the 15th of each month, monthly returns of their transactions made during the preceding month, and make immediate payments to the Equatorial Guinea revenue authorities. Any taxpayer who has not performed a transaction during the said period must file a zero return.

### Interest and penalties

The interest and penalty range depends on whether the administrative correction procedure is contradictory or unilateral.

Both contradictory and unilateral correction procedures can be followed by a tax agent when noting any shortfall, inaccuracy, omission or concealment in the elements used as the basis of the tax calculation:

- contradictory procedure – in addition to the 10% interest for being in arrears, the fine will be 50% of the fees involved, which may be increased up to 100% if the taxpayer fails to show good faith;
- unilateral procedure – in addition to the 10% interest, the fine will be 100% of the fees involved.

### Refunds

No refund is allowed according to the Tax Code. Nonetheless, when the amount of VAT deductible for one month exceeds that of VAT payable, the surplus constitutes a tax credit attributable to the VAT payable for the following period.

### Objections

The taxpayer can appeal the decision to the same authority that took the decision or the higher authority.

The case could also be submitted to Tax Panels ('Jurados Tributarios'). Tax Panels are the governing bodies which must resolve controversies on factual matters that may be brought between the Tax Administration and taxpayers.

## VAT records

### Invoices

Every taxpayer is required to issue and deliver invoices for goods delivered or services provided to its clients, as well as down payments received for these operations. Each invoice must reflect:

- serialised invoice number and chronological date;
- name, address and Taxpayer Number of the company;
- prices, with the respective VAT charges listed separately; and
- name, address and Taxpayer Number of taxpayer.

### Credit notes and debit notes

Credit notes and debit notes are not ruled under the tax legislation but result from accounting practice. They are tolerated by the Tax Administration and must meet the same conditions that apply for an invoice.

### Record keeping

Taxpayers are required to keep the following accounting books:

- a registry book of all invoices issued, separated into those belonging to operations that are subject to VAT, exempt, not subject to VAT and self-consumption;
- a registry book of invoices received;
- a registry book of investment goods; and
- a book with a current account of clients and suppliers.

Taxpayers are required to keep all accounting items showing income and expenses for five years following the respective operations.

Accounting books must allow a precise determination of the following for each settlement period:

- total amount of VAT that the taxpayer has passed on to its clients; and
- total amount of VAT that suppliers have passed on to the taxpayer during the same settlement period, and total amount of VAT taxing imported goods.

Other indirect taxes

Special Duty Tax

A standard Special Duty Tax of 30% applies to an exhaustive list of products (mainly luxury goods) contained in Annexure 3 of the Tax Code.

However, contradicting the preceding rule, both the Tax Code and CEMAC provisions apply special rates to the list of products such as:

- sparkling wine or champagne – 20% (Special Duties); 15% (CEMAC duties);

- cigars, cigarettes and tobacco – 50% (Special Duties); 25% (CEMAC duties); and
- photographic devices with automatic flashes – 25% (Special Duties).

Import duty

An import duty (ranging from 5% to 30%) is applied to the price paid.

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# Gabon



## Introduction

VAT was introduced in Gabon by the Financial Law for the fiscal year 1995 (Law No 1/95 dated 24 February 1995). The new Gabonese Tax Code in force since May 2009 (Law No 27/2008 dated 22 January 2009) amends various provisions of the previous law.

The VAT authority in Gabon is the Tax Authorities ('Direction Générale des Impôts').

## Rates and scope

### Rates

There are three VAT rates applying in the Gabonese Republic:

- standard rate of 18%, applying to all transactions unless otherwise provided for;
- reduced rate of 10%, applying to production, manufacturing and selling of the following products:
  - mineral water produced in Gabon;
  - imported meat and chicken;
  - imported salad oil;
  - sugar;
  - imported peanuts;
  - washing powder;
  - steel for reinforcing concrete;
  - fishing equipment;
  - outboard motors;
  - replacement parts of cars;
  - car axles;
  - building tiles and cement;
  - nails;
  - raincoats;
  - tomato purée;
  - canned fruits and vegetables;

- zero rate of 0%, applying to exports and international transport. The 0% rate applies only to exports for which declarations have been issued by the Customs Authorities.

### Scope

VAT is a broadly based tax on consumer expenditure. VAT is largely removed from business costs, and thereby confined to consumer expenditure, by providing taxable persons with a credit mechanism, the deduction.

All transactions relating to an economic activity that constitutes an import, a delivery of goods or a provision of services carried out in the Gabonese Territory, by a person subject to tax (a chargeable person), excluding the transactions expressly exempted from VAT under the Gabonese Tax Code, are taxable operations.

## VAT registration

### Compulsory registration

The registration is compulsory insofar as operations are carried out in Gabon. Provision is made for two categories of potential taxable persons:

- any person carrying on economic activities in Gabon and having an annual revenue of at least XAF80 million is liable for VAT;
- the registration is optional for the following persons:
  - taxpayers who were liable for VAT under the provisions of the former Tax Code (that is services suppliers who had an annual revenue equal to or higher than XAF60 million and XAF40 million for specific services suppliers listed in the former Tax Code, such as retailers of spare parts and accessories for cars, driving schools, legal and accounting professions: solicitors, bailiffs,

public notaries);

- taxpayers subject to the simplified taxation regime ('régime d'imposition simplifié') that have chosen to declare their real profit (determined by deducting from their turnover their effective operating costs).
- Forestry exploiters having a turnover of at least XAF500 million are liable for VAT.

### Nonresidents

Companies that are not established in Gabon are not entitled to deduct VAT.

Foreign companies having no permanent establishment in Gabon and which permanently or occasionally realise operations falling within the VAT scope are liable for VAT, regardless of the value of their operations.

As a consequence, for foreign VAT chargeable persons, the VAT must be paid by the client on behalf of the person who does not have a permanent establishment in Gabon.

### Application for registration

Until the VAT Administration has granted a VAT number (NIF) to the company, it is not allowed to deduct VAT.

In order to be granted an NIF, the taxpayer must request it at the tax administration of its jurisdiction. This request is made at the beginning of the activity, if the taxpayer considers that the activity will reach the liability threshold mentioned above or within a month following the date he satisfies the liability conditions, if these conditions are met when the activities have already been carried out.

## Deregistration

The transfer or discontinuance of business, totally or partially, must be declared to the Tax Authorities within 30 days:

- in case of a transfer or sale of business, following the day where the sale or transfer would have been published;
- in case of sale or transfer of other enterprises, following the day when the transferor or buyer would have effectively started managing the operations; and
- in case of discontinuance of business, following the day of the definitive closing down.

## Output tax

### Advertising and prices

The prices are always given inclusive of all taxes.

### Calculation of output tax

The calculation of output tax depends on the VAT rate. Where the standard rate applies, the output tax is determined as follows:

$$18\% \times \text{price (all taxes included)} = \text{VAT}$$

The taxable amount consists of all the sums, values or services received in compensation for the operation, including subsidies, like all the expenses, taxes and deductions of any nature other than the VAT itself.

## Exemptions and zero-rating

### Exempt supplies

Exempt operations include, but are not limited to:

- agricultural, farming and fishing goods;

- importation of new materials and tools intended exclusively for the development of vacant properties in urban zones and for the construction by public and private promoters of socio-economic residences duly authorised;
- sale of quarry products;
- operations realised by insurance companies in the context of their activity linked to insurance and reinsurance contracts, as well as services rendered by insurance middlemen;
- transfer of intangible movable goods and immovable goods that support registration duties;
- renting of undeveloped land and unfurnished premises;
- printing, import and sale of newspapers and reviews, except for advertisement profits;
- operations relating to fiscal stamps;
- sums paid by the state to the Central Bank;
- welfare, education, competitive, cultural, religious or philanthropic supplies made by nonprofit institutions to their members unless operating in a competitive sector;
- first necessity products such as bread, sugar, rice, eggs, academic books and milk;
- imports of products that are exempt under the Customs Code;
- secondhand products;
- import of products by mining companies for the performance of mining operations; and
- agricultural and breeding devices and tourism equipment (except forestry and fish sectors).

## Zero-rated supplies

The zero-rated supplies include:

- international exports and transport; and
- exports subject to a customs duty declaration.

## Input tax

### Input tax allowed

Input VAT incurred to perform taxable operations is deductible from output VAT collected. The right to a deduction arises when the tax point occurs. To meet the formal deduction conditions, VAT has to be mentioned on one of the following documents:

- invoices delivered by suppliers legally authorised to mention it;
- documents of importation; or
- declarations completed by the debtor in the event of self-supply.

### Specific input tax deduction exclusion

VAT incurred is denied as an input tax deduction in the following instances:

- entertainment, accommodation and catering, except where a company's taxable activity consists of these operations;
- import of goods that are re-exported without any modification;
- goods given free or at a price less than the value of the goods;
- petroleum products, except for those used by a fixed device as combustible or as a manufacturing element in industrial companies;
- vehicles used, mainly or partially, for the transport of passengers and constituting fixed assets, except:



## Inputs and inputs tax credit

- vehicles with more than ten seats exclusively used for the transport of personnel (except four wheel drive cars);
- vehicles used for transport of passengers and products;
- pickup or utilitarian vehicles bought after 8 July 1997 exclusively used for the company's activities;
- fixed assets of public transport companies; and
- fixed assets of cars rental companies.

### Limited deduction right

Taxable persons who do not carry out only taxable operations (allowing them full right of deduction), may deduct the VAT incurred on the acquisition of goods and services by application of a deduction prorata. This fraction is the relationship between:

- as numerator, turnover related to operations subject to VAT; and
- as denominator, total turnover performed by the taxable person.

### Adjustments

As far as an element of the fixed assets is concerned, the input VAT deducted has to be regularised when this element is no longer part of the fixed asset before the third year following the year when this element was purchased.

## Imports

### Goods

The taxable basis of importation is determined by adding the amount of the customs duties and the excise duties to the value of the goods as defined for customs purposes. However, the fact that imports of goods are re-forwarded as such does not result in a right to deduction.

VAT on the importation is paid to the Customs Authorities. VAT on imports must be declared and paid before the removal of the goods.

Imports of new materials and tools for the construction of social residences by authorised property developers are VAT exempt.

### Services

Foreign suppliers of services who have no permanent establishment in Gabon and who perform services in Gabon are liable for VAT. The Gabonese client will submit a VAT return and pay the VAT to the Treasury.

The Gabonese company that benefits from the services may deduct such VAT from VAT collected.

## Exports

### Goods

The zero rate is applicable to international exports and transport. It applies only to exports that have been subjected to customs declarations. Exporters must attach the customs references of exports carried out during the month to their monthly declarations.

By way of exception, the taxable exporters may request the refund of their tax credit, limited to the VAT fictitiously calculated by application of the general rate to the amount of the exports carried out during the period.

### Services

Supplies of services are subject to Gabonese VAT when the recipient uses or enjoys the services in Gabon.

### Refunds to foreigners

As far as refunds to foreigners are concerned, there are no specific provisions.

## Place, time and value of supply

### Place of supply

A supply of goods is subject to VAT if the delivery occurs in Gabon. A supply of services is subject to VAT if the rendered services are used or enjoyed in Gabon.

Therefore, all transactions relating to an economic activity that constitutes an import, a delivery of goods or a provision of services carried out in Gabonese territory are subject to VAT.

### Time of supply

As far as goods are concerned, the tax point of the VAT occurs with the delivery of the goods.

In the case of services, the tax point occurs either upon the payment, or when the supplier has opted for a tax point at the moment of invoicing. This option is irrevocable and must be shown on invoices.

### Value of supply

The taxable basis consists of all amounts and, if necessary, the value of the goods incorporated in the execution of the service, in the case of the supply of services.

## VAT compliance

### Returns and payment of VAT

By the 20th day of each month any taxable person has to calculate whether he has a tax debit or a tax credit and declare his monthly taxable operations to the Tax Administration.

Should no operation be made during a month, a 'nil' VAT return must nonetheless be submitted.

## Interest and penalties

The late submission of the monthly declaration is subject to 5% late payment interest. If the late declaration does not indicate any VAT due, the penalty is XAF100,000.

The late payment of the VAT mentioned in the monthly declaration is sanctioned by a late payment interest of 10% for the first month of delay, and 3% for the following months.

Any omission noted in the monthly declaration is sanctioned by a penalty of 1,5% per month of delay, with a maximum of 50% of the evaded rights or reassessments carried out, subject to the good faith of the taxable person. This penalty can be changed to 100% and up to 150% if the bad faith of the taxable person is established.

Any request for deduction of the tax related to an invoice not corresponding, partly or entirely, with a purchase of goods or a provision of services is sanctioned by a penalty of 150% of the evaded rights.

## Refunds

VAT refunds are only possible in specific cases provided by the VAT legislation.

## Objections and appeals

Any taxpayer who is dissatisfied with VAT imposed on him may present a written request, which is an introductory request of authority.

The procedures are the same as for other taxes as laid down in the Gabonese Tax Code.

## Time limits

The omissions and errors in respect of VAT payable by the taxpayer can be repaired by the Tax Administration until the expiry of the third year following the year during which the tax became due.

The omitted former deductions can be claimed until the twelfth month following the month when the deduction right occurred.

## VAT records

### Tax invoices

Any invoice issued in Gabon or sent to Gabonese clients must be written in French, be issued in CFA francs and indicate:

- the name and address of the supplier;
- the name and the address of the beneficiary;
- the date;
- the description of the services or goods and their quantity; and
- the unitary price excluding VAT and discounts.

Any person liable for VAT must indicate its NIF number, statistic number, trade registration number, the applicable rate and the amount of VAT on the invoice.

An invoice delivered to non-taxable persons can mention one single tax-inclusive amount.

### Additional export documentation

Exporters must attach to their monthly declaration the customs references of the exports carried out during the month.

## Record keeping

The accounting books as well as the supporting documents, in particular the purchase invoices, must be kept for a period of ten years after the year during which the operations were noted in the entries.

## Specific VAT rules

### Petroleum activities

While petroleum activities were initially considered as outside the scope of VAT, petroleum activities (prospecting and production) are governed by two specific regimes which depend on whether the oil company is in a research and prospecting phase or in operation and production. Petroleum activities do not include the distribution of petroleum products.

### Oil exploration companies

Oil companies which possess permits that are in the exploration phase may be exempted from the payment of VAT invoiced to them by their suppliers. This exemption is granted for the whole period of prospecting and remains valid until the oil company starts producing.

Therefore, each supplier has to mention the VAT on an invoice sent to an oil prospecting company which, being exempted, will not pay the invoiced VAT and submit a certificate of exemption, stating the following:

- the date of the Ministerial authorisation;
- chronological number;
- identification of the oil company and the supplier;
- date and number of invoice; and
- price before VAT, price including taxes, VAT amount and total of the invoice.

In such a system, even if the oil companies do not pay any VAT, the suppliers (oil subcontractors) have to charge VAT on the oil companies' invoices and may obtain a VAT credit, which must appear in the CA3 monthly return.

Economically speaking, this mechanism generates a tax credit for suppliers working exclusively with oil prospecting companies, which cannot be reimbursed.

### Oil production companies

Oil production companies do not have to pay VAT on operations performed by some of their subcontractors. This exemption only concerns subcontractors who are authorised by the Tax Administration and who appear on the UPEGA (representative union for the oil sector) list. Such subcontractors benefit from a reimbursement right of the VAT paid upstream of an exempt operation.

This application for VAT refunds will only concern deductible VAT under common law. For instance, VAT paid on lodging expenses is not deductible (and therefore, should not be mentioned on the VAT refund application form). Otherwise, the application for the aforesaid VAT reimbursement may be rejected.

On the other hand, non-authorised subcontractors must charge VAT when invoicing production oil companies and consequently receive a payment including VAT. They therefore have to pay the VAT to the Treasury. As for oil companies, they may claim the reimbursement of the VAT paid.

### Bad debts

In order to recover output VAT for the unpaid transactions where the amount is irrecoverable, a correction of the invoice is necessary. A duplicate of

the initial invoice should be issued, containing the following statement:

'Invoices remained unpaid for the sum of X price excluding VAT and for the sum of corresponding VAT which cannot be the subject of a deduction.'

### Land and buildings

The operations relating to the renting of undeveloped land and unfurnished premises are exempt from VAT. The transmission of real goods and the intangible movable property subject to registration rights are not subject to VAT.

Imports of new materials and tools for the construction of social residences performed by authorised property developers are VAT exempt.

### Leasing

Leasing is subject to VAT at the standard rate.

### Promotional gifts

As there are no specific provisions, the deduction of input VAT should therefore be possible as far as promotional gifts are concerned.

### Secondhand goods

VAT does not apply to secondhand goods. Therefore, these sales are exempt from the payment of VAT. However, this exemption does not apply to traders of secondhand goods.

### Tourism industry

There is a VAT exemption for equipment, goods and personalised furniture specifically for the tourism industry.

### Transfer of a business

As far as an element of the fixed assets is concerned, the input VAT deducted has to be regularised when this element is no longer part of the fixed asset before the third year following the year when this element was purchased.

## Other indirect taxes

### Import duty

Gabon is a member of the UDEAC (CEMAC) region, which means that consideration must be given to the UDEAC (CEMAC) regulations. There is a common customs regime, as well as specific customs regimes.

- UDEAC (CEMAC) common customs regulations: The New Custom Code provides that the customs value of imported merchandise is their transactional value, i.e. the price actually paid or to be paid for this merchandise, subject to some adjustment and/or reintegration.
- Specific customs regimes:
  - the temporary admission regime (normal or special) may be granted for specific equipment materials, products, machines and tools required for the performance of some operations;
  - the specific regime is granted for imports by the contractor, third parties on its behalf or subcontractors, provided that the goods are re-exported after they are used;
  - the exemption regime may be granted for all materials, products, equipment, machines and tools exclusively intended and actually used up for certain operations, such as drilling equipment, submarines and oxygen;

- the reduced rate regime of 5% may be granted for materials, products, equipment, machines and tools which do not fall in the above-mentioned categories, and are necessary for petroleum production.
- beer – 20%;
- wine – 25%;
- other drinks with a volumetric degree of alcohol between 12% and 32%; and
- cigarettes, cigars, tobacco – 30%;
- the sale of a building is subject to a registration right of 6% (plus 2% for buildings located in Libreville or Port-Gentil); and
- the transfer of a leasing right is subject to a registration right of 4%.

#### Excise duty

The excise duties are indirect tax levies, applicable to certain categories of goods, such as tobacco and liquor, at the time of their marketing or their consumption. The rates are as follows:

#### Registration duties

These are proportional rights, charged from 1% up to 6%, depending on the nature of the acts:

- the transfer of shares is normally subject to the payment of a registration right of 3% of the price, as a burden to the assignee;

#### Stamp duty

The stamp contribution is levied on all paperwork relating to civil and judicial actions and to documents that could be produced in court as authority.

### Contact details – PricewaterhouseCoopers, Gabon

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# Ghana



## Introduction

Value added tax (VAT) was introduced in Ghana on 18 March 1998 to replace sales tax under the Customs, Excise and Preventive Service (Management) (Amendment) (No. 2) Act 1995 (Act 500), and Service Tax Act 1995 (Act 501), as amended.

The National Health Insurance Levy (NHIL) was also introduced on 4 November 2004 as an additional consumption tax similar to VAT specifically to secure the provision of basic healthcare services to persons resident in the country through mutual and private health insurance schemes. NHIL is administered alongside VAT by the VAT Service.

## Rates and scope

### Rates

The standard rate of 12.5% for VAT and the rate of 2.5% for NHIL apply to all supplies of goods and services not qualifying for an exemption or zero-rating. Under the VAT flat rate scheme (VFRS), a rate of 3% is charged by retailers for the supply of goods.

### Scope

VAT and NHIL are charged on the supply of taxable goods and services.

VAT is charged on the supply of all goods and services by a taxable person (except when the goods and services are specifically exempt). There are no territorial jurisdictions which do not belong to the VAT territory.

## VAT registration

### Compulsory registration

The following registration thresholds currently apply in respect of taxable persons supplying goods:

- GHS10,000 over a twelve-month

period;

- GHS7,500 over a nine-month period;
- GHS5,000 over a six-month period; or
- GHS2,500 over a three-month period,

whichever is achieved the earlier.

In the case of businesses supplying services there is no registration threshold. As a result, these businesses need to register straight away.

### Voluntary registration

Any business with a turnover below the registration threshold may apply voluntarily to be registered by the Commissioner.

### VAT flat rate scheme registration

Under the VAT flat rate scheme (VFRS), which was introduced on 1 September 2007, operators are required to register with the VAT Service and be issued with the regular VAT certificate of registration. VFRS operators are required to apply a rate of 3% on the value of taxable supplies for each sale transaction.

### Group and branch registration

Two or more corporate bodies may be registered as members of a group if each member is a registered corporate body in Ghana and has an established place of business in Ghana, and one of them controls the others in the group or one company controls all the members of the group.

A taxable person in his application for separate branch registration must state the branches and divisions, including self-accounting branches where the business has more than two branches or divisions.

### Nonresidents

A nonresident business needs a physical representative to register. If requested, and where permissible by internal independence requirements, PricewaterhouseCoopers will act as representative in the processing of VAT returns and advise on issues relating to VAT compliance and the submission of cheques of agreed VAT liability to the VAT Service.

### Application for registration

Anyone who qualifies to register has to apply to the Commissioner for registration as a taxable person. The registration form requires the following information:

- name of business or proprietor;
- trading name (if different);
- postal and physical address;
- telephone number;
- date of commencement of trading;
- tax identification number;
- type of business and description of business activity;
- value of total sales or turnover for the last 12 months, value of taxable sales and turnover (including zero-rated) during the last 12 months; and
- a declaration by the person completing the registration form certifying that the information provided is true and accurate to the best of his knowledge.

Failure to register attracts a penalty of GHS500 to GHS1,000.

The VAT identification number format is: 999 V 999999

### Deregistration

Businesses who no longer qualify can be deregistered and would have to reregister again when qualified.



## Output tax

Advertised prices include VAT and NHIL taxes. Therefore, when prices are charged exclusive of such taxes, VAT and NHIL at 15% (in total) must be added.

Output VAT is calculated by applying the rate of the tax to the VAT-exclusive amount.

## Exemptions and zero-rating

### Exempt supplies

The exempt supplies, for which no credit is allowed, include (but are not limited to):

- certain medical and pharmaceutical products;
- basic food items usually in their raw states;
- books and newspapers;
- crude oil and hydrocarbon products;
- building and construction, including the right to occupy land or buildings;
- financial services;
- supply of postage stamps;
- supply of goods as part of the transfer of business as a going concern by one taxable person to another taxable person;
- goods for the disabled, i.e. articles designed exclusively for use by the disabled;
- machinery, apparatus, appliances and parts used in agriculture, industry, mining (as specified in the mining list), railways and tramways;
- transport by bus and similar vehicles, train, boat and air;
- education;
- electricity, excluding domestic consumption up to a minimum level;

- water, excluding bottled and distilled water;
- fishing equipment; and
- agricultural inputs.

Special relief applies for:

- supplies to the President of the Republic of Ghana;
- supplies for the official use of any Commonwealth or foreign embassy, mission or consulate (relief applies only to VAT on imported goods);
- supplies for the use of a permanent member of the diplomatic service of any commonwealth or foreign country, exempted by Parliament from the payment of customs duties (relief applies only to VAT on imported goods); and
- supplies for the use of an international agency or technical assistance scheme where the terms of the agreement made with the government includes exemptions from domestic taxes.

### Zero-rated supplies

The zero-rated supplies include (but are not limited to):

- exports of taxable goods and services;
- goods shipped as stores on vessels and aircrafts leaving the territory of Ghana;
- locally produced textbooks and exercise books; and
- locally manufactured agricultural machinery and other agricultural implements or tools.

## Input tax

### Input tax allowed

A taxable person may claim input tax on goods and services purchased in Ghana or goods and services imported

by him and used wholly, exclusively and necessarily for business purposes, provided (inter alia) the supply is a taxable supply.

### Non-deductible input tax

Input tax deduction is not allowed on the following:

- purchases or imports in respect of exempt supplies;
- on the expiration of three years from the date the tax accrued;
- import of motor vehicles or vehicle parts unless the taxable person is in the business of dealing in or hiring vehicles or selling vehicle parts; and
- entertainment including restaurant, meals and hotel expenses, unless the taxable person conducts a business of that nature.

### Partial exemption

Input tax is restricted to the part of taxable supplies or imported goods that is used for business purposes.

If a taxable person makes both taxable and exempt supplies, a portion of VAT and NHIL incurred may be recovered on the taxable purchases and imports that can be directly attributed only to the taxable supplies made.

### Preregistration and post-deregistration VAT

A taxable person may recover the VAT on stock and capital goods purchased or imported prior to registration, provided the goods are still in the ownership and possession of the taxable person and the purchase or importation occurred not more than four months or six months prior to registration in the case of stock and capital items respectively.

## Imports

### Goods

Other than exempt goods and services, the importation of taxable goods is subject to VAT and NHIL, and the importer of the goods is required to account for the tax.

### Services

Importation of taxable supplies is subject to VAT and NHIL. The receiver of the service is required to account for VAT and NHIL by means of a 'reverse charge' mechanism. The reverse charge applies to services that are supplied by a nonresident business, and received by a resident taxable person. There are no specific invoicing requirements.

## Exports

### Goods

Exports of taxable goods are zero-rated supplies that attract VAT and NHIL at the rate of 0%. However, the law is not clear on the export of exempt goods.

### Services

The export of services is zero-rated and is subject to a VAT and NHIL rate of 0%, if all requirements are met.

### Refunds to foreigners

Refunds of VAT charged on goods purchased in Ghana by a taxable person not resident in Ghana for consumption outside Ghana may be authorised by the Commissioner, subject to such conditions as he may direct in writing.

## Place, time and value of supply

### Place of supply

The place of supply of goods is the place from which the goods are supplied. The place of supply of a service is the supplier's place of business or the place from which the service is supplied or rendered.

### Time of supply

The time of supply rules are as follows:

- goods or services applied for own use – the date the goods or services are applied to own use;
- goods or services supplied by way of gift – date on which ownership in the goods passes or the performance of the services is completed;
- any other case – the earliest of the date on which:
  - the goods are removed from the taxable person's premises, or from other premises where the goods are under the taxable person's control;
  - the goods are made available to the person to whom they are supplied;
  - the services are supplied or rendered;
  - payment is received; or
  - the tax invoice is issued.

### Value of supply

The value of supply rules are as follows:

- supply for monetary consideration – the amount of the consideration plus all duties and taxes but excluding the tax (VAT and NHIL); and
- supply is not for monetary consideration or partly for monetary consideration – the open market value of a similar supply excluding the tax.

## VAT compliance

### Tax period

Tax period means one calendar month.

### Returns and payment of VAT

VAT returns must be submitted monthly and must be filed not later than the last working day of the month immediately following the month to which the return relates. Payments must be made at the same time, by way of cash or cheque.

Electronic filing is not allowed.

### Interest and penalties

The following penalties are charged:

- late submission of a return – penalty of GHS100;
- for each day the return is not submitted – penalty of GHP50;
- late payment – penalty of Bank of Ghana discount rate plus a quarter of that rate;
- failure to register – GHS500 to GHS1,000; and
- failure to issue tax invoice – GHS1,000.

### Refunds

Credit is given to offset the following month's liability. A request for a refund may be made where the excess credit is outstanding for a continuous period of three months or more.

### Objections and appeals

Disagreement with a decision of the VAT Service must be lodged with the Commissioner within 30 days after notice of the decision has been served on the taxpayer or upon his becoming aware of the decision.

A person dissatisfied with the decision of the Commissioner may lodge an appeal with any court with jurisdiction to hear and determine tax disputes within 30 days after being notified of the decision of the Commissioner.

## Time limits

The law has no specific time limit for payment of output tax.

The maximum period for claiming input tax is three years from the date the deduction accrued. The claim is forfeited on the expiration of a period of three years.

## VAT records

### Tax invoices

Invoices must be preprinted as authorised by the Commissioner of VAT. Invoices that are not preprinted must be approved by the Commissioner of VAT before use.

An invoice for VAT purposes should contain the following information:

- invoice number;
- the supplying taxable person's name, VAT registration number and address of the supplier;
- the customer's name or business name and address and VAT registration number of the recipient, if a taxable person;
- description of goods or services supplied, including the quantity of the goods or the extent of the services supplied;
- date of supply, invoice or payment;
- invoice amount, excluding VAT;
- VAT amount;
- VAT rate;
- the rate of any discount;
- total of VAT values;

- total inclusive of VAT;
- quantity, price and description of goods or service;
- terms of payment; and
- supplier's signature.

Electronic invoices are accepted in the case of retail clients with high turnover, but must be approved by the Commissioner of VAT. Except with the approval of the Bank of Ghana, invoicing in foreign currency is not allowed.

### Credit notes and debit notes

A credit note is issued to a recipient of a supply where the amount on a tax invoice exceeds the amount that should have been charged, while a debit note is issued to a recipient of a supply where the amount on a tax invoice is less than the amount that should have been charged, due to the fact that:

- the supply is cancelled;
- the nature of the supply has been fundamentally varied or altered;
- the previously agreed consideration for the supply has been altered by agreement with the recipient of the supply, whether due to an offer of a discount or for any other reason; or
- the goods or services or part has been returned to the supplier.

### Additional export documentation

Invoices must be preprinted as authorised by the Commissioner of VAT. Non-preprinted invoices must be approved by the Commissioner of VAT before use.

### Record keeping

Records must be kept for six years, unless the Commissioner's approval is obtained to keep the records for a shorter period.

The records may be kept outside the country, if the business can produce the records within a reasonable time for inspection by revenue officers. Records may be kept solely in electronic form.

## Specific VAT rules

### Bad debts

Input VAT may be recovered by a taxable person on bad debts where the purchaser becomes insolvent and fails to pay all or part of the taxable amount of the sale plus the VAT imposed, and the debt becomes a bad debt and is certified as such by the Internal Revenue Service of Ghana.

However, a debt previously written off as bad for which credit has been given, and is later recovered, is subject to VAT on the amount recovered.

### Land and buildings

Land and buildings are exempt from VAT and NHIL.

### Leasing

The taxable value of a taxable supply of goods under a finance lease is the open market value of the goods at the time of the supply. This excludes any interest or finance charges.

### Promotional gifts

Promotional goods attract VAT and NHIL. Input tax may be deducted when promotional goods are acquired.

### Secondhand goods

Taxable persons who deal in locally procured secondhand goods may apply to the Commissioner of VAT for approval to charge VAT on the difference between the buying price and the selling price of the goods, subject to certain conditions.

**Small retailer scheme**

The intention has been that small retailers should charge a standard rate of VAT on taxable supplies, hence the introduction of the VFRS on 1 September 2007, which charges 3% on taxable supplies made by operators.

**Transfer of a business**

The transfer of a business is VAT exempt.

**Warranty repairs**

No special rules apply in this regard. However, if the warranty is deemed to be part of a taxable service, it will attract VAT and NHIL.

**Other indirect taxes**

**Import duty**

Import duty ranges from 0% to 20%, depending on the degree of luxury of the goods as specified under the Harmonised System and Customs Tariff Schedules.

**Excise duty**

Excise duty is limited in scope and is charged on some locally manufactured products, especially on tobacco and alcoholic and nonalcoholic beverages. The import of tobacco and beverages attract import excise duty. In the 2009 Budget, the Government has proposed

to levy excise duties on all imports and domestic supplies of eligible goods, such as tobacco, vehicular and alcoholic products. The imports that will attract excise duty include those that have local equivalence.

**Stamp duty**

Stamp duty rates vary, depending on the kind of transaction.

**Contact details – PricewaterhouseCoopers, Ghana**

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# Kenya



## Introduction

VAT was introduced in Kenya with effect from 1 January 1990 to replace sales tax, which had been in operation since 1973. The basic law is contained in the Value added tax Act, Cap. 476 of the Laws of Kenya, read together with the Regulations stemming from it.

The VAT authority in Kenya is the Kenya Revenue Authority (KRA).

## Rates and scope

### Rates

The current standard rate of VAT in Kenya is 16%. The rate applies to all taxable supplies of goods and services not qualifying for another rate of VAT or VAT exemption. There is a lower rate of 12% for electricity energy and fuel oils.

With effect from June 2006 the hotel and restaurant services are subject to a VAT rate of 16%. Such services are also subject to a catering, training and tourism development levy (CTTDL) of 2%. Hence with effect from June 2006, the cumulative rate applicable to hotel and restaurant services is 18%. Prior to June 2006, hotel and restaurant services were subject to a reduced VAT rate of 14% and the 2% CTTDL, bringing the effective combined rate to 16%, similar to the standard rate for other taxable supplies.

### Scope

VAT is charged on the supply of taxable goods or services made or provided in Kenya and on the importation of taxable goods or services into Kenya.

In relation to taxable supplies in Kenya, only taxable persons are required to levy and pay VAT to the KRA. A taxable person is any person liable to apply for VAT registration under the VAT Act, but does not include an export processing zone (EPZ) enterprise.

The following supplies fall outside the scope of the VAT system:

- supply of goods in a bonded warehouse in Kenya;
- transfer or disposal of taxable assets purchased prior to the implementation of VAT on 1 January 1990;
- employment services rendered by an employee to the employer in consideration for a wage or salary;
- transfer of a registered business as a going concern, provided an application has been made to the Commissioner, as prescribed in the VAT regulations; and
- supplies made by a person who is not required to register for VAT, for example, someone whose turnover is below the VAT registration threshold.

## VAT registration

### Compulsory registration

Suppliers of taxable goods and services are required to apply for VAT registration. These include sole proprietors, partnerships, limited liability companies and corporations.

To qualify for registration, a person must attain or expect to attain a taxable turnover of KShs5 million per year.

If a person attains or expects to attain the above threshold, he must apply for VAT registration. Failure to register for VAT will lead to retrospective compulsory registration by the Commissioner of Domestic Taxes from the date the person became due for registration. Further, the person will be liable to a default penalty of KShs100,000. Late registration for VAT attracts a default penalty of KShs20,000.

### Voluntary registration

The VAT Act provides for voluntary VAT registration when one expects to meet all determinants for registration. However, the requirement to register for VAT is mandatory once the determinants of whether one needs to be registered have been met. In all other instance there is no need to register for VAT.

### Group registration

Group VAT registration for a group of companies is not allowed.

### Nonresidents

Nonresident businesses are not specifically required to register for VAT. However, where the supplier of the service is a nonresident, the Commissioner may by notice in writing appoint a person who normally resides in Kenya as an agent for collecting the VAT payable on the services provided locally and remitting it to the Commissioner.

A nonresident business that has registered as a branch in Kenya can apply for VAT registration through a resident representative. If the nonresident business decides to register in Kenya, the permanent establishment or local representative should apply on behalf of the nonresident business to the local VAT office or to VAT Headquarters for registration.

### Application for registration

With effect from 1 January 2009, the KRA encourages online VAT registration, which has become possible after a successful pilot test of the online registration system. The application for registration is made to the VAT Department of the KRA by means of a single form. This form must be used for all types of registrations, and only one certificate is issued for all tax obligations. It is no longer a mandatory requirement to have a VAT



number on a tax invoice or credit note.

The VAT legislation requires VAT-registered persons to display their registration certificates in a clearly visible place within their business premises. Failure to comply with the requirement will lead to the following:

- a default penalty of KShs20,000; or
- being found guilty of an offence and liable to a fine not exceeding KShs200,000 and interest payable on any outstanding balance at the rate of 2% per month compounded, or imprisonment for a term not exceeding two years, or both.

A PIN certificate is usually issued within a few hours of making the application online.

### Deregistration

If a registered person ceases making taxable supplies, he must notify the Commissioner of the date of cessation and furnish him with a return showing details of all goods in stock and taxable assets within 30 days from the date the registered person ceased to make taxable supplies.

If the value of the registered person's taxable supplies in any 12 months does not exceed KShs5 million and he does not expect any increase in such supplies in the next 12 months, he may also notify the Commissioner of deregistration.

Other reasons for deregistration include death, insolvency, goods becoming non-taxable, change of trading names and legal incapacitation. Where such changes occur, the registered person, the one charged with liquidation, the executor or any other person must notify the Commissioner without delay.

### Output tax

Output tax means tax that is due on taxable supplies. Output tax is

computed by applying the VAT rate attributable to the supply to the taxable value of the supply. The VAT rate attributable to the supply will depend on whether it is a standard rated, a zero-rated or an exempt supply.

### Exemptions

#### Exempt supplies

Businesses that deal exclusively in exempt supplies are not required to register for VAT and cannot claim relief from input tax on the goods and services that they consume. The exempt supplies include, but are not limited to:

- financial services. (Previously, only financial services provided by banks, financial institutions and the Postal Corporation of Kenya were exempt from VAT. The Minister has introduced a significant change in the 2009 budget by providing a comprehensive list of what constitutes financial services. Financial services are now exempt from VAT, irrespective of the supplier.);
- most basic foods, other than milk and milk products;
- automotive fuels;
- insurance and reinsurance services excluding:
  - management and related insurance consultancy services;
  - actuarial services; and
  - services of insurance assessors and loss adjusters;
- education and training services;
- medical, veterinary, dental and nursing services;
- sanitary and pest control services provided to domestic households;
- agricultural, animal husbandry and horticultural services;
- social welfare services provided by charitable organisations;
- burial and cremation services;
- transportation of passengers by any means of conveyance, except where the means of conveyance is hired or chartered;
- renting, leasing, hiring or letting of land, residential buildings and nonresidential buildings, excluding car park and conference or exhibition services;
- local authority services;
- insurance agency, insurance brokerage, stock exchange brokerage;
- tea and coffee brokerage;
- limited tour operators' services;
- trade, professional and labour association services;
- transportation of tourists by any means of conveyance;
- postal services;
- sale of buildings;
- telephone handsets for mobile and wireless networks;
- hiring, leasing or chartering of zero-rated or exempt goods but excluding chartering of aircraft and hiring of buses;
- certain entertainment services (plays, performances and sports events by approved charitable, educational or other institutions of a nonprofit nature);
- entertainment performed wholly by artists who are resident in Kenya; and
- limited hotel and accommodation services (by educational, medical, charitable or religious institutions subject to prior approval).



## Zero-rated supplies

Zero-rated supplies include, but are not limited to:

- exports of all goods;
- exports of taxable services;
- certain supplies to aid agencies;
- supplies of goods or taxable services to Export Processing Zones;
- certain supplies of goods to privileged bodies or persons;
- ship stores supplied to international sea and air carriers;
- certain supplies to official aid-funded projects;
- tea and coffee supplied for export to coffee and tea auction centres;
- taxable services supplied in respect of goods in transit;
- taxable airport services supplied to transit aircraft;
- under 200 kilowatt-hours of electricity for use in a domestic household;
- taxable goods or services supplied to cotton ginneries;
- services provided by hotel establishments to nonresident travel and tourism promoters (subject to conditions);
- supply of goods and taxable services to exporters under prescribed conditions;
- supply of water drilling and connected services;
- goods and services for construction of grain silos upon approval by the Director of Agriculture;
- taxable goods and services to a film producer approved by the Minister for Information;
- items used for film production, such as photographic film rolls, video-recording or reproducing apparatus;
- generators and generating sets;

- bicycles;
- refrigerated trucks and insulated milk tankers;
- the treatment and supply of natural water, excluding bottled water, by a local authority or a person approved by the minister for the time being responsible for water development for domestic or for industrial use;
- the supply of transportation services in respect of agricultural and agro-forest produce;
- taxable goods and services provided to Kenya Red Cross Society; and
- taxable goods for emergency relief purposes.

Supplies to official aid-funded projects, privileged bodies or persons and aid agencies may be supplied free of VAT, but only if an exemption certificate is provided. This must be obtained from the Ministry of Finance before importation or local purchase.

The registered supplier is required to retain a copy of the exemption certificate as proof of authority to supply the goods or services at zero rate. Where these goods for which exemption has been granted are subsequently sold, the VAT becomes due and payable.

## Input tax

### Input tax allowed

Generally, input tax incurred by a VAT-registered person in respect of most expenses incurred and services received for business purposes is deductible. Conversely, input tax is not deductible where:

- input tax is directly attributable to exempt supplies where the direct attribution method for recovering input tax is applied in calculating the recoverable element of input tax;

- a valid VAT invoice has not been obtained;
- the input tax is non-Kenyan VAT;
- the time period for claiming input tax has expired (input tax must be reclaimed within 12 months of the tax point); or
- input tax is specifically blocked from recovery.

### Input tax expressly denied

Deduction of input tax incurred on the following supplies is specifically denied:

- all oils for use in vehicles (including motor vehicles and similar vehicles) and in ships, boats and other vessels;
- passenger cars and minibuses (including repairs, servicing, lease and hire charges);
- all other motor vehicles unless they are primarily used for making taxable supplies;
- furniture, fittings and ornaments, unless permanently attached to a building;
- household or domestic electrical appliances;
- entertainment services;
- restaurant services;
- services received prior to registration date;
- accommodation services; and
- taxable supplies for use in staff housing and similar establishments for the welfare of staff.

### Partial exemption

Partial exemption arises where a registered business makes both taxable and exempt supplies and the amount of input tax attributable to exempt supplies is more than 5% of his total input tax.

Where the input tax attributable to exempt supplies is less than 5% of total input tax, this situation is referred to as *de minimis* and all input VAT can be recovered.

There are three methods specified in the VAT Act to be used to determine the portion of VAT incurred that can be deducted as input tax:

- a value-based method requiring the recovery proportion to be calculated in accordance with the ratio of taxable supplies to total supplies;
- a method requiring all VAT to be recovered where VAT can be attributed to taxable supplies, and no VAT to be recovered where it relates to exempt supplies. The remaining (residual) VAT is then recovered according to the value of taxable supplies expressed as a proportion of total supplies; and
- a special method that is fair and reasonable to the nature of the business, but this must be approved by the Commissioner of Domestic Taxes before being used.

### Adjustments

Partially exempt taxpayers are expected to pass an annual VAT adjustment at the end of each calendar year. The purpose of the annual adjustment is to adjust the amount of input tax recovered during the year so that distortions resulting from the varying monthly recovery rates are 'levelled' by an annual recovery rate.

Any amount overpaid or under-claimed should be accounted for in the VAT return for the first tax period in the following calendar year (i.e. the January return).

### Preregistration and post-deregistration VAT

When, on the date he becomes registered, a person:

- has in stock goods on which VAT has been paid and which are intended for use in making taxable supplies; or
- has constructed a building or civil works or has purchased assets for use in making taxable supplies,

such a person may, within six months, claim relief from the VAT paid in respect of the above, provided that such buildings or civil works are constructed, or such goods or assets are purchased, within 12 months immediately preceding registration, or within such period, not exceeding 24 months, as the Commissioner may allow.

Where a person ceases to make taxable supplies, he must notify the Commissioner of the date of cessation and furnish a return showing details of materials, other goods in stock and taxable assets, as well as their value and the VAT due on such goods within 30 days from the date on which he ceased to make taxable supplies.

## Imports

### Goods

The term 'import' in the VAT Act means to bring into Kenya from either a foreign country or from an EPZ. The Commissioner of Customs Services is charged with the responsibility of collecting the VAT on imported goods at the various ports of entry into the country when goods are cleared for home use. Transit goods are not subject to VAT.

A VAT-registered person is able to deduct from his output tax the input tax incurred on the importation of goods, subject to the maintenance of the relevant import documentation and any restrictions.

No input tax may be deducted in relation to imported goods unless a registered person is in possession of:

- a valid tax invoice;
- a customs entry duly certified by the proper officer and a receipt for the payment of tax; or
- a customs receipt and a certificate signed by the Commissioner of Customs Services stating the amount of tax paid, in the case of goods purchased from a customs auction.

### Services

Any imported taxable service is liable to a reverse VAT charge. Reverse charge VAT is payable by anybody importing a taxable service, including private individuals.

For fully taxable businesses, reverse charge VAT is fully recoverable and represents cash outflow cost in one month and a cash inflow or cash saving in the subsequent month. However, for private individuals and businesses that are unable to, or can only partially recover their input tax, reverse charge VAT represents an actual cost.

The tax point for imported services is the earlier of the date:

- the service is received;
- the invoice for the service is received; or
- full or partial payment is made for the service.

## Exports

### Goods

Any goods exported by a registered person or supplied by that person to an EPZ are zero-rated where the registered person holds evidence of exportation consisting of:

- a copy of the invoice showing the sale of the goods to the purchaser;
- the export entry is duly certified by the proper officer of Customs at the port of export;
- transit documents, such as copies of the bill of lading, road manifest or airway bill; and
- in the case of sugar and all excisable goods, a certificate signed by the Commissioner of Customs Services that the goods have been examined and loaded into sealable vehicles or containers under a tamper-proof seal and the seal number duly endorsed on the export entry.

## Services

The exporter of services is required to maintain tax invoices showing that the services were provided to a foreign country recipient or an EPZ. However, the Commissioner of Domestic Taxes may seek to look into proof of payment from the exporter's financial records, including bank statements. A service exported outside Kenya means a service that is provided for use and consumption outside Kenya.

Regulation 20, which was introduced by the Minister of Finance in June 2008, restricting the instances where services would qualify for exports, caused a lot of confusion. The Minister amended this regulation in his 2009 budget speech to provide more clarity. Services supplied in Kenya are now determined by the 'use and consumption test' and the physical location of the supplier. Therefore, where the supplier has a fixed physical establishment in Kenya and services are physically used and consumed in Kenya, the services will be deemed to be supplied in Kenya irrespective of the location of the payer.

This means that export of services takes place where the services are

used and consumed outside Kenya in accordance with the definition of export of services under the VAT Act.

However, the Regulation still needs to be further clarified to give a broader view of what constitutes 'use and consumption' in order to provide more certainty. The emphasis on 'physically used or consumed' may also create more confusion.

## Refunds to foreigners

VAT refunds are not allowed to tourists or nonresident businesses.

## Place, time and value of supply

### Place of supply

The place of delivery is generally accepted as the place of supply in relation to goods. However, where the goods are made or provided in Kenya or imported into Kenya, the place of supply will be in Kenya.

Place of supply in relation to services is not clearly defined. The VAT Act makes reference to the terms 'use' or 'consumption' of the service in the definitions of both exported and imported services. However, the term 'use' and 'consumption' are not defined in the VAT Act, leading to subjectivity in their interpretation.

### Time of supply

Output tax is due and payable to the Commissioner of Domestic Taxes once a tax point has been triggered, on the earliest of the following dates:

- date of issue of an invoice for the supply;
- date of full or partial payment for the supply;
- date when the goods or services are supplied to the purchaser; or

- date of issue of a certificate by an architect, surveyor or any person acting in a consultant or supervisory capacity in respect of the service.

Where taxable supplies are made on a continuous basis or where the supplies are metered, such as electricity, the tax point is the date of first determination of the supply (when the value of the supply is established) or the date of the meter reading for metered supplies.

## Value of supply

The taxable value of any supply of goods or services is:

- in the case of a supply by the registered person to an independent person dealing at arm's length, the price at which the supply is provided, or the price at which the supply would have been provided in the ordinary course of business by a registered person to an independent person dealing at arm's length and, in cases where no such price can be determined, the price decided by the Commissioner;
- in the case of taxable goods imported into Kenya, the sum of the following amounts:
  - the value of such taxable goods ascertained for the purpose of customs duty, whether or not any duty of customs is payable on those goods;
  - the amount of customs duty, if any, payable on those goods; and
  - in the case of a taxable service imported into Kenya, the price at which the supply is provided.

For this purpose, the price of goods includes any amount charged for, or liability in respect of, packaging, containers, related services or commissions and the excise duty payable.

## VAT compliance

### Returns and payment of VAT

VAT returns (Form VAT3) are filed on a monthly basis. The return must be submitted and payment of VAT made within 20 days of the end of every tax period (the tax period is equal to one calendar month), except where the 20th day falls on a Saturday, Sunday or bank holiday, in which case the return is due on the preceding working day. Currently, manual returns have to be filed with the KRA. However, the KRA is encouraging taxpayers to file on-line VAT3 returns.

Payment of any VAT due must be made at the time of filing of VAT returns. Payment can be made in cash, by way of a cheque or a bank transfer.

In terms of the withholding VAT system, appointed withholding VAT agents are required to withhold and remit the VAT charged to them directly to the KRA. When supplies are made to a withholding VAT agent, the agent will pay the supplier net of the VAT, remit the VAT due to the KRA directly, and provide the supplier with a withholding VAT certificate equal to the amount withheld at the time of making payment for the supplies and not at a later date, which has been the practice by some withholding VAT agents.

### Interest and penalties

In the case of the late filing or non-filing of a VAT return, a flat rate penalty of KShs10,000 per month or 5% of tax due, whichever is higher, plus interest payable on the outstanding balance at a rate of 2% per month compounded is payable.

Late payment of VAT will result in interest on the outstanding tax balance at a rate of 2% per month compounded. In these cases, the flat rate penalty is waived and only the interest is charged.

### Refunds

VAT credits are usually carried forward to offset future VAT liabilities. However, a tax refund can be obtained upon application in a prescribed form (on Form VAT4), in the following cases:

- where a taxpayer is in a credit position and the credit is attributed to either:
  - the making of zero-rated supplies;
  - tax withheld by appointed withholding tax agents;
- where tax has been paid in error; or
- where tax has been paid on uncollected debts.

Other than where credits result from VAT withholding, the refund claim must be accompanied by an auditor's certificate where the amount of the refund claimed is in excess of KShs1 million. The claim for a tax refund, other than a claim for a refund based on the Commissioner's discretion for supplies relating to public interest, must be made within 12 months from the time the tax becomes payable.

VAT-registered businesses can utilise an approved VAT refund for set-off against any other current or future tax liability. However, refunds cannot be used to set off taxes arising upon importation of either goods or services.

### Objections and appeals

A person who disputes an assessment made upon him for failure to pay any of the VAT that has become payable by him may object to the assessment by notice to the Commissioner. The notice must expressly state the grounds of objection to the assessment and be received by the Commissioner within 30 days after the date of service of the notice of assessment.

The Commissioner may amend the assessment or refuse to amend the assessment. Where a person disputes the decision of the Commissioner on any matter subsequent to an objection he may, upon giving notice in writing to the Commissioner within 30 days of being notified of the decision, appeal to the tribunal, provided that:

- the person pays assessed tax not in dispute or such part thereof as the Commissioner may require;
- in case of any other dispute, the person, before filing the appeal, must submit all tax returns where applicable, as required, and pay the tax amount shown thereon as being due and payable.

A party to an appeal who is dissatisfied with the decision of the tribunal on the appeal may appeal to the High Court within 14 days of being notified of the decision, provided that before filing the return such person shall deposit with the Commissioner the full amount of tax disputed.

### Time limits

Input tax may be deducted at the end of either the tax period in which the supply or importation occurred or the next following tax period, provided that not more than 12 months have elapsed since that input tax became due and payable.

In the case of a motor vehicle or other asset purchased under a hire purchase or a finance lease agreement, input tax may not be deducted more than 12 months after the issuance of a letter of undertaking or a clearance certificate.

## VAT records

### Tax invoices

A tax invoice must be issued by any registered person who makes a taxable supply immediately when the supply is made. The tax invoice to be issued

is required to be serially numbered and either generated through an electronic tax register (ETR) or have an attached receipt generated from an ETR containing details of all the transactions.

A tax invoice can be issued in a currency other than KShs but must be converted to KShs for purposes of recording and accounting in the VAT returns and records. Electronic invoicing is not yet permitted in Kenya for VAT purposes.

A proper tax invoice must include:

- name, address, VAT registration number and personal identification number (PIN) of the person making the supply;
- serial number of the tax invoice;
- date of the tax invoice;
- date of the supply;
- name, address, VAT registration number and PIN (if known) of the recipient;
- description, quantity and price of the supply;
- taxable value of the supply (if different from the price charged);
- rate and amount of tax in respect of each of the goods or services supplied;
- details of cash or credit sale;
- details of any discount offered;
- total value of the supply and the total VAT charged; and
- the logo and identification number of the ETR.

Simplified tax invoices are permitted where cash sales are made from retail premises or where cash sales to the same person in any one day do not exceed KShs500. A simplified tax invoice must have the following information:

- name, address, VAT registration number, PIN of the user of the register;
- logo and identification number of the ETR;
- serial number of the receipt;
- date of the invoice;
- brief description of the goods/ services supplied;
- total charge to recipient (VAT inclusive); and
- statement that the price includes VAT.

The ETR requirement is aimed at ensuring that sales are recorded properly. Registered taxpayers must implement, install and use the ETR to issue invoices at each sales point. For taxpayers with computerised accounting systems for sales, an electronic signature device is required to be installed in their systems.

## Credit notes and debit notes

Where a registered person amends the value of goods or services sold for a valid reason, e.g. a reduction in the price charged as a result of a price negotiation, or increasing the price charged to correct an undercharge, credit or debit notes must be issued.

A credit note should be:

- serially numbered;
- contain the name, address, registration number and PIN of the customer;
- contain details of the original tax invoice on which the supply was made and the VAT that was originally charged; and
- not be issued more than 12 months after the relevant tax invoice was issued.

When a VAT-registered person issues a credit note that effectively reduces the amount of VAT charged in his original invoice, he may claim a credit (via his VAT account or return) in respect of the VAT amount relating to the reduction in the value of the supply in the period in which he raises the credit note.

The debit note has the effect of increasing the taxable value indicated in the original invoice and therefore acts as an additional tax invoice for VAT purposes. It must contain the following details:

- the same details as required for a standard VAT invoice; and
- details of the tax invoice issued at the time of the original supply.

## Record keeping

A registered person is required to keep records of all supplies, including zero-rated supplies, standard rated and exempt supplies. These details should be recorded in the VAT return.

Records must, for VAT purposes, be kept for five years. The records may be kept solely in electronic form, but businesses must assist VAT inspectors in accessing such records. Businesses may keep records outside the country, but the records must be made available for inspection in Kenya as and when required by the KRA.

A taxpayer must maintain a separate memorandum VAT account, which will be included in the audit of the accounts. The entries required to be included in the VAT account for each period are:

- total of VAT charged on sales in the period;
- total VAT incurred on purchases in each period; and
- net total of VAT payable or recoverable at the end of the period.



Partly exempt businesses, making both exempt and taxable supplies, must calculate their input tax in accordance with the partial exemption method. The calculations for determining input tax recoverable should be retained to provide a clear audit trail between VAT incurred on costs and VAT recovered per the VAT return.

### Specific VAT rules

#### Bad debts

A VAT-registered person who has made a supply and paid tax on that supply can apply for a refund or remission of the VAT paid under the following circumstances:

- where three years have elapsed since the date of that supply and the debt has not been recovered; or
- before three years have elapsed where the debtor has been declared legally insolvent; and
- where the debt is not more than five years old.

The taxpayer must prove that reasonable attempts have been made without success to collect the debt.

#### Land and buildings

The renting, leasing, hiring or letting of land and residential buildings is exempt from VAT. The exemption does not apply where such services are supplied in respect of car park services or conference or exhibition services, except where provided for educational institutions as part of learning.

However, renting, leasing, hiring or letting of buildings used for nonresidential purposes is subject to VAT with effect from 1 January 2008.

The sale of land and buildings is exempt from VAT.

There is a claw-back provision on sale, disposal or conversion of business premises. Where a registered person has deducted input tax in respect of business premises in which taxable supplies are made and subsequently, before the expiry of five years, the whole or any portion of the premises is sold or disposed or converted for use in making exempt supplies (from the date the construction of such premises was completed), such tax or portion thereof must be paid as output tax to the Commissioner within 30 days of such sale, disposal or conversion.

#### Secondhand goods

Input tax on secondhand goods is deductible. Output tax is to be accounted for on taxable secondhand goods. The exception is where input tax included in the purchase price of such goods was not allowable for deduction.

#### Tourism industry

Tour operation and travel agency services, including travel, hotel, holiday and other supplies made to travellers, are generally exempt from tax. Excluded from this are in-house supplies and services provided for commission other than commission earned on air ticketing.

In this context in-house supplies means supplies that are either made from own resources or bought in from third parties but are materially altered so that the supply made is substantially different to that purchased.

#### Transfer of a business

Where a person disposes of a registered business as a going concern to another registered person, both registered persons, within 30 days, must provide the Commissioner with details of the transaction, of the arrangements made for payment of

tax due on supplies already made, of details regarding assets and stocks of taxable goods on hand at the date of disposal, and of arrangements made for transferring the responsibility for record keeping relating to the business before disposal.

Unless the Commissioner has reason to believe that there would be undue risk to the revenue and notifies the registered persons accordingly within 14 days of receipt of the notification, the assets and stocks of taxable goods on hand may be transferred without payment of the tax otherwise due and payable.

Notwithstanding that the business is being disposed of by the registered person as a going concern, the registered person will remain registered and be responsible for all matters in relation to the business prior to its disposal until such time as all requirements have been properly complied with.

#### Warranty repairs

Usually the grant of a repair under warranty would be included in the price of goods or services to be provided under that warranty, and on that basis VAT would have been accounted for when accounting for the VAT on the taxable goods or services.

If warranty repairs are made without a further charge, the consideration for repair under warranty would be nil.

#### VAT remission

A VAT incentive scheme provides for VAT remission on certain capital goods, effectively resulting in no payment of VAT on the purchase or importation of certain capital goods. Under normal circumstances, VAT will be paid on capital goods on purchase or importation and will subsequently be recovered as a credit against output

tax due 20 days after the end of the month in which it is incurred. The remission scheme effectively leads to a cash-flow saving on the VAT as no VAT will be payable on purchase or importation of the goods once the approval has been granted.

The VAT remission eligibility is limited to expenditure in respect of 'new investments' or the expansion of investments. The remission is subject to certain conditions.

## Other indirect taxes

### Import duty

Import duty is imposed on goods imported into Kenya. The rate will depend on a Common External Tariff (CET) in respect of the goods. The

import duty rates range from 0% to 25%. The import duty rates and their application are governed by the East African Community Customs Management Act.

### Excise duty

Excise duty is tax imposed on excisable services or excisable goods manufactured in or imported into Kenya. Excise duty is governed by the Kenyan Customs and Excise Act.

Excise duty must be accounted for on certain manufactured goods, including alcoholic and nonalcoholic beverages, luxury goods, soft drinks, juices, tobacco products, petroleum products, cosmetics and vehicles. Excise duty is also applicable to services such as use of mobile cellular phone service, casino and gambling services.

### Stamp duty

- Stamp duty is applicable to the following:
  - transfer of immovable property;
  - transfer of unquoted stock or marketable securities;
  - creation or increase of share capital;
  - leases; and
  - grant of security over assets.

The stamp duty rates vary from 0.15% to 4%.

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# Lesotho



## Introduction

VAT was introduced in Lesotho with effect from 1 July 2003, by way of the Value added tax Act No 9 of 2001. VAT replaced the general sales tax system that was used for many years.

The VAT system is administered by the Commissioner for VAT in the Lesotho Revenue Authority (LRA).

## Rates and scope

### Rates

The VAT rates are as follows:

- 0% on goods and services exported from Lesotho;
- 5% on supplies of electricity and telephone calls;
- 15% on import and supplies of alcoholic beverages and tobacco; and
- 14% on all other taxable supplies and service (the standard rate).

All goods and services that are subject to VAT, including zero-rated supplies, are referred to as 'taxable supplies'. The total value of these supplies is referred to as 'taxable turnover' for VAT registration purposes.

### Scope

VAT is a tax on the disposal, either by sale or transfer, of goods or services, either supplied in Lesotho or imported into Lesotho, including supplies to Government.

A 'supply' of goods means any arrangement under which the owner of goods parts with, or will part with, possession of those goods. 'Goods' means not only tangible movable property but also buildings and developments. The supply of goods also includes the application of the goods for the supplier's own or for non-business use.

The supply of services includes the making available of any facility, the toleration of any situation or the refraining from doing any act, where a person receives a payment, or the application of services for own use.

VAT is charged on a supply by auction, sale of goods by instalments, lay-by sale and the supply of taxable fringe benefits. A supply of goods or services by an agent for a principal is a supply by the principal.

A supply is taxable if it is made by a vendor for a consideration, as part of a trade or profession. A 'vendor' is someone who is, or should be, registered for VAT.

## VAT registration

### Compulsory registration

The VAT registration threshold is 500,000 Maloti (equivalent to ZAR500,000) taxable turnover in the past or next 12 months. The LRA may register a person who should be registered for VAT, but has failed to apply for registration. The vendor will be liable to pay VAT on all the taxable supplies made after the registration date, regardless of whether tax was actually charged. Furthermore, additional tax of up to 200% of unpaid VAT may be imposed.

### Voluntary registration

A person whose taxable turnover is below the threshold may apply for voluntary registration. A person who has set up a business where he intends to make taxable supplies in future can apply to be registered for VAT registration, even if he is yet to begin making the taxable supplies.

### Group registration

Subject to certain conditions, groups of companies may apply for a single VAT registration. The Commissioner may at any time exclude any member from the group.

## Registration of nonresidents

A person living in Lesotho may be required to register for VAT notwithstanding that only part of his business is carried on in Lesotho and the other part is carried out abroad. A person will also be required to register for VAT if he has a place of business in Lesotho, notwithstanding that he lives abroad. Additionally a person will be required to register for VAT if he has a place of business in Lesotho, even if he only supplies goods or services abroad.

A local fiscal representative is required but a bank account in Lesotho is not a necessity.

## Application for registration

An application for VAT registration must be lodged with the Commissioner. If the application is approved, the Commissioner will issue a certificate of registration, which must be displayed in a prominent position.

The format of the VAT registration number is: 1234567. The number used is called a tax identification number (TIN)

## Deregistration

The LRA should be notified in writing in the following circumstances and cancellation of registration must take place:

- where there is a change in the legal status of an entity (e.g. a partnership is dissolved);
- if the business is sold;
- if the business ceases trading permanently; or
- if a person was registered as an intended trader and the intention to make supplies has ceased.

## Output tax

Output tax is the total VAT payable in respect of taxable supplies made by the vendor during the tax period. Prices are all VAT inclusive.

## Exemptions and zero-rating

### Exempt supplies

Exempt supplies, in relation to which no input tax deductions can be made, include, but are not limited to:

- education;
- financial services;
- passenger transport;
- insurance;
- public postal services;
- unimproved land;
- lease or letting of immovable property where the tenant is a manufacturer and the property is used by him principally for carrying on a manufacturing enterprise;
- water; and
- services of doctors and dentists (but not, for example, osteopaths).

The following imports are exempt from VAT:

- an import of goods prescribed in Schedule II; and
- an import of goods or services that would be exempt as above if supplied in Lesotho.

### Zero-rated supplies

Zero-rated supplies include (but are not limited to) the following:

- maize meal;
- maize, but excluding popcorn or green mealies for human consumption;

- beans – dried, whole, split, crushed or in powder form, but not further prepared or processed, or where packaged as seed;
- agricultural input, e.g. fertilisers, seeds and pesticides;
- paraffin intended for cooking, illuminating and heating, not mixed or blended with any other substance for any purpose other than cooking, illuminating or heating;
- milk intended for domestic consumption;
- bread intended for domestic consumption;
- peas – dried, whole, split, crushed or in powder form, but not further prepared or processed, canned, or frozen, or packaged as seed;
- certain animal feeds and substances;
- lentils – dried, shelled but not skinned or split;
- sorghum meal;
- unmalted sorghum grain;
- wheat grain; and
- wheat flour.

## Input tax

### Input tax deductions allowed

VAT incurred on goods purchased for resale, raw materials purchased by manufacturers and certain services used for the installation of capital goods may be deducted as input tax. However, input tax does not include the VAT paid on goods or services for someone else's business, or the VAT on private purchases. VAT incurred on goods and services acquired to make exempt supplies is not recoverable.

The vendor must be in possession of a proper VAT invoice for purchases made in Lesotho, or customs documentation in respect of goods imported into the country. Where a vendor has lost a tax invoice, he should request the supplier for a duplicate of the invoice, otherwise a photocopy of the invoice is not allowed when seeking input tax credit. The replacement invoice must be clearly marked by the supplier as a duplicate.

### Input tax expressly denied

There are specific items on which VAT cannot be reclaimed:

- telephone and electricity bills not exceeding M5,000 annually per telephone line or electricity meter (input tax can only be claimed on expenses exceeding M5,000);
- motorcars, except in the case of car dealers, leasing businesses or financial institutions engaged in leasing. Maintenance and repairs to motor vehicles, used solely for business purposes, can be claimed; and
- business entertainment, namely hospitality of any kind provided in connection with a business, including the supply of meals, drinks, entertainment at clubs and the provision of recreational facilities.

### Partial exemption

If a vendor makes taxable supplies as well as exempt supplies, he may claim part of the input tax paid on his purchases. Similarly, where goods or services are used for both business and private purposes, a vendor is only allowed a credit for input tax incurred for business use.

## Preregistration and post-deregistration VAT

A vendor is allowed to claim input tax credit for VAT paid not more than two months prior to the date of VAT registration in respect of:

- goods held for re-supply on the date of registration; and
- a supply to or an import by the vendor prior to the date of registration of goods or services to be used in manufacturing goods for supply after the date of registration.

The claim for preregistration VAT credit must be submitted within four years of registration and the vendor must provide details of the stock on hand, copy invoices etc. to support the claim.

## Imports

### Goods

VAT is payable on the importation of goods by any person into Lesotho. The VAT paid by the vendor on importation of goods for his business can be claimed as an input tax deduction.

Goods imported from a country of the Southern African Customs Union (SACU) (i.e. Botswana, Namibia, South Africa and Swaziland) are imported into Lesotho at the time the goods physically enter Lesotho.

Goods are deemed imported into Lesotho from outside the SACU on the date when the goods are entered for use within Lesotho.

The taxable value for imported goods includes the value of any services relating to the import, such as commission, packaging, transportation, short-term insurance and warranty expenses. Where goods are imported from outside the SACU, their taxable value is the sum of:

- the customs value of the goods imported; and
- the customs duty payable on the goods imported.

Where goods are imported from a SACU country, the value of the goods for VAT is the price charged for the goods plus freight and insurance.

If an importer is not registered for VAT or is registered but without a VAT account, VAT officers will collect the VAT payable on the import at the time the goods physically enter Lesotho.

If goods are imported by post, VAT officers at the Post Office will collect the VAT when goods are collected from the Post Office.

Where the importer is a registered vendor or (in certain circumstances) a foreigner who has arranged a VAT Import Account, VAT is payable on the import by the 20th day of the month following the month during which the goods were imported.

Goods that would be exempt or zero-rated if supplied in Lesotho will be subject to the same VAT status when imported into Lesotho.

### Services

An imported service is a supply of services by a person in the course or furtherance of an enterprise carried on outside Lesotho where the services are for use or consumption in Lesotho. VAT is payable on the imported service by the person importing the service into Lesotho, except where a registered person imports a service to make taxable supplies.

## Exports

### Goods

The exportation of goods is zero-rated (if sold directly to a business abroad), the goods are exported by or on behalf of the supplier, and the required proof of exportation is maintained.

### Services

The exportation of services is zero-rated.

### Refunds to foreigners

Refunds to foreigners are done through the South African Revenue Service.

## Place, time and value of supply

### Place of supply

A supply of goods is deemed to be made at:

- the location of the goods when allocated to a customer's order. If the goods are in Lesotho when allocated, the supply is in Lesotho, while if the goods are not in Lesotho when allocated, the supply is normally outside the scope of VAT;
- the place where the assembly or building of goods for the first time takes place on site.

A supply of services is deemed to be made at the place:

- where the supplier belongs, namely the supplier's business or other fixed establishment, including a branch or agency;
- if no such establishment exists, where a natural person usually lives or a company is legally constituted;
- in the case of establishments in more than one country, at the location of the establishment most directly concerned with the supply;

- if services are supplied wholly or partly in Lesotho, but not near the border between Lesotho and another country, the Commissioner may determine that the services are supplied in Lesotho if the supplier is registered in or operates in Lesotho;
- in the case of the supply of radio, television, telephone or other communication services, if the signal or service originates outside Lesotho, where the recipient receives the signal or service, provided a consideration is payable for receiving the service or signal.

### Time of supply

The time of supply of the goods or services determines when the liability for VAT arises. In terms of the general rule, the time of the supply is the earliest of when:

- goods are delivered or made available;
- performance of services is completed;
- an invoice for the supply is issued; or
- payment for the supply is received.

A vendor is considered to have received cash on the date that he receives the money and a cheque on the date that he receives the cheque. In the case of credit cards, payment is received on the date that a vendor makes out the sales voucher. Where a vendor takes a deposit for a supply, he must account for VAT when the deposit is received.

The specific rules can be summarised as follows:

- auctions – time is the time of the auction;
- goods taken for own use – time is the date on which the goods or services are applied for own use;

- gifts – time is the date on which ownership passes or the services are completed;
- hire purchase agreement or financial lease – time is the date of commencement of the agreement or lease;
- other periodic payments and rent – the successive supplies occur when each payment is due; and
- services – supplier of services may apply in writing to the Commissioner to defer payment of VAT until payment for the services is received.

A vendor is deemed to have made a payment on the date that he receives a VAT invoice. In relation to cheques, a vendor is deemed to have made a payment on the date that he sends the cheque or the date on the cheque, whichever is the later. In the case of credit cards, the credit card payment date is the date when the supplier makes out the sales voucher. Where a vendor makes a deposit payment that serves as an advance payment, he can claim a credit for the input tax for the payment made.

### Value of supply

The general rule is that the taxable value of a taxable supply is the consideration received for the supply. ‘Consideration’ normally means money, but it can also mean any payment made directly or indirectly to a person. This includes credits or payment in kind, or any other indirect form.

Where monetary consideration for a supply is not sufficient, or where there is no monetary consideration, a fair market value is adopted, such as in the following circumstances:

- hire purchase agreements and finance leases;
- application of goods for own use; and
- supply for a reduced consideration.

## VAT compliance

### Accounting basis and tax periods

Where a vendor has adopted the cash VAT accounting system, he accounts for VAT in the VAT return for the month in which payment for a supply is received, and input tax credit is claimed after payment has been made.

Where an invoice VAT accounting system is adopted, input tax credit may be claimed on the basis of a tax invoice showing a time of supply date that falls before the end of the return period during which the claim is lodged.

Registered businesses may apply to use the cash method if 90% or more of the taxable value relates to services, such as accountants, lawyers and hotels, and certain other requirements are met.

Tax periods are periods of one calendar month.

### Returns and payment of VAT

A VAT return form must be completed for every tax period and sent to the Department of VAT accompanied by the tax remittance, within 20 days after the end of the month.

### Interest and penalties

Where a return is filed late, the vendor is liable for additional tax calculated at 3% of the outstanding VAT per month or part thereof.

### Refunds

Where a vendor has overpaid VAT for any tax period, he has the option to either:

- set off the excess against any outstanding liability relating to an earlier period; or
- carry forward the excess, and apply for a refund in respect of each calendar quarter, ending on 31 March, 30 June, 30 September and 31 December.



Any repayment due must first be set off against any other tax arrears. Where a vendor can satisfy the LRA that excess credits are a feature of his business activities, the quarterly rule may be waived and the vendor allowed to make monthly refund claims, or whenever a credit arises.

## Objections and appeal

A person who is dissatisfied with an assessment may file an objection with the Commissioner within 30 days after the notice of assessment. After considering the objection, the Commissioner may allow the objection in whole or part, or disallow the objection. The Commissioner must serve the person objecting with notice of the objection decision. If the Commissioner has not made an objection decision within 60 days, the Commissioner is deemed to have made a decision to disallow the objection.

A person dissatisfied with an objection decision may, within 30 days, appeal to the Tribunal. A party to a proceeding before the Tribunal who is dissatisfied with the decision of the Tribunal may, within 30 days, appeal to the High Court. A party to a proceeding before the High Court may, with special leave of the Court of Appeal, appeal the decision of the High Court to the Court of Appeal.

## VAT records

### VAT invoices

A registered vendor must issue a VAT invoice in respect of a taxable supply to a taxable vendor in the same month that the goods or services are supplied. A VAT invoice must contain the following details:

- the words 'value added tax invoice' or 'VAT invoice';
- the vendor's commercial name, address, place of business and VAT registration number;

- individual invoice number;
- the commercial name, postal address, place of business and VAT registration number of a vendor recipient;
- date of issuing the VAT invoice;
- brief description (including quantity or volume) of the goods or services supplied; and
- the selling price, excluding VAT and any discount, the total amount of the VAT charged, and the selling price including VAT; or
- the total charge on the invoice inclusive of VAT, any discount and the rate of VAT.

### Credit notes and debit notes

Credit notes may be issued where the VAT disclosed on an issued VAT invoice exceeds the correct amount chargeable. The credit note must contain the following information:

- the words 'credit note' in a prominent place;
- the vendor's commercial name, place of business, VAT and TIN registration number;
- the commercial name, place of business, VAT and TIN registration number of the recipient;
- the date the credit note is issued;
- brief explanation of the circumstances that gave rise to the issue of the credit note;
- sufficient information to identify the taxable supply to which the credit note relates; and
- the taxable value of the supply shown on the VAT invoice, the correct taxable value, the difference between the two amounts and the VAT relating to the difference (that is, the VAT overcharged).

Other than the fact that the words 'debit note' must appear in a prominent place, the information to be disclosed

in a debit note is similar to the information required in a credit note. The additional VAT amount in a debit note is due for payment in the period in which the additional liability arises.

### Additional export documentation

The required proof of exportation includes:

- commercial invoices;
- certified copies of the documents presented to Lesotho Customs at exportation;
- certified copies of customs import documents of the country of destination; and
- proof of payment (settlement) if applicable.

### Record keeping

A vendor must keep record of all the supplies made and supplies received, including zero-rated supplies, and a summary of VAT for each month. The VAT summary is referred to as the vendor's VAT account. A separate record must be maintained for any exempt supplies made by a vendor.

If a vendor sells directly to the public he does not need to issue a VAT invoice unless the customer asks for one, but must make a summary of his sales, showing separate totals for:

- VAT on the sales;
- value of the sales before VAT;
- total of all exempt sales;
- VAT on certain postal imports and imported services; and
- credits allowed to customers.

A vendor must keep a summary of supplier invoices received, showing separate totals for:

- VAT paid on purchases in Lesotho;
- value of the purchases before VAT;

- VAT paid on imported supplies; and
- credits received from suppliers.

Record must also be kept of:

- goods given away or taken from stock for employees' or private use;
- business purchases on which input tax is denied;
- Customs documents showing the import entry and the VAT receipt; and
- business records.

Records must be kept for a period of six years.

### Specific VAT rules

#### Bad debts

VAT paid to the LRA by a taxpayer in respect of a taxable supply, but not received from an insolvent customer,

is allowed as a credit, where the whole consideration for the supply is subsequently treated as a bad debt.

The credit arises on the later of:

- the date on which the bad debt was written off in the accounts of the vendor; or
- 12 months after the end of the tax period in which the VAT was paid on the supply.

A supplier who wants to claim relief for bad debt must:

- make a claim to the administrator, receiver or liquidator against his debtor for the VAT-inclusive amount that he is owed by the insolvent debtor; and
- obtain a written statement from the administrator, receiver or liquidator that the debtor is insolvent and cannot pay the debt.

Where any amount on which a credit has been allowed is subsequently wholly or partly recovered by the vendor, the vendor must account for output tax on that amount.

#### Secondhand goods

Where secondhand domestic items are bought for resale from a person who is not a vendor, the taxable value of the re-supply of these items is the difference between the price paid on acquiring the goods and the amount received for their resale. VAT is thus only levied on the profit made and not the total consideration received.

#### Contact details – PricewaterhouseCoopers

PricewaterhouseCoopers, South Africa, can assist with any VAT issues relating to Lesotho. See contact details at the end of the chapter on South Africa.





# Madagascar



## Introduction

Value added tax (VAT) was introduced in Madagascar in 1994. It is referred to locally as ‘Taxe sur la Valeur Ajoutée (TVA)’. It is a tax on turnover.

## Rates and scope

### Rates

The standard rate of VAT is 20%. The rate of 0% is applicable to export of goods and services.

### Scope

VAT is applicable to all transactions related to goods and services performed in Madagascar by a legal entity, or by an individual business having a turnover equal to or more than 200 million Ariary.

VAT is generally chargeable on:

- supplies of goods and services made in Madagascar by a taxpayer in the course of its business;
- importation of goods and certain services into Madagascar; and
- execution of buildings and civil works.

## VAT registration

### Tax Identification Number

All new businesses must obtain a Tax Identification Number at the time of incorporation. Such Tax Identification Number automatically covers VAT registration, if applicable.

### Compulsory registration

Any company (legal entity) or individual business that makes supplies of goods and services and realising annual gross revenue of 200 million Ariary is generally subject to VAT.

### Voluntary registration

Businesses realising a turnover below the annual statutory threshold given above are not subject to VAT. However, it is possible to register for VAT voluntarily even if the value of a business's taxable supplies does not exceed the statutory threshold given above, after obtaining authorisation from the Ministry of Finances and provided that the accounting is certified by an auditor.

### Group and branch registration

Each independent legal entity has to get its own Tax Identification Number and perform its own VAT compliances and obligations. VAT grouping is not permitted.

A branch of a company registered under Malagasy law has the same Tax Identification Number as the main company.

A branch of a foreign company has to obtain a Tax Identification Number for the purpose of tax compliance obligations, including VAT obligations. A foreign company must register or open a branch if it wants to be established in Madagascar.

### Nonresidents

Any services realised/performed in Madagascar should be subject to VAT. Services are considered realised/performed in Madagascar if such services are used or enjoyed in Madagascar. A foreign services supplier who is not registered in Madagascar has to appoint a tax representative to collect and pay VAT on its behalf. In the absence of such a tax representative, the recipient is liable to account for VAT on behalf of the foreign supplier.

The taxpayer or the tax representative must have a bank account in Madagascar for VAT payment purposes.

### Application for registration

There is no separate VAT registration procedure as distinct from general tax registration in Madagascar. In practice, registration is completed on incorporation.

A foreign business that does not have, or is not required to have a local branch has to appoint a fiscal representative in Madagascar who can be the recipient.

### Deregistration

There is no separate VAT deregistration procedure as distinct from the business deregistration procedure. In practice, tax deregistration is completed with business winding up or liquidation.

## Output tax

### Advertising and prices

In the absence of further information, prices are supposed to be inclusive of VAT. Supplier invoices should mention clearly the amount of VAT in order to allow the recipient to deduct VAT input tax.

### Calculation of output tax

Output tax is calculated on:

- CIF value, including all costs and taxes other than VAT, in respect of importation;
- taxable amount, including all costs and taxes other than VAT, for goods and services;
- value of services and goods self-delivered by a taxpayer; and
- amount of invoices or partial payment for civil works.

## Exemptions and zero-rating

### Exempt supplies

The following supplies fall mainly outside the scope of the VAT system:

- sales of tickets for sport events organised by nonprofessional clubs;
- scholarships for technical, professional and general studies;
- interest paid to the Public Treasury ('Trésor'), banks and financial institutions;
- medicines and health services;
- international transportation; and
- delivery to foreign diplomatic representatives, on condition of reciprocity.

The following operations also fall outside the scope of the VAT system:

- salaries;
- operations of the Central Bank of Madagascar; and
- operations of the 'Caisse d'Epargne'.

### Zero-rated supplies

The zero rate is applicable only on exportation of goods and services. However, the VAT legislation does not contain a definition of 'exportation of services'.

## Input tax

### Input tax allowed

In general, input tax is allowed on:

- VAT paid on the invoices related to non-exempted goods and services, and required for normal operation of the taxpayer, subject to the condition that the invoice mentions the Tax Identification Number of the supplier;
- VAT paid on importation of goods

required for normal operation of the taxpayer; and

- Generally, VAT paid on taxable operations.

### Input tax expressly denied

Restrictions apply to the recovery of input VAT incurred on the purchase of:

- buildings other than for industrial, artisan, trading, hotel, restaurant, agriculture and mining activities;
- personal motor vehicles, except for those used for rent;
- restaurant expenses;
- fixtures and fittings; and
- domestic supplies of energy and some petroleum products such as car fuel except those which are used for fixed equipment and installation.

### Partial exemption

Input VAT can only be recovered to the extent that it is attributable to the registered business's taxable activity. When a business makes a mixed supply of taxable and exempt supplies, only the input VAT attributable to the taxable supplies is fully recoverable. Where the input VAT is attributable to both taxable and exempt supplies, only a proportion calculated on the basis of taxable turnover as a proportion of total turnover is recoverable.

### Adjustments

Adjustments are required when taxable goods are sold at a lower value than the net value.

When an apportionment is applicable, the taxpayer calculates the input tax according to a provisory proportion based on available information for previous years regarding taxable supplies compared to total supplies. After calculation of the final proportion,

an adjustment must be made to assure that input tax for a year corresponds to the proportion of taxable turnover compared to total turnover for such year.

## Imports

### Goods

Import VAT is due on the importation of goods into Madagascar. VAT is payable to the Customs Department. The rate of import VAT is the same rate that applies to a domestic supply of goods. It is payable on the value of the goods, including cost, insurance and freight (CIF), and duty.

VAT incurred on the importation of goods into Madagascar may be recovered by a registered business as input VAT. The receipt issued by Customs at the time of import constitutes appropriate evidence of VAT payment.

### Services

There is no definition of imported services. Services are supposed to be performed in Madagascar, thus subject to VAT when they are executed in Madagascar, or used by a recipient, or the recipient is a taxpayer established in Madagascar.

Even if the supplier of the services is not registered for VAT in Madagascar, the reverse charge procedure applies. In that case, the recipient will be liable to account for VAT on the supply.

## Exports

### Goods

Goods that are exported from Madagascar are zero-rated. In order to qualify for input tax credit, the taxpayer must issue valid commercial invoices and retain evidence of export.

## Services

The VAT legislation does not make provision for when services are regarded as being exported. The fact that the recipient is established abroad does not necessarily result in zero-rating of the service.

Currently, the Tax Administration accepts that exported services include those services eligible under free zone company regime, which are mainly quality control, data processing, call centre and cinematographic services. All other services performed by local suppliers are subject to VAT.

## Refunds to foreigners

There is no mechanism to allow foreigners who are not tax registered in Madagascar to obtain a refund of VAT paid.

## Place, time and value of supply

### Place of supply

VAT is applicable to all goods delivered in Madagascar, or all services performed in Madagascar. Services are considered to be performed in Madagascar when they are executed in Madagascar or invoiced to a recipient established in Madagascar.

### Time of supply

VAT is payable at the time of clearing in the case of importation, or at the time of delivery of goods for local purchase, or at the time of payment for services.

### Value of supply

VAT is payable on the CIF value of imported goods, or on the cost or price of a transaction for services and local transactions in respect of goods.

## VAT compliance

### Accounting basis and tax periods

VAT returns and VAT payments related to operations performed during a month must be filed and made no later than 15 days after the following month. Periodical VAT filing is compulsory even if no VAT is payable.

VAT payable is the difference between VAT output and VAT input recorded during a period (monthly).

Only VAT input on an invoice showing the VAT collected by the supplier and the Tax Identification Number of the supplier can be credited against VAT output.

If VAT output is not sufficient in order to offset VAT input, then the difference constitutes a VAT credit. A VAT credit can be carried forward for an undetermined period.

### Returns and payment of VAT

Returns and payments of VAT must be filed at the territorially competent tax office, no later than the 15th day of the following month.

VAT must be paid by bank transfer.

### Interest and penalties

The penalty ranges depend on the nature of the default:

- 40% of the tax due for no submission of a VAT return, and under-declarations of VAT;
- 150% of the tax due for sale without regular invoice;
- 150% of the amount of the invoice in the case of fictitious invoice;
- 80% to 150% in the case of opposition to a tax verification; or
- 1% per month of the tax payable for late payment of VAT due.

Criminal penalties may also be imposed. Penalties can be mitigated in certain circumstances.

## Refunds

Free zone enterprises and qualified exporters may obtain a VAT refund of a VAT credit which is directly attributable to their export activities. Normal companies having a VAT credit of more than 20 million Ariary due to important investments are also entitled to claim a VAT refund.

Application for a refund must be submitted at the same time as the periodical VAT return is filed.

## Objections and appeals

A tax inspector has three years from the date of filing in order to challenge, by way of notice, a VAT declaration submitted by the taxpayer. The taxpayer has 15 days from such notice to provide further explanation or information.

In the case of a dispute, the taxpayer can appeal to the Director of Tax and the Minister of Finances. If the dispute cannot be settled at this stage, the final recourse is the administrative court.

## Time limits

The prescription period for output tax and claims by the Tax Administration is three years. The maximum period for the claiming of input tax is six months. An invoice can only be cancelled within six months from the date of issue.

## VAT records

### Tax invoices

A proper tax invoice must be prepared in duplicate and include the following information:

- date of issue;

- signature of the supplier;
- numbering;
- name and identification of the supplier and the recipient;
- statistical identification of the supplier and the recipient;
- Tax Identification Number of the supplier and the recipient;
- quantity, unit price and total price of the goods or the services;
- due date for the payment of the invoice; and
- manner of payment.

## Credit notes and debit notes

Credit notes and debit notes are not ruled under the tax legislation but result from accounting practice. These credit notes and debit notes are assimilated by the Tax Administration as invoices, invoice cancellations or disbursements, depending on the nature of the operation concerned. A disbursement re-invoiced at real cost is not subject to VAT.

## Additional export documentation

Exportation must be substantiated by the following documents:

- export invoice;
- commitment to repatriate foreign currency ('engagement de rapatriement de devises'); and
- evidence of shipping or air transportation ('attestation d'embarquement').

## Record keeping

All evidence, commercial, tax and accounting documentation should be kept at the company head office or at the company's main establishment in the case of a branch. The taxpayer should be able to provide the originals in the case of an audit.

Documentation must be retained for five years. Electronic files and scanned copies cannot be submitted to the Tax Administration.

## Specific VAT rules

### Bad debts

There is no special VAT provision in the tax legislation regarding bad debts. Therefore, the general rule is applicable:

- transactions involving goods: VAT is due at the time of delivery of the goods independent of the debt situation; and
- transactions involving services: VAT is due at the time of payment for the service. If no payment is made, no liability for VAT arises.

### Land and buildings

There is no special provision regarding land and buildings. Land and buildings transactions (rent or sale) are subject to VAT as long as they are performed by VAT taxpayers (a legal company or professional individual). Land and buildings transactions by nonprofessional individuals are not subject to VAT.

### Promotional gifts

No special provisions apply. In any case, VAT output tax cannot be less than VAT applicable on the goods' net book value.

### Small retailer scheme

Any business having an annual turnover of less than 200 million Ariary may also collect VAT after prior authorisation from the Minister of Finance, provided that their accounting is certified by an auditor.

## Tourism industry

No special rules apply. The general rule is applicable, with the exception that the Tax Administration accepts the calculation of VAT output tax on the company margin per operation.

## Transfer of a business

Transfer of a business by cession of assets is subject to VAT. Transfer of a business by cession of shares is not subject to VAT. Transfer of a business by merging or assimilating an operation is not subject to VAT.

## Warranty repairs

No special rules apply. Goods imported and services rendered to foreign companies are subject to VAT. The importation of goods for the purpose of identical exchange is not subject to VAT. The importation of goods after exportation for repair is not subject to VAT.

## Other indirect taxes

### Import duty

Import duty is applicable on the importation of goods. The rates vary from 0% to 30%.

### Excise duty

Excise duty is applicable on the collection, extraction, fabrication, preparation or importation of goods and services as provided each year by the Tax Law, on, for example, wine, beer, other fermented drinks, alcohol, whisky and rum, tobacco, cigarettes and cigars, and telephone communication.

The rates vary from 7% to 180%.

## Tax on transfer

A withholding tax (income tax for nonresidents), at a rate of 10%, applies to any transfer of revenue from Madagascar abroad in remuneration of services performed by foreign entities.

## Stamp duty

Since August 2008, no stamp duty is applicable.

## Royalties

Manufactured cigarettes, matches, farinas, mobile communication, paid

television transmission, traditional alcoholic drinks and sugar are subject to royalties.

## Special tax and duty

Alcoholic drinks, cigarettes and gambling games are subject to special tax and duty.

## Contact details – PricewaterhouseCoopers, Madagascar

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# Malawi



## Introduction

VAT was introduced in Malawi on 1 October 2002 to replace Surtax. The VAT authority in Malawi is the Malawi Revenue Authority. The head of VAT administration is the Commissioner General.

## Rates and scope

### Rates

VAT is levied at the standard rate of 16.5%. Zero-rated items are charged at 0%. Exempt items are not subject to VAT.

### Scope

VAT is charged on the supply of taxable goods and services. Certain listed exempt supplies and relief supplies fall outside the scope of the VAT system.

## VAT registration

### Compulsory registration

A person must be registered as a taxable person if he or she makes taxable supplies of goods or services and has a business turnover that is or exceeds MK2 million per annum, or has reason to believe that the turnover threshold will be met.

### Voluntary registration

Any business with a turnover below the registration threshold amount may apply for voluntary registration, and the Commissioner General may notify the proprietor in writing and register any class or category of business specified in the notice.

### Group registration

A group of taxable persons may, with the approval of the Commissioner General, be treated as one designated taxable person for VAT purposes.

## Nonresidents

Nonresidents do not qualify for registration.

### Application for registration

Any person who qualifies as a taxable person or has grounds to believe that he or she will qualify as a taxable person must apply to the Commissioner General for registration as a taxable person.

### Deregistration

A taxable person must apply in writing for deregistration within 30 days of ceasing to carry on business in relation to which a registration is made. Any deregistration will take effect from the end of the tax period in which the registration is cancelled.

The registration of a taxable person shall be cancelled by the Commissioner General where the Commissioner General is satisfied that the registered person no longer exists. A registered person may also apply for deregistration when he or she no longer meets the requirements for registration.

## Output tax

### Advertising and prices

Prices are normally quoted inclusive of VAT.

### Calculation of output tax

The output tax is calculated at 16.5% of the value of the taxable supply of the goods, services or import. Net output tax, i.e. output tax less input tax, is payable to the Malawi Revenue Authority by the 25th day of the following month.

## Exemptions and zero-rating

### Exempt supplies

Exempt supplies include specific items such as:

- live animals;
- certain animal products;
- vegetable products in a raw state;
- water, non-mineral or aerated water without additives;
- residue and waste from the food industries;
- petroleum products and petroleum oils;
- fuel wood, sawdust, wood waste and scrap;
- printed matter;
- mosquito and sandfly nets;
- coins;
- mechanical appliances for projecting, dispersing or spraying liquids or powders;
- certain vehicles;
- medical equipment;
- educational services;
- banking and life insurance services;
- postal services (but not courier services);
- funeral services;
- medical services;
- transport of exports;
- residential property rental and sale;
- ordinary bread;
- hessian cloth; and
- betting and gaming, including lotteries and casinos.

Some exempt items are defined by reference to specific Customs Tariff Headings. Reference should be made to the actual Customs Tariff Headings to determine whether an item is exempt.

## Zero-rated supplies

Zero-rated supplies include, but are not limited to:

- exports of goods and services;
- goods shipped as stores on aircraft and vessels leaving the territory of Malawi;
- fertilisers;
- sheath contraceptives;
- exercise books;
- laundry soap;
- salt;
- certain agricultural, horticultural, forestry and harvesting machinery;
- motor vehicles for transport of goods;
- pharmaceutical products;
- buses with a seating capacity of 45 or more persons, including the driver;
- military equipment;
- building materials for factories and adjoining warehouses;
- goods for use in tourism;
- miscellaneous chemical products;
- cycle ambulances;
- motorcycle ambulances;
- certain industrial and construction machinery;
- goods for specialised use in dairy farming;
- goods for specialised use in the fish farming industry;
- goods for specialised use in the mining industry;
- goods used in water supply;
- goods used in electricity generation and distribution; and
- goods for specialised use in telecommunication.

Zero-rated items, other than exports of goods and services and goods shipped as stores on aircraft and vessels leaving the territory of Malawi, are defined by reference to specific Customs Tariff Headings and Customs Procedure Codes. Reference should be made to the actual Customs Tariff Headings and Customs Procedure Codes to determine whether an item is zero-rated.

## Input tax

### Input tax allowed

A taxable person may deduct from the output tax due for a taxable period VAT on goods and services purchased in Malawi or goods and services imported and used wholly, exclusively and necessarily in the course of business.

### Input tax expressly denied

Input tax is not claimable:

- where it relates to exempt supplies by the taxable person;
- after the expiration of 12 months from the date the right to the deduction accrued;
- in respect of motor vehicles or motor vehicle spare parts unless the taxable person is in the business of dealing in or hiring of motor vehicles or selling motor vehicle spare parts. However, motor vehicles and motor vehicle spare parts used wholly, exclusively and necessarily for the business qualify for input tax deduction;
- in respect of entertainment, including restaurant meals and hotel expenses, unless the taxable person is in the business of providing entertainment; and
- in respect of the personal element where the purchase is partly for business and partly for personal or other use.

The Value added tax Act empowers the Minister, by Order published in the Gazette, to prescribe other classes, types or description of goods and services on which input tax is not deductible.

During Malawi Revenue Authority tax audits, input tax claimed is sometimes disallowed and penalties charged on transactions such as residential property expenses incurred by employers and security costs at residential properties. The claiming of such input tax is not excluded by the Value added tax Act and no Order has been gazetted. If a taxpayer receives a claim for the recovery of input tax incorrectly claimed, and the expense does not fall within the categories above, the taxpayer is advised to request a copy of the relevant Gazette. If no Gazette is produced, the taxpayer may consider following the appeal procedures.

### Partial exemption

Where a taxable person makes both taxable and exempt supplies, but cannot directly attribute the input tax to the taxable or exempt supplies, the taxpayer may deduct as input tax an amount that bears the same ratio to the total VAT incurred as the taxable supplies bear to the total supplies, applying an apportionment formula where:

- the numerator is the (total amount of input tax for the period multiplied by the total amount of taxable supplies made by the taxable person during the period); and
- the denominator is the total amount of all supplies made by the taxable person during the period.

If taxable supplies amount to less than 5% of total supplies, the taxpayer may not claim any input tax for the period.

If taxable supplies amount to more than 95% of total supplies, the taxpayer may claim all input tax for the period.

## Preregistration VAT

A taxable person who is registered from a specified effective date and who has in stock on the effective date goods on which VAT has been paid, may claim credit or refund of VAT, provided that:

- the supply or input occurred not more than four months prior to the date of registration; and
- in the case of capital goods, the goods have been held for a period not exceeding six months from the date of registration.

## Post-deregistration VAT

A taxable person whose registration has been cancelled is regarded as having made a taxable supply of all goods on hand (including capital goods) and will be liable for output tax, at the time of deregistration on all goods in respect of which he or she received input tax credit. The output tax payable is based on the open market value of the goods at the time of deregistration.

## Imports

### Goods

VAT is payable on the importation of goods. VAT on importation is paid by the importer.

### Services

VAT is payable on the importation of services. VAT on importation is paid by the importer.

## Exports

### Goods and services

The export of goods and services is zero-rated for VAT.

## Refunds

### Refunds to foreigners

There is no specific provision regarding refunds to foreigners.

### Refunds to exporters

If exports exceed 70% of the taxpayer's total supplies, the Commissioner General may refund the excess input tax within the accounting period, although refunds are, in practice, difficult to obtain.

## Place, time and value of supply

### Place of supply

The place of supply of goods is the place from which the goods are supplied. The place of supply of a service is the place of business of the supplier or the place from which the service is supplied or rendered.

### Time of supply

A supply of goods or services occurs:

- where goods are appropriated to own use, the date on which the goods or services are first applied to own use; or
- where the goods or services are supplied by way of gift, the date on which ownership in the goods passes or the performance of the services is completed.

In any other case the earliest of the date on which:

- goods are removed from the taxable person;

- goods are made available to the person to whom they are supplied;
- the services are supplied or rendered;
- payment is received; or
- the tax invoice is issued.

### Value of supply

The value of a supply is:

- where the supply is for monetary consideration, the amount of the consideration with the addition of all duties and taxes, but excluding VAT; or
- where the supply is not for monetary consideration or is only partly for monetary consideration, the open market value of a similar supply excluding VAT.

## VAT compliance

### Returns and payment of VAT

A taxable person must account for VAT on a prescribed form not later than the 25th day of the month immediately following the month to which the return relates. The VAT return is in a prescribed form and states:

- the amount of VAT payable for the tax period;
- the amount of input tax credit or refund claimed; and
- such other matter as may be prescribed.

### Interest and penalties

A person who fails to submit to the Commissioner General a return on the due date is liable to a penalty of MK20,000 and a further penalty of MK1,000 for each day that the return is not submitted.

Late payment of VAT incurs penalties of:

- 15% of the amount not paid; and
- a further sum of 5% per month or part thereof for the period during which the amount remains unpaid.

## Refunds

A claim for a refund may be made if the return for three consecutive months shows that a refund is due. Such refunds are to be made within 30 days of receipt of the application for refund. In practice, it is very difficult to obtain a refund of VAT, and claims remain outstanding for years.

If exports exceed 70% of the taxpayer's total supplies, the Commissioner General may refund the excess input tax within the accounting period. However, exporters suffer the same problems in obtaining the actual refund as other business entities.

## Objections and appeals

A person dissatisfied with the decision of an officer, other than the Commissioner General, may appeal to the Commissioner General within 30 days of the notice of the decision being served on the taxpayer or the taxpayer becoming aware of the decision. The appeal must be in writing, detailing the grounds of the appeal and supported by relevant supporting documents.

The Commissioner General must decide on the appeal within 30 days of receipt of the appeal.

A person dissatisfied with the decision of the Commissioner General may appeal to any Court of a Resident Magistrate. The appeal must be lodged within 30 days of notification of the Commissioner General's decision.

Unless given leave by the Court, no appeal will be heard unless all returns due have been submitted and all VAT assessed or due has been paid.

The VAT Act does not specify any appeal procedures where the taxpayer is dissatisfied with the Resident Magistrate's decision. In such an event, taxpayers are advised to obtain immediate legal advice.

## Time limits

The maximum period for claiming input tax is 12 months from the date the deduction accrued.

## VAT records

### Tax invoices

A proper tax invoice should include:

- name and address of supplier;
- name and address of customer;
- tax registration number;
- description of supply; and
- rate of VAT.

The VAT Act is silent about electronic invoicing. While there are no specific rules regarding the language on tax invoices, English is normal for business transactions. Prices are often quoted in foreign exchange, with the amount being payable in Malawi Kwacha.

A tax invoice may be issued by the supplier (principal) or the agent, but the supplier retains responsibility.

### Credit notes and debit notes

The original tax invoice may be incorrect where:

- the supply is cancelled;
- the nature of the supply was fundamentally varied or altered;

- the previously agreed consideration for the supply has been altered by agreement with the recipient of the supply; or
- goods or services or part thereof have been returned.

Where a tax invoice has been issued and the amount shown as VAT charged on the tax invoice exceeds the VAT properly chargeable in respect of the supply, the taxable person making the supply must issue a credit note to the recipient of the supply.

Where a tax invoice has been issued and the VAT properly chargeable in respect of the supply exceeds the amount shown as VAT charged on the tax invoice, the taxable person making the supply must issue a debit note to the recipient of the supply.

## Record keeping

Every taxable person is required to keep such records and books of accounts as the Minister may prescribe. These records and books of account must be produced at such place and time as the Commissioner General may require. They may be kept in electronic or scanned format, but original documents may be required at the request of the authorities.

The records must demonstrate adequately:

- the completeness of supplies and accuracy of related VAT;
- the entitlement to claim and accuracy of any VAT claimed.

The records and books may not be destroyed within a period of less than six years. They may be kept outside Malawi, as long as they can be produced in Malawi when necessary.

Specific VAT rules

Bad debts

VAT relief on bad debts may be claimed if the supplier has obtained a court judgement for the debt or can show that all legal means of pursuing the debt have been exhausted.

Land and buildings

VAT is not chargeable on the sale or rental of residential property. VAT is chargeable on the sale or rental of nonresidential property.

Leasing

Leasing or letting of goods on hire is subject to VAT.

Secondhand goods

The supply of secondhand goods is subject to VAT if supplied by a taxable person. Exports of secondhand

goods are zero-rated. Input tax may be claimed on the acquisition of secondhand goods.

Tourism industry

Designated shops or outlets are accorded tax-exempt status, e.g. duty free shops at airports. There are no other exemptions for tourism.

Transfer of a business

The authorities have to be notified within 30 days of cessation, sale, change of location, material change in the business or material change in ownership.

Warranty repairs

VAT is charged on the importation of goods. Services rendered to a foreign company are taxable unless the supply is a zero-rated export.

Other indirect taxes

Import duty

Import duty is applicable at various rates, depending on the nature and the source of the item.

Excise duty

Excise duty applies to qualifying goods produced and manufactured in Malawi and qualifying goods imported into Malawi.

Conveyancing

Conveyancing applies to land and buildings situated in Malawi.

Stamp duty

Stamp duty is charged at 3% on absolute conveyance or vesting of real property or agreement for sale. Other rates apply depending on the nature of the matter. The transfer of shares is not subject to stamp duty.

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# Mauritius





## Introduction

VAT was introduced in Mauritius with effect from 7 September 1998, to replace the sales tax Act of 1982. VAT is levied in terms of the Value added tax Act, 1998 and the VAT authority is the Mauritius Revenue Authority.

## Rates and scope

### Rates

The standard rate of VAT is 15% and it applies to all supplies of goods and services not qualifying for an exemption or zero-rating. There is no higher or reduced VAT rate.

### Scope

VAT is charged on any supply of goods or services made in the Republic of Mauritius, where it is a taxable supply made by a business that is registered or should be registered for VAT purposes, in the course or furtherance of any business carried on by it.

The importation of goods by any person is also liable for VAT, subject to certain exceptions.

VAT is applicable to the whole territory of the Republic of Mauritius, which includes the island of Rodrigues.

## VAT registration

### Compulsory registration

VAT registration is compulsory where the taxable annual turnover has exceeded MRs2 million.

There is no registration threshold for certain businesses and professions, e.g. domestic banks, insurance agents/brokers, management companies, lawyers, accountants and consultants.

### Voluntary registration

A person making taxable supplies may register voluntarily provided that he can satisfy the VAT authorities that he keeps proper business records and has done so for a period of at least one year prior to the application. He must also satisfy the VAT authorities that he has been discharging his obligations under the revenue laws.

### Group or branch registration

Group registration is not allowed in Mauritius. A branch of a foreign company can register for VAT purposes in Mauritius.

### Nonresidents

A nonresident business is only required to register if it has a permanent establishment in Mauritius and the registration threshold has been exceeded. Nonresident businesses may register in their own name and must appoint a local representative for purposes of filing VAT returns and dealing with related matters.

### Application for registration

A registration form needs to be completed and submitted by the business to the VAT office.

The penalties for late registration, or failure to register, is the higher of MRs200,000 or treble the amount of tax involved, as well as imprisonment for a term not exceeding eight years. The penalty is payable on conviction.

The registration number of a resident and a nonresident business contains eight digits: VAT 99999999.

### Deregistration

A registered person, whether resident or nonresident, who has ceased carrying on business may apply for deregistration.

## Output tax

Prices must be advertised inclusive of VAT. If prices are shown exclusive of VAT, this must be stated clearly.

## Exemptions and zero-rating

### Exempt supplies

Exempt supplies (without input tax credit) include, but are not limited to, the following:

- basic food items;
- pharmaceutical products;
- supplies of ships and aircraft;
- educational and health services;
- public transport;
- financial services, including general domestic banking services, but excluding services in respect of credit and debit cards, safe deposit lockers and the keeping of customers' accounts; and
- insurance services, except services provided by insurance agents, insurance brokers and insurance salesmen.

### Zero-rated supplies

Zero-rated supplies include, but are not limited to:

- goods, other than exempt goods, exported under customs control;
- certain food items such as edible oil, wheat flour and sugar;
- educational material;
- the transport of passengers and goods by sea or air;
- the supply of goods or services other than exempt supplies to the freeport zone;
- the supply of services by management companies to GBL1 and GBL2 companies (formerly known as offshore companies)

- and international companies respectively); and
- the supply of services by a bank in respect of its banking transactions with nonresidents and GBL1 and GBL2 companies.

### Input tax

#### Input tax allowed

Input VAT, which is related to taxable supplies, is generally deductible, while VAT incurred for purposes of exempt supplies cannot be deducted.

#### Input tax expressly denied

The following supplies are specifically denied input VAT deduction:

- motorcars including vehicles for the transport of not more than nine persons, including the driver, and motorcycles for own use, including rental, lease or repair;
- hotel accommodation or lodging;
- catering services;
- entertainment;
- petroleum oil (except for resale and if used in stationary engines) and petroleum gas used for running motorcars and motorcycles;
- goods and services, other than services provided to nonresidents and GBL1 and GBL2 companies, used by banks or services provided by banks; and
- services provided by companies other than banks in respect of credit cards and goods and services used by such companies for providing those services.

#### Partial exemption

If goods and services are used to make both taxable and exempt supplies, input tax is deductible proportionally.

#### Adjustments

Where credit for any input tax has not been taken in the taxable period in which it ought to have been taken, a registered person may take such credit within a period of 24 months of the date the input tax ought to have been taken.

#### Preregistration and post-deregistration VAT

The deduction is allowed on a case-by-case basis.

### Imports

#### Goods

Every person who imports goods, other than exempt goods, is required to pay VAT on such goods.

#### Services

The reverse charge rule applies to taxable services that are supplied from abroad to a person who is VAT-registered in Mauritius. There are no specific invoicing requirements. The onus is on the beneficiary of the services to account for the VAT.

### Exports

#### Goods

Goods, other than exempt goods, exported from Mauritius under customs control are zero-rated.

#### Services

The supply of services to a person who has neither his place of abode nor a permanent establishment in Mauritius is zero-rated, provided that he is outside of Mauritius at the time the services are performed.

#### Refunds to foreigners

Tourists may either purchase goods VAT free from suppliers registered under the 'VAT free supply scheme' and collect such goods at the air/sea port on departure or pay VAT and obtain a refund on departure.

Nonresident businesses cannot get a refund of Mauritian VAT.

### Place, time and value of supply

#### Place of supply

This concept is not defined in the law.

#### Time of supply

A supply of goods or services is deemed to take place at the time an invoice is issued or at the time payment for the supply is received by the supplier, whichever is the earlier. In the case of a hire purchase agreement, the supply is deemed to take place at the time the agreement is made.

#### Value of supply

If the supply is for a consideration in money, its value is the amount which, with the addition of the VAT chargeable, is equal to the consideration. In the case of imported goods, the value is the sum of the customs value of the goods and the customs duty and excise duty payable on the goods.

### VAT compliance

#### Tax periods

Tax periods of one month each apply when the annual turnover of taxable supplies exceeds MRs10 million. Tax periods of three months apply when the annual turnover of taxable supplies does not exceed MRs10 million.

### Returns and payment of VAT

VAT returns must be made monthly or quarterly, depending on the person's tax periods, and must be filed within 20 days. VAT returns may be filed electronically.

VAT is due when the VAT return has to be filed. VAT can be paid in cash, by cheque or bank transfer.

### Interest and penalties

Penalties and interest are charged as follows:

- non-submission of the VAT return – penalty of MRs2,000 per month or part of the month until the return is submitted, provided that the total surcharge does not exceed MRs20,000;
- VAT not paid by the due date – fixed penalty of 5% of the unpaid VAT in addition to interest at the rate of 1% of the VAT per month or part of the month until payment;
- failure to join the electronic system when required – penalty of MRs5,000 per month or part of the month, subject to a maximum penalty of MRs50,000.

### Refunds

Amounts owing by the VAT Authority are normally carried forward. A refund is only available where the input tax relates to capital goods and exceeds MRs100,000. A refund may also be made when the business is mainly engaged in making zero-rated supplies.

### Objections and appeals

Where a person assessed for VAT is dissatisfied with the assessment, he may lodge an objection with the Mauritius Revenue Authority within 28 days of the date of the assessment. Upon determination of the objection, the person may, if he is still dissatisfied, make representations to the

Assessment Review Committee (ARC). It is also possible to appeal to the Supreme Court against the decision of the ARC.

### Time limits

An assessment in respect of a taxable period can only be made within five years from the last day of the taxable period. A claim for input tax can be made within 24 months of the date the input tax was paid.

### VAT records

#### VAT invoices

A registered person making taxable supplies to another registered person is required to issue a VAT invoice for such supplies. Invoices must be issued by the supplier of the goods or services or his agent.

The following information should be specified on the invoice:

- the words 'VAT invoice' in a prominent place;
- the name, business address and the VAT registration number of the supplier;
- the serial number and date of issue of the VAT invoice;
- the quantity and description of the goods or the description of the services;
- the value of the supply exclusive of VAT;
- the amount of VAT chargeable and the rate applied; and
- the name, address and VAT registration number of the recipient.

Invoices may be issued electronically, provided the information required to be specified on an invoice is contained on the electronic invoice. Invoices may be issued in either French or English.

Where invoicing is done in a foreign currency, only the VAT on the invoice should be converted into local currency, at the rate applicable on the date of the invoice.

### Credit notes and debit notes

Credit notes and debit notes are taken into account through adjustments. Documentary evidence may be required by the MRA.

### Additional export documentation

The following information should be specified on the invoice for export purposes:

- name, business address, and VAT registration number of the supplier;
- name and address of the recipient;
- quantity and description of goods/ services supplied and the value thereof; and
- VAT at zero per cent.

### Record keeping

The supplier must keep legible copies of VAT invoices and other records, either on computer or otherwise, in chronological order for a period of at least five years after the completion of the transaction. Records may be kept solely in electronic form, but cannot be kept outside Mauritius.

### Specific VAT rules

#### Bad debts

VAT adjustments may be made in respect of any bad debts written off during the tax period.

#### Land and buildings

No VAT is chargeable on the transfer of land and buildings, except land with any building or part of a building, apartment, flat or tenement together

with any interest in or right over land, sold or transferred by a VAT-registered property developer to a VAT-registered person.

VAT is also payable on the construction of buildings, the contract in respect of which has been entered into after 30 September 2006.

Any input VAT paid in respect of a building forming part of the fixed assets of a registered person may be clawed back proportionally if the building ceases to form part of the fixed assets before the 19th year following the year it was acquired.

## Leasing

Under a lease agreement the supply is treated as a supply of services and the time of supply is the earlier of the date of invoicing or the date of payment for that supply. Under a finance lease, VAT is payable up front by the lessee on the value of the asset leased and no VAT is charged on the interest component of the lease rental.

## Promotional gifts

VAT paid on gifts is not allowed as an input tax deduction.

## Secondhand goods

VAT is levied on sales of secondhand goods and input tax on such goods is creditable.

## Tourism industry

A VAT refund scheme is available for tourists.

## Transfer of a business

Where a business is transferred as a going concern to another person, the latter is deemed to be a taxable person and is required to register as such forthwith.

## Other indirect taxes

### Customs duties

Customs duties are levied on the importation of goods.

## Excise duties

Excise duties are levied on the production of goods such as tobacco, spirits, liquors and alcoholic beverages.

## Taxes on gambling

Taxes on gambling are levied on lotteries, betting and gaming.

## Taxes on transportation

Taxes on transportation are levied in respect of road motor vehicles.

## Registration duty

Registration duty is payable at the rate of 5% on the purchase of immoveable property. Land Transfer Tax is payable on the transfer of immoveable property at 5% if the transfer takes place after 5 years or 10% in other cases. (However, the land transfer tax will be applied at a flat rate of 5% until December 2010.)

## Stamp duty

Stamp duty is payable per page of a document registered, at a negligible amount.

## Contact details – PricewaterhouseCoopers, Mauritius

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# Mozambique





## Introduction

Recently, Mozambique witnessed a tax legislation reform, which also included VAT legislation.

As a result of the tax reform, the VAT Code approved by Decree no. 51/98 of 21 September and its amendments were revoked by Law no. 32/2007 of 31 December, which also approved the new VAT Code that has been in force since 1 January 2008.

Currently the VAT legislation is mainly established in the aforesaid VAT Code and in its Regulation that was approved subsequently by Decree no. 7/2008 of 16 April, as well as other complementary legislation.

In general and in essence, the new VAT code and its regulation follow the same rules as those set in the previous Code approved by Decree 51/98.

## Rates and scope

### Rates

The Mozambique (unique) VAT rate is 17%. Certain goods and services are charged at 0%.

### Scope

VAT is levied on the:

- supply of goods – the transfer of the right to dispose of tangible property as owner, which includes commercial transactions, hire purchase, sale by instalments with reserve of ownership, commission, consignment, and application of goods forming part of a business for private use or for non-business purposes when on such goods tax has been deducted, use of goods on which tax has been deducted for a purpose or in a sector where right of deduction is excluded;

- supply of services – as a residual concept it includes all the operations carried out that are not a supply of goods, including the supply of services free of charge made by the company in view of the personal needs of the company or of its staff, or to purposes not related to the company, and the personal use of a company's goods as well as its use for purposes not related to the company and in exempt sectors of activity when input tax has been deducted on such goods;
- importation of goods, being the entry of goods into the territory of the country.

The following persons will be liable for the payment of VAT:

- any person carrying on an economic activity on an independent and regular basis;
- any person carrying on an operation on an occasional basis;
- nonresidents carrying on operations;
- importers (whether or not they are entrepreneurs);
- cases of self-assessment;
- any person who unduly charges VAT on an invoice; and
- the state, except if those activities are not carried out in a significant manner (including telecommunications, water, gas and electricity distribution, transport, ports and airports, TV and radio, etc).

## VAT registration

### Compulsory registration

All corporate or individual entities carrying out taxable economic activities are obliged, prior to the start of their activities, to register themselves with the competent Tax Department.

### Voluntary registration

No provision is made for voluntary registration.

### Group or branch registration

Companies in the same group (holding company and subsidiaries) cannot apply for one registration for the whole group as each company must be registered separately.

Companies or branches of foreign entities only register for tax once – if they open additional offices within the country, it is under the same registration. Each foreign entity registering as a branch is specifically registered for VAT.

### Nonresidents

Nonresident entities, without permanent establishment in Mozambique, carrying out transactions in the national territory, should appoint a resident legal representative to comply with the respective VAT obligations.

If the VAT representative of the nonresident company is an entity already registered with the Tax Authorities, the registration of the nonresident entity is made through the completion and submission of the form 'Declaration of Amendments'.

If the VAT representative of the nonresident company is an entity not registered with the Tax Authorities, the registration of the nonresident entity is made through the completion and submission of a form designated Model No. 6 – 'Declaration of registration of companies'.

The legal representative and the nonresident entity are severally liable before the Mozambican Tax Authorities.

Should the nonresident entity fail to appoint a legal representative in

Mozambique, the tax obligations in respect of the transmission of goods or performance of services must be complied with by the purchaser of the goods or the recipient of the services.

### Application for registration

The tax registration is made by the completion and submission to the tax authorities of a proper application form designated Model No. 6 – ‘Declaration of registration of companies’ to obtain a tax number. The start of activity is made by completion of Model No. 1 – ‘Declaration of start of activity for tax purposes’ – 15 days prior to commencement of tax activities.

The registration number normally comprises nine or ten numerals and is called NUIT – Unique Number of Tax Identification (‘Número Único de Identificação Tributária’) and it is also the tax number for all taxes (direct and indirect).

### Deregistration

Deregistration is made by the completion and submission to the Tax Authorities of a proper application form, Model No. 4 – ‘Declaration of ceasing of activity’.

### Output tax

Output tax is calculated by applying the VAT rate of 17% to the selling price. There are no specific requirements for the calculation of output VAT.

### Exemptions and zero-rating

#### Single exemptions

Single exemptions (without credit) are applied, amongst others, to transmission or supplies of the following goods and services:

- medical and sanitary services and strictly connected operations, carried out by hospitals, clinics and dispensaries;
- wheelchairs and similar vehicles for disabled people and any prosthetic or compensation material intended for substitution of any limb or organ of the human body, or intended for treatment of fractures, as well as those intended to be used by blind people or for hearing deficiency correction;
- human organs, blood and milk;
- transport of sick or wounded people in ambulances by duly authorised entities;
- mosquito nets;
- medicines, including those intended for veterinary purposes, pharmaceutical specialities and other pharmaceutical products intended exclusively for therapeutic and prophylactic ends, as well as plasters, bandages, cotton, cotton-wool, adhesive bands and other similar products;
- goods and services related to social assistance, provided by public entities or nonprofit organisations;
- services and strictly connected goods, supplied by nurseries, kindergartens, centres of leisure, establishments for abandoned children and youths, homes for the aged and invalids, establishments for children and youths with disabilities, rehabilitation centres and other similar establishments pertaining to public entities or nonprofit organisations;
- services supplied by public entities or nonprofit organisations engaged in the pursuit of sports, culture and physical training activities;
- services supplied by guides on visits at museums, parks or other places belonging to the state or other nonprofit entities. This exemption includes the supply of strictly connected goods;
- services and related goods, supplied by public entities or nonprofit entities related to congresses, conferences, seminars or similar activities of a scientific, cultural, educational and technical character;
- educational services and related goods, carried out by an approved establishment;
- lessons given by an individual on school and/or university subjects;
- professional training services and related goods, including, accommodation, food and tutorial material, carried out by public entities;
- intellectual property rights and the authorisation to use intellectual property by the respective authors or heirs;
- newspapers, magazines and books considered being of a cultural, educational or technical character;
- cession of staff, by religious or philosophical entities, for the execution of exempt activities under the terms of the VAT Code or for purposes of spiritual assistance;
- services supplied by nonprofit entities in the collective interest of its members provided that the consideration given by the members is only a fixed fee in terms of the entities’ Articles of Association;
- goods and services supplied by exempt entities, related to occasional events for fund raising to a maximum of eight events per year;
- stamps at their face value;
- public service of garbage removal;
- funeral services and accessory goods;
- banking and financial operations;
- insurance and reinsurance operations;
- lease of immovable property for residential purposes or for commercial, industrial or services, provided that the immovable property is located in a rural area;

- operations subject to Property Transfer Tax (SISA);
- exploration and practice of certain games of luck and social entertainment;
- goods allocated exclusively to an exempt sector of activity or that do not entitle one to a right of deduction;
- goods and services pertaining to agricultural, forestry, cattle and fishing activities;
- certain equipment, seeds, procreators, fertilisers and fungicides, as well as fishing nets, hooks and other tools for fishing;
- alimentary oil and soaps;
- sugar; and
- acquisition of raw material, intermediary products, spares, equipment and components made by the national sugar industry.

### Complete exemptions (zero-rated supplies)

The following transactions are fully exempted:

- exports (such as transactions and international transport);
- maize flour, rice, bread, iodated salt, powdered milk for infants up to one year, wheat, wheat flour, fresh or refrigerated tomatoes, frozen horse-mackerel ('carapau'), illuminating paraffin, 'jet-fuel', mosquito nets, common bicycles and condoms;
- some products resulting from the industrial activity of production of rations for feeding of animals for human consumption;
- transmission of goods to be used as raw material in the alimentary oil and soap industry, resulting from the industrial activity of production of alimentary oil and soap, carried out by the relevant factory; and

- transmission of goods and supply of services related to the agricultural activity of production of sugarcane and destined for the industry.

### Input tax

#### Input tax allowed

VAT is fully recoverable, subject to complying with the legal requirements, in the case of taxpayers carrying out fully taxable activities. Taxpayers carrying out VAT exempt activities are not entitled to claim any input credit.

#### Input tax expressly denied

Input tax is expressly denied in the following circumstances:

- passenger or passenger/goods vehicles, pleasure boats, helicopters, aircrafts and motorcycles;
- fuel used for cars, except for diesel fuel, where 50% of the tax is deductible. However, diesel is fully deductible if related to tractors used for agricultural purposes, certain machines, and large vehicles licensed for the transportation of people or goods, excluding those used in the rent-a-car sector;
- expenses with business trips and transport for the entrepreneurs or employees;
- lodging, food and drink, tobacco and entertainment expenditure;
- telephone communication costs, except those related to fixed telephones in the name of the company; and
- diversion and luxury expenses.

#### Partial exemption

Taxpayers simultaneously carrying out taxable and exempt activities can recover VAT on inputs on an apportionment basis.

### Adjustments

Application of goods that are part of a business for private use or for non-business purposes when VAT has been deducted on such goods is considered a supply of services. Therefore the taxpayer must pay VAT to the tax authority.

### Preregistration and post-deregistration VAT

There are no specific rules regarding the recovery of VAT prior to registration or after deregistration. Companies intending to recover preregistration or post-deregistration VAT should submit an application to the competent Tax Authorities requesting their legal opinion on such procedure.

### Imports

#### Goods

VAT is payable by any importer on the importation of goods. However, importation of the following goods is exempt from VAT:

- goods that are exempt when sold within the country;
- certain goods that are duty exempt or declared to suspension procedures;
- importation of gold by the Bank of Mozambique;
- re-importation of goods by the entity that exported the goods, when they are exempt from import duties;
- ships and aircraft used in the international trade and goods for provisioning and fuelling thereof;
- importation of art objects by the respective artists, authors, heirs or legatees;
- certain other exemptions and reductions recognised by the Minister of Finance; and

- goods classified as class K according to the Customs Tariff Schedule.

## Services

The general rule is that any performance of services is taxable if the service provider has its headquarters, permanent establishment or domicile from which the services are rendered in Mozambique.

However, the performance of the following services are always taxable regardless of the service provider having its headquarters, permanent establishment or domicile in Mozambique:

- services related to an immovable property located in Mozambique;
- services performed on movable tangible goods and inspections related to them, if executed totally or essentially in Mozambique; and
- services of an artistic, scientific, sports, entertainment, educational and similar nature that take place in Mozambique.

The following services are also always taxable when the customer is established or domiciled in Mozambique –

- cession or authorisation for use of copyright, licences, trademarks and similar rights;
- advertisement services;
- telecommunication services;
- services provided by consultants, engineers, lawyers, economists and accountants, as well as study offices in several areas, such as organisation, research and development;
- supply of information and data;
- banking, financial, insurance and reinsurance operations;

- disposal of personnel in favour of a third party;
- intermediary services that intervene in the name and on behalf of a third party in the performance of services therein;
- the obligation of not exercising, even if partially, a professional activity or a right mentioned above; and
- leasing and renting of movable assets.

Should the service provider not have appointed a legal representative in Mozambique, the tax obligations in respect of the transmission of goods and performance of services must be complied with by the purchaser of the goods or the recipient of the services by the application of the self-assessment rules.

## Exports

### Goods

Exportation of the following goods is subject to complete exemption from VAT (i.e. zero-rating):

- goods shipped or transported abroad by or on behalf of the seller;
- goods shipped or transported abroad by a customer without residence or establishment in Mozambique, except goods destined to the supply of ships, tourism aircraft or any other means of conveyance for private use.

The following supplies of goods are considered as operations assimilated to exports and, therefore, are subject to VAT exemption:

- supply of provisioning goods for vessels that carry out maritime navigation on the high seas, the remunerated transport of passengers, a commercial, industrial or fishing activity, rescuing or maritime assistance and coastal fishing;

- supply of goods under diplomatic and consular relations, in accordance with international agreements;
- supply of goods to certain international entities;
- supply of goods to recognised entities that export the goods abroad in the ambit of their humanitarian, charitable or educational activities;
- supply of goods by the Mozambican public railway entity to foreign railway companies; and
- supply to the Bank of Mozambique of gold ingots or other forms of gold.

## Services

The following services are also considered as operations assimilated to exports and, therefore, are subject to VAT exemption:

- transmission, transformation, repair, maintenance, freight and lease of vessels relating to certain activities;
- transmission, transformation, repair, maintenance, freight and lease of aircrafts used by airline companies dedicated to international traffic, and the supply of provisioning goods for aid aircraft;
- services directly related to goods exempt from tax, being temporary imports or transits, or entered in deposits of the customs regime;
- services related to the shipping of goods abroad;
- services supplied by the Mozambican public railway entity to foreign railway companies;
- transport of persons proceeding from or going abroad; and
- works on movable assets acquired or imported for purposes of such works, which are afterwards shipped or transported abroad.



Furthermore, as stated above, the general rule is that all performance of services is taxable, provided that the service provider has its headquarters, permanent establishment or domicile in Mozambique from which the services are rendered.

However, the aforesaid rule comprises certain exceptions, namely that the performance of certain services is not taxable when the customer is established or domiciled outside of Mozambique, even if the service provider has its headquarters, permanent establishment or domicile in Mozambique. The said services that are VAT exempt are the following:

- cession or authorisation for use of copyright, licences, trademarks and similar rights;
- advertising services;
- telecommunication services;
- services provided by consultants, engineers, lawyers, economists and accountants, as well as study offices in several areas, such as organisation, research and development;
- supply of information and data;
- banking, financial, insurance and reinsurance operations;
- disposal of personnel in favour of a third party;
- intermediary services that intervene in the name and on behalf of a third party in the performance of services therein;
- the obligation of not exercising, even if partially, a professional activity or a right mentioned above; and
- leasing and renting of movable assets.

### Refunds to foreigners

To PricewaterhouseCoopers Mozambique's best knowledge, the Mozambican authorities have not yet implemented the mechanisms that

allow tourists and foreign entities to be refunded the VAT paid on their local purchases when they leave the country.

## Place, time and value of supplies

### Place of supply

VAT is levied on the supply of goods or services carried out in Mozambique (territoriality concept), as well as on imports.

In the case of goods, the general rule is that the taxable operation takes place where the transport to the person to whom the goods are supplied begins or where the goods are when the supply takes place (except in the case of transactions by the importer before clearance of the goods upon importation).

In the case of services or works, the general rule is that the taxable operation takes place at the supplier's business or permanent establishment from which the services are rendered, or its permanent address.

The following exceptions apply:

- services related to immovable property located outside Mozambique – place of property;
- works on movable goods executed totally or mainly outside Mozambique – place where the service takes place;
- services of artistic, scientific, sports, recreational, educational and similar nature, executed outside Mozambique – place where the service takes place;
- transport – where effected or distance covered.

Under the self-assessment rules, supplies of specific services (such as telecommunications, royalties, licences, trademarks, copyrights, advertising consulting, engineering, lawyers,

economists, accountants and research and Development (R&D) services, supply of staff, lease [including financial leasing] of movable goods, etc.) are taxable in Mozambique, even if the supplier fails to register, provided the customer is a taxable person. However, these supplies would not be taxable if the customer were a foreign entity, even if the supplier were a resident entity.

### Time of supply

The time of supply rules determine when VAT becomes chargeable and the time from which the Tax Authorities may reclaim tax. These two relevant moments may not occur simultaneously whenever an invoice or equivalent document is issued, although the term for invoicing is counted from the taxable event.

As such the normal rules of taxable event are the following:

- supply of goods – when the goods are delivered to the customer;
- supply of services – when the service is concluded;
- imports – when the goods are cleared at customs;
- supply of goods with transport – when the transport begins;
- supply of goods with assembling – time of conclusion;
- supply of continued services – at the end of each period;
- self-consumption and free supplies – when they occur;
- supply of goods from principal to commissionaire – when the goods are delivered to the customer;
- consignment stock – when delivered to customer or after 180 days; and
- delivery of goods before the transferring effect of a contract (except hire purchase and sale on instalments) – when such effects take place.

VAT becomes chargeable as follows:

- date of invoice – if the term for issuing is complied with (five working days counting from the taxable event);
- end of term – if the term is not complied with; and
- upfront invoices and advanced payments – immediate chargeability of VAT.

## Value of supply

In the case of goods and services, the value is the value of the consideration (including any taxes and duties other than VAT, and expenses related to commissions, packaging, transport and insurance paid on behalf of the customer).

In the case of imports, the value is the customs value increased by customs duties and other import taxes and complementary expenses (such as packaging, transport, insurance) up to the first destination of the goods in Mozambique.

## VAT compliance

### Returns and payment of VAT

The following returns must be submitted:

- starting of activity return – to be submitted to the Tax Department 15 days before starting the activity (Model No. 1);
- tax registration return – to be submitted to the Tax Department before starting the activity (Model No. 6);
- monthly returns with payment – to be submitted up to the last day of the following month;
- amendments return – to be submitted within 15 days after the alteration of any information included in the Declaration of Start Activity the company; taxpayers

should submit a Declaration of Alterations to the same entity; and

- close-down return – to be submitted within 30 days of the relevant Declaration.
- VAT payments must be made as follows:
  - VAT due by taxpayers for the month must be paid to the competent Tax Department by the last working day of the following month; and
  - VAT assessed must be paid within 30 days after termination.

### Interest and penalties

The nonpayment or late payment of the VAT due is subject to a fine that may vary from the amount of unpaid tax to double this amount, but not exceeding MZN2.5 million.

Interest may also be applicable should there be an amount of VAT due. The applicable interest rate is MAIBOR – 12 months plus 2% in force at the date of assessment.

### Refunds

Whenever there is a right to deduct VAT, the amount of deductible VAT must be offset against the amount of VAT due on a monthly basis. If the amount of deductible VAT exceeds the amount due, the difference shall be deductible within the subsequent months. If after 12 months, the amount of credit subsists and is higher than MZN50,000, the taxpayer may apply for the relevant refund.

Irrespective of the 12-month term, the taxpayer is allowed to request a VAT refund when:

- it ceases the activities;
- it starts carrying on exclusively VAT exempt operations with no right to deduction or is qualified under the exemption or simplified regimes; or

- the amount of credit exceeds the fixed limit of MZN50,000.

The deadline legally established for the Tax Authorities to refund VAT is 30 days. If the deadline is not met, interest will be paid upon special request by the taxpayer.

### Objections and appeals

The Tax Authorities issue assessments and taxpayers are entitled to contest such assessments. The process is regulated not only for objection but also for appeal to the administrative court.

### Time limits

The tax liability for any taxpayer exists for up to five years. There is no prescription period for the obligation to charge VAT on a transaction, but we can assume that this obligation falls away after five years.

After one year, input tax may be claimed only upon recognition by the Tax Authorities of such tax credit.

## VAT records

### Tax invoices

Invoices must be issued by any person/entity which carries out an economic activity on an independent and regular or occasional basis. Therefore, we understand that agents may also issue invoices.

Regardless of the process of issuance of the invoice, all wording must be in Portuguese. However, the tax authorities do accept that English may be used alongside the Portuguese wording.

As per VAT Regulations in Mozambique, an invoice will only be valid for VAT purposes if it is either –

- printed by a local printing company, authorised by the Ministry of Finance; or
- issued by invoicing software authorised by the Ministry of Finance.

VAT Invoices have to comply with the following requirements –

- name, address and tax registration number (NUIT) of the supplier and customer;
- date and unique sequential number;
- number and type of goods supplied;
- the price net of VAT;
- the VAT rate (17%), the value of the VAT charged and (separately) any exempt goods, with specific indication of the legal article granting exemption;
- if the invoice is issued by an authorised printer it should include the name of the printer, the authorisation number and the tax registration number of the printer;
- if the invoice is issued by software previously authorised by the Ministry of Finance, it has to include the expression ‘processed by computer’; and
- invoices must be issued in meticaís.

### Credit notes

Credit notes are used in the case of the cancellation or reduction of the value of a past operation adjusting the relevant value. Credit notes must always make reference to the invoices to which they relate.

VAT on credit notes may or may not be included, i.e credit notes may only adjust the operation’s value without modifying the VAT position, since in normal circumstances VAT charged by the supplier has been deducted by the customer. Normally, the inclusion of VAT on credit notes does not have a financial effect on the state.

### Additional export documentation

Export transactions should be reflected in the company’s records through the specific form issued by the customs authorities for every export made (namely the DU – ‘Documento Único’), as well as any other documentation that supports the transaction (e.g. invoices).

### Record keeping

The following records must be kept:

- statutory accounting system – records of all operations according to their VAT treatment; original invoices received and duplicates of invoices issued;
- special records when invoicing is waived (e.g. sales by retailers and traders in market places; supply of services in certain circumstances);
- VAT books (for taxable persons without a statutory accounting system) – records of inventories, supplies of goods and finished products, services rendered, operations on fixed assets and inventories, byproducts and consumables, as at 31 December each year.

All books, records, supporting documents and other documentation related to programming and treatment of data, when accounting is carried out through a computer system, must be kept for ten years.

The accounting documentation must be kept within the country at the company’s headquarters or by its legal representative, to allow the Tax Authorities access to the documents when required.

As the scanning of documents is not expressly allowed, authorisation for scanning should be requested from the Tax Authorities.

## Specific VAT rules

### Bad debts

A taxpayer may deduct the VAT previously invoiced to the debtor only if the debt has been formally recognised by the court as a bad debt within an insolvency, bankruptcy or liquidation process. If the taxpayer subsequently recovers part of the outstanding debts, he must account for output tax.

### Land and buildings

Land in Mozambique is state-owned and, therefore, it is not possible to sell, transfer and give as mortgage or pledge the state-owned land. Entities are only granted the right of use of land for a determined period of time.

Operations subject to Property Transfer Tax (SISA) are exempt from VAT. As the onerous transfer of buildings is subject to SISA, such operations are VAT exempt.

On the other hand, the lease of immovable property is single-exempted when intended for residential purposes or for commercial, industrial or services use, provided that the immovable property is located in a rural area. Otherwise, the lease of immovable property is subject to VAT.

### Leasing

As financial operations are exempt from VAT, leasing is exempt from VAT.

### Promotional gifts

Promotional gifts and samples are not considered a supply of goods and are therefore not subject to VAT. The Ministry of Finance will determine the maximum value of promotional gifts and samples that are not subject to VAT.



## Secondhand goods

Secondhand goods are subject to VAT. The tax is applicable to the difference between the sale price and the purchase price. The invoices issued by the taxpayers engaged in selling secondhand goods must contain the wording 'VAT – secondhand goods'. Special accounting is required to evidence the calculation of VAT.

Exports of secondhand goods are, in most cases, zero-rated.

## Retailers and service providers scheme

Retailers and service providers may issue invoices with prices that do not disclose the amount of VAT charged.

## Travel agencies and organisers of tourism circuits

Where tour operators act in their own name, VAT is chargeable on the gross margin only. The taxable amount is calculated as:

$$\frac{(\text{sales with VAT} - \text{purchases with VAT}) \times 100}{117}$$

Invoices issued for these operations should not disclose the VAT amount and should include the wording 'VAT included'. Even if the VAT is shown separately on the invoice it cannot be deducted. These operations must be accounted for in a separate record (of a special model) showing the calculation of VAT.

## Transfer of a business

Transfer of a whole business or independent part thereof is excluded from taxability, provided the recipient is or will become a taxable person. All goods not found in the place where the taxable person runs his business,

forming part of his inventories and those consumed in excessive quantities, will be presumed to have been transferred or sold.

## Other indirect taxes

### Import duty

Import duties are levied on imports of goods. The taxes vary according to the Customs Tariff Schedule.

### Specific consumption tax

This tax is levied on purchases of certain merchandise manufactured in Mozambique or imported. The tax rates are listed in a table and range from 20% to 75%. Kindly note that this code will be amended in the near future.

### Property transfer tax

Property transfer tax (SISA) is charged on the onerous transmission of property rights or other minor rights over immovable property (e.g. sale and purchase, accord and satisfaction, constitution of servitudes, etc.) considered as urban tenements located in the Mozambican territory. Urban tenements is any building on the land, with the grounds that serve it, where the source of income depends mainly on the existing structures and not on the land itself.

The obligation to pay the property transfer tax is generated at the moment that the onerous transmission of a property right or a minor right as referred to above is considered transmitted (including as referred above, the signature of promise of sale agreements).

The current rate of property transfer tax is 2% of the transmission value.

## Stamp duty

Stamp duty is assessed on all documents, contracts, books, papers and deeds designated in the schedule attached to the code. Transactions that are subject to VAT and not exempt are not subject to stamp duty.

Some of the amounts and rates indicated in the stamp duties schedule are as follows:

- shares, bonds and any instrument representative of share capital – 0.4%;
- sale and purchase, exchange and transfer of immovable property – 0.2%;
- lease and sublease of immovable property – 2%;
- mortgage and pledge – 0.3%;
- notarial deeds – MZM250,00;
- powers of attorney with any other power – MZM100,00;
- loans (credit for a term of five years or longer) – 0.5%;
- legal, judicial, fiscal and customs proceedings (per page) – MZM1,000; and
- warranty insurance – 3%.

The following entities are responsible for assessing and paying over stamp duty:

- notaries, civil, commercial and real estate registrars and other public entities;
- entities that grant credit or guarantees or creditors of interest, premiums, commissions and other forms of consideration;
- resident credit institutions, finance companies or other similar entities that have discounted credit instruments, intermediated in credit operations;

- borrowers, beneficiaries under guarantees or debtors of interest;
- insurance companies;
- issuers of bills and other credit instruments;
- lessors and sublessors; and
- other entities that participate in deeds and contracts or issue or use documents, books, instruments or papers.

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# Namibia



## Introduction

VAT was introduced in Namibia on 27 November 2000 with the enactment of the Namibian Value Added Tax Act, 10 of 2000 ('VAT Act') to replace sales tax and additional sales levies. The VAT authority is Inland Revenue, a division of the Ministry of Finance.

## Rates and scope

### Rates

The standard VAT rate is 15% and applies to all supplies of goods and services not qualifying for the zero rate (0%), or an exemption. The effective VAT rate for the importation of items subject to 15% VAT will be 16.5%, due to a 10% upliftment factor.

### Scope

The following transactions are generally subject to VAT:

- the supply of goods and services for consideration within the territory of Namibia performed by a taxable person; and
- the importation of goods by any person.

The following supplies are considered outside the scope of VAT:

- employment services;
- provision of goods on consignment;
- hobbies;
- exempt supplies;
- branch activities outside Namibia;
- registration and issuing of a licence by a registering authority;
- levying of tax or levies by the state or local/regional authorities under any Act of Parliament; and
- any activity conducted by the state.

## VAT registration

### Compulsory registration

A business that has a turnover of N\$200,000 or more per year is obliged to register.

### Voluntary registration

A business can choose whether it wants to register if its turnover is below N\$200,000.

### Group registration

No group registration is allowed.

### Nonresidents

A nonresident business must register for VAT if it is performing taxable activities in Namibia and the turnover exceeds N\$200,000.

It is important to note that in order to register for VAT purposes, a business is required to prove that it has a Namibian bank account and that it has business premises in Namibia.

The VAT registration of a nonresident business does not necessarily create a permanent establishment for direct tax purposes.

### Application procedures

A business should complete a VAT registration form, which can be obtained from Inland Revenue.

The VAT number is the first seven digits of the income tax number, followed by 015, i.e. 9999999 015. For the VAT import account, the VAT number is the first seven digits of the income tax number, followed by 016, i.e. 9999999 016.

## Deregistration

A registered person can only deregister after a period of two years of being registered.

## Output tax

Prices charged by a registered person in respect of a taxable supply are deemed to include the VAT payable on the supply.

Prices advertised or quoted by any registered person in respect of a taxable supply must include VAT and the registered person must state, in the advertisement or quotation, that the price includes VAT. If a person wishes to advertise or quote a price exclusive of VAT, he may nevertheless do so, provided that the VAT amount is also indicated.

## Exemptions and zero-rating

### Exempt supplies

Exempt supplies include (but are not limited to):

- financial services;
- educational services;
- medical services;\*
- public transport of persons;
- fringe benefits; and
- supplies to nonresident heads of state.

\* Medical services will be zero-rated once the VAT Act has been amended to give effect to the announcement made by the Minister of Finance during her Annual Budget Speech, 2009.

## Zero-rated supplies

Zero-rated supplies include (but are not limited to):

- exportation of goods;
- fuel;
- maize meal and mahango;
- sunflower cooking oil, fresh and dried beans, fried out or processed animal fat used for the preparation of food, bread and cake flour(sifted and unsifted) and bread;\*
- international transport; and
- erection, extension and sale of land and buildings for residential purposes.

## Input tax

### Input tax allowed

The VAT paid or payable in respect of the import of goods and taxable supplies made to registered persons during the tax period in the course or furtherance of a taxable activity carried on by a registered person can be recovered as input tax.

Input tax claims may be made within a period limited to three years after the end of the tax period during which a taxpayer became entitled to that for the first time.

No input tax deduction is allowed in respect of exempt supplies.

### Input tax expressly denied

VAT incurred relating to the following goods and services is specifically denied input VAT deduction:

- entertainment;
- passenger vehicles; and
- subscriptions of a sports, social or recreational nature.

However, certain types of persons may deduct the input tax on passenger vehicles. They are:

- persons dealing in or hiring out motor vehicles;
- tour operators;
- short-term insurers if the vehicle was acquired to indemnify a client under a short-term insurance contract;
- but the subsequent sale of the vehicle will be subject to VAT; and
- charitable organisations.

### Partial exemption

The VAT Act makes provision for only one apportionment method which should be utilised by persons rendering a mixture of taxable and exempt supplies. The method is based on the application of a turnover ratio using the turnover of the previous financial year as a basis (certain special rules apply to the banking sector). If the percentage of exempt supplies in relation to total supplies is less than 10%, the registered person does not have to apportion the input tax paid on its expenses.

### Adjustments

No special rules apply.

### Preregistration and post-deregistration VAT

A registered person is allowed a deduction in the first tax period in which the person is registered, for input tax paid by the person on taxable supplies or imports of goods (in both cases other than capital goods) before becoming registered. This is subject to the following requirements:

- the supply must have occurred not more than four months before the date of registration; and
- the goods must be on hand at the date of registration.

A person whose VAT registration is cancelled shall be deemed to have made a taxable supply of any goods on hand at date of deregistration in respect of which that person has been allowed an input tax claim. The person is deemed to make that supply at the open market value of the goods concerned.

## Imports

### Goods

VAT is payable on the importation of goods at the greater of the free-on-board value plus the upliftment factor of 10% (effectively 16.5%), or the open-market value of the imported goods. Import VAT paid may be claimed back should the person be registered for VAT and render taxable supplies.

Only cash or Namibian bank guaranteed cheques are acceptable by Customs for payment of VAT on importation of goods, unless the importer has arranged for a VAT import account facility at Inland Revenue and the facility has been registered at Customs.

All imports are recorded electronically on the Customs Asycuda system. Inland Revenue has been linked to the Customs Asycuda system, making it possible to determine import VAT liability based on the reports of monthly imports produced by the Asycuda system.

### Services

VAT on imported services (the so-called reverse charge) is only levied to the extent that such imported services are utilised or consumed other than to make taxable supplies. VAT on imported services is levied at 15% of the value of the supply.

Essentially, only exempt or partially exempt taxpayers (for example banks and life insurers) are thus impacted

\* Milk and sugar will be added to the list of zero-rated services once the VAT Act has been amended to give effect to the announcement made by the Minister of Finance during her Annual Budget Speech, 2009.

by the reverse charge. Nonregistered persons who import services theoretically also have to declare and pay VAT on these imported services.

### Exports

#### Goods

Exports consigned and delivered outside Namibia are zero-rated, subject to the interpretation embodied in a Practice Note (Practice Note 1 of 2001). Nonresidents qualify for refund of VAT paid on purchases of goods in Namibia and exported by them.

#### Services

Services generally supplied to nonresidents who are outside Namibia at the time the services are rendered are zero-rated, provided that these services do not relate to movable or immovable property situated in Namibia.

A supply of services physically rendered outside Namibia is zero-rated.

#### Refunds to foreigners

Tourists qualify for refunds of VAT upon presentation of goods bought in Namibia to Customs at the point of exit from Namibia, subject to presentation of a tax invoice to the VAT Refund Administrator (VRA).

Nonresidents qualify for refunds of VAT upon presentation of proof of export (Customs-stamped export bill of entry) and a tax invoice. Refunds are dealt with by the VRA.

Nonresident businesses can file a claim with the tax administration for a refund of VAT charged on the export of goods (where the goods were not consigned and delivered by the Namibian supplier). Such refunds do not apply to goods and services consumed in Namibia.

A refund must be claimed within three years from the date the excess arose.

Payment will be withheld until the registered person furnishes the return or claim supported by documentary proof and tax invoices.

### Place, time and value of supplies

#### Place of supply

There are no place of supply rules in Namibia.

#### Time of supply

A supply is deemed to take place at the earlier of issuing a tax invoice or the receipt of payment. Special rules apply to supplies between connected persons and certain other supplies.

#### Value of supply

VAT is levied on the consideration received. If a supply is carried out between connected persons, the supply is deemed to be made at the open market value if the recipient of the supply is not registered for VAT purposes. If the recipient is registered, the value of the supply is the amount of the consideration.

### VAT compliance

#### Returns and payment of VAT

A VAT return must be made bimonthly and must be filed within 25 days after the end of the tax period. A tax period is a period of two calendar months, except for farmers who may elect a tax period of 2, 4, 6 or 12 months.

A penalty of N\$100 per day will be levied for any outstanding VAT returns in addition to 10% of the outstanding VAT per month or part of a month. Electronic filing of VAT returns is not allowed. VAT payable must be paid

when the VAT return has to be filed.

A separate import VAT return must be filed every month, within 20 days after the last day of the relevant month. VAT on imports must be paid monthly.

VAT can be paid in cash or by way of a cheque. Internet banking payments are not accepted, but a bank transfer into a specific Bank of Namibia account can be effected. Payments larger than N\$5 million have to be made by bank transfer.

#### Interest

Interest is levied at the rate of 20% per annum of any unpaid VAT calculated from the date from which payment was due until the last day of the month preceding the date on which payment was made. Interest is calculated daily and compounded monthly.

#### Refunds

A refund can be claimed on the VAT return, or (in case of overpayment of VAT) per written application to the Commissioner for Inland Revenue. In a refund situation, a business may not deduct the refund from the next period's payment.

#### Objections and appeals

The VAT Act makes provision for an objection and an appeal process. However, the Act specifically defines appealable decisions, thus rendering certain decisions by the Minister not subject to appeal, for example the decision to deregister a taxpayer for VAT purposes.

VAT due in terms of an assessment issued by Inland Revenue must first be settled before the assessment can be objected against. However, the Directorate does not always enforce this requirement strictly.



## Time limits

Input tax not yet claimed may be deducted if such input tax arose from a transaction that occurred during the current or immediately preceding two VAT periods (i.e. input tax older than 6 months cannot be claimed). However, Inland Revenue has granted a dispensation that input tax may be claimed for a period of three years.

## VAT records

### Tax invoices

An invoice for VAT purposes must contain the following information:

- the words ‘tax invoice’ must be shown in a prominent place;
- the name, address and VAT identification number of the supplier;
- the name, address of the recipient (purchaser);
- the serial number of the invoice;
- date of issue;
- a description of the goods or services supplied;
- the quantity or volume of the goods or services supplied; and
- the total amount of the tax charged, the purchase price, excluding tax and the purchase price including tax.

Electronic invoices are not accepted, foreign languages on invoices are not allowed and invoicing may not be done in a foreign currency.

There is no requirement to state the VAT registration number of the customer on the tax invoice.

### Credit notes and debit notes

A tax credit note or tax debit note must contain the following particulars:

- the words ‘tax credit note’ or ‘tax debit note’ in a prominent place;
- the name, address and VAT registration number of the registered person making the supply;
- the name and address of the recipient of the supply;
- the date on which the tax credit note or tax debit note was issued;
- the value of the supply shown on the tax invoice, the correct amount of the value of the supply, the difference between those two amounts, and the tax that relates to that difference;
- a brief explanation of the circumstances giving rise to the issuing of the tax credit note or tax debit note; and
- sufficient information to identify the taxable supply to which the tax credit note or tax debit note relates.

### Additional export documentation

In case of an export, a business must present the following data:

- a tax invoice; and
- a stamped SAD 500 (Customs and Excise declaration for home consumption).

### Record keeping

Records must be kept for a period of five years. Records cannot be kept solely in electronic form – paper copies are still necessary.

The original purchase invoices and copies of all sales invoices must be kept in Namibia. Accounting records (i.e. trial balances, general ledgers, cashbooks, etc.) may be kept in another country, provided that these are kept on an electronic system that is linked to Namibia and that print-outs can be provided within 24 hours after receiving a request for documents from Inland Revenue.

## Specific VAT rules

### Bad debts

Amounts written off as bad debts qualify for deduction as input VAT.

### Land and buildings

Services to nonresidents directly in connection with land or buildings in Namibia are subject to VAT.

Supplies of goods and services comprising the sale of immovable property or the erection of or extension to a building used for residential purposes are zero-rated for VAT purposes.

VAT at 15% is applicable to the sale and the leasing of commercial property. In the case of a sale of commercial property, VAT is levied in addition to transfer duty.

### Leasing

Rentals of buildings used solely for commercial purposes are subject to VAT at the standard rate. Rentals of buildings used solely for residential purposes are exempt from VAT. Financial lease payments to a bank, financier or dealer are not subject to VAT.

### Promotional gifts

Promotional gifts that are not part of the normal stock of the retailer may be provided exempt from VAT.

### Secondhand goods

A deemed input tax credit is available to a registered person when acquiring used goods from a person who was not entitled to claim input tax on such goods. This provision essentially requires that the person from whom the used goods have been acquired must have paid input tax on the original acquisition of such goods and



was not entitled to claim an input tax credit on such goods. It is submitted that this can only apply in respect of secondhand goods acquired by a nonregistered person after the introduction of VAT in Namibia (as VAT must have been charged on the original acquisition) or in respect of secondhand goods acquired from a person rendering exempt supplies and who acquired such goods after the introduction of VAT and utilised such goods acquired solely in the making of exempt supplies.

Prior to 1 October 2004, an input tax claim was allowed on the acquisition of any secondhand goods from a nonregistered person, irrespective of whether or not that nonregistered person in fact paid VAT on the acquisition of such goods.

### **Tourism industry**

The VAT paid on passenger vehicles and entertainment services acquired by tour operators qualify for deduction of input tax. Services by a tour operator to nonresidents are subject to VAT.

### **Transfer of a business**

The sale of a business as a going concern is a zero-rated supply for VAT purposes. However, in order to obtain the zero-rating, notification to Inland Revenue is required within 21 days of the date of the sale. It is thus not possible to obtain a zero-rating for a backdated sales transaction.

### **Warranty repairs**

A supply of goods or services in pursuance of any guarantee given in respect of new goods is zero-rated for VAT purposes.

### **Agents and auctioneers**

Where an agent makes a supply of goods or services on behalf of a principal, the supply is deemed to

be made by the principal and not the agent, provided that where the agent is a registered person, the agent may issue a tax invoice, tax credit or tax debit note as if the agent has made a taxable supply. In such cases, the principal is not allowed not to issue a tax invoice, tax credit or tax debit note for the same taxable supply.

Where any goods are imported into Namibia by an agent on behalf of a principal, the importation is deemed to be made by the principal and not the agent, provided that the Customs declaration may be held by the agent.

Despite the above provision, where a registered Namibian agent imports goods on behalf of a nonresident and nonregistered principal, the importation is deemed to have been made by the agent and not the principal, provided the agent obtains and retains acceptable documentary proof that he or she paid the import VAT and that the agent and principal agreed in writing that the import VAT paid by the agent will not be reimbursed by the principal.

An auctioneer and principal may agree that auction sales will be deemed to have been made by the auctioneer in the course of the auctioneer's taxable activity and will be subject to VAT.

## **Other indirect taxes**

### **Customs and excise duties**

Customs and excise duties are due on goods imported from outside the Southern African Customs Union (SACU) and on certain manufactured goods such as liquor and tobacco. No customs duties are levied on intra-SACU trade.

As a cosignatory of the SADC Trade Protocol, Namibian importers and exporters benefit from lower or duty-free tariffs with regard to imports to or exports from other signatories to the Protocol, e.g. Zambia, Kenya,

Mozambique and Mauritius.

A free-trade agreement with Zimbabwe provides for duty-free imports of goods of Zimbabwean origin, and vice versa. However, import VAT is payable on such imports.

Preferential trade arrangements between SACU and the USA, as well as between SACU and MERCOSUR, are being finalised. Namibia's importers and exporters will soon benefit from lower or duty-free rates being applied in terms of these trade arrangements.

The new Economic Partnership Agreement with the European Community has not been signed yet.

### **Fuel levy**

A portion of the levy on fuel is transferred to the Road Funds Administration for road maintenance.

Fuel levies are payable per a credit account arrangement by fuel wholesalers registered with the Ministry of Mines and Energy to Customs and Excise, based on importation of petrol, diesel and paraffin into Namibia.

### **Transfer duty**

The transfer duty rates are as follows (as at 31 May 2009, thus prior to the amendment of the Transfer Duty Act in line with the Minister of Finance's Budget Speech, 2009):

Duty payable on the transfer of immovable property is as follows:

- Non-Agricultural
  - 1% of the value exceeding N\$100,000;
  - N\$1,000 plus 5% of the value exceeding N\$200,000;
  - N\$11,000 plus 8% of the value exceeding N\$400,000.

- Agricultural
  - 1% of the value exceeding N\$100,000;
  - N\$1,000 plus 3% of the value exceeding N\$200,000.

Transfer duty rates in terms of the Transfer Duty Act on property purchases by individuals will be amended in line with the Minister of Finance Annual Budget Speech, 2009 as follows:

- The exemption threshold will be increased to N\$400,000 (from the current N\$100,000);
- 1% of the value above N\$400,000 to N\$800,000;

- 5% of the value above N\$800,000 to N\$1,500,000;
- 8% of the value exceeding N\$1,500,000.

Natural persons benefiting under the Affirmative Action Loan Scheme for purchases of farmland will pay transfer duty as follows once the Transfer Duty Act has been amended to give effect to the announcements made by the Minister of Finance during her Annual Budget Speech, 2009:

- The exemption threshold will be N\$500,000;
- 1% of the value above N\$500,000 to N\$1,000,000;

- 3% of the value above N\$1,000,000.

The current transfer duty rate for companies, close corporations and trusts will be increased from 8% to 12%, once the Transfer Duty Act has been amended.

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# Nigeria



## Introduction

Value added tax (VAT) was introduced in Nigeria in 1993 but became effective on 1 January 1994. VAT replaced sales tax.

VAT is governed by the Value added tax Act, Chapter V1, Laws of the Federation of Nigeria (LFN), 2004. The tax is administered by the Federal Inland Revenue Service (FIRS).

## Rates and scope

### Rates

The standard VAT rate on goods and services is 5%. Value for VAT purposes includes customs duties, taxes, commission, transport, insurance and other charges, where applicable. Other than the standard rated goods and services, some goods and services have been classified as VAT exempt, while others are zero-rated.

### Scope

The standard rate applies to all goods imported, supplied or manufactured in Nigeria. The scope of VAT in Nigeria is broad and applies to almost all transactions. VAT, which is based on general consumption, is applicable to all business supplies of goods and services made (i.e. consumed) in Nigeria, except where the supply is specifically exempted or zero-rated.

VAT is applicable in all Nigerian states, including the Federal Capital Territory, the territorial waters and the continental shelf of Nigeria. For VAT purposes, the Export Processing Zones (EPZ) or Freeport Zones are not treated as part of Nigeria. VAT is therefore not payable on the importation of any goods or services into an EPZ or a Freeport Zone.

In addition, plant and machinery imported for use in an EPZ or Freeport Zone are exempt, provided that 100%

of the production of such a company is for export; otherwise, the tax shall accrue proportionally on the item.

## VAT registration

### Compulsory registration

All resident and nonresident businesses doing business in Nigeria are required to register with the FIRS within six months of commencement of business. There is currently no registration threshold. The tax authorities will allocate a VAT registration number to every registered person. This number must be stated on all invoices issued by the registered person. Such invoices are referred to as VAT or tax invoices.

A nonresident company doing business in Nigeria is required to register for VAT using the address of the person with whom it has a subsisting contract as its address for purposes of correspondence relating to VAT.

Where a registered person changes his name or trading name or the address of any of his business premises or opens any new business premises, he must immediately notify the FIRS in writing, and all existing registration documents should be returned to the tax authorities for amendment or re-issue.

### Group or branch registration

Where branches exist, each branch of a company is required to register separately. However, the FIRS now permits taxpayers to register centrally where their administrative offices are located. There is no group registration in Nigeria.

### Nonresidents

A nonresident company that carries on business in Nigeria is required to register and charge VAT on all its taxable supplies. However, VAT

charged by a nonresident company is to be withheld and remitted directly to the tax authorities on behalf of the nonresident by the resident recipient. If VAT is not charged, the resident should still withhold VAT at 5%. However, the nonresident company must file monthly returns, including nil returns where appropriate.

### Application for registration

Businesses must register with the tax authorities using VAT Form 001, within six months of commencement of business. Upon registration, the business will be issued a 'Certificate of Registration' and a VAT registration number. The number serves as an authority to charge and collect VAT on behalf of the FIRS.

### Deregistration

The tax authorities must be notified in writing of the winding up of a company. There are no specific provisions for VAT deregistration in Nigeria.

## Output tax

### Advertising and prices

Advertised prices for taxable goods and services are deemed to be inclusive of VAT. Where prices are not inclusive of VAT, this should be clearly stated. When invoicing, VAT must be clearly stated, where applicable.

### Calculation of output tax

Output VAT is calculated at the standard rate of 5% on gross sales, including customs duties, taxes, commission, transport, insurance, other charges, etc. incurred on the goods or services supplied.

Output tax is due when a taxable supply is made or in certain other circumstances, such as:

- forced sales of goods in satisfaction of a debt;
- certain activities in relation to the cessation of a business; and
- withdrawal of goods for private or own use.

## Exemptions and zero-rating

### Exempt supplies

Exempt goods have no VAT levied on the final goods sold to the consumer. A registered supplier of exempt goods and services cannot claim input tax credits for VAT paid on the goods or services acquired to make exempt supplies, which include:

- all exported services;
- all medical and pharmaceutical products;
- basic food items;
- books and educational material;
- baby products;
- plant, machinery and goods imported for use in the EPZ or Free Trade Zone;
- plant, machinery and equipment purchased for utilisation of gas in downstream petroleum operations;
- fertilisers, tractors and ploughs, agricultural equipment and implements purchased for agricultural purposes;
- medical services;
- services rendered by community banks, people's banks and mortgage institutions; and
- plays and performance conducted by educational institutions as part of learning.

### Zero-rated supplies

Zero-rated goods attract VAT at 0% on the final product, while any VAT paid on the input is claimable by the supplier. The following goods and services have been listed as zero-rated:

- non-oil exports;
- goods and services purchased by diplomats; and
- goods and services purchased for use in humanitarian donor-funded projects.

### Input tax

Input tax is the VAT charged on purchases by a registered person, including:

- goods purchased, leased or otherwise acquired;
- imported goods; and
- services acquired by a registered person.

### Input tax allowed

VAT incurred as input VAT may be deducted from output VAT only in respect of:

- goods purchased or imported directly for resale; and
- goods constituting the stock in trade, used directly for the production of a new product on which output VAT will be charged.

### Input tax expressly denied

The following are not allowed for deduction as input VAT:

- VAT incurred on overheads, service and general administrative cost of any business – such VAT is expensed to the profit and loss account together with the costs to which they relate; and

- VAT on any capital item or asset – such VAT is capitalised along with the cost of the capital item or asset to which they relate.

### Partial exemption

Any VAT incurred on the acquisition of goods that cannot be wholly attributed to the making of taxable supplies will be reclaimable as input VAT in part only. The apportionment of input tax that can be claimed is determined by reference to the level of taxable use or consumption of the goods and subject to the normal rules for deducting input tax.

## Imports

### Goods

VAT is payable on the importation of all goods, whether or not the importation is subject to customs duty or excise duty. Import VAT is payable to the Nigerian Customs Service before the import can be cleared for home consumption.

Goods entered into a bonded warehouse or an excise warehouse will not be recognised as imported goods until such goods are removed from the warehouses and entered for home consumption.

Goods entered for transshipment, export or re-export in accordance with the Export Processing Zone Act are not liable for VAT.

VAT on importation is calculated by applying VAT at the rate of 5% to the sum of the customs value of the goods plus any customs duty and excise duty payable on the goods.

## Imported services

The VAT Act defines imported services to mean services rendered by a nonresident person to a person inside Nigeria.

## Exports

### Goods

All exports of non-oil goods are zero-rated.

### Services

Exported services are exempt from VAT. The VAT Act defines exported services to mean services rendered by a Nigerian resident or a Nigerian company to a person outside Nigeria.

## Refunds to foreigners

There is no VAT refund to tourists on purchases made in Nigeria.

## Place, time and value of supplies

### Place of supply

There are no specific place of supply rules. Supplies of goods and services in Nigeria are liable for VAT in Nigeria. Supplies made outside Nigeria are outside the scope of Nigerian VAT.

### Time of supply

A supply of goods and services shall for the purposes of VAT be deemed to take place at the earlier of the time a tax invoice is issued by the supplier or payment is received by the supplier.

### Value of supply

If a supply is for monetary consideration, the amount of the supply with addition of the VAT

chargeable will be equal to the consideration. The prices of goods and services may be stated:

- exclusive of VAT, in which case output VAT will be calculated at 5% of the VAT-exclusive price;
- inclusive of VAT, in which case, the tax fraction of 5/105 will be applied to the VAT-inclusive price.

If the supply is for a consideration not wholly consisting of money, the value of the supply is its open market value.

Where a taxable supply is not the only matter to which the consideration in money relates, the supply is deemed to be for such part of the consideration as is properly attributed to the taxable supply.

## VAT compliance

### Accounting basis and tax periods

VAT is accounted for on an accrual and not a cash basis. A supplier's liability to account for output tax arises in the taxable period in which the time of supply takes place, irrespective of whether or not the supplier has received payment during that tax period.

A registered person may thus make a claim for an input tax credit in the taxable period during which the taxable supply is made to him, provided he is in possession of a valid VAT invoice from his supplier, irrespective of whether or not he has paid his supplier.

The taxable period will generally commence on the first day of a calendar month and end on the last day of that month.

### Returns and payment of VAT

Where a registered person's output tax exceeds the input tax, the difference

must be paid to the Tax Authorities at the time the return is submitted. Where the input tax exceeds the output tax, such VAT is carried forward as a future credit, as cash refunds are not given in practice.

Where a registered person does not make any supply of goods and services and does not receive any goods or services within a particular taxable period, he must submit a nil return in respect of that tax period.

The due dates for payment of VAT are as follows:

- taxable supplies – on the submission of the return by the 21st day of the month following the end of a taxable period;
- importation of goods – on entry for home consumption, when customs duty or excise duty is payable; and
- notice of assessment – within 30 days of the date of the notice.

## Interest and penalties

Interest and/or penalties are charged as follows for the failure to:

- register for VAT – penalty of N10,000 for the first month of failure and N5,000 for each subsequent month in which the failure continues;
- file monthly returns – penalty of N5,000 for every month in which the failure continues;
- remit VAT payable to the FIRS – penalty of 5% and interest charged at the prevailing commercial lending rate (currently about 21% p.a.);
- issue a tax invoice for taxable goods or services – penalty of 50% of the cost of the goods or services for which the tax invoice was not issued; or
- collect VAT (by a registered person) – penalty of 150% of the VAT not



collected plus 5% interest above Central Bank of Nigeria Monetary Policy Rate.

## Time limit for claiming input VAT

In general there appears to be no time limit as to when input VAT can be claimed, as long as such claim is supported by a tax invoice. However, in line with the statute of limitation, which is six years, it is unlikely that any claim in excess of this will be entertained.

## Refunds

Where the allowable input VAT exceeds the output VAT, the registered person is entitled to claim the excess VAT. However, the registered person must set off the excess against the next month's output tax as there are no cash refunds in practice.

## Objections and appeals

Any registered person who disputes an assessment or demand notice issued to him, may appeal to the Tax Tribunal in the prescribed format.

An award or judgment by the Tax Tribunal shall be enforced as if it were a judgment of the Federal High Court on registration of a copy of the award or judgment in the registry of the Federal High Court by the party seeking to enforce the judgment.

Following the decision of the Tax Tribunal, notice of the amount of tax chargeable under the assessment as determined by the Tribunal shall be served by the FIRS on the company or person liable for the tax. Notwithstanding a pending appeal, tax shall be paid in accordance with the decision of the Tribunal within one month of notification of the amount of tax payable.

Any party aggrieved by the Tribunal's decision may appeal against it on a point of law to the Court of Appeal within 30 days after the date on which

the decision was given, setting out the grounds on which the decision is being challenged.

## VAT compliance

### Tax invoices

A tax invoice is issued on the supply of taxable goods or services in support of the transaction. The VAT invoice serves as a form of certification that VAT has been levied on a transaction, and as documentary proof supporting claims for input tax by a registered person.

A tax invoice must contain the following particulars:

- the taxpayer's identification number;
- name, address and VAT registration number of the supplier;
- customer's name and address;
- type of supply;
- description of the goods and services supplied;
- quantity of goods or extent of services;
- the rate of VAT;
- the rate of cash discount offered; and
- the total VAT payable.

The penalty for failure to issue a tax invoice for taxable goods or services is 50% of the cost of the goods or services for which the tax invoice was not issued.

### Credit notes and debit notes

A credit note or debit note is usually issued to take account of a change in the consideration for a taxable supply due to the following circumstances:

- the cancellation of a supply of goods and services;
- an alteration or variation in the nature of a supply;

- a change in the previously accepted consideration for the supply e.g. due to a discount;
- a short supply of goods;
- an irrecoverable bad debt arising from a taxable supply that has been written off; or
- a return of goods to the supplier.

The issue of a credit note or a debit note will form the basis for the requisite adjustment to the relevant VAT return.

The VAT legislation is not specific on what information is to be reflected on the debit and credit notes but such documents should contain sufficient information to identify the original transaction and the VAT invoice to which it relates.

## Record keeping

A registered person must keep records and books of all transactions, operations, imports and other activities relating to taxable goods and services sufficient to determine the correct amount of VAT due. Copies of a supplier's VAT invoices should be kept for a period of at least six years after the completion of the transaction to which they relate.

A general statutory limitation of six years immediately following the last day of the taxable period in which the transaction took place applies to the carrying out of a tax audit to produce records. This time limit can be extended when fraud is suspected to have occurred.

Records may not be kept outside the country. Records should be kept in the form of paper copies as well as in electronic form, where possible. For the purpose of ascertaining the tax liability, FIRS may require the registered person to produce records and copies of VAT invoices for retention, as it may consider necessary.

## Specific VAT rules

### Bad debts

Where a registered person has claimed an input tax credit, and the person's debt towards the supplier is written off as irrecoverable, the registered person will be required to make an adjustment for input tax over-claimed in the past.

Where a registered person has made a taxable supply, accounted for the output tax and has subsequently written off the whole portion of the debt as irrecoverable, the relevant adjustments should be made to the VAT return for the period concerned.

Although not specifically provided for in the VAT legislation, where a registered person subsequently recovers all or a portion of the debt which was previously written off, output tax should be paid in respect of the VAT portion of the amount recovered in the relevant tax period.

### Land and buildings

The supply of land and buildings is not exempted from VAT. The FIRS would therefore demand output tax in this respect, which should be accounted for in the normal manner. Input tax in line with normal rules is capitalised as part of the cost of the asset.

### Other indirect taxes

#### Customs duties

Customs duties are payable on imported goods at the rate of duty shown in the customs duty tariff classification for the applicable year. The tariff under the Customs Act ranges from 0% to 150%. Duties on imported goods are levied on the cost, insurance and freight (CIF) value of the imported good.

Nigeria is moving towards the adoption of the Common External Tariff (CET) for Economic Communities of West

African States (ECOWAS). The tariff under the CET ranges from 2% to 20%.

### Stamp duty

Stamp duties are payable on relevant documents at prescribed rates. Stamp duties may be at a flat rate (specific) or based on a percentage of the values of the applicable transactions (ad valorem).

Stamp duty rates range between 1% and 6%, where it is charged ad valorem. Leasehold agreements or rent agreements generally attract the highest rate of 6%. Fixed rates are in the range of N100 to N1,000 (about US\$1 to US\$10).

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# Senegal



## Introduction

VAT ("taxe sur la valeur ajoutée [TVA]) is one of the most harmonised areas of taxation within the West African Economic and Monetary Union (UEMOA). UEMOA regulations provide that the VAT rate must be unique and be between 15% and 20%.

Senegalese VAT legislation is contained in the General Tax Code from Article 283 to Article 310. VAT was introduced in 1980.

## Rates and scope

### Rates

The standard rate of VAT is 18%.

### Scope

VAT is charged on the supply of goods and provision of services in Senegal in the framework of an economic activity, including where the state and public entities carry out a commercial activity.

A certain number of operations are exempted. The main exemptions are health care, agricultural and fishing activities, education, banking (specific taxation), insurance and reinsurance (specific taxation), and international transport companies (export).

## VAT registration

### Compulsory registration

Companies that carry out economic activities must be registered. They must have a tax identification number, which is valid for all taxation purposes.

### Voluntary registration

Companies specialising in fishing or agricultural activities are free to register for VAT.

## Group and branch registration

Companies of a group are registered individually. A branch is considered as a commercial company and must thus be registered with the tax administration.

### Nonresidents

When services are subject to VAT, the foreign provider must designate a local fiscal representative for the payment of VAT. If not, the Senegalese debtor has to pay the VAT on behalf of the foreign provider.

No bank account is required in Senegal.

### Application for registration

An application for VAT registration must be submitted when the company is incorporated.

### Deregistration

Deregistration is possible if the company has closed permanently. In such case, it has to inform the tax administration of its permanent closure.

## Output tax

### Advertising and prices

There are no specific rules relating to how VAT must be quoted in advertisements and prices. However, the amount of VAT must be indicated individually on an invoice.

### Calculation of output tax

Taxable income includes the value of the goods or services. For importation, it is the customs valuation (CIF).

The following items are not included in the taxable income:

- stamp duties;
- disbursement under-provision; and
- rebates or discounts.

## Exemptions and zero-rating

### Exempt supplies

Supplies are exempt (without credit) when they are related to:

- health care;
- education;
- banking, insurance and reinsurance (specific taxation applies);
- international transport companies;
- fishing activities;
- agricultural activities; and
- exports.

### Zero-rated supplies

No supplies are zero-rated, but economic operators who are exempted because of export activities may deduct input VAT and obtain a reimbursement of the corresponding credit, subject to certain conditions.

## Input tax

### Input tax allowed

VAT, applied on goods and services acquired for the need of business, is deductible.

### Input tax expressly denied

VAT incurred on the following items is generally not deductible:

- restaurant and housing expenses; and
- vehicles for transporting persons.

## Partial exemption

When performing taxable and non-taxable (exempted) operations, the deductible VAT is calculated by way of the apportionment formula, where:

- the numerator is the total of taxable operations plus exports; and
- the denominator is the total of taxable operations plus exempt operations plus exports.

The taxpayer may also choose to divide into sectors for VAT purposes (subject to conditions). If the division into sectors is retained, there will be:

- a taxable sector, where the VAT paid to providers is fully deductible; and
- an exempted sector, where the VAT paid is not deductible.

The VAT paid to providers for goods and services acquired for both sectors, which is deductible as input tax, is calculated in accordance with the above apportionment formula.

## Adjustments

An adjustment must be made:

- if the goods are no longer used for a taxable activity. In such a case, the VAT must be calculated on the basis of the value of the goods;
- in the case of a sale of depreciable goods for which input VAT has been deducted, an amount of VAT calculated in proportion to the remaining depreciable period must be paid. However, if the goods have been fully depreciated, there is no adjustment.

## Imports

### Goods

Imports of goods are subject to VAT at CIF value.

## Services

If a foreign service provider has not designated a local fiscal representative, the Senegalese debtor must pay VAT on behalf of the foreign provider.

## Exports

### Goods and services

Exports of goods and services are exempted from VAT.

### Refunds to foreigners

Refunds to foreigners are not available in practice.

## VAT compliance

### Returns and payment of VAT

VAT returns must be deposited and payment of VAT must be made within 15 days after the end of the month within which the tax event occurred.

### Interest and penalties

In the case of late payment, interest is due. The amount of interest is equal to 5% per month of the tax due.

### Refunds

VAT refunds are possible only where the liable person cannot deduct the VAT credit from the output VAT. In such case, a refund application must be made to the tax administration within a period of two years following the origination of the credit. However, that refund must be related to VAT on fixed assets.

### Objections and appeals

Any liable person can contest liability for VAT before the courts after reception of an assessment notice or a notice of refusal of a VAT refund. A specific procedure must be followed

and a limitation period may be applicable, applied depending on the purpose of the contestation.

### Time limits

Omission or error noted in the calculation or payment of the tax can be rectified by the tax administration within a period of five years. The maximum period for the taxpayer to claim for correcting his mistake is two years after the tax event.

## VAT records

### Tax invoices

A proper tax invoice should include:

- the name, address and fiscal identification number of the supplier of goods or provider of services;
- the nature and the quantity of the goods or services;
- the net amount;
- the amount of VAT;
- the rate of VAT;
- the gross amount; and
- the exemption provision from the Tax Code (if VAT is not applicable).

There is no electronic invoicing practice and also no related specific rules in Senegal.

The Senegalese entity must use the French language and local currency when issuing invoices.

### Credit notes and debit notes

Credit notes and debit notes are just accounting notions and are considered neither legal documents nor invoices.

### Additional export documentation

In case of export, the following documents are required:

- proof that the goods will be transported outside Senegal (international transportation documentation);
- copy of export declaration stamped by Customs; and
- banking documents proving that payment has been made by the importer.

## Record keeping

All records and books of account must be held inside Senegal. The records must be kept for a period of ten years. Retention of records in electronic and scanned formats is not allowed.

## Specific VAT rules

### Bad debts

VAT on bad debts is recoverable. A claim must be made to the tax administration.

### Land and buildings

Renting of residential blocks is exempt from VAT if they are unfurnished. The sale of houses is exempted from VAT where stamp duties are applicable.

### Leasing

Leasing operations are exempted from VAT where related to goods the supply of which are also exempted.

### Promotional gifts

VAT on promotional gifts is recoverable if the value of each of them is not above XOF20,000.

### Small retailer scheme

A small retailer can opt for the 'global contribution regime' and thus be liable to a fixed tax in full discharge, which includes:

- income tax;
- minimum income tax;
- business licence tax;
- VAT;
- fixed valuated employer tax; and
- drinking establishment licence.

To benefit from this regime, the turnover of the small retailer should not exceed:

- XOF50 million in the case of the supply of goods; or
- XOF25 million in the case of the provision of services.

A tax scale determines the amount of tax due according to the turnover of the small retailer.

### Tourism industry

Apart from VAT, a specific tax is applicable to a stay in a hotel:

- XOF600 per day for a single hotel bed;
- XOF1,200 per day for a double hotel bed.

### Transfer of a business

Transfer of a business is liable to registration duties and VAT is not applicable.

### Warranty repairs

Warranty repairs are subject to VAT if they constitute a service invoiced separately. However, if the service is included in the price of the goods, VAT should not be applicable.

## Other indirect taxes

### Import duty

In the case of the import of goods, some taxes are applicable such as:

- customs duty – ranging from 5% to 20%;
- statistical tax – 1%;
- solidarity community levy – 1%;
- CEDEAO levy – 0.5%; and
- COSEC levy – 0.5%.

### Excise duty

The products on which the Senegalese authorities levy excise tax, and the relevant excise tax rates, are as follows:

- beverages – 40% for beverages containing alcohol plus an additional tax ranging from XOF800 to XOF3,000 per litre and 2.75% for sparkling beverages;
- tobacco – rate varies from 20% to 45%;
- coffee – 3.8%;
- tea – 3.8%;
- Cola – 30%; and
- fat – rate varies from 5% to 12%.

### Registration taxes

The following transfers trigger registration taxes:

- transfer of shares or debts – 1%;
- sale of real estate – 15%; and
- sale of business – 15%.

### Stamp duty

Among the transactions subject to stamp duties are:

- any document pertaining to registration formalities;
- acknowledgment of payment in cash; and
- bills of exchange.

The amount of stamp duty varies from XOF100 to XOF 2,000 per page of documentation.



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# South Africa



### Introduction

VAT was introduced in South Africa with effect from 30 September 1991, by way of the Value-Added Tax Act 89 of 1991, to replace sales tax. The VAT system is administered by the South African Revenue Service (SARS). The Head of SARS is the Commissioner.

### Rates and scope

#### Rates

The standard VAT rate of 14% applies to all supplies of goods or services not qualifying for an exemption, the importation of goods by any person and the importation of services. There is no higher VAT rate, nor any reduced VAT rate (except for the zero rate).

#### Scope

VAT is levied on 'taxable supplies', being supplies of goods or services made by a 'vendor' (a person registered or required to be registered as a vendor with SARS) in the course or furtherance of an enterprise carried on by the vendor, wholly or partly in South Africa.

The concept 'goods' includes all corporeal movable goods, as well as immovable (fixed) property. The concept 'services' includes anything done or to be done, the granting, assignment, cession or surrender of any right or the making available of any facility or advantage. Money and tax stamps are neither goods nor services.

A 'supply' 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.

### VAT registration

#### Compulsory registration

The registration threshold is ZAR1 million. If a person's total annual value of taxable supplies has exceeded this threshold during the past 12 months, or there are reasonable grounds to expect that the threshold will be exceeded during the following 12 months, the person must apply for registration. (Prior to 1 March 2009 the threshold was ZAR300 000.) A 'person' includes natural persons, legal persons (e.g. companies), bodies of persons (e.g. partnerships and joint ventures), public authorities, municipalities, estates, trust funds and foreign donor-funded projects.

Registration is not required where the threshold will be exceeded solely as a consequence of:

- the cessation of, or substantial and permanent reduction in, the size or scale of, an enterprise;
- the replacement of capital assets; or
- abnormal circumstances of a temporary nature.

#### Voluntary registration

The following persons may apply for voluntary registration:

- a person whose taxable supplies have exceeded ZAR20,000 in a preceding 12-month period;
- a person who carries on an enterprise that, due to the nature of the activity, can be expected to result in taxable supplies in excess of ZAR20,000 during a 12-month period;
- a person who buys a business as a going concern, if the previous owner of the business made taxable supplies in excess of ZAR20,000 in a 12-month period; and

- welfare organisations, share block companies, foreign donor-funded projects and municipalities, even if the ZAR20,000 requirement has not been met.

(With effect from 1 March 2010, the ZAR20,000 threshold will be increased to ZAR50,000.)

#### Group and branch registration

Different companies in the same group cannot be registered as a group under one VAT registration number.

Separate enterprises carried on by a vendor, or branches or divisions of an enterprise carried on by a vendor, may be registered separately.

#### Nonresidents

For a nonresident to register in South Africa, he must furnish SARS with the particulars of:

- his fiscal representative, who is a natural person and South African resident; and
- his bank account in South Africa.

#### Application for registration

To register for VAT purposes in South Africa, a person must complete form VAT 101 and submit it to the local office of SARS. The application for registration must be accompanied by (inter alia) the following documents:

- copy of the identity document (ID) of the individual or of the two most senior partners or directors, shareholders, members or trustees;
- copy of certificate of incorporation or constitution;
- letter of authority, if application is submitted by a registered tax practitioner;

- banking details required by SARS;
- copy of the ID or passport of the fiscal representative;
- copy of municipal account of business and representatives; and
- copies of latest three months' bank statements, for purposes of determining value of business's taxable supplies.

There are no penalties for late registration or for failing to do so. However, output VAT plus penalties and interest will be due on supplies that have not yet been declared at the time the business should have been registered for VAT purposes.

The registration number of resident and nonresident businesses consists of 10 digits, starting with a '4', e.g. 499 9999 999.

With effect from 1 March 2009, certain persons with a turnover not exceeding ZAR1 million during the year of assessment who do not render professional services and meet certain other requirements, may apply to be registered for the turnover tax for micro-businesses. When the turnover tax applies, it replaces VAT, income tax, provisional tax, capital gains tax and secondary tax on companies.

### Deregistration

A vendor who was obliged to register, but whose taxable supplies have not exceeded ZAR1 million, has the option of deregistering. A vendor must apply for deregistration if his taxable supplies did not exceed the ZAR20,000 voluntary registration limit, or when the vendor ceases to carry on an enterprise. SARS may deregister a vendor who voluntarily registered if it no longer has a fixed place of business, a bank account or proper accounting records.

Upon deregistration the vendor must pay output tax on all assets of his enterprise held by him immediately prior to his deregistration. If a vendor is deregistered as he has been registered as a micro-business for turnover tax purposes, the amount on which the deregistration output tax is payable is reduced by ZAR100,000.

## Output tax

### Advertising and prices

Advertised prices must include VAT. If the VAT inclusive and VAT exclusive prices are advertised or quoted, both prices must be advertised or quoted with equal prominence.

Prices charged for taxable supplies are deemed to include VAT, whether or not the vendor has included VAT in the price.

### Calculation of output tax

Output tax, which must be accounted for on a taxable supply, is calculated by applying the tax fraction (14/114) to the price charged.

## Exemptions and zero-rating

### Exempt supplies

Supplies of (inter alia) the following goods or services are exempt:

- certain financial services;
- donated goods or services supplied by an association not for gain;
- residential accommodation in a dwelling;
- leasehold land that is or will be used to erect a dwelling;
- land (including existing improvements) situated outside South Africa;

- management services supplied by bodies corporate of sectional title property schemes, share block companies and housing development schemes for retired persons;
- passenger transport by road or railway;
- educational services;
- crèche and after-school services;
- services supplied by employee organisations against payment of membership contributions; and
- goods in a licensed Customs and Excise storage warehouse, if the goods have not been entered for home consumption (unless approval is obtained to zero-rate the supply).

### Zero-rated supplies

Supplies of (inter alia) the following goods or services are zero rated:

- exportation of goods (provided procedural and documentary requirements have been met);
- supply of an enterprise as a going concern;
- unmanufactured gold supplied to the South African Reserve Bank, the South African Mint Company or a registered bank;
- certain gold coins;
- certain agricultural products supplied under prescribed circumstances;
- fuel levy goods and petroleum oil;
- goods transferred to a foreign branch;
- basic foodstuffs such as brown bread, brown wheaten meal, maize meal, samp, mealie rice, dried maize, beans and lentils, pilchards or sardinella, rice, vegetables, fruit, vegetable oil, milk, cultured milk,

- milk powder, dairy powder blend, eggs and edible legumes;
- illuminating paraffin (kerosene) used for illuminating or heating;
- movable goods (excluding a motor car) sold to a registered vendor in a Customs Controlled Area (in an Industrial Development Zone), if the goods are physically delivered to the recipient by the supplier or his VAT-registered cartage contractor;
- goods supplied by a vendor to a person who is a nonresident and non-vendor, but delivered to a vendor-recipient who will use the goods wholly for taxable supplies;
- international transport of passengers or goods – outside, to or from South Africa;
- local leg of international carriage by aircraft;
- local leg of international transport of goods;
- services relating to land and improvements outside South Africa;
- certain services relating to goods outside South Africa, foreign-going ships or aircraft, goods temporarily admitted, goods exported or a foreign-operated railway train;
- services rendered elsewhere than in South Africa or to a registered vendor in a Customs Controlled Area;
- services supplied to a nonresident, if not directly in connection with movable or immovable property in South Africa (with certain exceptions);
- the granting of, and other services relating to, intellectual property rights, to the extent that the rights will be used outside South Africa;

- services rendered by welfare organisations, to the extent that the services are funded by national or local government;
- certain services funded by government grants;
- services funded by international donor funds;
- vocational training of employees of nonresident employers;
- housing subsidies;
- certain warranty services;
- municipal property rates;
- supply of goods by an inbound duty- and tax-free shop; and
- supply of goods in a licensed Customs and Excise storage warehouse, if the goods have not been entered for home consumption (if approval has been obtained to zero-rate instead of exempt the supply).

### Input tax

#### Input tax allowed

Input VAT incurred on goods or services acquired for the purpose of consumption, use or supply in the course of making taxable supplies (including zero-rated supplies) is generally deductible as input tax, provided all documentary requirements are met and the deduction is made in time (generally speaking within five years). VAT incurred in the making of exempt (without credit) supplies cannot be deducted as input tax.

#### Input tax expressly denied

The deduction of VAT incurred is expressly denied as input tax in the following circumstances:

- to the extent that goods or services are acquired for purposes of entertainment (i.e. the provision of food, beverages, accommodation, entertainment, amusement, recreation or hospitality), except where –
  - a vendor carries on an entertainment business;
  - the entertainment expenses are incurred for personal subsistence for business purposes (subject to requirements);
  - a meal or refreshment forms part of a taxable transport service;
  - food and drinks are included in the fee for a seminar;
  - the entertainment is supplied by a municipality in providing sports or recreational facilities or amenities to the public;
  - a welfare organisation incurs entertainment expenses;
  - entertainment is provided to an employee at a medical care facility;
  - a meal or refreshment is supplied to a crew member of a ship or vessel; or
  - entertainment is provided as a prize in a competition if the entry fees were subject to VAT;
- motorcars, except if acquired by a motor dealer or rental firm for resale or rental purposes or as demonstrators, or where the motorcar is awarded as a prize (conditions apply); and
- membership fees with regard to sports, social or recreational activities.



### Partial exemption

Where goods or services are acquired both for making taxable supplies and exempt (without credit) supplies, an apportionment of VAT incurred must be made. The standard method for calculating the apportionment is the turnover-based method. If the turnover-based method does not give a fair result, or if the vendor wants to apply another method, SARS' written approval must be obtained.

If the intended use of goods or services acquired is more than 95% taxable supplies, the VAT incurred may be deducted in full.

### Adjustments

When the application or use of goods or services is changed subsequent to the acquisition thereof, the amount of VAT that was originally deducted as input tax may no longer be equitable and appropriate in view of the subsequent application of the goods or services.

Adjustments must be made to the vendor's output tax where:

- goods or services acquired for making taxable supplies are subsequently applied wholly for exempt, private or other non-taxable purposes – output tax is calculated on the open market value of the goods or services and must be accounted for in the tax period in which the non-taxable application occurs; and
- the extent of taxable use or application of capital goods and services (costing more than ZAR40,000) has decreased by more than 10% – output tax is calculated as  $[14/114 \times \text{lesser of cost or open market value} \times \text{percentage of decreased taxable use}]$  and must be accounted for in the tax period in which the last day of the vendor's income tax year of assessment falls.

Adjustments must be made to the vendor's input tax where:

- goods or services acquired for exempt, private or other non-taxable purposes are subsequently applied for making taxable supplies – the deduction is calculated as  $[14/114 \times \text{lesser of cost or open market value} \times \text{percentage of taxable use}]$  and may be made in the tax period in which the taxable application occurs; and
- the extent of taxable use or application of capital goods or services (costing more than ZAR40,000) has increased by more than 10% – the deduction is calculated as  $[14/114 \times \text{lesser of cost or open market value} \times \text{percentage of increased taxable use}]$  and may be made in the tax period in which the last day of the vendor's income tax year of assessment falls.

### Preregistration and post-deregistration VAT

Under certain circumstances, a company can claim input tax on goods and services acquired by a person on behalf of the company before incorporation.

A person who has incurred VAT on the acquisition of goods or services prior to his VAT registration date, and who will use the goods or services subsequent to his registration as a VAT vendor, may make a deduction, calculated as  $[14/114 \times \text{lesser of cost or open market value} \times \text{percentage of taxable use}]$ , in the tax period in which the taxable application occurs.

When a vendor is deregistered, VAT is payable on all assets of the business on the date of cancellation of registration. VAT incurred after deregistration cannot be recovered as input tax.

## Imports

### Goods

VAT is payable on the importation of goods, except where a specific exemption applies.

Where goods are imported from a South African Customs Union (SACU) country, namely Botswana, Lesotho, Namibia or Swaziland, the VAT payable on importation is calculated as 14% of the customs value of the goods.

Where goods are imported from outside the SACU region, the VAT payable on importation is calculated as follows:

$(\text{Customs value of goods} + 10\% \text{ thereof} + \text{customs \& excise duties}) \times 14\%$

Regular importers may apply to SARS for access to a VAT Deferment Account, allowing a credit facility for the customs duty and VAT payable on the importation of goods.

### Services

A reverse charge rule applies when a nonresident (being a non-vendor) provides services (which would be neither exempt nor zero-rated if made by a VAT vendor), to recipients in South Africa, to the extent that the services are acquired for purposes other than to make taxable supplies. The South African recipient must pay the VAT to SARS by way of declaration.

## Exports

### Goods

Where the supplying vendor sells and consigns or delivers movable goods to a customer at an address outside South Africa, the export is regarded as a 'direct export'. The vendor may zero-rate the sale, if all documentary requirements are met.

Where the recipient, from outside South Africa, removes or arranges for the removal of goods purchased in South Africa, the export is regarded as an 'indirect export'. The supplier must generally charge VAT at 14%, but may elect (subject to certain requirements) to zero-rate the supply where the supplier accepts the responsibility to ensure that the goods are delivered to a 'designated commercial port' from where they will be exported by the purchaser.

### Services

Services physically rendered outside South Africa are zero-rated.

Services supplied to a nonresident are zero-rated, except where the services are:

- rendered directly in connection with land in South Africa;
- supplied directly in connection with movable property in South Africa, except where the property is exported after the services have been rendered or the services are rendered in connection with movable property supplied by the nonresident to a vendor in South Africa;
- supplied directly to the nonresident or any other person who is in South Africa when the services are rendered; or
- in connection with a restraint of trade relating to an enterprise in South Africa.

### Refunds to foreigners

Where foreigners purchase goods in South Africa, VAT will (generally) be charged at 14%. If all requirements are met, a qualifying purchaser (i.e. a non-South African resident, tourist, foreign enterprise or foreign diplomat) may claim a refund from the VAT Refund Administrator (VRA). The purchaser

must remove the goods from South Africa within three months. The refund request must be received by SARS within three months after the date of export.

A 'foreign enterprise' is a business that is carried on continuously or regularly by any person (including South African passport holders) outside South Africa. The foreign enterprise must submit appropriate evidence in the form of a trading licence as well as a letter of authorisation from the foreign enterprise authorising the specific person who exports the goods to claim a refund on behalf of the foreign enterprise.

### Place, time and value of supplies

#### Place of supply

In line with the destination-based principle, the VAT Act aims to tax only consumption within South Africa, by allowing zero-rating for exports of goods and services rendered to nonresidents.

However, as the VAT Act does not contain specific place of supply rules, uncertainties and disputes have arisen as to when foreign enterprises making supplies in South Africa, e.g. by way of local agents or the internet, must be registered as vendors in South Africa. However, the Minister of Finance has announced that the introduction of place of supply rules is being considered.

#### Time of supply

The time of a supply generally determines in which tax period output tax must be accounted for and input tax may be claimed, although the vendor's VAT accounting basis (invoice basis or payments basis) may also affect the timing of accounting for VAT.

The general rule is that a supply takes place when an invoice is issued or any payment of consideration (excluding a deposit) is received, whichever is the earlier.

Various special time of supply rules apply, for example:

- rental agreements and service agreements providing for periodic payments – when each payment becomes due or is received;
- goods supplied progressively or periodically and construction services – when each payment becomes due or is received, or invoice is issued, whichever is the earlier;
- instalment credit agreement – when the goods are delivered or any payment is received, whichever is the earlier;
- fixed property – when registration of transfer is effected in the Deeds Office, or any payment is made, whichever is the earlier;
- coin-operated machines – the time of supply for the supplier is when the coin or token is taken from the machine, and the time for the recipient is when the coin or token is inserted into the machine.

#### Value of supply

The general rule is that the value of a supply is the consideration (price) paid for the supply. As all prices must include VAT, 'consideration' is a VAT-inclusive concept:

- Consideration = value + 14% VAT; and
- VAT = consideration x 14/114.

Various special rules apply, for example:

- supply to a connected person for less than the open market value of the supply, where, had a

- market-related price been paid, the recipient would not be entitled to a full input tax deduction – value is the open market value of the supply;
- cancellation of vendor's VAT registration – value is the lesser of the cost or the open market value of all assets at deregistration;
- instalment credit agreement – value is the cash value (i.e. cash price, excluding finance charges);
- application of goods (which were acquired for taxable purposes), for non-taxable purposes – value is the open market value of the goods;
- supply of certain residential accommodation for an uninterrupted period exceeding 28 days – value is 60% of the all-inclusive charge;
- exportation of secondhand goods – value is the purchase price to the supplier;
- fringe benefits – value is the cash equivalent of the benefit for income tax purposes;
- supply of entertainment if input tax was denied on the goods or services acquired to supply the entertainment – value is nil;
- no price is paid and a special rule does not apply – value is nil.

### VAT compliance

#### Accounting basis and tax period

Tax periods are periods of one, two, four, six or twelve months, depending on the vendor's circumstances:

- 1 month – compulsory for vendors with annual taxable turnover in excess of ZAR30 million; other vendors may apply;
- 4 months – small businesses with annual taxable turnover not exceeding ZAR1.5 million may apply;

- 6 months – farming enterprise with annual taxable turnover not exceeding ZAR1.5 million may apply;
- 12 months – companies and trusts letting goods and providing administrative services to related persons on an annual basis may apply;
- 2 months – all other vendors.

#### Returns and payment of VAT

VAT returns must be filed by the 25th day after the end of the tax period. The return may be filed electronically, in which case the time limit for filing the return is the last business day of the month.

VAT payments can be made in cash, by cheque (limited to ZAR5 million), debit order (limited to ZAR500,000), by bank transfer or electronically. VAT payments must be made to SARS by the 25th day after the end of the tax period (or the last preceding business day). When paying by debit order or when using the e-filing and e-payment options, payment must be made by the last business day of the month.

#### Interest and penalties

Interest and penalties are levied in the case of:

- late payment by a vendor – penalty of 10% is levied on the outstanding VAT amount;
- payment made after the first day of the month in which payment is due – interest is levied on the outstanding VAT due at a rate fixed from time to time by the Minister of Finance; and
- evasion of VAT or fraud – additional tax of up to 200% and criminal prosecution.

#### Refunds

If a payment is not made within 21 business days of the return being

received, interest is payable by SARS, provided the return was completed correctly and SARS was not prevented from auditing the refund claim.

#### Objections and appeals

A person who is aggrieved with an assessment or certain decisions may lodge an objection in the prescribed form within 30 business days. If the person is dissatisfied with SARS' decision, an appeal may be lodged within 30 business days. Depending on the specific circumstances, an appeal may be dealt with by:

- the 'alternative dispute resolution' process – an informal and cost-effective method of dispute resolution, outside the litigation arena;
- the Tax Board – a more informal and inexpensive process (compared to the Tax Court) for appeals not exceeding ZAR500,000;
- the Tax Court – a formal court process; or
- the High Court and/or Supreme Court of Appeal – appeal by any party who feels aggrieved by the judgment of the Tax Court.

#### Time limits

The maximum period for the recovery of VAT by SARS is five years. This limitation does not apply where the VAT has already been assessed during the five-year period, the failure to pay VAT was intentional, the responsible person did not act in good faith and any assumption as to VAT liability was not based on reasonable grounds but was due to negligence.

Input tax must generally be deducted within five years of the time when the input tax was first claimable. However, if the non-deduction of input tax was

in line with the practice generally prevailing, the input tax must be claimed within six months.

### VAT compliance

#### Tax invoices

A full tax invoice must be issued within 21 days of the date of a taxable supply if the consideration for the taxable supply exceeds ZAR3,000. The tax invoice must be in South African rand and contain the following information:

- the words 'tax invoice';
- an individual serialised invoice number;
- name, address and VAT registration number of the supplier;
- name, address and VAT registration number (if applicable) of the recipient;
- date of issue of invoice;
- quantity or volume of goods or services;
- full and proper description of goods or services supplied; and
- amount charged excluding VAT, VAT charged and amount charged including VAT, or
- amount inclusive of VAT, with a statement to the effect that VAT is included at a specified rate.

If the consideration for the taxable supply does not exceed ZAR3,000 the supplier vendor may issue an abridged tax invoice, instead of the full tax invoice. The abridged tax invoice must contain all the information required for a full tax invoice, except:

- the name, address and VAT registration number of the recipient; and
- the quantity or volume of the goods or services.

Electronic invoicing is accepted on certain conditions. A foreign language may not be used on invoices. Invoicing in a foreign currency is allowed, if it is a zero-rated tax invoice. For standard rated tax invoices, the conversion to South African rand must be reflected on the tax invoice.

#### Credit notes and debit notes

Credit and debit notes are issued when the initial consideration for the taxable supply must be adjusted.

Credit notes and debit notes must contain the following information:

- the words 'credit note' or 'debit note';
- name, address and VAT registration number of supplier;
- name, address and VAT registration number of recipient (only if a full tax invoice was issued for the original supply);
- date of issue of credit note or debit note;
- reason for issuing the credit note or debit note;
- sufficient information to identify the transaction to which the credit note or debit note relates;
- amount charged,
- excluding VAT, VAT charged and amount charged including VAT, or
- including VAT, and a statement that VAT is included and the rate of VAT charged;

A credit note is not required where the terms of a prompt payment discount are clearly reflected on the face of the tax invoice.

A supplier must increase his output tax for the period in which the debit note was issued, and the recipient (if a registered vendor) may increase his input tax to reflect the debit note.

Where a credit note was issued, the supplier has an option either to decrease his output tax or to increase his input tax. The opposite applies to the recipient (if registered as a vendor).

#### Additional export documentation

Specific documentary requirements have been prescribed by SARS for substantiating the zero-rating of an export, for example:

- the supplier's copy of the zero-rated tax invoice;
- the recipient's order or the contract between the supplier and recipient;
- export documentation as prescribed under the Customs and Excise Act;
- proof of payment;
- proof that the exported goods have been received by the recipient outside South Africa; and
- other specific documents, depending on the mode of transport.

#### Record keeping

Records must be kept for a period of five years. After the first year, certain records may be kept solely in electronic form, if SARS' prior approval has been obtained. The records may be kept outside South Africa, but the originals must be made available if requested by SARS.



### Other VAT rules

#### Bad debts

A vendor may claim a deduction if a bad debt has been written off for accounting purposes. If the bad debt is subsequently recovered, output tax must be accounted for.

Bad debt relief cannot be claimed when a vendor transfers accounts receivable on a non-recourse basis. If transferred on a recourse basis, a deduction can be claimed only when the debt is transferred back to the vendor in respect of any part of the debt that is subsequently written off as irrecoverable.

If a vendor who is registered on the invoice claims an input tax deduction and fails to pay the invoice within 12 months, the vendor must account for output tax on the outstanding invoice amount (exceptions apply). When the vendor subsequently pays any amounts of the invoice value, an input tax deduction can be claimed.

#### Land and buildings

The sale of land and buildings by a vendor during the ordinary course of his business is subject to VAT, in which case no transfer duty is payable. The sale of fixed property by a non-vendor is subject to transfer duty only (unless an exemption applies).

A vendor may claim an input tax deduction on the acquisition of secondhand fixed property under a non-taxable supply, limited to the transfer duty paid on the acquisition.

#### Accommodation

The letting of a dwelling, to be used as a residence of a natural person, is exempt from VAT.

The supply of short-term

accommodation, e.g. holiday accommodation in hotels, guest houses and similar establishments, is subject to VAT, if the supplier is registered as a VAT vendor in respect of this activity. A person who provides such accommodation qualifies for VAT registration only if he has made (or is expected to make) taxable supplies of such accommodation of more than ZAR60,000 per annum. Where such accommodation is provided for an uninterrupted period exceeding 28 days, VAT is charged only on 60% of the charge.

#### Leasing

If goods are supplied under an 'instalment credit agreement', the supplier must account for output tax on the total cash value, excluding any finance charges, when the goods are delivered or the first payment is made, whichever time is the earlier.

If goods are supplied under a 'rental agreement', output tax is payable on the full amount of each periodic payment. While VAT is thus also levied on any finance charges included in the rental, VAT is not payable upfront, but when the instalments are paid.

#### Promotional gifts

Where no consideration is received for promotional gifts distributed by a vendor, no output tax will be payable. A vendor who acquires promotional gifts for purposes of distribution in the course of making taxable supplies (e.g. diaries, pens, clothing or product samples) may claim input tax in respect thereof, unless the input tax is specifically denied, such as where the gift constitutes entertainment (e.g. wine or chocolates).

#### Secondhand goods

The supply of secondhand goods by a vendor is subject to VAT.

A vendor who has purchased secondhand goods under a non-taxable supply, subject to certain conditions, is entitled to deduct 'notional input tax', calculated as the tax fraction (14/114) of the lesser of the open market value or the consideration paid. Where the secondhand goods are fixed property, the notional input tax is limited to the amount of transfer duty paid (or which would have been paid, had an exemption not applied).

#### Small retailer scheme

SARS will grant a vendor permission to use the Small Retailers VAT Package (SRVP) if the vendor supplies both standard and zero-rated goods from the same premises, his VAT-exclusive taxable supplies do not exceed ZAR1 million per annum, he does not have adequate point of sale equipment and cannot account for VAT under the normal rules, and the application of the SRVP will not materially distort his actual VAT liability.

The output tax payable for the tax period is the sum of all daily standard rated sales for the tax period multiplied by the tax fraction (14/114). The daily standard rated sales are calculated as the daily gross takings less the daily zero-rated sales, where:

- the amount of daily gross takings is the total amount of the cash in the till, monies banked, credit and debit card vouchers, cash taken for purchases, own use and wages, and credit sales (when the vendor is on the invoice basis) less the daily float, refunds paid and debtors receipts (when the vendor is on the invoice basis); and
- the amount of daily zero-rated sales is calculated by adding the industry markup percentage to the

total zero-rated purchases used exclusively to make zero-rated supplies.

### Tourism industry

The transport of fare-paying passengers by road or railway is exempt, excluding transport by way of a funicular railway or a game-viewing vehicle. The transport of passengers from South Africa to a destination outside South Africa (and vice versa) is zero-rated. The zero rate also applies to the local leg of an international flight, e.g. a connecting flight between Cape Town and Johannesburg en route to New York. The supply of accommodation and meals (e.g. in hotels) is subject to VAT at the standard rate.

Travel agency fees charged for arranging a tour package will be zero-rated if the tourist is outside South Africa when the tour package is arranged and standard rated if the tourist is in South Africa when the tour package is arranged. Tour operators must keep accurate records to establish which part of the package relates to exempt supplies (e.g. travel in South Africa), zero-rated supplies (e.g. travel to a place outside South Africa) and taxable supplies (e.g. hotel accommodation).

### Transfer of a business

The sale of an enterprise (or part thereof) to a registered vendor is zero-rated if the parties have agreed in writing that:

- the enterprise will be sold as a going concern at 0%;
- the enterprise will be an income-earning activity on the date of transfer; and
- the assets that are necessary to carry on the enterprise are disposed of to the purchaser.

If the purchaser of an enterprise, sold as a going concern at 0%, acquires the enterprise partly for non-taxable purposes, output tax must be paid to the extent of the intended non-taxable application (if more than 5% of total application).

### Warranty repairs

The supply of services to a warrantor for consideration, in respect of goods under warranty, is zero-rated if:

- the warrantor is a nonresident and non-vendor;
- the warrantor is outside South Africa at the time the services are rendered; and
- VAT was paid on the importation of the goods under warranty.

## Other indirect taxes

### Customs duty

Customs duty is payable on the importation of goods into South Africa at the time of entry for home consumption. The rate of duty is often determined as a percentage of the value of the goods (ad valorem), at a rate ranging from 0% to as high as 60%. Additional ad valorem customs duties are levied on a range of luxury items.

South Africa is a member of the Southern African Customs Union, the other members being Botswana, Namibia, Lesotho and Swaziland. Import duties are not levied on movements of goods between these countries.

Depending on the origin of the imported goods concerned, preferential tariff treatment may be applied. Furthermore, a number of duty relief schemes are available, depending on the type of customs-related activities in which an importer or exporter engages.

### Excise duty

Excise duty is payable on the following locally manufactured goods with a corresponding customs duty (at the same rate of duty) on imported goods of the same class or kind: fuel products, tobacco products, malt beer, traditional African beer, spirits (liquor) products, wine, other fermented beverages, ad valorem products and environmental levy goods.

The rate of excise duty is levied on either an ad valorem or a specific basis (i.e. per litre).

### Environmental levy

An environmental levy is charged on certain locally manufactured and imported plastic carrier bags and flat bags (e.g. grocery bags) at a rate of 4 cents per bag. The levy is not payable on plastic bags used for immediate wrapping/packaging, refuse bags and refuse bin liners.

### Transfer duty

Transfer duty is payable on the transfer of immovable property, unless the supply of the property is subject to VAT. The person acquiring the property must pay the transfer duty, at the following rates:

- if the property is acquired by a person other than a natural person, the rate is 8%;
- if the property is acquired by a natural person and the value of the property:
  - does not exceed ZAR500,000, no transfer duty is payable;
  - is ZAR500,001 – ZAR1 million, the rate is 5% on the value above ZAR500,000;
  - exceeds ZAR1 million, the transfer duty is ZAR25,000 plus 8% on the value above ZAR1 million.



**Stamp duty**

Stamp duty has been abolished with effect from 1 April 2009. Previously, stamp duty was payable on property leases of over five years.

**Securities transfer tax**

Securities transfer tax is charged on the transfer of listed and unlisted securities (on or after 1 July 2008), at the rate of 0.25% of the taxable

amount (i.e. the purchase consideration unless a special rule applies) in respect of any transfer of a security.

**Skills development levy**

A skills development levy is payable by employers who have an annual payroll in excess of R500 000 at a rate of 1% of the total remuneration paid to employees. This is a compulsory levy scheme for the funding of education and training.

**General fuel levy and Road Accident Fund levy**

The general fuel levy and the Road Accident Fund levy are payable on the sale of petrol and diesel. No VAT is payable on fuel levy goods.

## Contact details – PricewaterhouseCoopers, South Africa

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# Tanzania



## Introduction

VAT became effective in mainland Tanzania on 1 July 1998 when the Value added tax (VAT) Act 24 of 1997 came into force. In Zanzibar VAT became effective on 1 January 1999. While this chapter sets out the law prevailing on the Mainland, the law in Zanzibar is essentially the same.

VAT is administered by the Tanzania Revenue Authority (TRA).

## Rates and scope

### Rates

The standard rate of VAT was 20% as at 31 May 2009. However, from 1 July 2009, the rate was reduced to 18%. There is no higher or reduced rate (except for the zero rate).

### Scope

VAT is charged on any supply of goods or services made in mainland Tanzania where it is a 'taxable supply' made by a 'taxable person' in the course or furtherance of any business carried on by him. VAT is also chargeable on the importation of taxable goods and services.

## VAT registration

### Compulsory registration

A 'taxable person' is a person who is, or is required to be, registered for VAT. The requirement to register for VAT arises where taxable turnover exceeds, or is likely to exceed:

- TZS40 million in a period of 12 consecutive months; or
- TZS10 million in a period of three consecutive months.

Once either of these criteria is satisfied the person is obliged to register within 30 days.

The value of taxable imported services is taken into account for the purposes of determining whether registration is required. Businesses that make no taxable supplies but who import services with a value exceeding the threshold are obliged to register.

The Commissioner is also empowered to register persons on the grounds of national economic interest or for the protection of revenue. This provision is also used to register investors whose projects have not yet commenced production.

### Voluntary registration

Application for registration may be made in advance of any requirement to do so, but is allowed only at the Commissioner's discretion.

### Group or branch registration

Group registration for companies is not allowed in Tanzania.

Where a taxable person carries on a business in several divisions or branches, it may be registered in the names of those divisions or branches if the company's request is approved by the Commissioner.

If taxable supplies are made in Zanzibar, a separate 'branch' registration in Zanzibar is required.

### Nonresidents

To obtain a VAT registration, a nonresident business must obtain a local business licence and a Taxpayer Identification Number (TIN). To obtain these, the nonresident business must first open an income tax file with the Tanzania Revenue Authority.

The appointment of a fiscal representative is optional. A bank account is not required for VAT registration.

## Application for registration

Registration is applied for on form VAT101, which is obtained from and returned to the TRA office, local to the principal place of business. Application must be lodged within 30 days of the business becoming liable to make the application, but may be made in advance of any requirement to do so.

The penalties for late registration or failure to register are as follows:

- automatic penalty of TZS50,000;
- 1% of the VAT due for the first month, then TZS100,000 or 2% for each further month late, for each missing return;
- interest charged at Central Bank rate plus 5%.

If criminal prosecution is pursued, a fine of TZS200,000 shillings and/or two to 12 months imprisonment may be imposed on conviction.

The registration number format for resident and nonresident businesses is the same, namely '2 digits-6 digits A': 99-999999 A.

## Deregistration

If a person ceases to be liable to be registered, either through cessation of trading or because the turnover falls below the registration threshold, he must notify the Commissioner within 30 days and make application to be deregistered. Deregistration may also be initiated by the TRA where it sees fit. VAT must be accounted for on all stock and assets on hand at deregistration, unless the business is the subject of a transfer of a going concern, or the VAT involved is less than TZS5,000.

## Output tax

Advertised prices must be stated inclusive of VAT.

Output tax is calculated on the taxable value of the supply.

## Exemptions and zero rating

### Exempt supplies

Supplies that are exempt from VAT and in respect of which the supplier cannot make a deduction of input tax, include (but are not limited to):

- health supplies;
- water;
- educational supplies;
- books and newspapers;
- passenger transport, excluding air charter, taxi cabs, rental cars, boats and boat charters;
- land and certain residential housing;
- finance and insurance;
- petroleum products (including aviation spirit, jet fuel, liquid petroleum gas (LPG) and LPG cylinders, compressed natural gas (CNG) and CNG cylinders, petrol, diesel, kerosene, heavy furnace oil, industrial diesel oil, avgas and bitumen);
- agricultural services and implements;
- certain unprocessed foods;
- crops and livestock;
- pesticides and fertilisers;
- veterinary supplies;
- funeral services;
- tourist services;
- postal supplies;
- aircraft and certain supplies thereof, including leasing of aircraft;
- fishing gear;
- games of chance;
- computers;

- solar energy appliances and wind powered energy appliances;
- firefighting equipment;
- burning jelly; and
- certain dairy equipment.

### Zero-rated supplies

Supplies that are zero rated, in respect of which the supplier may claim input tax deductions, include (but are not limited to):

- exports of goods and certain taxable services;
- supply of goods for consumption or duty-free sale on ships and aircraft on journeys to destinations outside Tanzania;
- transport of goods in transit and ancillary transport services in connection with goods in transit;
- various specified services for foreign-going ships and aircraft;
- supply by a local manufacturer of various agricultural implements, fertilisers, pesticides, etc.;
- supply by a local manufacturer of fishing nets and accessories;
- supply by a local manufacturer of human and veterinary medicine, drugs and equipment designed for use by the blind or disabled, mosquito coils and sanitary pads; and
- supply of locally manufactured sacks.

### Special relief supplies

Supplies to or imports by designated categories of person are entitled to 'special relief' from the VAT that would otherwise be charged. The relief is conditional on certain procedures being followed. The designated categories of person include:

- diplomats or diplomatic missions;
- mineral exploration or prospecting companies;
- petroleum and gas exploration and prospecting companies;
- projects funded under technical aid or by donors;
- medical practitioners, opticians, dentists, hospitals, clinics or veterinary practitioners;
- personal effects of travellers or deceased;
- charities, nonprofit organisations or religious organisations;
- water or sewerage authority;
- spectacle lens manufacturers;
- registered educational establishments;
- water drilling companies, of goods to be used solely for water drilling;
- anyone importing/purchasing capital goods, firefighting equipment, railway locomotives;
- investors licensed under the Export Processing Zones Act, 2002; and
- the Bank of Tanzania.

## Input tax

### Input tax allowed

VAT incurred on goods and services supplied to a taxable person for the purposes of a business carried on or to be carried on by him, and which relates to taxable supplies made or to be made by him, may be deducted as input tax.

A business that makes only exempt supplies cannot register for VAT and cannot claim any input tax.

Input VAT, which would otherwise qualify for input tax deduction, is not deductible if no tax invoice is held at

the time the deduction is claimed, or if the tax invoice is dated more than one year before the deduction is claimed.

### Input tax expressly denied

The following supplies are specifically denied input VAT deduction:

- 'motorcars' as defined in the legislation; and
- business entertainment, unless the business either carries out entertainment in the normal course of its business, or the costs relate to the provision to staff of food, accommodation and nonalcoholic beverages for exclusive business use.

### Partial exemption

If a business makes both exempt supplies and taxable supplies, it is said to be 'partially exempt'. The amount of input tax it may reclaim will be restricted to that related to its taxable supplies.

There are two methods set out in regulations to calculate this amount:

#### *Method 1 (Average Method)*

- Under this method, the deductible input tax is calculated under the apportionment formula, where:
  - the numerator is the total value of all zero-rated and standard rated supplies (VAT-exclusive); and
  - the denominator is the total value of all zero-rated, standard rated (VAT-exclusive) and exempt supplies.

#### *Method 2 (Direct Attribution)*

- All VAT that is directly and wholly attributable to taxable supplies may be deducted in full as input tax. Any VAT that is directly and wholly

attributable to exempt supplies may not be deducted. The residual input tax is the VAT that cannot be wholly attributed to either taxable or exempt supplies. The deductible input tax portion is calculated by reference to the proportion of taxable sales to total sales.

Taxpayers may choose either of the above methods, but the method chosen must be used for the whole accounting year. At the end of the year, the input tax claim is recalculated on the basis of the whole year, using the method chosen, and any adjustments are made on the next VAT return.

### Adjustments

No change of use adjustments are required or allowed in Tanzania.

### Preregistration and post-deregistration VAT

VAT incurred on goods and services purchased for the purposes of the business up to six months prior to registration may be deducted. In the case of goods, they must be in the possession and ownership of the taxable person at the date of registration.

Repayment of tax incurred on services up to six months after deregistration may be claimed if those services were received for purposes that are directly connected with the reason the registration was cancelled.

## Imports

### Goods

VAT is chargeable at importation on all goods that are not exempt from VAT, do not qualify as capital goods, or are ineligible for special relief. The value for VAT is the CIF value plus any customs and/or excise duty. There is no VAT

deferment scheme. VAT, if applicable, must be paid before the goods are released by Customs.

### Services

The reverse charge applies to all services, which would be taxable if supplied in Tanzania, when supplied from outside Tanzania to a recipient who is a resident of Tanzania.

The recipient of the services, if registered for VAT, must account for VAT on the value of the imported services, when the service is performed or completed, an invoice is issued, or any payment is made, whichever is the earlier. The VAT is deductible as input tax subject to the normal rules, and any restriction imposed by a partial exemption method.

Recipients of imported services, who are not otherwise registered for VAT, will become liable for registration if they import taxable services to a value of over TZS40 million in any 12-month period.

## Exports

### Goods

Exports of goods are zero rated. This applies whether goods are standard rated or exempt when supplied for domestic consumption. Zero-rating is applicable only to the actual exporter, not to any preceding transactions. Zero rating is conditional on satisfactory proof of exportation being produced to the TRA if required.

### Services

Only the following services can qualify as an export of service subject to documentary proof acceptable to the Commissioner:

- the supply of services and ancillary



- services relating to cultural, artistic, sports, scientific, educational, entertainment fairs and exhibitions, including the supply of services of organisers of such activities but only when such services are physically carried out outside Tanzania;
- the supply of services of valuation of and work on movable tangible property but only when such services are physically carried out outside Tanzania;
  - the supply of ancillary transport activities such as loading and unloading, handling and similar activities, but only when such services are physically carried out outside Tanzania;
  - the supply of certain specified services connected with immovable property, but only when the immovable property is located outside Tanzania;
  - the supply of services rendered by an intermediary acting in the name and on behalf of another person when the underlying transaction is supplied outside Tanzania;
  - the supply of services of consultants, engineers, lawyers, accountants and other similar services, as well as data processing and the provision of information, but only when such services are supplied to a person other than a related person who is established or has his permanent address or usually resides outside Tanzania, provided that such services are not related to a business established or to be established in Tanzania; and
  - the supply of telecommunication services, radio and television broadcasting services but only if effective enjoyment of such services takes place outside Tanzania.

Taxable supplies of services not falling within the above categories are taxed at the standard rate.

### Refunds to foreigners

No tourist refund scheme applies in Tanzania. Foreign companies without a VAT registration in Tanzania cannot get a refund of Tanzanian VAT.

### Place, time and value of supplies

#### Place of supply

Goods are deemed to be supplied in mainland Tanzania if their supply:

- does not involve their removal from or to mainland Tanzania; or
- involves their installation or assembly at a place in mainland Tanzania to which they are removed.

Goods are deemed to be supplied outside mainland Tanzania if their supply involves their installation or assembly at a place outside mainland Tanzania to which they are removed.

Services are deemed to be supplied in mainland Tanzania if the supplier of the service has:

- a place of business within mainland Tanzania and nowhere else;
- no place of business in mainland Tanzania or elsewhere but his usual place of residence is in mainland Tanzania;
- places of business in mainland Tanzania and elsewhere, but the place most concerned with the supply is in mainland Tanzania.

#### Time of supply

The time at which a supply of goods or services is treated as taking place, and hence the date on which the tax on the supply becomes chargeable, is called the 'tax point'. The rate of tax to be charged is the rate in force at the tax point, and the supply must be accounted for in the return period in which the tax point occurs.

For goods, the time of supply is the earlier of:

- if the goods are to be removed, the date of removal;
- if the goods are not to be removed, the date they are made available to the customer;
- the date a tax invoice is issued; or
- the date payment is received for all or part of the supply.

For services, the time of supply is the earlier of:

- the date the service is performed or rendered;
- the date a tax invoice is issued; or
- the date payment is received.

In the case of a metered service, where there is no recognisable completion date, a tax point occurs each time the meter is read, a tax invoice is issued or payment is received, whichever happens first.

For imports of goods, VAT must be paid at the time the customs duty is payable.

#### Value of supply

If the supply is for monetary consideration, the value of the supply is taken to be the taxable consideration.

If the consideration is not monetary or only partly monetary, the value of the supply is the open market value. Open-market value is deemed to be the value that the goods or services would fetch in the ordinary course of business, where the supplier and purchaser are not connected. In this respect the law assumes that:

- the goods have been delivered;
- the recipient will bear the cost of freight, insurance and other costs incidental to the supply and delivery of the goods;

- the supplier will bear any duty or tax; and
- the value covers any right to use any patent, design or trademark, in respect of the supply.
- Where there has been a fraudulent act or omission, anti-avoidance provisions give the Commissioner the power to amend any value used.

## VAT compliance

### Accounting basis and tax period

VAT returns are filed every month. From 1 July 2009, VAT returns can be filed electronically.

A taxable person is required to record each supply made and account for VAT on it at the time of supply (i.e. in the month in which the supply took place). The accounting for input tax is based on the accrual principle (i.e. upon the receipt of the tax invoice).

### Returns and payment of VAT

A VAT return on the prescribed form VAT 201 must be lodged with any VAT payment due or claim for repayment, by the last business day of the month, following the month in which the relevant transactions were incurred. Electronic filing of VAT returns is currently not permitted.

VAT on imported taxable goods is payable at the time customs duty is payable. Where the imported goods are capital goods as defined in the Customs Tariff, special relief is allowed if certain procedures are followed.

VAT is payable by the last working day of the calendar month following the end of the prescribed accounting period. Payment can be made in cash, by cheque or by a bank transfer. Direct bank transfer is allowed, provided proof of payment is enclosed with the return.

### Interest and penalties

The penalties for late filing of the return are:

- a fine of TZS500,000 and/or 2–12 months imprisonment;
- a penalty of TZS50,000 or 1% of the VAT due for the first month, then TZS100,000 or 2% for each further month late, for each missing return;
- interest charged at the Central Bank rate plus 5%.

### Refunds

At the end of a six-month period commencing with the return when a repayment first became due, taxpayers may apply for the refund of any accumulated or residual credit. A taxpayer in a regular repayment situation, defined as one who over a six-month period is in a net credit situation, can apply for repayments to be made on a monthly basis.

If a business does not wish to make a claim, it can elect to carry forward excess VAT credits for offset against future payments.

All refund claims must be examined by a registered auditor who will issue a 'certificate of genuineness'. There is a three-year time limit for lodging VAT refund claims. In theory, interest should be paid to the taxpayer if properly submitted claims for refund are not repaid within 30 days.

### Objections and appeals

If an objection to a VAT assessment is to be lodged, it must be lodged with the Commissioner General within 30 days from the date of the assessment.

If the assessment is not resolved and TRA confirms the assessment and the taxpayer wishes to dispute the assessment, he must lodge a notice of intention to appeal with the Tax

Revenue Appeals Board within 30 days, and a statement of the ground for appeal within 45 days from the date of the notice of confirmation of the assessment.

This same appeal process must be followed in any case where the taxpayer wishes to dispute the TRA's calculation of the amount due for refund or the refusal to make a refund.

A taxpayer can appeal against the decision of the Appeals Board to the Tax Revenue Appeals Tribunal. A notice of intention to appeal must be lodged within 30 days from the date of the Board's ruling and a statement of the grounds for appeal must be submitted within 15 days of lodging the notice of intention to appeal.

A taxpayer can appeal against the decision of the Tax Appeals Tribunal to the Court of Appeal of Tanzania.

## VAT records

### Tax invoices

An invoice for VAT purposes should contain the following information:

- name, address, VAT registration number and Taxpayer Identification Number (TIN) of supplier and recipient;
- date;
- invoice number;
- description of goods;
- VAT-exclusive and VAT-inclusive values;
- VAT amount;
- rate of VAT;
- any discounts; and
- the words 'tax invoice' prominently displayed.

Although electronic invoices may be issued, hard copies of electronic invoices must be made available for inspection. The TRA also requires the purchaser to hold the original tax invoice.

Foreign languages may not be used on the invoice. Invoicing may be done in a foreign currency.

### Credit notes and debit notes

Credit notes may be issued if a supply is cancelled, the goods are returned to the supplier, the value of the supply is reduced, or if there is a bad debt (and the Commissioner is satisfied that such a debt is bad). Credit notes must contain all the information required for a tax invoice, and must also state the amount of credit and the reason for it. Debit notes are issued if the amount of tax originally invoiced is found to be understated.

### Additional export documentation

Exporters who claim refunds of VAT must provide certificates of landing in respect of their sales.

### Record keeping

Records must be kept for a period of five years. Records may be kept outside Tanzania, but must be made available for inspection in Tanzania when required. Records may be kept in electronic form, but hard copies must be made available for inspection.

## Specific VAT rules

### Land and buildings

The sale or lease of an interest in land is exempt from VAT. From 1 July 2009, it is proposed that the sale of used property and the lease of most residential property will no longer be exempt. The sale or lease of commercial or nonresidential property, whether new or used, is standard rated.

### Leasing

An operating lease is a standard rated supply of a service. VAT is chargeable (and deductible) on the periodic leasing payments. Finance leases are treated as the immediate sale of goods. VAT on the full value of the goods is accounted for by the supplier at the time they are made available to the customer, and this may be deducted by the purchaser, subject to the normal rules. If the subject of the transaction is a car, input tax deduction is blocked.

The leasing of aircraft is exempt for VAT purposes.

### Promotional gifts

Gifts of goods are taxable supplies. VAT should be accounted for at the open market value. There is no de minimis limit for business gifts, nor any concessions for business promotion schemes.

### Secondhand goods

VAT is chargeable on the sale of secondhand goods unless the items are exempt from VAT or are 'motorcars', as defined. Exports of secondhand goods also qualify for zero rating.

There are two special schemes to enable retailers to calculate output tax due. They do not have to calculate and keep a record of the VAT on each transaction as it takes place, nor issue a tax invoice unless the customer asks for one.

### Retailer scheme

#### Method 1

Takings must be separated, at the point of sale, between taxable and exempt supplies.

Each day at the close of business, the gross takings for taxable and exempt supplies must be recorded.

At the end of the accounting period, the records of taxable daily gross takings must be totalled.

The VAT to be included in the VAT return is calculated by applying the tax fraction (20/120) to that total.

#### Method 2

Gross takings for each day are recorded.

At the end of the accounting period, daily gross takings for that period must be totalled.

Those gross takings must be allocated to taxable supplies in the same proportion that the value of taxable purchases made in the period bears to the value of total purchases in that period.

The VAT for the accounting period must be calculated from the gross takings allocated to taxable supplies using the tax fraction.

### Electronic cash registers

Retailers must use electronic cash registers (ECRs) to record their daily sales and issue receipts for all transactions. Retailers are taxable persons who make supplies of goods and services by retail direct to the consumer in small quantities that are not meant for resale. Retailers include shops, restaurants and other catering outlets, bars and photographic studios. Wholesalers, sub-wholesalers and businesses like opticians, accountants and internet service providers are not retailers and must therefore issue tax invoices for each transaction.

### Tourism industry

Tourist services such as tour guiding, game driving, water safaris, animal or bird watching, park fees, tourist charter services and ground transport are

exempt for VAT purposes. However, this does not include the provision of food and accommodation.

## Transfer of a business

No VAT is chargeable and no input tax is deductible on transactions that qualify as the transfer of a going concern. The Commissioner must be notified of such a transfer within 30 days of the transfer taking place.

## Other indirect taxes

### Customs duties

Customs duty is charged on imports at rates of 0%, 10% and 25%, based on a Common External Tariff for the East African Community. The import

of most goods from one East African country to another is free from customs duty, subject to satisfaction of rules of origin. It is expected that from 1 January 2010, all goods will be free from customs duty, again subject to satisfaction of the rules of origin. The top rate of 25% applies to consumer goods. The customs duty rates and their application are governed by the East African Community Customs Management Act, 2004.

### Excise duties

Excise duties are chargeable on petroleum products, beer, wine, spirits, soft drinks, tobacco goods, mobile phone airtime, satellite and cable TV and motor vehicles over 1,000cc in engine size.

### Fuel levy

A fuel levy is charged on petroleum products at a rate of TZS200 per litre.

### Stamp duty

Stamp duty is chargeable on certain prescribed instruments, including conveyances, leases, transfers of shares, and the issue and transfer of debentures.

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# Tunisia



## Introduction

VAT is levied under the Tunisian VAT Code and is due on all transactions taking place in Tunisia. The sale of goods is considered as taking place in Tunisia and thus subject to VAT if the goods sold are delivered in Tunisia. The sale of services is considered as taking place in Tunisia and thus subject to VAT if the services sold are consumed or used in Tunisia.

VAT was introduced in June 1988 to replace the 'Tax on production', the 'Consumption tax' and the 'Tax on services', in force from 1955.

## Rates and scope

### Rates

The standard rate of VAT is 18%. Lower rates of 6% and 12% apply to specifically designated operations.

Some operations, products or services are out of the scope of VAT in Tunisia and some others are expressly exempt from VAT.

### Scope

Unless expressly exempt, transactions that take place in Tunisia relating to commercial operations other than sales (sale operations subject to VAT are expressly designated), industrial and artistic operations and independent personnel services are subject to VAT. This is regardless of the targets, the results and the legal status of the persons conducting the relevant operations and regardless of their liability for other taxes.

With regard to services, transactions are considered as taking place in Tunisia when the service or the right provided is used or consumed in Tunisia.

## VAT registration

### Compulsory registration

The following persons are liable for compulsory registration:

- individuals and companies carrying out transactions that are subject to VAT;
- individuals and companies mentioning, by mistake, VAT on their invoices, despite the fact that they are not subject to VAT. However, these individuals and companies are to be considered as subject to VAT only in respect of the relevant operations;
- individuals and companies that opt to be liable for VAT;
- entities affiliated to companies subject to VAT, regardless of their legal forms; and
- persons storing alcoholic drinks and wholesalers of wine and alcoholic drinks.

Persons liable for VAT can be either totally or partially subject to VAT.

### Voluntary registration

Voluntary registration is allowed where persons:

- carry out activities that are outside the scope of Tunisian VAT. In this case, the option has to be a full option, which means that all the activities carried out by these persons will be subject to VAT; or
- carry out operations that are exempt from VAT and that are destined for export, or supply products and services that are exempt from VAT to persons liable for VAT. In this case, the option may be a partial or a full option.

## Group and branch registration

The branch or the subsidiary must register for VAT with the Tax Department, regardless of its liability for VAT, in order to obtain a tax identification number that shows the status of the registrant in regard to VAT. The registration must be made prior to starting any activity.

### Nonresidents

In a case where VAT is due on a transaction invoiced by an entity that is neither resident nor established in Tunisia, VAT will be withheld at source by the Tunisian entity and paid on behalf of the nonresident, non-established entity in Tunisia to the Tunisian Government within 28 days following the end of the month during which the transaction took place.

The entity not established in Tunisia that carried out a transaction liable for VAT in Tunisia may file a return with the Tunisian Tax Authorities in order to deduct the input VAT on the purchase of goods and services necessary for the realisation of the transaction subject to VAT in Tunisia from the amount of the VAT due in Tunisia on that transaction, and which was withheld at source by the Tunisian client.

### Application for registration

A written application is to be filed with the relevant Tax Authorities by newly created enterprises before starting any activity.

In case of voluntary registration, the application may be submitted at any time during the tax year (most of the time, the tax year coincides with the calendar year) and the option becomes effective from the first day of the month following the one during which the optional registration is accepted by the tax authorities.



The registrant must remain subject to VAT for a four-year period starting from the day the option becomes effective (see above) until 31 December of the fourth year following the one during which the registration for VAT took place. No deregistration is possible during this period.

In case of deregistration, a written request is to be filed with the relevant Tax Authorities three months before the expiry of the four-year period. Failing that, the registration will be tacitly renewable for four years each time.

### Deregistration

Deregistration is not possible in the case of compulsory liability for VAT.

In case of voluntary registration, the deregistration is to be made by a written application to be filed with the relevant tax authorities within the three months before the end of the four-year registration period.

### Output tax

Output VAT is calculated on the basis of the amount of the invoice excluding VAT.

The VAT rate to be applied depends on the nature of the goods or services to be provided.

### Exemptions and zero rating

#### Exempt supplies

The VAT exemptions include, but are not limited to:

- retailing of foodstuffs, medicines, pharmaceuticals and products that are subject to the government homologation of prices;
- education services and certain IT training services;
- books, brochures and similar products (other than those made with leather);

- certain agricultural products and equipment;
- aircraft intended to be used in public air transport, and related equipment;
- air and shipping transport, country-collective transport;
- bank interest derived from deposits; and
- sale by a property developer of apartment buildings exclusively intended for residential purposes.

VAT exemptions also apply to sales defined as exports, which means sales of goods and services to entities not located in Tunisia, as well as sales to wholly exporting entities governed by the Incentives Investment Code, to companies based in free zones, to offshore banks and to certain other entities benefiting from a VAT exemption.

#### Zero-rated supplies

The zero rate does not apply in Tunisia.

### Input tax

#### Input tax allowed

Individuals and companies that are subject to VAT may deduct the input VAT incurred on the purchase of goods and services necessary to carry out activities subject to VAT.

#### Input tax expressly denied

VAT incurred on the following expenses may not be deducted as input VAT:

- purchases of passenger cars other than those that constitute the main activity of the business;
- expenses related to the functioning or maintenance of passenger cars;
- VAT unduly charged (charged by mistake by a supplier who is not liable for VAT); and

- VAT mentioned on invoices that do not comply with the VAT requirements, i.e. invoices that do not mention the compulsory information, such as the amount excluding VAT, rate and amount of the VAT, amount including VAT and the name and address of the client.

### Partial exemption

Partial exemption applies if the company is carrying on two or more activities and one or several activities are not subject to VAT. In this case, the input VAT to be deducted is a portion of the whole input VAT incurred. This portion is calculated by multiplying the total amount of the input VAT by a quotient where:

- the numerator is the total amount of the turnover subject to VAT plus the turnover realised from exportations increased by the hypothetical VAT (due on the turnover derived from exportation), plus the turnover realised from sales made to persons allowed to acquire goods and services necessary for their activities VAT free, based on a certificate issued by the Tax Authorities, and
- the denominator is the total amount of the numerator increased by the turnover realised from sales exempt from VAT and sales outside the scope of VAT.

### Adjustments

During the course of the year, the company deducts the input VAT on a pro rata basis (as described above). The quotient applied is calculated by using the data of the previous year. At the end of the current year, the company must calculate the quotient to be applied and corresponding to that year. If the difference exceeds 5%, the company must adjust the input VAT.

### Imports

The importation of goods and services is subject to VAT.

### Exports

#### Goods and services

The exportation of goods and services is not subject to VAT. VAT exemption applies to sales defined as exports, which means sales of goods and services to entities which are not located in Tunisia, as well as sales to wholly exporting entities governed by the Incentives Investment Code, to companies based in free zones, to offshore banks and to certain other entities benefiting from a VAT exemption.

#### Refunds to foreigners

VAT charged on goods bought by nonresident individuals (tourists) may be refunded.

### VAT compliance

#### Accounting basis

The Tunisian accounting legislation is based on the accrual principle. The VAT is accounted for and declared during the month during which the expense or the revenue is incurred or realised notwithstanding the disbursement of the receipt date.

#### Returns and payment of VAT

The VAT is declared and paid on a monthly basis.

#### Refunds

If the input VAT exceeds the output VAT, the VAT credit resulting from the difference between the input VAT and the output VAT may be reimbursed on the basis of a written request made to the Tax Authorities.

The VAT credit is refundable if it arises from:

- exportation operations of goods and services, sales made to clients allowed to acquire goods and services VAT free and withholding tax made on the remunerations paid to companies that are neither resident nor established in Tunisia – such VAT credit is refundable if it is shown at least in one monthly tax return;
- investments destined for the carrying out of new projects as provided for in the Tunisian Incentives Investment Code – such VAT credit is refundable if it is shown in at least three successive monthly tax returns;
- suspension of activity – such VAT credit is refundable after a tax audit;
- other operations – such VAT credit is refundable if it is shown in at least six successive monthly tax returns.

In order to benefit from the refund of the VAT credits, the taxpayer has to file supporting documents such as declarations relating to exportation of goods, documents proving that the service rendered by the Tunisian taxpayer was used or consumed outside Tunisia, authorisations to sell VAT free and withholding tax certificates.

To benefit from the refund of the VAT credit, the taxpayer must already have submitted all his tax returns and paid all taxes due at the time of submission of the request for a refund.

The VAT credit is to be reimbursed within:

- 90 days if it arises from exportation operations of goods and services, and
- 30 days if it arises from sales made to clients allowed to acquire goods and services VAT free, withholding tax on remuneration

paid to companies that are neither resident nor established in Tunisia or investments destined to carry out new projects as provided for in the Tunisian Incentives Investment Code.

An advance payment of 15% of the VAT credit is to be paid to the taxpayer as soon as he presents the request for refund if the VAT credit arises from operations other than export, suspension of activity and operations of companies that are neither resident nor established in Tunisia. This rate is to be increased to 35% if the taxpayer is a company of which the financial statements are subject to legal audit.

#### Time limits

The taxpayer may claim for the VAT credit within three years calculated from the date of the deadline for filing the tax return showing the said credit and not exceeding five years calculated from the date of the payment of the VAT.

#### Tax invoices

A proper tax invoice should include:

- name and address of the supplier;
- name and address of the client;
- VAT tax identification of the supplier;
- designation of the goods or services;
- transaction date;
- the amount excluding VAT;
- the VAT rate; and
- the VAT amount.

### Specific VAT rules

#### Bad debts

VAT related to bad debts (irrecoverable invoices) can be neither deducted nor refunded.

Land and buildings

The sale by a property developer of buildings exclusively destined for housing is VAT exempt. The same rule applies to the rent of non-equipped houses.

Leasing

Leasing operations are subject to VAT. Leasing companies deduct, as input VAT, the VAT due on the purchase of the goods leased. The output VAT is calculated on the basis of the whole amount paid by the lessee (principal and interest).

Secondhand goods

If a person acquires secondhand goods:

- the seller has to reimburse the VAT initially deducted or the theoretical VAT which would have been paid in case of a purchase based on a certificate delivered by the Tax Authorities, decreased by a fifth per calendar year of detention if the goods constitute equipment, and decreased by a tenth per calendar year of detention if the goods are construction goods, but in other cases, the VAT is to be reimbursed in full; and

- the purchaser deducts the amount reimbursed by the seller, provided that the invoice shows the amount of the VAT paid back by the latter.

Small retailer scheme

Retailers realising a turnover exceeding TND100,000 are subject to VAT.

However, the sales made by retailers of the following products are exempt from VAT:

- foods;
- medicines;
- products the sale price of which is fixed by the Tunisian State.

Retailers are constrained to maintain registers in which they register, on a day-to-day basis, their purchases (the nature of the goods, price excluding VAT, rate and amount of VAT, etc.) and their turnover.

Retailers are allowed to issue, by the end of the business day, one single invoice for all the sales made during the day, as it is difficult in practice to issue an invoice for each customer.

Other indirect taxes

Registration tax

The registration of some operations is compulsory. In these cases, the registration fees are expressly determined by the Registration Fees and Stamp Duties Code, whereas registration remains optional for certain operations. In case of optional registration, the registration fees due to be paid are equal to TND15 per page.

In case of compulsory registration, the fees due depend on the nature of the transaction and the goods involved.

Stamp duty

Companies have to charge a stamp duty of TND0,300 (0,2 Euro) on each issued invoice, unless the customer is expressly exempt.

Contact details – PricewaterhouseCoopers, Tunisia

Postal address

Passage du Lac Van 1053 Les Berges du Lac  
Tunis  
Tunisie

PwC contact persons	Designation	Contact details
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# Uganda



## Introduction

VAT was introduced in Uganda with effect from 1 July 1996 to replace sales tax. VAT is charged in terms of the Value added tax Act, Cap 349.

The VAT system is administered by the Uganda Revenue Authority (URA), the head of which is the Commissioner-General.

## Rates and scope

### Rates

The standard rate of 18% applies to all supplies that do not qualify for an exemption except for the supply of residential dwelling units, which are taxable at a rate of 5%. There is no higher or reduced VAT rate, except for the zero rate.

### Scope

The following transactions are subject to VAT:

- taxable supplies of goods or services made in Uganda by a taxable person; and
- importation of goods (other than an exempt import) or services by any person.

## VAT registration

### Compulsory registration

The registration threshold for domestic supplies is UGX50 million.

Any person being a national, regional, local or public authority or body which carries on taxable activities may voluntarily register without regard to the threshold requirement of UGX50 million.

Applications for registration for VAT must be made by all persons carrying on existing business activities whose

annual taxable turnover exceeds or is expected to exceed UGX50 million in a 12-month period or UGX12.5 million in a three-month period.

A person who fails to register is liable for a penalty equal to double the amount of tax payable during the period that no application for registration is filed, or that registration by the Commissioner-General has not yet taken place.

### Voluntary registration

Persons carrying on a taxable activity whose expected turnover is below the annual registration threshold (UGX50 million) may register voluntarily.

Application may be made for registration under the Investment Trader Status scheme, before taxable supplies are made. This is allowed for a period of four years, renewable for another period of four years, and enables a person to claim VAT in respect of expenditure on inputs relating to the planned taxable business activities.

### Group or branch registration

Separate registration is needed for the different entities in a business group, as group registration is not provided for in the law.

In addition, the law does not provide for registration of separate branches or divisions.

### Nonresidents

A nonresident individual must have a nominated person in Uganda for VAT purposes. Though the VAT Act provides that a nonresident person who supplies services in Uganda for consideration would be considered as a taxable person, there is currently no registration procedure in place for a nonresident.

### Application for registration

In order to apply for VAT registration, one first has to obtain a Tax Identification Number (TIN) and an income tax file number. The application for VAT registration (both compulsory and voluntary registration) must be made on form VAT 101, 'Application for VAT Registration' (which may be obtained from any local URA office). A visit is normally conducted by an URA officer. Once registered, the Commissioner-General provides a registration number and issues a VAT registration certificate, indicating the number and the effective date of registration. If registration is denied, the applicant is notified accordingly.

The format of the VAT registration number is: 1 2 3 4 5 \_ X

### Deregistration

A taxable person may apply in writing to have his registration cancelled in the following circumstances:

- cessation to make supplies of goods or services for consideration as part of the business activities of the person; or
- if in the most recent period of three calendar months, the value of the taxable supplies exclusive of VAT does not exceed 25% of the annual registration threshold of UGX50 million. In addition, the value of the taxable supplies exclusive of VAT for the previous twelve calendar months should not have exceeded 75% of the annual registration threshold.

A voluntarily registered taxable person (with a turnover below the annual registration threshold) may apply for deregistration after the expiration of two years from the date of registration. The Commissioner-General may cancel the registration of a voluntarily registered taxable person where the person:



- has no fixed place of abode or business;
- has not kept proper accounting records relating to any business activity carried on by him;
- has not submitted regular and reliable tax returns;
- is not, in the opinion of the Commissioner-General, a fit and proper person to be registered.

The Commissioner-General has to notify the taxable person of the cancellation of registration within 14 days of making the decision. The cancelled registration takes effect from the end of the tax period in which the registration is cancelled.

Obligations and liabilities incurred by a taxable person before deregistration are not affected by the cancellation of the person's registration.

## Output tax

### Advertising and prices

Where the taxable value is made without a separate amount of the consideration being identified as VAT, it is assumed that the taxable value is inclusive of VAT.

### Calculation of output tax

Output tax is calculated by applying the VAT fraction (18/118) to the VAT-inclusive value, or by applying the rate of 18% to the taxable value of the transaction.

## Exemptions and zero rating

### Exempt supplies

Exempt supplies, in respect of which input tax is never claimed by the supplier, include (but are not limited to) the following supplies:

- unprocessed foodstuffs, unprocessed agricultural products, and livestock;
- postage stamps;
- financial services;
- insurance services;
- unimproved land;
- lease or letting of immovable property other than:
  - of commercial premises;
  - of hotel or holiday accommodation;
  - for periods not exceeding three months;
  - for parking or storing cars or other vehicles; or
  - of serviced apartments;
- educational services;
- medical, dental and nursing services;
- social welfare services;
- betting, lotteries and games of chance;
- goods transferred as part of a business as a going concern by one taxable person to another;
- burial and cremation services;
- precious metals and other valuables to the Bank of Uganda for the State Treasury;
- passenger transportation services (other than registered tour and travel operators);
- petroleum fuels, subject to excise duty (motor spirit, kerosene and gas oil), spirit-type jet fuel and kerosene-type jet fuel;
- dental, medical and veterinary equipment;
- feeds for poultry and livestock;
- machinery used for the processing of agricultural or dairy products;
- photosensitive semiconductor devices, including photovoltaic devices, whether or not assembled in modules or made into panels; light emitting diodes; solar water heaters, solar refrigerators and solar cookers;
- accommodation in hotels and tourist lodges (outside Kampala district);
- computers, printers, parts and accessories;
- feasibility studies, engineering designs and consultancy services and civil works related to road bridge construction and water works;
- liquid petroleum gas (LPG);
- contraceptive sheaths and examination gloves;
- mosquito nets, insecticides, acaricides (mite and tick poison);
- life jackets, lifesaving gear, head gear and speed governors;
- diapers, salt;
- motor vehicles of 3.5 tonnes or more for the transport of goods; and
- goods and services to the contractor of the Bujagali hydro-electric power project.

### Zero rated supplies

Supplies where VAT at the rate of zero per cent can be accounted for include (but are not limited to) the following:

- goods or services exported from Uganda (including services supplied by persons engaged exclusively in handling goods for export at a port of exit);
- international transport of goods and passengers (transport tickets);
- drugs and medicines;
- educational materials and the supply of printing services for educational materials;

- cereals grown, milled or produced in Uganda;
- seed, fertilisers, pesticides and hoes;
- milk, including milk treated in any manner to preserve it;
- machinery, tools and implements suitable for use only in agriculture; and
- leased aircraft, aircraft engines, spare parts for aircraft and aircraft maintenance equipment.

A supplier may claim input tax on these items.

## Input tax

### Input tax allowed

Generally, VAT is deductible on taxable supplies made to the taxable person during the tax period and on all imports of goods and services made by that person if they are directly related to taxable transactions of the taxable person.

VAT is not deductible on taxable supplies made to the taxable person and on imports of goods or services made by that person if they are not for use in the business of the taxable person (for example where the goods and services are directly related to exempt, without-credit, transactions).

### Input tax expressly denied

VAT incurred on the following supplies is specifically denied an input tax deduction:

- goods or services acquired for purposes of entertainment (which is defined to mean the provision of food, beverages, tobacco, accommodation, amusement, recreation or hospitality of any kind), unless the taxable person is in the business of providing entertainment, or supplies meals or

refreshments to his employees in premises operated by him, or on his behalf solely for the benefit of his employees; or

- a passenger automobile, and the repair and maintenance of that automobile, including spare parts, except in the case of motor dealers or rental businesses; and
- telephone services to the extent of 10% of the input tax on those services.

### Partial exemption

Where goods or services are acquired only partially for purposes of taxable supplies, the taxable person can only claim a proportion of the VAT incurred on purchases during the tax period according to an apportionment formula where:

- the numerator is the total amount of taxable supplies in the tax period; and
- the denominator is the total amount of all supplies in the tax period (other than the supply of goods as part of the transfer of a business as a going concern).

If the apportionment percentage is less than 5%, no input tax may be credited for the period. If it is more than 95%, the full amount of input tax may be credited for the period.

The Standard Alternative Method (or the Direct Attribution Method) allows a person directly to attribute input tax separately to the exempt and taxable supplies and to claim for all the input tax related to the taxable supplies and for none of the input tax related to exempt supplies. The balance of input tax that cannot be directly attributed can be apportioned according to a given formula. This method, or any other method, may be used only with the approval of the Commissioner-General.

### Preregistration and post-deregistration VAT

VAT incurred prior to the registration as a taxable person can be recovered in respect of taxable supplies where the supply or import was for use in the business of the taxable person, provided the goods are on hand at the date of registration and the supply or import occurred not more than six months prior to the date of registration.

A taxable person whose registration has been cancelled is regarded as having made a taxable supply of all goods on hand, including capital goods, and shall be liable for output tax on all the goods on which he received input tax credit. The output tax payable shall be based on the fair market value of the goods at the time of cancellation of registration.

## Imports

### Goods

VAT on imports is payable on the date the imports are cleared under the Customs clearance procedures. The taxable value is the total of:

- the value of the goods for customs duty purposes (cost, insurance and freight (CIF), packing costs, selling commission, royalty or licence fees) and the value of any other services excluded from the customs duty value; and
- the amount of customs duty, excise tax and any other fiscal charge payable (other than VAT).

Uganda is a signatory to the World Trade Organisation (WTO) agreement. The URA uses the valuation method of the WTO General Agreement on Tariffs and Trade (GATT), namely the Transaction Value Method. The importer must produce documents for the transactions relating to the imports, and the values contained therein are used to determine the customs value.

If the goods cannot be valued on the basis of the Transaction Value Method, secondary bases may be used.

## Services

A registered taxpayer who receives a supply of services from a nonresident supplier must account for the VAT due on the supply:

- when performance of the service is completed;
- when payment for the service is made; or
- when the invoice is received from the nonresident supplier,

whichever is the earlier.

The VAT payable is calculated by applying the VAT rate to the total consideration paid to the nonresident supplier. The recipient must account for both the value and the VAT calculated in his tax return.

VAT accounted for on imported services may be claimed as a credit, provided the recipient of the service prepares a self-billed tax invoice to account for the tax due on the supply. The claim for credit is subject to certain conditions.

Non-VAT-registered persons must obtain form VAT 500 from any local URA office and account for the VAT on imported services. Such persons will not be able to claim back any VAT incurred on imported services.

VAT-registered persons account for VAT on imported services through the monthly VAT return.

## Exports

### Goods

The supply of goods that are exported from Uganda are taxed at the zero rate. The zero rate will apply if:

- the goods are supplied by a registered taxpayer to a person in another country;
- the goods are delivered by a registered taxpayer to a port of exit for export;
- the registered taxpayer obtains documentary proof as set out below; and
- the goods are removed from Uganda within 30 days of delivery via a port of exit.

For an export transaction to qualify for zero-rating, a registered taxpayer should obtain and retain the prescribed documentary proof of export (see 'Additional export documentation' below).

### Refunds to foreigners

The Act does not authorise any refunds to tourists or nonresidents.

## Place, time and value of supply

### Place of supply

A supply of goods takes place where the goods are delivered or made available by the supplier.

A supply of thermal or electrical energy, heating, gas, refrigeration, air conditioning or water takes place where the supply is received.

A supply of services takes place where the services are rendered unless one of the following specific rules apply:

- a supply of services in connection with immovable property takes place where the immovable property is located;
- a supply of services of, or incidental to, transport takes place where the transport commences;
- a supply of services that applies to the supply of goods or services exported from Uganda is regarded as having been made in Uganda;

- where a signal or service is provided for the supply of television, radio, telephone or other communication services, the supply takes place where the person receives the signal;
- where a supply involves an agent or any other person of whatever description, the supply takes place at the person's place of business.

### Time of supply

The time of the supply (sale) of goods or services occurs:

- where the goods are applied for own use – on the date on which the goods or services are first applied for own use;
- where the goods or services are supplied by way of gift – on the date on which ownership in the goods passes or the performance of the service is completed;
- in case of a supply of goods under a rental agreement (including letting of goods, hire purchase agreements or finance lease) or services under an agreement or law which provides for periodic payments – each successive supply occurs on the earlier of the date on which each payment is due or received;

in any other case, on the earlier of the date on which:

- goods are delivered or made available, or the performance of the service is completed;
- payment of the goods or services is completed; or
- a tax invoice is issued.

Input tax is claimed in the tax period when the invoice or Customs Bill of entry and URA Receipt have been obtained from the supplier. For taxable persons on the cash basis, input tax is claimed when payment is made and the taxable person has evidence to certify it.

## Value of supply

The taxable value of a taxable supply is the total consideration paid in money or kind by all persons for that supply.

‘Consideration’ in relation to a supply of goods or services, means the total amount in money or kind paid or payable for the supply by any person, directly or indirectly, including any duties, levies, fees and charges paid or payable on, or by reason of, the supply other than VAT, reduced by any discounts or rebates allowed and accounted for at the time of the supply.

The concepts ‘consideration’ and ‘value’ must be distinguished as follows:

- value of the supply = amount payable inclusive of VAT;
- consideration for the supply = amount payable exclusive of VAT.

The taxable value of:

- a taxable supply of goods by way of an application for own use; or
- a taxable supply for reduced consideration,

is the fair market value of the goods and services at the time the supply is made.

The taxable value of a taxable supply of goods under a rental agreement is the amount of the rental payments due or received.

## VAT compliance

### Accounting basis and tax period

Under the invoice basis, VAT is accounted for by using the formula  $(X - Y)$ , where:

- ‘X’ is the total of the VAT payable in respect of taxable supplies (sales) made by the taxable person during

the tax period; and

- ‘Y’ is the total credit (on purchases) allowed to the taxable person in the tax period.

The cash basis applies to taxable persons whose annual taxable supplies do not exceed UGX200 million. Under this scheme the taxable person accounts for VAT on the actual cash receipts and payments.

Tax periods are periods of one calendar month.

### Returns and payment of VAT

VAT returns must be made monthly, and filed within 15 days of the end of the tax period.

Taxpayers may register with the URA to carry out their tax formalities or procedures with the URA electronically, such as electronic filing of tax returns.

The VAT due must be paid within 15 days of the end of the tax period, i.e. when the return must be filed. A Bank Payment Advice form is obtainable from the URA. The form can be used to pay VAT in cash or by cheque into any URA account at the various banks.

Payments above UGX20 million have to be effected by electronic funds transfer.

### Interest and penalties

The penalty for not filing a VAT return is the greater of UGX200,000 or the compounded interest rate of 2% per month for the period the return is outstanding. Penalty for late payment of VAT is calculated at a compound interest rate of 2% per month for the period during which the tax is unpaid.

If a person knowingly or recklessly makes a statement or declaration to an officer of the tax authority that is false

or misleading in a material manner and the resulting tax payable or refundable is different from the proper tax payable, the person is liable to pay double the amount of excess tax.

Further, a person who, during a tax period, claims a refund that is in excess of what is due, is liable to a penal tax equal to 100% of the excess.

### Refunds

For businesses that are in a regular repayment (zero-rated) position, cash refunds are made. Cash refunds can be made within one month following the due date or when the return was made.

For deserving taxpayers (large taxpayers), refunds can be made within 10 days of lodging the claim under the Customised Fast Track (CFT) system. Taxpayers are subject to preliminary evaluations on a case-by-case basis before they qualify for the CFT.

Where businesses are not in a regular repayment position, and the refund is:

- less than UGX5 million: the refund will be offset against the next tax period’s liability; or
- more than UGX5 million: the business can opt to offset the refund as described above, or get a cash refund.

Where the URA fails to make a refund within one month, the URA must pay interest at a rate of 2% per month compounded on the amount of the refund.

### Objections and appeals

A person who is dissatisfied with an assessment may lodge an objection with the Commissioner-General within 45 days after receipt of the notice of the assessment decision.

Where a person is dissatisfied with

the objection decision from the Commissioner-General, that person may lodge an application with the Tax Appeals Tribunal for review of the objection within 30 days after having been served the notice of the objection decision.

Before lodging the application with the Tribunal, the person is required to pay the Commissioner-General 30% of the tax in dispute or that part of the tax not in dispute, whichever is the greater.

Where a person is dissatisfied with the decision of the Tax Tribunal, a notice of appeal may be lodged with the registrar of the High Court within 30 days after being notified of the decision. An appeal to the High Court is always made on a question of law only.

## Time limits

Where a person fails to lodge a return as required, or the URA is not satisfied with the return lodged, or the URA has reason to believe that a person will become liable to pay VAT but is unlikely to pay the amount due, an assessment will be issued within five years of the date on which the return was lodged by that person. An assessment may be issued at any time where fraud or gross or wilful neglect has been committed by, or on behalf of, a person.

A claim for output tax overpaid must be made within three years after the end of the tax period in which VAT was overpaid.

An application to alter a return can be made within three years after the date on which the return was lodged.

## VAT records

### Tax invoices

Every taxable person must issue an original tax invoice to the recipient

(whether a taxable person or not) at the time of the supply. An invoice for VAT purposes should contain the following information:

- the words 'tax invoice';
- the commercial name, address, place of business, VAT registration number and Taxpayer Identification Number (TIN) of the supplier and recipient;
- the serial number and date of issue of the invoice;
- the description, quantity or volume of goods or services supplied;
- the rate of VAT for each category of goods or services and the total amount of VAT charged; and
- the consideration for the supply excluding tax and the consideration including VAT or where the amount includes VAT, a statement that it includes VAT, and the rate thereof.

Invoicing may be done in a foreign currency but even though the law allows invoicing in a foreign currency, the returns have to be filed in Ugandan shillings. Where an amount is expressed in a currency other than Ugandan shillings, the amount must be converted into Ugandan shillings using the weighted average selling rates of the previous month for the currency concerned. These rates are normally issued by the Bank of Uganda at the beginning of every month.

Tax invoices prepared by the principal may be passed to the agent for issue. The principal may also authorise the agent to issue tax invoices on his behalf. This authorisation must be in writing and be retained by the agent. The authorisation commits the principal to meet the VAT obligations resulting from the agent's actions.

### Credit notes and debit notes

Where in relation to a taxable supply by

a taxable person -

- the supply is cancelled;
- the nature of the supply has been fundamentally varied or altered; or
- the previously agreed consideration for the supply has been altered by agreement with the recipient of the supply, whether due to an offer of a discount or for any other reason; or
- the goods or services or part thereof have been returned to the supplier,

and the taxable person making the supply has provided a tax invoice in relation to the supply and the amount shown therein as the VAT charged on the supply is incorrect as a result of the occurrence of any one or more of the above-mentioned events; or the taxable person has filed a return for the tax period in which the supply occurred and has accounted for an incorrect amount of output tax on that supply as a result of the occurrence of any one or more of the above-mentioned events, the taxable person must issue a credit note or debit note.

A credit note is issued where the actual VAT chargeable is less than the amount on the tax invoice. A debit note is issued where actual VAT chargeable is more than the amount on the tax invoice.

### Additional export documentation

A tax invoice issued to a nonresident recipient generally shows tax at a zero rate. In order to qualify for zero-rating on exports, the supplier must also have the following:

- a copy of the invoice issued to the foreign purchaser with tax shown at 0%;
- a Customs Bill of Entry or Export certified by the customs authorities;
- a CD3 form issued by the Bank of



- Uganda;
- evidence sufficient to satisfy the Commissioner-General that the goods have been exported, in the form of an order form, or signed contract with, a foreign purchaser, or transport documentation that identifies the goods such as:
    - a transit order or consignment note issued by the railway company for goods exported by rail;
    - a copy of a bill of lading for goods exported by water;
    - a copy of an airway bill for goods exported by air; or
    - a copy of a transport document for goods exported by road.

## Record keeping

Records must be kept for at least six years after the end of the tax period to which the records relate. Records cannot be kept outside the country. Records can also be maintained in electronic form.

Records should be maintained in the English language and may be accessed by the Commissioner-General or authorised officer at any time during normal working hours.

## Specific VAT rules

### Bad debts

Bad debt relief may be allowed by the Commissioner-General where:

- a registered person has supplied goods or services and has accounted for and paid VAT on that supply but has not received any payment from the person liable to pay the tax;
- two years from the date of that supply have elapsed or that person has become legally insolvent; and
- the Commissioner-General is satisfied that the person has taken all reasonable steps to recover the

money and they have been futile.

### Land and buildings

The supply of unimproved land is exempt from VAT.

The letting of immovable property is exempt. However, the letting of commercial premises, hotel or holiday accommodation property for periods not exceeding three months, serviced apartments, or property for parking or storing vehicles is standard rated.

In the case of building or construction services, VAT is payable when an invoice is issued or when payment is received or becomes due, whichever is the earlier, in respect of each stage of the work completed. Where an invoice or a claim for payment by a contractor requires certification (e.g. by an architect), the time of supply is the time of certification. Where a contractor varies the cost of a contract during the course of execution, the variations to the original contract are deemed to include VAT.

### Leasing

In the case of a rental agreement (i.e. an agreement for the letting of goods, including a hire-purchase agreement or a finance lease), goods are treated as successively supplied for successive parts of the period of the agreement and each successive supply occurs on the earlier of the date on which payment is due or received. VAT is payable on the amount of rental payments due or received.

The supply of goods under a finance lease is treated as a supply under a rental agreement. The lessor may claim the input credit at inception of the finance lease and must charge VAT on the lease rentals (including the finance charge). The lessee, if registered for VAT, may claim an input tax credit. A 'finance lease' is a lease of goods where:

- the lease term exceeds 75% of the expected life of the goods; or

- the lessee has an option to purchase the goods for a fixed or determinable price at the expiration of the lease; or
- the estimated residual value of the goods to the lessor at the expiration of the lease term is less than 20% of its fair market value at the commencement of the lease.

### Promotional gifts

The making of a gift is regarded as a taxable supply of goods or services. VAT is therefore charged on the market value of such gifts unless the goods are supplied or used as trade samples.

### Secondhand goods

There are no specific rules for secondhand goods. Sales made by a taxable person are subject to VAT. The export of secondhand goods is zero rated in accordance with the general rules.

### Small retailer scheme

No special scheme is available for small retailers.

### Tourism industry

The VAT consequences of supplies made by tour operators can be summarised as follows:

- air travel – international travel is zero rated and local travel is exempt;
- car rental – standard rated;
- accommodation – exempt, if located outside Kampala;
- tourism services – standard rated;
- packaged tours – standard rated;
- marketing and management fees – standard rated.

### Transfer of a business

Transfer of a business (or separate part thereof) as a going concern is exempt if the transferor and transferee are both



taxable persons and both parties notify the Commissioner-General within 21 days of the transfer in writing of the details of the transfer.

Warranty repairs

The importation of parts as per the warranty agreement is subject to VAT at the standard rate of 18%. Services offered to foreign companies are considered exported services and are charged at the zero rate, provided the services are consumed outside Uganda.

Other indirect taxes

Import duties

Import duties are taxes imposed on imported goods. There are different rates for COMESA (Common Market for East and Southern Africa, which includes Kenya, Tanzania, Mauritius, Rwanda, Burundi, Malawi, Zambia, Zimbabwe and Mozambique) and for the rest of the world.

The COMESA rates vary between 4% and 10%. For the rest of the world the highest import duties are 25%. In addition, all goods coming into the East African Community, of which Uganda is a member, are subject to the three-tariff band (0%, 10% or 25%), depending on the origin of the goods. The East African Community member countries include Uganda, Kenya, Rwanda, Tanzania and Burundi.

Excise duties

Excise duty is imposed on certain excisable goods, as well as on selected imported products. These products largely include spirits, soft drinks, beer, wine, cigarettes and tobacco, fuel, motor vehicles, sugar, colour TVs and certain other luxury goods.

Excise duty is also levied on airtime and talk time. The rates are 12% for mobile telephone services whereas the rate for fixed lines is 5%.

Motor vehicle fees

Fees are levied on the registration and transfer of ownership for motor vehicles. Annual road licence fees were scrapped.

Stamp duty

Stamp duties are charged on various legal documents and agreements, such as:

- bills of exchange, promissory notes and bonds;
- marketable securities, including debentures;
- the sale, conveyance, mortgage and lease of any property situated in Uganda; and
- insurance policies.

Stamp duty is payable within 30 days of the execution of the instrument (if executed in Uganda), and within 30 days of arriving in Uganda (if executed outside Uganda).

Contact details – PricewaterhouseCoopers, Uganda

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# Zambia



## Introduction

VAT was introduced in Zambia on 1 July 1995 to replace the manufacturing and retail sales tax. VAT is invoice-based and is levied under the VAT Act of 1995.

The VAT authority is the Zambia Revenue Authority (ZRA). The Commissioner of Domestic Taxes, based at the ZRA Headquarters in Lusaka, is responsible for the administration of the VAT Act, together with the other taxes.

## Rates and scope

### Rates

The supply of goods and services (other than those that are exempt and zero rated) are subject to VAT at the standard rate of 16%.

### Scope

VAT is levied on taxable goods and services supplied by VAT-registered suppliers in the course or furtherance of a business that takes place in Zambia. It also applies to imported goods and services.

## Registration

### Compulsory registration

Suppliers making taxable supplies with a taxable turnover of up to ZMK200 million in any 12 consecutive months or ZMK50 million in any three consecutive months or whose taxable turnover is expected to exceed either ZMK200 million or ZMK50 million in the subsequent 12 months or three months, respectively, must make an application for VAT registration.

A supplier who is required to apply for VAT registration and who fails to do so within a month after becoming liable to apply shall be liable to a fine not

exceeding ten thousand penalty units (a penalty unit is currently ZMK180, and therefore the current fine is ZMK1.8 million, which is approximately US\$350), or to imprisonment for a term not exceeding 12 months.

### Voluntary registration

Suppliers whose taxable turnover does not meet the statutory requirement, but who wish to be registered for VAT, may do so on a voluntary basis. Suppliers registered on a voluntary basis will have the same obligations to abide by the rules that apply to statutorily registered suppliers.

The period of voluntary registration has been restricted to 12 months and any request for renewal will be scrutinised.

### Group or branch registration

The VAT Act provides for two or more companies incorporated in Zambia to form a recognised group and apply for group registration. For a group registration to be recognised by the ZRA the following conditions should be met:

- one of the group members controls each of the others;
- one person, whether a company or an individual controls them all; or
- two or more individuals carrying on a business partnership controls them all.

If the ZRA recognises the group, a single VAT registration number is allocated. Any supply of goods or services by a member of the group to another member of the group shall not constitute a supply for VAT purposes (no VAT is required to be accounted for on inter-group transactions).

In practice, separate branches can opt for a separate VAT registration number if necessary.

### Application for registration

Application for VAT is made on a prescribed application form. The ZRA will only process a VAT application form if the supplier has applied for and been allocated a taxpayer identification number (TPIN). This requirement means that by applying for the TPIN, the supplier is registering for other taxes, such as corporate tax and 'pay as you earn', but these will also require separate applications.

The VAT registration number has 10 digits: 9999 999 XAB. The first seven digits are allocated consecutively. The last three digits mean the following:

- 'X' is a check digit number generated by the computer;
- 'A' denotes the region where the business is conducted; and
- 'B' denotes the type of ownership of the business.

The registration number format for resident and nonresident businesses is the same.

### Deregistration

Cancellation of registration may take place if:

- there is a change in the legal status of an entity;
- the business ceases trading permanently;
- the business is sold;
- the business was registered as an intending business and the intention to make supplies ceases; or
- the taxable supplies fall consistently below the VAT registration threshold.

All applications for deregistration should be made in writing to the Commissioner-General of the ZRA. The ZRA will normally carry out a VAT audit before approval for deregistration

is made and the business is required to complete the final VAT return. The business will be required to account for VAT on any stock and capital assets on hand at the date of deregistration.

## Output tax

VAT is charged on the value of consideration or open market value, whichever is greater, at 16%.

## Exemptions and zero rating

### Exempt supplies

Supplies that are exempt from VAT, but in respect of which the supplier may not deduct input tax, include (but are not limited to):

- water supply and sewerage services provided by a local authority;
- nursery, primary and secondary school education;
- financial and insurance services:
  - the arrangement, provision or transfer of ownership of any contract of insurance or re-insurance;
  - the issue, transfer, receipt of or other dealing with money or any note or order for the payment of money;
  - the provision of credit and the interest component of finance leases;
  - the operation of any account at a bank or other financial institution;
  - the issue, allotment or transfer of shares; and
  - uncirculated new kwacha notes;
- funeral services;
- books and newspapers:
  - booklets;
  - maps;

- charts;
- newspapers; and
- journals;
- health and medical services supplied by a registered medical practitioner, optician, dentist, hospital or clinic;
- equipment designed for use by the blind and disabled persons;
- transport services – transport of persons by air, rail, boat or bus;
- conveyance of real property – the sale or lease of an interest in land, other than the lease or rental of commercial property;
- the sale or lease of domestic buildings;
- any fee, royalty or similar right to explore or remove any natural resource;
- the supply of gold in bullion form to a bank;
- trade union subscriptions;
- domestic kerosene;
- importation of certain goods;
- treated and untreated mosquito nets, including insecticides and kits used to treat mosquito nets;
- road construction agreements entered into with the Government of the Republic of Zambia prior to 1 July 1995;
- statutory fees that are prescribed and regulated by an Act of Parliament or Statutory Instrument; and
- certain food and agricultural products and supplies.

### Zero rated supplies

Supplies that are zero rated in respect of which the supplier may deduct input tax, include (but are not limited to):

- export of goods;
- supply of services that are physically rendered outside Zambia;
- supplies to privileged persons, such as diplomats and donor agencies;
- medical supplies and drugs, including implements for the medical industry;
- supplies by licensed tour operators for certain services;
- hotel accommodation, lodge or similar establishment in the Livingstone District between 31 January 2001 and 31 December 2009;
- raw materials used in the production of mosquito nets;
- books and school exercise books;
- energy-saving appliances, machinery and equipment;
- goods or services supplied to or imported by a developer of a multi-facility economic zone (MFEZ), an industrial park, or a business enterprise operating in the MFEZ or industrial park, licensed as such by the Zambia Development Agency;
- certain building supplies to charitable organisations approved by the Minister of Finance;
- certain agricultural equipment and spares; and
- ethanol based biofuel – green gel.

## Input tax

### Input tax expressly denied

VAT incurred in respect of the following goods and services cannot be deducted as input tax:

- entertainment;
- saloon cars and double cabs;
- petrol – with effect from 10 February 2007, 20% of the VAT paid on petrol

- incurred for business purposes is allowed as input tax;
- telephone and internet services;
- all non-business purchases, including expenses incurred for the benefit of the employee; and
- where a nonresident business does not register for VAT, the recipient of any services supplied by such business will need to apply the reverse charge (i.e. charge themselves the VAT that would have been due on the supply). However, the VAT charged is not recoverable as input tax.

## Partial exemption

A business that makes both taxable and exempt supplies is allowed to claim input VAT that relates only to taxable supplies.

Currently there are four methods available for reclaiming input VAT on mixed supplies. These are briefly described below.

### *Method 1: General apportionment method*

Under this method, the proportion of taxable supplies determines the claim for input VAT for any month over the total supplies. Accordingly, the total amount of input VAT incurred on all purchases by the company will be apportioned using the ratio of taxable supplies over total supplies to determine the amount of input VAT that will be claimed in any VAT period (i.e. each month).

### *Method 2: Direct attribution method*

Under this method, taxpayers are required to identify and segregate those inputs that are directly attributable to taxable supplies from those inputs that are directly attributable to exempt supplies. Input

VAT that is directly attributable to taxable supplies will automatically qualify for the claim. Where purchases or expenses are attributable to both taxable and exempt supplies, the amount of input VAT that may be claimed will be determined using the proportion of taxable supplies to total supplies.

Therefore, the total input claim for VAT in any tax period (a month) will comprise of input VAT that is directly attributable to taxable supplies plus a proportion of the input VAT attributable to both taxable and exempt supplies that is determined using the ratio of taxable supplies over total supplies for the month.

### *Method 3: Cumulative apportionment*

In this instance the amount of input VAT that may be reclaimed is arrived at by working out the cumulative input claim for the period to date using the ratio of cumulative taxable sales for all of the periods to date to total cumulative sales for all the periods to date, multiplied by the total input VAT incurred on all purchases to date in the accounting year. The cumulative input VAT claimed in the previous periods is then deducted from the cumulative input VAT incurred to date.

### *Method 4: Year to date attribution method*

In this instance, the input claim is determined using Method 2 on a cumulative basis. Possible input VAT is segregated, using the direct attribution method, between taxable and exempt supplies on a cumulative basis for the period to date. VAT on purchases that are attributable to both taxable and exempt supplies is then apportioned using the ratio of taxable sales to date over total sales to date. The total claim for input VAT will be the sum of the input VAT claimable using the direct attribution method for the year

to date, plus input VAT on purchases attributable to both exempt and taxable supplies using the cumulative apportionment method, less the total VAT claimed up to the previous period.

A partially exempt supplier may elect any of the four methods. However, once the election is made, the method will have to be applied consistently for a period of not less than 12 months.

## Adjustments

A VAT-registered supplier is required to notify the ZRA in writing of any business change, including change of business premises and postal address. This notification should be made within a month of when the changes occur.

## Preregistration VAT

A business registered for VAT may claim input VAT on goods or services relating to the start-up of the business within three months prior to registration. However, the business should have the goods on hand and must have a tax invoice from the supplier to be allowed the claim.

## Intending traders

A supplier who becomes registered in anticipation of commencing trading activities as 'an intending trader', may claim input tax credit or deduction in respect of goods and services that are received:

- within a period of seven years after becoming registered as an intending trader, in the case of exploration;
- within a period of four years after becoming registered as an intending trader, in the case of farming and mining; and
- within a period of two years after becoming registered, in the case of any other intending trader.



However, this will not apply after the stated periods have elapsed unless trading activities have commenced and the supplier is making taxable supplies.

## Imports

### Goods

Imported goods are subject to import VAT at 16% if these goods are standard rated. Some capital goods qualify for VAT deferment. Such goods will be standard rated, but VAT-registered suppliers will not pay any import VAT on importation of these specified capital goods.

### Services

It would be beneficial for local recipients of imported services if suppliers who are not established in Zambia but make taxable supplies in Zambia appointed a local tax agent in Zambia to account for VAT on their supplies in Zambia.

Once appointed, the fiscal representative would charge VAT on services provided by his principal, i.e. the nonresident supplier. In this instance, the recipient of the services should be able to claim the corresponding input VAT.

If the nonresident does not appoint a fiscal representative or register for VAT, the recipient of the services must account for the VAT on such services. Such VAT, referred to as 'VAT reverse charge', cannot be claimed as input VAT, or as a refund or credit and thus becomes a cost to the recipient of the services.

An application for the appointment of the local tax agent must be made in writing to the Commissioner-General (CG) of ZRA. Generally, the CG will only approve the appointment if the local representative is an independent third party. Once appointed, the fiscal representative will take on the responsibilities and liabilities for paying

the taxes due and complying with all the filing requirements on transactions undertaken by the principal in Zambia.

A foreign supplier who appoints a tax agent does not have to open a bank account in Zambia. A bank account is required only for locally registered suppliers.

The appointment of a local tax agent could place under scrutiny the operations and local tax obligations of a foreign company in Zambia by the ZRA.

## Exports

### Goods

The export of goods from Zambia by or on behalf of a taxable supplier and the supply of ancillary services, which are provided at the port of exportation of the goods, are zero rated (0%).

### Services

Only services that are physically rendered outside Zambia are zero rated. However, the supply of ancillary services that are provided at the port of exportation of goods may be zero rated. The supply of freight transport services, which are directly linked to the transit of goods through Zambia to destinations outside Zambia, will also be zero rated.

### Refunds to foreigners

The VAT system allows special tax refunds to tourists and commercial exporters. However, refunds are only made if the purchase is made from suppliers under the approved scheme.

A refund mechanism exists for nonresident businesses (on a business visit to Zambia). If a nonresident business is not registered and has not appointed a fiscal representative, a refund payment may be made under the Commercial Exporters Refund Scheme in respect of goods supplied.

A nonregistered nonresident business that purchases goods from VAT-registered suppliers who are participants in the Commercial Exporters Scheme can obtain a refund on these goods if these are purchased for resale outside Zambia. The refund should be made within six weeks and is sent to the exporter's destination.

Participants in the Commercial Exporters Scheme will issue the nonresident business a commercial export tax invoice form (VAT 283) and a commercial export authorisation form (VAT 284). At the port of exit, a copy of each form will be left with the Customs officials for verification.

Nonresident businesses that have appointed a fiscal representative may make a claim for input VAT up to one year from the date of the invoice. Refunds should be made by the ZRA within 30 days of the submission of the claim, but as this may be subject to verification by the ZRA, the claim may be delayed.

## Place, time and value of supply

### Place of supply

The place of supply is the location of the goods when supplied to a customer. If goods are in Zambia when a supplier allocates them, the supply is in Zambia. Goods are considered supplied in Zambia if their supply involves their installation or assembly at a place in Zambia.

The place of supply of services is deemed to be in Zambia if the supplier has a place of business in Zambia, the supplier's usual place of residence is in Zambia, or the service is imported.

In these instances, services are considered as supplied in Zambia and will therefore be subject to 16% VAT.

Special rules apply for the place of supply of radio, television, telephone or other communication services, where the signal or service originates outside Zambia. The place of supply of these services is taken to be the place where the recipient receives the signal or service, provided that a consideration is payable for receiving the service or signal.

## Time of supply

The time at which any goods are supplied, or at which any services consisting of the lease, hire, loan or treatment of, or other activity in relation to any goods is supplied, is the earliest of the time when:

- goods are removed from the premises of the supplier;
- goods are made available to the person to whom they are supplied;
- payment for the supply is received; or
- a tax invoice is issued.

The time of supply of services is the earliest of the time when:

- payment for the supply is received;
- a tax invoice is issued; or
- services are actually rendered or performed.

If, for the supply of any goods or services referred to above, payment is made or a tax invoice is issued in respect of part of the supply, VAT is payable only on the part relating to the supply.

## Value of supply

Where goods or services are supplied:

- otherwise than for a monetary consideration;

- for a consideration that consists only partly of money; or
- for a consideration that is less than the open market value of the goods or services;

the taxable value will be the open market value of the goods or services. The open market value is the price at which the goods or services being supplied would have been supplied in the ordinary course of business to a person independent of the supplier.

Where a taxable supplier supplies 'specified supplies' locally, the taxable value of the supplies shall be the greater of:

- the taxable value ascertained in accordance with the general value of supply rules above; or
- the amount by which the recommended retail price exceeds the tax payable in respect of the supply.

Every taxable supplier involved in the supply of goods and services listed as specified supplies below needs to submit to the ZRA a schedule of recommended retail prices. Specified supplies include the following:

- bulk and bagged cement (local and imported);
- carbonated drinks (local and imported);
- non-carbonated drinks (local and imported);
- maheu products;
- clear beer (local and imported, bottled and canned);
- opaque beer (bulk and packed);
- cigarettes (local and imported);
- airtime; and
- mineral water (local and imported).

## VAT compliance

### Returns and payment of VAT

Returns must be submitted monthly. However, some businesses are allocated tax periods of either three or six months upon application and approval by the ZRA.

VAT returns and any VAT payable must be lodged with the ZRA within 21 days after the end of the prescribed accounting period.

VAT due must be paid within 21 days following the end of the prescribed accounting period.

VAT may be paid in cash, per cheque or by way of a bank transfer. Payments must be in Zambian Kwacha (ZMK).

### Interest and penalties

Businesses that do not lodge a return within the time allowed are liable to a penalty, the higher of either:

- 1000 penalty units (K180,000, approximately US\$35 currently); or
- 0.5% of the tax payable in respect of the tax period covered by the return,

for each day the return has not been submitted.

For late payment of VAT, the penalty is 0.5% of the tax due for each day the VAT is unpaid. Interest is also chargeable for each month that a payment is overdue and is charged at the Bank of Zambia discount rate plus 2%.

### Refunds

The business is allowed to deduct any input VAT that it has paid from the output VAT that it is liable to pay. Where the input VAT exceeds the output VAT in any given tax period, the excess input VAT is refunded to the

taxable supplier. Refunds should be made within 30 days from the date of submission but they may be subject to verification by the ZRA, which can delay the payment of the refund.

### Time limits

Input tax may not be deducted or claimed after a period of one year from the date of the relevant invoice.

## VAT records

### Tax invoices

Tax invoices should normally be issued in the same month that the goods or services are supplied. Tax invoices must be retained for a minimum period of six years. Not more than one tax invoice may be issued for the same taxable supply. A customer is entitled to ask for a duplicate invoice in case of loss of the original tax invoice. The duplicate invoice must be marked prominently with the word 'duplicate'.

The details to be shown on tax invoices vary, depending on the value of the supply. For supplies in excess of ZMK50,000, a full tax invoice must be issued. For supplies of less than ZMK50,000, a simplified invoice may be issued. The following details are mandatory requirements on the tax invoice:

- the words 'tax invoice' in a prominent place;
- the name, address and VAT registration number of the supplier;
- the name or business name and address of the recipient;
- the serial number of the invoice and date of issue;
- the quantity or volume of the goods or services supplied;
- the description of the goods or services supplied;

- the selling price, excluding VAT and any discount;
- the total amount of the VAT charged; and
- the selling price including VAT or the total charge on the invoice inclusive of VAT, any discount and the rate of VAT.

The ZRA requires tax invoices to be preprinted with the invoice numbers preprinted in sequential form. This means that the invoices must be issued from a preprinted book. If the supplier wishes to issue a computerised invoice, the accounting package must be audited and approved by the ZRA. The system must not permit any manual input of the invoice number. If the invoice is not preprinted, the ZRA will disallow the invoice for input VAT deduction purposes.

Electronic invoices will only be accepted if the accounting system is audited and approved by the ZRA. Further, they must meet the mandatory requirements specified for tax invoices.

Foreign languages may not be used on invoices.

Where foreign currency is used on an invoice, the tax invoice must show the kwacha exchange rate and the kwacha equivalent at the date of the transaction. The date of transaction will normally be the date the tax invoice is raised. The exchange rate to be applied is the Bank of Zambia rate or any commercial bank rate in Zambia.

Agents issue tax invoices only where a foreign supplier has appointed the agent.

### Credit and debit notes

Credit notes may be issued where:

- the supply has been cancelled;
- the supply or total purchase price has been varied or altered; or
- the goods have been returned to the supplier.

The details required on a credit note are the same as those required on a tax invoice. The invoice must be clearly headed 'credit note'. The details of the person or business receiving the credit, the quantity and amount credited for each item, the number and date of the original tax invoice or a clear audit trail to show VAT was accounted for on the original supply must be shown. A brief reason for the issue of a credit note is also required.

The supplier who issues the credit note may deduct from the total output VAT on the VAT return the total output VAT shown on the credit note, in which the credit is given.

The business in receipt of a credit note for goods or services that have been subsequently cancelled or returned should ensure that input VAT is not claimed, or if it has already been claimed, that it is cancelled by deducting the VAT amount from the input VAT claimed in the period during which the credit note was received.

### Additional export documentation

VAT-registered suppliers are required to maintain proof or evidence that goods were exported to qualify for zero rating. Proof of export includes:

- copies of export documents for the goods, bearing a certificate of shipment provided by the export authority;
- copies of import documents for the goods, bearing a certificate of importation into the country of destination provided by the customs authority of that country;
- proof of payment by the customer of the goods; and

- such other documentary evidence substantiating the exportation of the goods.

## Record keeping

Records must be kept for a minimum period of six years, unless the Commissioner-General advises otherwise. Records may not be kept outside the country. The records may be kept in electronic form, but hard copies must be made available for inspection purposes.

## Specific VAT rules

### Bad debts

The output VAT paid to the ZRA by a business, but not received from the customer, can be claimed back if the following conditions are met:

- the claim is made on or after 27 January 1996;
- the debt has been outstanding for 18 months or more; or
- the debtor has been declared insolvent by a court of law.

To make a claim for relief from bad debt, a business should have:

- made a claim to the administrator, receiver or liquidator against the debt for the VAT-inclusive amount that is owed by the insolvent debtor;
- obtained a written statement from the administrator, receiver or liquidator to the effect that the debtor is insolvent and that the debt cannot be paid; and
- claimed a credit for VAT remitted in respect of the bad debt by adding the bad debt relief to the input VAT incurred on domestic purchases on the VAT return.

The business is also required to maintain the following records relating to the bad debt relief:

- copy of the tax invoice issued to the debtor in connection with the supply that later became a bad debt; and
- evidence that the VAT being claimed as bad debt relief was remitted to the ZRA.

### Land and buildings

The sale of commercial property and the sale and lease of land are exempt. Lease or rent of commercial property is taxable at the standard rate but domestic rent is exempt.

Construction of domestic and commercial buildings is taxable at the standard rate.

### Leasing

The common types of leases in Zambia are finance and operating leases.

The VAT treatment under a finance lease is as follows:

- the lessor may claim the input VAT on the purchase of the asset;
- when the lessor leases the asset to the lessee, VAT is applied to the lease rentals/principal and other finance charges, other than interest charged on finance leases;
- if the asset is sold at any time during or after the termination of the lease, the lessor must charge VAT on the selling price; and
- the lessee, if registered for VAT, may claim the input VAT (output VAT charged by the lessor) but only if the claim on such assets is deductible and if the asset is for business use.

Under an operating lease, the VAT treatment is as follows:

- the lessor may claim input VAT on the purchase of the asset;
- when the lessor leases the asset to the lessee, VAT is applied to the lease rentals and any interest charged;
- if the asset is sold at any time during or after the termination of the lease, the lessor must charge VAT on the selling price; and
- the lessee, if registered for VAT, may claim the input VAT (output VAT charged by the lessor) but only if the claim on such assets is deductible and if the asset is for business use.

The lessee may also claim the input VAT charged for leasing the asset or the lease rentals payable. However, input VAT may only be claimed if the claim on these assets is allowable and the assets are used for business.

### Promotional gifts

A business that provides promotional gifts where each promotional gift exceeds ZMK25,000 (approximately US\$5) in value is required to account for output VAT on the open market value of the gift. This value is the price at which the gift being supplied would have been supplied in the ordinary course of business, to a person independent of the supplier.

### Secondhand goods

The sale of secondhand local goods is subject to VAT. However, for saloon cars and double cabs on which input tax was expressly denied, output VAT is only charged on the profit.

### Tourism industry

The supplies made by a tour operator or travel agent, licensed under the Zambia National Tourist Board, to a tourist of an inclusive tour, including accommodation, food and beverages

(provided that the package tour is prebooked and is inclusive in the total price of the package tour), or which have been approved by the Commissioner-General, are zero-rated.

**Transfer of a business**

No tax will be charged or input claimed in respect of the transfer of a business as a going concern where both the transferor and transferee are registered VAT suppliers.

In respect of a business sold as a going concern, the legislation requires the transferor to notify the Commissioner-General in writing of the transfer within 30 days following the

date of transfer. There is no ruling on the specific records that are required to show that a transfer of a going concern has taken place. However, the general practice is to use the normal business documents (of the transferor and transferee) to show that a transfer of a going concern has indeed taken place and to have evidence that the same business has continued to operate in the same manner after the transfer at hand.

**Other indirect taxes**

**Customs duties**

Customs duties are applied to imported goods. The customs duty

rates vary from 0% to 25%. The rate is applied to the cost of the goods being imported, plus insurance, freight and incidental costs of importation.

**Excise duties**

Excise duty is levied on certain specified goods made or produced in Zambia, or imported into Zambia. Examples of such goods are petroleum products, beers, spirits, soft drinks, cigarettes and electricity. Excise duty rates vary from 0% to 145%.

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# Zimbabwe



## Introduction

VAT was introduced in Zimbabwe with effect from 1 January 2004 to replace sales tax. The VAT legislation is contained in the Value added tax Act (Chapter 23:12). The VAT system is administered by the Zimbabwe Revenue Authority (ZIMRA), the head of which is the Commissioner-General.

## Rates and scope

### Rates

Zimbabwe has two different VAT rates:

- the standard rate of 15%; and
- the zero rate of 0%.

### Scope

VAT is not charged on commodities as such, but rather on the supply of commodities, and is imposed at the prescribed rates on the following:

- the supply of any goods and services in Zimbabwe by a registered operator in the course or furtherance of a trade (enterprise);
- goods imported into Zimbabwe under certain circumstances; and
- services imported into Zimbabwe under certain circumstances.

## VAT registration

### Registered operator

A registered operator is a person who is registered or is required to be registered for VAT. It is the person, not the trade, who is registered for VAT. A person is only registered once for all the trades/divisions/branches carried on, unless permission is granted to register them separately.

### Compulsory registration

Any person who carries on or intends to carry on any trade(s) in the course of which taxable supplies (including zero-rated supplies) are made, and whose taxable value of supplies exceeds the prescribed limit, must register for VAT.

A person is liable to register at the end of any month when the total value of all his supplies of goods or services (turnover) has exceeded the prescribed amount in the preceding period of 12 months, or there are reasonable grounds for believing that the total value of supplies of goods and services that will be made in the following 12 months will exceed the prescribed amount.

The threshold for compulsory registration (with effect from 30 January 2009) is US\$60,000.

However, registration will not be required if the prescribed amount has been or will be exceeded as a result of:

- sales due to cessation of or reduction in the size of the business;
- sales due to replacement of capital assets; or
- abnormal circumstances of a temporary nature.

### Voluntary registration

A person may apply for voluntary registration even if the total value of taxable supplies is less than the prescribed amount. The person must satisfy the Commissioner that a trade is carried on. However, no minimum threshold has been set by the Commissioner and a decision to register is made on an individual basis.

The Commissioner may refuse to register a person for voluntary registration if the applicant:

- has no fixed place of abode or business;
- does not keep proper accounting records;
- has not opened a banking account; or
- has previously been registered as a registered operator under VAT or under the repealed sales tax Act and failed to perform his duties under either Act.

### Group or branch registration

Group registration is not permissible, as the law requires each separately registered entity to register individually. In exceptional circumstances, separate persons carrying on specified trades may, under an anti-avoidance provision, be deemed to be one for purposes of registration.

A registered operator may apply for separate registration of its different trades, branches or divisions carried on by it, provided they are separately identifiable and there is an independent system of accounting for each such division or branch.

### Nonresidents

A nonresident can only register through a resident representative registered operator.

### Application for registration

Application for compulsory and voluntary registration must be made on the prescribed registration form (VAT1), together with any other documents that the Commissioner may require from time to time (such as company registration particulars and bank details – VAT2 and VAT3). For compulsory registration, this must be completed not later than 30 days from the date of first becoming liable for such registration.

## Deregistration

A registered operator may be deregistered if:

- the value of his taxable supplies falls below the registration threshold;
- he ceases to carry on any trade and will not carry on any trade during the next 12 months;
- he has applied for registration in anticipation of commencing a trade and has not commenced that trade; or
- he has successfully applied for voluntary registration and it subsequently appears that he has not complied with the requirements.

Cancellation of registration, with the approval of the ZIMRA, will take effect from the last day of the tax period during which the Commissioner is satisfied with the trader's eligibility for deregistration or such later date as may be determined by the Commissioner.

## Output tax

### Advertising and prices

In all advertisements or quotations, all prices are to be stated on a VAT-inclusive basis. Where this is not stated, the price is deemed to be the VAT-inclusive price.

### Calculation of output tax

Output tax is calculated by applying 15% to the value of a taxable supply. Where the supplier has not specified whether VAT has been included, the tax fraction of 15/115 is applied to the amount deemed to be consideration for the supply.

## Exemptions and zero rating

### Exempt supplies

Supplies that are exempt from VAT, in respect of which the supplier may not make any input tax deductions, include:

- financial services (excluding financial services charged at 0%);
- donated goods or services supplied by an association not for gain;
- residential accommodation in a dwelling;
- leasehold land used to erect dwellings, and for existing dwellings;
- letting of land outside Zimbabwe;
- transport by public road or railway of fare-paying passengers and their luggage;
- educational services;
- medical services;
- membership contributions paid to an employee organisation; and
- piped water, rates charged by a local authority and electricity charges for supplies made for domestic purposes.

### Zero rated supplies

Supplies that are zero-rated, in respect of which the supplier may deduct input tax, include supplies of the following goods or services:

- goods (including consumables) supplied to repair goods temporarily admitted into Zimbabwe;
- goods supplied under a rental agreement if used exclusively outside Zimbabwe;
- goods supplied under a rental agreement if used in or paid for from outside Zimbabwe – this zero rating only applies to foreign-registered businesses;

- business supplied as a going concern;
- gold supplied to the Reserve Bank or a registered bank;
- regular inputs supplied to farmers for farming, e.g. herbicides, fodder and insecticide;
- certain basic foodstuffs e.g. milk, raw meat and bread;
- goods for disabled persons;
- goods supplied to an independent branch in an export country;
- gold coins issued by the Reserve Bank;
- drugs as defined in the Medicines and Allied Substances Control Act;
- international transportation of passengers or goods;
- transportation of passengers from one place to another place in Zimbabwe by aircraft to the extent that the travel constitutes 'international carriage';
- transportation and ancillary transport services supplied within Zimbabwe in respect of imports and exports of goods, if supplied by the same supplier responsible for the international transport of those goods;
- insuring and arranging of the transport and arranging of insurance of passengers or goods in respect of international transport;
- transportation services for the movement of goods through Zimbabwe from one export country to another, when provided to a nonresident (nonregistered operator), who does not carry on a business in Zimbabwe;
- services in connection with land or improvements outside Zimbabwe;
- services in connection with movables situated outside Zimbabwe or goods temporarily

- admitted into Zimbabwe that are exempted from import duties;
- services relating to foreign-going aircraft;
- handling, pilotage, salvage, towage and operation or management of a foreign-going aircraft, where supplied to a nonresident, nonregistered operator;
- arrangement of the supply of goods, services or transport of goods for a person who is a nonresident and a nonregistered operator;
- repair of a train operated by nonresidents, not carrying on business in Zimbabwe;
- services rendered whilst physically outside Zimbabwe (other than telecommunication services utilised in Zimbabwe);
- services supplied to a nonresident who is outside Zimbabwe at the time the services are rendered, except where related to land and improvements thereto, or movable property situated inside Zimbabwe;
- patents and other intellectual property for use outside Zimbabwe;
- deemed services supplied by a charitable organisation to a public or local authority; or
- services supplied by a registered operator to his branch situated in an export country.

The above services can only be zero rated if the registered operator obtains and retains the necessary documentary proof acceptable to the Commissioner, or as prescribed in the circumstances.

## Input tax

### Input tax allowed

Where a registered operator incurred VAT on the acquisition of goods or services for the purposes of making

taxable supplies, the VAT can, as a general rule, be deducted as input tax, provided the operator is in possession of the required tax invoice or bill of entry.

Where a registered operator purchased secondhand goods, being fixed property, from a nonregistered operator, and the recipient has paid for the supply and has kept the necessary details of the supplier and the transaction in terms of the prescribed documentary requirements, he may (generally) claim the tax fraction of the amount paid as input tax. This input tax is commonly referred to as 'notional input'. The input tax is limited to the stamp duty payable.

Where a registered operator (such as a leasing company) repossesses goods from a debtor (who is not a registered operator) under an instalment credit agreement, the registered operator may deduct input tax. This is calculated by multiplying the tax fraction (at the time the supply was originally made) by the balance of the cash value still owing to the supplier.

To qualify as input tax, two requirements have to be met, namely:

- the goods or services must be acquired by the registered operator wholly or partly for the purpose of consumption, use or supply in the course of making taxable supplies; and
- the goods supplied must have been subject to VAT at the standard rate or the goods must qualify as 'secondhand goods' (previously owned and used), which have been acquired from a nonregistered operator.

### Input tax expressly denied

VAT paid by a registered operator for the following purposes may not be deducted as input tax:

- entertainment;
- membership fees or subscriptions of clubs, associations or societies of a sports, social or recreational nature;
- medical costs paid by a medical scheme on medical services provided to its members; and
- non-commercial motor vehicles, with certain exceptions such as in the case of dealers.

### Partial exemption

Where goods or services were acquired only partly for taxable supplies and partly for some other purpose, a fair and reasonable portion may be claimed.

### Adjustments

A registered operator is allowed to claim additional input tax credit where previously he would have claimed input tax for a reduced taxable usage and has increased the taxable application of a capital asset worth at least US\$60.

### Preregistration and post-deregistration VAT

If the company reimburses the person for the costs and purchases, and the goods or services were acquired for the purposes of the trade to be carried on by the company, the company may deduct the VAT as input tax in the tax period during which the reimbursement is made. However, the company may not claim the deduction where:

- the supply of the goods or services by the person to the company is a taxable supply, or is a supply of secondhand goods not being a taxable supply;
- the goods or services were acquired more than six months before the date of incorporation; or

- the company does not hold sufficient records (in this case no input tax can be claimed at all under any section of the VAT Act).

The operator whose registration is cancelled must pay VAT on stocks on hand at the time of cancellation as this is deemed to be a supply in the operator's hands. Arrangements for settling VAT due can be made on an individual basis.

## Imports

### Goods

VAT is levied and paid on the importation of any goods into Zimbabwe by any person unless an exemption applies. The importer of goods is liable to pay the VAT levied on importation.

Goods are deemed to be imported on the date the goods are entered for home consumption (i.e. cleared through customs). This date is reflected on the customs bill of entry or Form 49 receipt (for importations valued at US\$1,000 or less). The VAT on importation must be paid at the same time as the customs duty.

The value to be placed on the importation is the value of the goods for customs duty purposes as provided under the Customs and Excise Act.

### Services

VAT is levied and paid on the supply of any 'imported services' by a supplier who is not a resident of Zimbabwe or who carries on business outside Zimbabwe, to a recipient who is a resident of Zimbabwe, to the extent that the services will be utilised or consumed in Zimbabwe otherwise than for making taxable supplies. An apportionment may therefore have to be made.

The VAT is payable by the recipient of the imported services. The recipient must declare and pay VAT on the prescribed form (VAT 9) within 30 days of importation.

## Exports

### Goods

Where goods are consigned or delivered to an address outside Zimbabwe, the supply of the goods will be zero rated. Any goods or services consumed within Zimbabwe are not eligible for zero rating.

### Services

Exported services (e.g. to nonresidents or services physically rendered outside Zimbabwe) can be zero rated, provided they are rendered to persons who do not utilise the services for the purposes of carrying on a trade in Zimbabwe.

### Refunds to foreigners

There are no refunds of VAT paid on either goods or services purchased by a tourist who subsequently exports them directly or indirectly to foreign destinations. The law allows zero rating of tour packages of tourist services that include accommodation and food, and hunting safaris where tourists pay in foreign currency to operators of tourist facilities, hotels, and camping and safari or hunting facilities.

VAT Regulations allow embassies, diplomatic missions and diplomats who pay VAT on the purchase of goods and services to claim relief by way of refunds as prescribed by the Ministry of Home Affairs on qualifying purchases. Vouchers in support of the tax claims will have to be attached to the claims.

The Commissioner may authorise VAT refunds on:

- prescribed goods and services purchased by diplomats and foreign staff of specified diplomatic missions or certain representatives of international or regional organisations or agencies; or
- goods or services supplied to prescribed persons.

An administration fee may be charged, but the amount has not been determined. Refund claims must be made within six years from the date of payment of the VAT.

## Place, time and value of supplies

### Place of supply

There are no elaborate rules in this regard. An operator is deemed to be trading for the purposes of VAT where the regular and continuous activities of supplying goods for a consideration take place in Zimbabwe or partly in Zimbabwe.

### Time of supply

The general rule is that the time of a supply is the earlier of the time an invoice is issued or any payment is received.

Various other time of supply rules also apply, for example in the following cases:

- rental agreements – the time is the earlier of payment received or when payment becomes due;
- progressive or periodic supply of goods – the time is the earliest of payment received, payment becoming due, or an invoice issued relating only to that payment;
- instalment credit agreement – the time is the earlier of delivery or payment received;



- fixed property – the time is the earlier of registration of transfer or the date of any payment or, where no transfer or payment is made, the date of the agreement.

## Value of supply

The general rule is that where the consideration is in money, the value of the supply is the amount of money less VAT. Where the consideration is not in money, the value is the open market value (OMV). Various specific rules apply, such as in the following cases:

- connected persons, where no consideration is charged, or where goods or services are supplied for less than the OMV – the value is the OMV if the recipient is not able to claim the full input;
- cessation as a registered operator or transfer of goods or services to a branch outside Zimbabwe – the value is the lesser of cost or OMV;
- instalment credit agreement – the value is the cash value (being the price of the goods or services without any interest and other incidental charges);
- adjustment in respect of change in use of assets in the trade – the value is the OMV;
- fringe benefits – the value is the cash equivalent of the benefit;
- public or local authorities – the value is the amount of the cash value (capital balance);
- betting – the value is the amount received;
- take-back bet – the value is the amount received as winnings;
- tokens, vouchers and stamps with monetary face value – no supply is made until exchanged;
- supply of entertainment where no input tax deduction is allowed – value is nil;

- supply of medical or dental services to medical aid members – value is nil for the medical aid scheme;
- mixed supplies (taxable and exempt) – value must be apportioned;
- where any supply is made for no consideration – the value is nil, unless the connected persons rule applies.

## VAT compliance

### Accounting basis and tax periods

Tax periods are as follows –

- Category A and B: 2-month periods;
- Category C: 1-month periods;
- Category D: Any other tax period (except if the Category C tax period was allocated to the registered operator). Category D may be applied for by the farming, pastoral and agricultural sector.

The VAT Act provides for the above categories. However, with effect from November 2008, the Commissioner has directed that all traders now fall in Category C even though the Act still provides for categories A, B and D. Individual traders have been notified and all new registrants are allocated category C.

### Returns and payment of VAT

A VAT return in the prescribed form must be submitted to ZIMRA for each tax period. The VAT return must reach ZIMRA not later than the fifth day of the month commencing after the end of a tax period, or where such day falls on a public holiday or a weekend, the last business day before that date.

With effect from 1 February 2009, a 'mid-term tax' was introduced into the VAT system requiring traders to remit to ZIMRA by the 15th day of the tax

period the VAT collected or accrued by the registered operator from the first to the 14th day of the tax period. This amount will be netted off the amount of VAT due as determined on the final return at the end of the tax period.

Payments are generally to be made in cash or by cheque, and at the same time when a return is submitted.

### Interest and penalties

There are two different ways of penalising a registered operator, namely:

- penalty and interest for failure to pay VAT when due; and
- additional tax in the case of evasion or causing a refund in excess of that properly refundable.

For any month(s) while VAT remains unpaid an additional percentage interest at the prescribed rate per month or part thereof will become payable. The effective rate is not subject to a maximum. This interest can only be charged from the first day of the month following the month in which the return is due. The interest rate applicable is 5% above the LIBOR (London Inter-Bank Offered Rate) for the month immediately preceding each month or part thereof in which the tax remains unpaid.

A penalty of up to 100% of the principal sum involved in the offence may be levied.

### Refunds

A registered operator will be entitled to a refund of VAT when, in a particular tax period, his input tax exceeds his output tax.

A routine refund must be paid to the registered operator within the prescribed period (currently 30 days) after the date on which the VAT



return is received by ZIMRA. Where the refund is not paid out within this period, interest is payable at a rate fixed by the Minister, which is equal to interest chargeable on delayed payments made to ZIMRA.

## Time limits

The recovery of output tax is subject to a general prescription period of six years. In cases of fraud or suspected fraud, cases may be opened beyond the prescription period.

The maximum period for claiming input tax is 12 months from the end of the tax period in which the relevant tax return had to be filed.

## VAT records

### Tax invoices

A registered operator is required to issue a tax invoice within 30 days from the date of supply, but if the consideration in money does not exceed US\$10, a tax invoice is not required. However, in such cases, some type of source document is required in order to enable the purchaser to claim input tax, e.g. a till slip or petty cash slip.

A tax invoice must contain the following particulars:

- the words 'tax invoice' in a prominent place;
- name, address and VAT registration number of the supplier;
- name, address and VAT registration number of recipient;
- individual serialised number and date of issue;
- description of goods or services;
- quantity or volume of goods or services supplied;

- the price of the goods including VAT, in one of the following ways:
  - the amount excluding VAT, plus the VAT charged and the amount including VAT; or
  - where VAT is included in the final price, the consideration, together with a statement that VAT is included and the rate of tax; or
  - where VAT is included in the final price, the amount charged including VAT and the amount of VAT charged.

A tax invoice can be in either Zimbabwean dollars or a foreign currency (mainly US dollars or South African rands) and VAT is accounted for in the relevant currency in which it was invoiced or the payment for the supply of goods or services was made.

Agents may issue tax invoices on behalf of principals. Special permission needs to be obtained to use electronic data interchange (EDI).

Where a registered operator purchases secondhand goods from a nonregistered operator to support his claim for input tax, the purchaser has to record the following:

- name, address and identity (ID number of the supplier (ID number of the representative person if it is a company);
- date of acquisition;
- quantity or volume of goods;
- consideration for the supply;
- the recipient must verify the person's ID number or passport number;
- where the amount of the supply is US\$10 or more, the recipient must obtain and retain a copy of the person's ID document, and, in the case of a company, a business

letterhead or similar document that shows the name and registration number allocated by the relevant authority is also required.

Where the goods concerned have been repossessed from a nonregistered operator, the person (registered operator) exercising his right of repossession is required to keep details as mentioned above.

### Credit notes and debit notes

The details are almost exactly the same as the details for a tax invoice. In addition, the amount of the adjustment (consideration and VAT) must also be reflected and it must refer to the original tax invoice that is affected by the adjustment (i.e. the invoice date and number), as well as reasons for issuing the credit or debit note.

Credit notes issued and debit notes received are to be reflected as input tax on VAT returns, while debit notes issued and credit notes received are to be reflected as output tax on VAT returns.

### Additional export documentation

These may change from time to time, but the major documents are CD1 forms from the Reserve Bank of Zimbabwe, an air waybill, bill of lading, bill of entry, rail advice and notes and invoices bearing foreign addresses.

### Record keeping

Where the records are kept in book form (e.g. a sales journal, cash book or bank deposit book) these records must be kept for a period of six years from the date of the last entry in that book.

Where not kept in book form (e.g. tax invoices, individual deposit slips, stock sheets, etc.) they must be kept for a

period of six years after the completion of the transactions, acts or operations to which they relate.

The registered operator must keep the original documentation. Under certain circumstances, ZIMRA may authorise the retention of microfilm copies or computer tape records in lieu of the originals.

### Specific VAT rules

#### Bad debts

Bad debts written off or factored without recourse qualify for input tax credit equal to the tax fraction applicable at the time output tax was accounted for. If no output tax was paid e.g. where the operator was allowed to account for VAT on a cash basis, then the issue of adjustment does not arise.

#### Land and buildings

Sale of buildings and land, other than farmland, is standard rated. Farmland, which is used for agricultural and pastoral activities, is not fixed property for VAT purposes.

#### Leasing

Leasing is generally taxable as part of an instalment credit agreement and the sum payable is standard rated, excluding the finance charges. The letting of fixed property for use by natural persons as dwellings or construction of such dwellings is exempt from VAT.

#### Promotional gifts

Input tax will be allowed on promotional gifts.

#### Secondhand goods

There are no special rules regarding secondhand sales except where fixed property subject to stamp duty is concerned. VAT is applicable on sales as normal.

Normal input tax principles apply. Notional input tax applies only to fixed property where stamp duty was payable, and not to the sale of other secondhand goods.

Exports are zero rated as in all other cases.

#### Tourism industry

Supplies by tour operators are treated as exports and are therefore zero rated when payments are made in foreign currency for facilities such as food, accommodation and other tourist-related services. The payment could be made by foreign bank drafts, credit cards or foreign bank cheques.

#### Transfer of a business

The sale of a business as a going concern is a zero-rated supply if both parties are registered operators. If not transferred as a going concern, the assets in the business would be taxable as supplies made in the ordinary course of trade. Where one of the parties is a nonregistered operator, VAT would apply as in all other trades.

### Other indirect taxes

#### Import duties

Import duties are levied on imported goods that are classified by commodity code in a customs tariff. Rates vary from duty free to an excess of 40% of the value. A surtax of 15% is applicable to all goods which attract duty at a rate above 40%, except for imported motor vehicles that are five years or older, which attract a surtax of 25% of the value.

#### Excise duties

Excise duties are levied on a limited number of locally manufactured commodities as listed in an excise tariff, e.g. beer, spirits, wine, cigarettes and tobacco products.

#### Transfer duty

Transfer duty is calculated at 6% of the market value of fixed property or at 3% of the value of quoted or listed shares. Unquoted shares do not attract any transfer duty.

#### Stamp duty

Stamp duty on cheques is USD0.05.

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