Being a Professional Accountant (SA) isn’t just about the title, it’s about using over 35 years of experience to make meaningful contributions to your career.

VALUE-ADDED TAX (VAT)
Introduction

- During the 1980s, South Africa imposed the General Sales Tax (GST) on goods and services.
- In 1986, the Margo Commission recommended that this system be replaced with a Comprehensive Business Tax, or alternatively, a value-added tax (VAT).
- VAT was introduced in September 1991 at a rate of 10%.
- Standard rate was increased to 14% during April 1993.
- Standard rate was increased to 15% during April 2018.
Imposition of VAT (Sec 7)

VAT is imposed on:

- The supply by a vendor of goods / services in the course or furtherance of an enterprise carried on by him (s 7(1)(a));
- The importation of goods into SA by any person (s 7(1)(b)); and
- The supply of imported services by any person (s 7(1)(c))

Calculated @ 15% (prior to 1 April 2018 – 14%) on value of supply or the importation.
Imposition of VAT
Section 7(1)

VAT is levied on:

- Supply
  - Goods or services
- Import
  - Goods or services
What is a supply?
Section 1(1)

“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, irrespective of where the supply is effected, and any derivative of “supply” shall be construed accordingly.
What is a supply?
Section 1(1)

- Oxford English Dictionary: “to furnish” or “to provide”.

- *Databank Systems v CIR (New Zealand High Court)*: also “to furnish” or “to provide”.

- The general meaning of the word “supply” connotes a positive act and land expropriation requires no positive action from the person whose land has been expropriated (therefore not a supply). However, the definition was since amended to include “compulsory” and “by operation of law” supplies.
VAT: types of supplies

- Standard-rated supplies
- Zero-rated supplies
- Taxable supplies
- Exempt supplies
- All other supplies
- Deemed supplies
Put differently

- Zero-rated supplies: Subject to VAT at 0%
- Exempt supplies: Exempt from VAT
- Standard-rated supplies: Subject to VAT at 15%
What is the difference?

- Exempt supplies and zero-rated supplies both have effectively no VAT levied on them.

- So what is the difference between the two?
Vendor

- Person registered for VAT (voluntary or compulsory)
- Person that is required to be registered (compulsory), even if not registered

*Output tax liability applies in regards to all taxable supplies made by a vendor; but only registered vendor can effectively claim input tax deduction.*
Input Tax

In relation to a vendor, means (section 1 definition)

a) tax charged under s 7 and payable in terms of that section by:

i) a supplier on the supply of goods or services made by that supplier to the vendor; or

ii) the vendor on the importation of goods by him; or

iii) the vendor under the provisions of s 7(3);
Input Tax

b) an amount equal to the tax fraction (at the time the supply is deemed to have taken place) of the lesser of any consideration in money given by the vendor for or the open market value of the supply (not being a taxable supply) to him by way of a sale on or after the commencement date by a resident of the Republic of any second-hand goods situated in the Republic; and

NB:

Notional input tax on second hand goods, with reference to property, is no longer limited to transfer duty payable.
c) an amount equal to the tax fraction of the consideration in money deemed by s 10(16) to be for the supply (not being a taxable supply) by a debtor to the vendor of goods repossessed under an instalment credit agreement: Provided that the tax fraction applicable under this paragraph shall be the tax fraction applicable at the time of supply of the goods to the debtor under such agreement as contemplated in s 9(3)(c),
Input Tax

where the goods or services concerned are acquired by the vendor wholly for the purpose of consumption, use or supply in the course of making taxable supplies or, where the goods or services are acquired by the vendor partly for such purpose, to the extent (as determined in accordance with the provisions of s 17) that the goods or services concerned are acquired by the vendor for such purpose
Input Tax

in relation to a vendor, means (section 1 definition)-

a) tax charged under s 7 and payable in terms of that section by-
   i) a supplier on the supply of goods or services made by that supplier to the vendor; or
   ii) the vendor on the importation of goods by him; or
   iii) the vendor under the provisions of s 7(3);
Input Tax deduction (s 17(1))

Apply to goods or services acquired or imported - allowed in the same ratio as the intended use in the course of making taxable supplies – Provided:

- **De Minimus** rule:
  - Wholly - 95% or more
  - Partly - less than 95%
    - apportion input tax to be deducted.

- Method to apportion: General written ruling (BGR 16) or ruling – change only in future tax period or from date Commissioner determines.
Allocation of input tax credits

Turnover-based method is the only method that you can use without a ruling from SARS:

\[ A = B \times \frac{C}{D} \]

- \( A \) = The deductible input tax,
- \( B \) = Total amount of input tax,
- \( C \) = The value of all taxable supplies (plus deemed)
- \( D \) = The value of all supplies (taxable and exempt)

NB: ‘Value’ exclude VAT
Round amount off – 2 decimal places
Allocation of input tax credits

Other apportionment methods (not an exhaustive list):

- varied-input-based method
- direct attribution method
- floor-space method
- transaction-based method; or
- employee-time method.

(Any method other than turnover based can only be used after approval by SARS).
Input Tax denied (s 17(2))

- **Entertainment** (s 17(2)(a))
- **Fees or subscriptions** – sporting, social or recreational club/association/society (s 17(2)(b)).
- Purchase, lease, hire or importation of a motor car (s 17(2)(c))
- Scheme whereby provision is made for the payment of benefits by a benefit fund, a pension fund, a preservation fund, provident fund, provident preservation fund or retirement annuity fund (s 2(2)(vii) Financial services). Services acquired by way a medical or dental (s 17(2)(d)).
Input Tax denied – Motor Car

Purchase, lease, hire or importation of a motor car (s 17(2)(c))

“Motor car” (Def - s 1) Includes -
Motor car, station wagon, minibus, double cab light delivery vehicle and any other motor vehicle of a kind
- normally used on public roads
- 3 or more wheels
- constructed / adapted wholly or mainly for carrying passengers

Excluding
- vehicles for 1 person or > 16 persons;
- 3 500 kilograms or more (unladen mass);
- caravans and ambulances;
- special purpose vehicles (other than carrying people);
- game viewing vehicles constructed/converted for the carriage of ≥ 7 persons – exclusively used for that purpose; or
- vehicles constructed/converted into hearses for the transport of deceased persons and used exclusively for that purpose
Input Tax allowed – Motor Car

Unless (exceptions to ‘motor car’):

▪ Car dealer or rental company - taxable
▪ allows demonstration or temporary use before sale – deemed 100% taxable
▪ acquired by vendor for the purpose of awarding it as a prize. The person awarding the prize is deemed to have made a supply (s 8(13)) and if the prize constitutes either goods or services the input tax must be limited to the VAT incurred on the initial cost of acquiring the goods or services (s 16(3)(d)).
▪ If the motor car is in the ordinary course of an enterprise which continuously or regularly supplies motor cars as prizes to clients or customers (not employee’s/office holders or connected persons).
Input Tax – Motor Car conversion

‘Motor car ➔ game-viewing vehicle or hearse

Input tax (s 18(9))

Kind of supply: Deemed supply per s 8(14)(b)

Time of supply – Tax period of conversion (per s 18(9) and s9(10))

Value of supply – Tax fraction (15/115) Lesser of:
  ▪ adjusted cost; or
  ▪ OMV

on day before conversion (per s 16(3) otherwise s 10(24) deem the value to be equal to OMV)
Input Tax – Motor Car conversion

Game-viewing vehicle or hearse applied for a different purpose

Kind of supply – Deemed supply per s 8(14A)

Time of supply – Tax period of different use (s 9(10))

Value of supply – OMV (s 10(24))
Time of Supply (s 9)

- **General Rule** (except as otherwise provided) (s 9(1)):
  - earlier of
    - date of invoice (issued by the supplier or the recipient); or
    - date of any payment of consideration is received

- Special rules apply to certain supplies
Value of Supply (s 10)

General Rule (s 10(3)):
Money consideration (if money) **OR** OMV (if no money consideration)

Special rules apply to certain supplies for example:
- Connected persons (S 10(4))
- Cessation of an enterprise (S 10(5))
- Foreign branches (S 10(5))
- Instalment credit agreement (s 10(6))
- Change of use (s 18(1); (2); (4) & (5)) (s 10(7); (9))
- Commercial accommodation (s 10(10))
Tax Invoice & Debit/Credit Notes

Tax Invoice (section 20) must be issued within 21 days of making a taxable supply, in the currency of the Republic, and shall contain the following particulars:

- The words “tax invoice”, “VAT invoice”, or “invoice”
- Name, address and VAT registration number of the supplier
- Name, address and VAT registration number of recipient
- Individual serialized number and date of issue
- Full and proper description of the goods or services supplied
- Quantity or volume of goods or services supplied
- Value of supply, the tax charged (alternatively a statement that it includes tax and the rate of tax charged), and the consideration
Debit and Credit Notes (section 21) similar to the Tax Invoice requirements, but must refer to the original supply (tax invoice).

Debit and Credit Notes do not relate to separate supplies, but is in regards to variation of the original supply (such as a return of goods sold, or a conditional discount granted).
Draft TLAB 2018 proposed an amendment to allow for a tax invoice to be cancelled and reissued correcting a material error.

The proposed amendment requires that the supplier or the recipient, as the case may be, must obtain and retain information sufficient to identify the transaction to which the original tax invoice and the subsequent corrected tax invoice refers, and that the time of supply shall be determined in accordance with the date reflected on the original tax invoice.
Supporting documentation

- Input tax deduction cannot be claimed unless the vendor has the original tax invoice (or prescribed supporting documents for notational input tax) at the time of claiming.

- The vendor is liable for output tax at the standard rate if prescribed documentation is not retained to support a zero-rated or exempt supply.
Connected Persons

- Defined in section 1
- Time of supply (s 9(2)(a)):

<table>
<thead>
<tr>
<th>Goods to be removed</th>
<th>Date of removal</th>
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<tbody>
<tr>
<td>Other goods not to be</td>
<td>Date when the goods are made available to the buyer</td>
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<tr>
<td>removed</td>
<td></td>
</tr>
<tr>
<td>Services</td>
<td>When the services are performed</td>
</tr>
</tbody>
</table>
Connected Persons

- Value of supply (s10(4)):

$ Value of a supply

1. Connected persons, AND
2. No consideration; or
3. Consideration < open market value; or
4. Consideration cannot be determined; AND
5. Buyer would NOT have been entitled to a full input tax deduction

= Open MV
Adjustment for Irrecoverable debts 
(s 22(1))

Supply: A deduction in terms of s 16(3) = Input
Value: Tax fraction (applicable on original sale) * amount irrecoverable (s 22(1) proviso)
Time: Tax period it became irrecoverable

Documentary proof has to be retained:
(a) accounting records reflecting the balance of the outstanding debt and amount of VAT written off
(b) proof that the VAT was charged and declared in a VAT return.
Adjustment for Irrecoverable debts (s 22(1)(v))

Account receivables transferred by vendor at face value on:

- Non-recourse basis – no deduction if irrecoverable
- Recourse basis – deduction by way of an input – when transferred back to vendor – on irrecoverable consideration
Adjustment for Irrecoverable debts (s 22(1A))

The other vendor (recipient) to whom the account receivables are transferred to at face value on a non-recourse basis by way of a taxable supply for a consideration in money may

When any amount of the face value (exclude finance charges & collection costs) are written off as irrecoverable by the recipient can claim input tax into s 16(3) as follows:

$$= \frac{15}{115} \times \text{face value written off (limited to amount paid for debt by recipient)}$$
Adjustment for Irrecoverable debts (s 22(2))

Kind: Deemed supply - Debt wholly or partly recovered (s 22(2)) = Output VAT

Time: Tax period in which the debt is recovered

Value: VAT on amount recovered
Unpaid debts (s 22(3))

Recipient of a supply **claimed input tax but did not pay full consideration within 12 months** (from end of tax period in which input tax deduction was claimed / consideration payable) must account for **output tax**

Value: 15/115 * part of consideration not paid
Time: Tax period following the expiry of the period of 12 months.

*Unless*: contract allows for an extended period

**NB**: Not applicable to vendors that are members of the same **group of companies** – for as long as they remain members of such group (s 22(3A) & s 22(6))

**[Group of companies definition – s 1 of the Income Tax Act = change 70% to 100% in such definition]**
Unpaid debts (s 22(4))

Section 22(4) – if vendor at any time thereafter pays any portion of the consideration – may in terms of s 16(3) account for input tax

Value: 15/115 * consideration paid

Time: VAT period of payment
Excessive Consideration (s 8(27))

Vendor receives an amount – standard rate (15%) supply - that is more than the consideration charged for the supply – and excess is not refunded within 4 months of its receipt = pay output tax on excess.

Kind:  Deemed supply of services
Time:  Last day of VAT period during which that four months ends
Value: Excess portion of the payment received (s 10(26))

When excess refunded – claim input tax (s 16(3)(m))
Import services

‘Imported services’ (s 1)
- supply of services
  - by a supplier who is a resident or carries on business outside SA; to a
  - recipient who is a resident in SA; to the extent that
  - services are utilised or consumed in SA
  - otherwise than for the purpose of making taxable supplies

- Imposition of VAT:
  - supply of imported services by any person (s 7(1)(c))

- Section 14(1) – Recipient shall within 30 days furnish the Commissioner with a return and calculate the VAT
Import services

Value: Greater of:
- Consideration of the supply; or
- Open-Market value of the supply (s 14(3))

Time: Earlier of:
- Issue of an invoice; or
- Making of any payment iro that supply (s 14(2))

NB: Section 14(5) provides that no tax is payable if:
- If a similar SA supply would be zero rated (s 11) or exempt (s 12) or levied in terms of s 7(1)(c);
- Supply of educational services by a authorized foreign educational institution;
- Services by an employee to his employer; or
- Value supply does not exceed R100 per invoice
Import Goods

Imposition of VAT:
- importation of goods by any person (s 7(1)(b))

In terms of s 13 goods are deemed to be imported into SA on a date determined by the provisions of the Customs & Excise Act
Exempt supplies
Section 12

- Exempt supplies are not taxable supplies.
- Exempt supplies are excluded from “enterprise”.
- An entity that only makes exempt supplies cannot register for VAT and cannot claim input tax credit on its purchase of goods or services.
- Persons making both taxable and exempt supplies, can claim input tax only to the extent that it relates to taxable supplies (apportionment required).
Accommodation

Exempt supplies (s 12(c) & (d)):

- Letting/hiring of a **dwelling**
- Lodging or board and lodging
  - The employee is entitled to occupy the accommodation as a benefit of employment
  - Employee’s hostel/boarding house provided by employer (not for profit)
- Land leased for accommodation in a **dwelling** erected or to be erected on the land
Accommodation

**Dwelling** (Def s 1): Building, premises, structure or any other place, or part thereof used / intended to be used mainly as a place of **residence or abode of a natural person**, including fixtures and fittings belonging to and enjoyed with the dwelling

*except* where used in the supply of **commercial accommodation**
Accommodation

Commercial accommodation (‘enterprise’ definition)

- lodging or board and lodging (with domestic goods & services) in a:
  - house, flat, apartment, room, hotel, motel, inn, guest house, boarding house, residential establishment, holiday accommodation unit, chalet, tent, caravan, camping site, houseboat or similar establishment,
    - regularly or systematically supplied and
    - total annual receipts > R120 000 in a 12 months period (definition of enterprise – s 1); but
  - excludes letting / hiring of a dwelling
- lodging or board and lodging in a home for aged, children, physically / mentally handicapped
- lodging or board and lodging in a hospice
Accommodation

goods and services provided in an enterprise supplying *commercial accommodation*, including:
- cleaning and maintenance
- electricity, gas, air conditioning or heating
- telephone, television set, radio or other similar article
- furniture and other fittings
- meals
- laundry
- nursing services
- water
Deemed supply (s 10(10))

**Domestic goods and services supplied with**
commercial accommodation at an all-inclusive charge:

- unbroken period > 28 days
- consideration in money is deemed to be 60% of the all-inclusive charge
Fixed Property

Def: (s 1)

- Land and improvements
- Sectional title units
- Share blocks – any shares in a company with a right to or an interest in the use of immovable property
- Time-share – in relation to a property time-share scheme, any time-sharing interest
- Any real rights in any of the above

Fixed property = goods (def ‘goods’ s 1)
Fixed Property

The supply of fixed property between two vendors that is subject to VAT (15% OR 0%) is exempt from transfer duty.

Transfer Duty Act – section 9(15)
Fixed Property – Connected Persons

**Value of supply**
Apply the normal rules.
When there is a taxable supply for VAT there will be no Transfer Duties.

**Time of supply s9(3)(d)**
When supply is made by a vendor

*Earlier of:*
- Date of registration or
- Date on which any payment is made
Fixed Property – Course or Furtherance of an Enterprise

**Time of Supply**
Where there is a fixed property transaction:
- In the course of furtherance of an enterprise
- Between non-connected persons
- Or connected persons who did not deem the supply at MV (s10(4) was not applied)

Then:
- Input tax claimed in proportion to amount paid (irrespective of date of transfer)
- Output tax accounted for to the extent of payment received
Fixed Property – not in the course or furtherance of an Enterprise

**Time of Supply**

Where there is a fixed property transaction:

- Not in the course of furtherance of an enterprise (fixed property supplied by a vendor, but where the fixed property, for example, related to exempt residential use)

Then:

- Can only be claimed once the fixed property is registered in the name of the vendor.
- After registration in the name of the vendor, the deemed input can further only be claimed to the extent that payment was made for the supply.
Fixed Property

**Second-hand fixed property acquired from non-vendor**

**Value of supply**

- Claim notional input tax
- Notional input not limited to the transfer duties paid
- Input Tax is calculated by the application of the tax fraction to the lesser of:
  - the purchase price or
  - open market value
Second-hand goods: Fixed property acquired from a non-vendor

Time of supply

- Can only be claimed once the fixed property is registered in the name of the vendor.
- After registration in the name of the vendor, the deemed input can further only be claimed to the extent that payment was made for the supply.

**NB:** Prerequisite – Registration

To extent payment was made
Mixed-Use Property

- The vendor’s deduction for input tax or notional input tax will be apportioned (s 17(1))

- Disposal in terms of section s 8(16)(a):
  - apply to a supply of goods – (other than fixed property acquired prior to the commencement date by a natural person used mainly as his private residence and no deductions under s 16(3) )
    - Acquired/imported for mixed-use purposes
    - Held or utilised for mixed-use purposes – immediately prior to the supply
    - Deemed to be supplied **wholly** in the course or furtherance of his enterprise (change-of-use relief then becomes available in s16(3)(h))
Mixed-Use Property

Disposal in terms of section s 8(16)(b):

- Supply of fixed property, by vendor, acquired prior to the commencement date by the vendor (needs to be a natural person) used mainly as his private residence and no deductions under s 16(3)

- Deemed to be supplied otherwise than in the course or furtherance of his enterprise.
Zero-rated supplies
Section 11

- Zero-rated supplies are **taxable supplies**.
- Most beneficial form of VAT treatment, because an entity making zero-rated supplies may still claim VAT on standard-rated goods and services acquired.
Zero-rated supplies
Section 11

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<th>Goods</th>
<th>Services</th>
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<td>Section 11(1)</td>
<td>Section 11(2)</td>
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</table>
Exported goods

Direct
Par (a)

Indirect
Par (d)

GDP = C + I + G + (X - M)

- consumption
- investment
- government expenditure
- exports
- imports
- net exports
"Exported", in relation to any movable goods supplied by any vendor under a sale or an instalment credit agreement, means:

a) consigned or delivered by the vendor to the recipient at an address in an export country as evidenced by documentary proof acceptable to the Commissioner; or

b) delivered by the vendor to the owner or charterer of any foreign-going ship contemplated in paragraph (a) or (c) of the definition of “foreign-going ship” or to a foreign-going aircraft when such ship or aircraft is going to a destination in an export country and such goods are for use or consumption in such ship or aircraft, as the case may be; or

c) delivered by the vendor to the owner or charterer of any foreign-going ship contemplated in paragraph (b) of the definition of “foreign-going ship” for use in such ship; or

d) removed from the Republic by the recipient or recipient’s agent for conveyance to an export country in accordance with any regulation made by the Minister in terms of this Act.
In order for a vendor to supply movable goods under a sale or instalment credit agreement and levy VAT at the zero rate, the vendor must:

- consign or deliver the movable goods to the recipient at an address in an export country; and
- obtain and retain the required documentary proof as is acceptable to the Commissioner.
This export is classified as a “direct export” as the vendor is in control of the export and ensures that the movable goods are exported from the Republic.
Designated commercial port and time period

- The vendor must export the movable goods via a designated commercial port within the prescribed time period.
- The movable goods must be exported from the Republic within 90 days from the earlier of the time an invoice is issued by the vendor or the time any payment of consideration is received by the vendor.
Documentary proof

- Official documentation
  - Export or removal documents such as Customs Declaration
- Commercial documentation
  - Proof of transaction and transport such as tax invoice and bill of lading
Documentary proof

- Movable goods physically delivered by the vendor at an address in an export country

- Movable goods conveyed by the vendor’s cartage contractor to an address in an export country

- Movable goods supplied and exported by any other mode of transport (including continuous transmission commodities, for example electricity, water, fuel, gas etc)
Movable goods physically delivered by the vendor at an address in an export country

- a copy of the zero-rated tax invoice
- the recipient’s order or the contract between the recipient and the vendor
- the customs documentation
- proof that the movable goods have been received by the recipient in the export country
- the transport documentation as required for the relevant mode of transport, and
- proof of payment for the movable goods supplied to the recipient
Documentary proof

- Movable goods physically delivered by the vendor at an address in an export country

- Movable goods conveyed by the vendor’s cartage contractor to an address in an export country

- Movable goods supplied and exported by any other mode of transport (including continuous transmission commodities, for example electricity, water, fuel, gas etc)
Movable goods conveyed by the vendor’s cartage contractor to an address in an export country

Depends on mode of transport:
Movable goods conveyed by the vendor’s cartage contractor to an address in an export country

| Road | (a) A copy of the zero-rated tax invoice  
(b) The recipient’s order or the contract between the recipient and the vendor  
(c) Proof that the vendor paid the transport costs  
(d) Either –  
  (i) a copy of the relevant document to prove that the cartage contractor took possession of the movable goods from the vendor; or  
  (ii) a copy of the road manifest issued by the cartage contractor  
(e) A copy of the proof of delivery issued by the cartage contractor that the movable goods have been received by the recipient in the export country  
(f) The customs documentation  
(g) Proof of payment for the movable goods supplied to the recipient |
Movable goods conveyed by the vendor’s cartage contractor to an address in an export country

| Rail | (a) A copy of the zero-rated tax invoice  
|      | (b) The recipient’s order or the contract between the recipient and the vendor  
|      | (c) Proof that the vendor paid the transport costs  
|      | (d) A copy of the rail consignment note; or if by –  
|      |   (i) wagon, a copy of the combined consignment note and wagon label issued by the rail operator; or  
|      |   (ii) container, a copy of the container terminal order or freight transit order issued by the container operator or the rail operator  
|      | (e) The customs documentation  
|      | (f) Proof of payment for the movable goods supplied to the recipient |
Movable goods conveyed by the vendor’s cartage contractor to an address in an export country

| Sea          | (a) A copy of the zero-rated tax invoice  
|             | (b) The recipient’s order or the contract between the recipient and the vendor 
|             | (c) Proof that the vendor paid the transport costs 
|             | (d) A copy of the sea freight transport document 
|             | (e) The customs documentation 
|             | (f) Proof of payment for the movable goods supplied to the recipient |
Movable goods conveyed by the vendor’s cartage contractor to an address in an export country

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<tr>
<th>Air</th>
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<tbody>
<tr>
<td></td>
<td>(a) A copy of the zero-rated tax invoice</td>
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<td>(b) The recipient’s order or the contract between the recipient and the vendor</td>
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<td>(c) Proof that the vendor paid the transport costs</td>
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<td></td>
<td>(d) A copy of the airfreight transport document</td>
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<td>(e) The customs documentation</td>
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</tbody>
</table>
Movable goods conveyed by the vendor’s cartage contractor to an address in an export country

| Post | (a) A copy of the zero-rated tax invoice  
|      | (b) The recipient’s order or the contract between the recipient and the vendor  
|      | (c) Proof that the vendor paid the postage costs  
|      | (d) Proof of receipt of the movable goods by the postal service;  
|      | (e) The customs documentation  
|      | (f) Proof of payment for the movable goods supplied to the recipient |
Documentary proof

- Movable goods physically delivered by the vendor at an address in an export country

- Movable goods conveyed by the vendor’s cartage contractor to an address in an export country

- Movable goods supplied and exported by any other mode of transport (including continuous transmission commodities, for example electricity, water, fuel, gas etc)
Movable goods supplied and exported by any other mode of transport (including continuous transmission commodities, for example electricity, water, fuel, gas etc)

A vendor who exports movable goods by means of any other mode of transport, for example, a pipeline or electrical transmission line, and the vendor supplying such goods is the owner of such mode of transport or is contractually liable for the full cost relating to the use of such mode of transport, may apply the zero rate to the supply of such movable goods.
Movable goods supplied and exported by any other mode of transport (including continuous transmission commodities, for example electricity, water, fuel, gas etc)

The Commissioner will, on application by the vendor, determine the documentary proof to be obtained and retained by the vendor including but not limited to:

- a copy of the zero-rated tax invoice
- the export and acquittal documentation prescribed under the Customs and Excise Act as set out in the relevant Customs policy for Continuous Transmission Commodities, the Customs and Border Management – External Policy Number SC-TR-01-02 Acquittal of Customs Declarations read with the Customs and Border Management – Annexure Number SC-TR-01-03-A06 Acquittal Document Requirements, and
- proof of payment.
Direct export of secondhand goods on which notional input tax was claimed

- Unlike other direct exports, the supply of second-hand movable goods for export may, under the proviso to section 11(1), **not be subject to VAT at the zero rate** if notional input tax was deducted on the acquisition of such goods.

- Section 10(12) sets out a special valuation rule which provides that the vendor must account for output tax on the supply of the second-hand movable goods at the standard rate on a consideration (inclusive of VAT) equal to the original purchase price of those goods by the vendor. Thus, output tax equal to the amount of notional input tax previously deducted, is declared in the tax period during which the goods are supplied.

- The vendor must furthermore ensure that the tax invoice issued for a supply of second-hand movable goods complies with the provisions of section 20(4).
Exported goods

Direct Par (a)

Indirect Par (d)

\[ GDP = C + I + G + (X - M) \]

- Consumption
- Investment
- Government expenditure
- Exports
- Imports
- Net exports
Indirect export
Par (d)
Indirect export
Par (d)

Regulation R.316

Part One
15%

Part Two
0%
Indirect export
Part One

- Vendor must levy VAT at standard rate.
- Vendor must issue tax invoice.
- If secondhand goods on which notional input tax was deducted – must give full and proper description on tax invoice.
- Vendor has no further responsibility.
Indirect export
Part One

- Purchaser must export the goods within 90 days of date of tax invoice, unless otherwise provided for in Regulations.
- Must export via designated commercial port (declare to customs official before submitting claim for refund).
Indirect export
Part One

The VAT refund administrator is authorised to make a refund to the qualifying purchaser where all requirements have been satisfied and documents have been submitted.
Indirect export
Par (d)

Regulation R.316

Part One
15%

Part Two
0%
Part two applies where a vendor supplies movable goods to a qualifying purchaser and the vendor elects to levy VAT at 0%.

The vendor must ensure that the goods are delivered to a harbour or airport listed in the definition of “designated commercial port”.
Sale of a going concern
Section 11(1)(e)

Purpose of this zero-rating:

To alleviate administrative and cash flow burden of the sale of an enterprise as a going concern.
Sale of a going concern
Section 11(1)(e)

The supply is to a registered vendor of an enterprise or of a part of an enterprise which is capable of separate operation, where the supplier and the recipient have agreed in writing that such enterprise or part, as the case may be, is disposed of as a going concern.
Requirements:
going concern at 0%

- The seller and purchaser must be registered vendors.
- The supply must consist of an enterprise or part of an enterprise which is capable of separate operation.
- The parties must agree in writing that the supply is a going concern.
- The seller and purchaser must, at the conclusion of the agreement, agree in writing that the enterprise will be an income-earning activity on the date of transfer thereof.
- The assets necessary for carrying on the enterprise must be disposed of to the purchaser.
- The parties must agree in writing that the consideration for the supply includes VAT at the zero rate.
The agreement must provide for the sale of an independent income-earning activity together with the necessary infrastructure.

The purchaser must be placed in possession of a business which can be operated in that same form, without any further action on the part of the purchaser.

The parties must, therefore, agree that the enterprise will remain active and operating until its transfer to new ownership.

It is however, not necessary that the purchaser indeed intends to carry on the particular activity of the enterprise. The contract must merely create a “capacity to continue”.
Going concern: partial taxable use before sale

- If more than 50% of the assets of the going concern were used for the making of taxable supplies, the seller levies output tax at the rate of 0% on the full transaction.

- If the goods or services of the enterprise were less than 50% applied by the seller for purposes of the going concern, only the portion of the selling price that relates to the going concern may be zero-rated.

18A & 16(3)(h) adjustments
Goods used or consumed for agricultural, pastoral or other farming purposes
Section 11(1)(g)

The supply is of such goods used or consumed for agricultural, pastoral or other farming purposes as are set forth in Part A of Schedule 2, provided such supply is made in compliance with such conditions as may be prescribed in the said Part.
Goods that qualify for 0%

- Animal feed
- Animal remedy
- Fertilizer
- Pesticide
- Plants
- Seed
Requirements

The Commissioner, in respect of a vendor registered under this Act, is satisfied that that vendor, being the recipient of any such goods, carries on agricultural, pastoral or other farming operations and has issued to him a notice of registration in which authorisation is granted whereby the goods concerned may be supplied to him at the rate of zero per cent:

- the goods concerned are supplied to a vendor who is in possession of a valid notice of registration as a vendor and an authorization contemplated in paragraph (a);

- a tax invoice in respect of the relevant supply is issued containing such particulars as required by section 20 (4) of this Act;

- the acquisition, disposal, sale or use of the said goods is not prohibited in terms of section 7bis of the Fertilizers, Farm Feed, Agricultural Remedies and Stock Remedies Act, 1947.
Future of this zero-rating?

Proposed amendment: Para. (g) to be deleted by s. 96 (1) (a) of Act No. 43 of 2014 with effect from a date determined by the Minister by notice in the Gazette which notice may not be published earlier than 12 months after the promulgation of that Act – date not determined.
Fuel levy goods
Section 11(1)(h)

The goods consist of fuel levy goods referred to in Fuel Item Levy numbers 195.10.03, 195.10.17, 195.20.01 and 195.20.03 in Part 5A of Schedule No. 1 to the Customs and Excise Act.
Fuel levy goods
Section 11(1)(h)

Fuel is already highly taxed.

Fuel levy:  R3.37 per litre
RAF levy:  R1.93 per litre
Future of this zero-rating?

- During the 2017 Budget, a proposal was made to review the 0% on fuel.

- Estimated to raise an additional R18bn in revenue.

- VAT rate was since increased to 15%.
The goods consist of such foodstuffs as are set forth in Part B of Schedule 2, but subject to such conditions as may be prescribed in the said Part.
Zero-rating of basic foodstuffs
Section 11(1)(j)


- Maize meal graded as super maize meal, special maize meal, sifted maize meal or unsifted maize meal, not further processed other than by the addition of minerals and vitamins not exceeding one per cent by mass of the final product, solely for the purpose of increasing the nutritional value.

- Samp, not further prepared or processed.

- Mealie rice, not further prepared or processed.

- Dried silo screened mealies or dried mealies not further prepared or processed or packaged as seed, but excluding pop corn (zea mays everta).

- Dried beans, whole, split, crushed or in powder form but not further prepared or processed or where packaged as seed.
Zero-rating of basic foodstuffs

- Lentils, dried, whole, skinned or split.

- Pilchards or sardinella supplied in tins or cans consisting mainly of such products regardless of whether flavoured, seasoned or preserved in oil, but excluding such products as are supplied as pet food or sardines supplied in tins or cans.

- Milk powder: unflavoured, being the powder obtained by the removal of water from milk and which falls under the following classifications determined by the Minister of Agriculture under the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990), or any regulation under that Act provided the fat or protein content of such milk powder consists solely of milk fat or milk protein.

- Dairy powder blend.

- Rice, whether husked, milled, polished, glazed, parboiled or broken.
Zero-rating of basic foodstuffs

- Vegetables, not cooked or treated in any manner except for the purpose of preserving such vegetables in their natural state, but excluding dehydrated, dried, canned or bottled vegetables or such vegetables as are described under separate Items in this PART.

- Fruit, not cooked or treated in any manner except for the purposes of preserving such fruit in its natural state, but excluding dehydrated, dried, canned or bottled fruit and nuts.

- Vegetable oil, marketed and supplied for use in the process of cooking food, but excluding olive oil.

- Milk, including high-fat, full-fat, low-fat or fat-free milk, being the milk of cattle, sheep or goats that has not been concentrated, condensed, evaporated, sweetened, flavoured, cultured or subjected to any other process other than homogenisation or preservation by pasteurisation, ultra-high temperature treatment, sterilisation, chilling or freezing or the addition of minerals, vitamins, enzymes and other similar additives not exceeding one per cent by volume of the final product, solely for the purpose of increasing the nutritional value.
Zero-rating of basic foodstuffs

- Cultured milk, being cultured milk as classified under the Agricultural Product Standards Act, 1990.

- Brown wheaten meal, being pure, sound wheaten meal, but excluding separated wheaten bran, wheaten germ and wheaten semolina.

- Eggs, being raw eggs laid by hens of the species *gallus domesticus*, whether supplied in their shells or in the form of egg pulp consisting of the yolk and white which is obtained from such eggs after the shells have been removed.

- Edible legumes and pulse of leguminous plants, dried, whole, split, crushed, skinned or in powder form, but not further prepared or processed or where packaged as seed or such pulse as are described under separate Items in this PART.
Zero-rating of basic foodstuffs

The provisions of paragraph 1 shall not apply where any goods mentioned in that paragraph are supplied in the course of carrying out any agreement for the furnishing or serving of any meal, refreshment, cooked or prepared food or any drink, as the case may be, so as to be ready for immediate consumption when so supplied.
Expansion of this list?

Possible additions considered:
- White bread
- White bread flour and cake flour
- School uniforms
- Baby formula
- IQF poultry parts
- Sanitary pads
- Nappies
Expansion of this list?

Recommendations by panel:
- White bread
- White bread flour and cake flour
- School uniforms
- Sanitary pads
- Nappies

Cost (revenue foregone) is estimated at R4 billion
Gold coins
Section 11(1)(k)

The goods are gold coins supplied as such and which the Reserve Bank has issued in the Republic in accordance with the provisions of section 14 of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), or which remain in circulation as contemplated in the proviso to subsection (1) of that section.
The goods consist of illuminating kerosene (marked) intended for use as fuel for illuminating or heating, referred to in Fuel Item Levy number 195.10.13 in Part 5A of Schedule No. 1 to the Customs and Excise Act and are not mixed or blended with another substance.
Zero-rated supplies
Section 11

Goods
Section 11(1)

Services
Section 11(2)
Cross-border transport
Section 11(2)(a)

The services (not being ancillary transport services) comprise the transport of *passengers* or *goods*:

- from a place outside the Republic to another place outside outside the Republic; or

- from a place in the Republic to a place in an export country; or

- from a place in an export country to a place in the Republic.
Cross-border transport
Section 11(2)(b)

The services comprise the transport of passengers from a place in the Republic to another place in the Republic to the extent that that transport is by aircraft and constitutes “international carriage” as defined in Article 1 of the Convention set out in the Schedule to the Carriage by Air Act, 1946 (Act No. 17 of 1946).
Cross-border transport
Section 11(2)(c)

The services (including any ancillary transport services) comprise the transport of goods from a place in the Republic to another place in the Republic to the extent that those services are supplied by the same supplier as part of the supply of services to which paragraph (a) applies.
The services comprise the:

- insuring;
- arranging of the insurance; or
- arranging of the transport, of passengers or goods to which any provisions of paragraph (a), (b) or (c) apply; or
- insuring or the arranging of the insurance of passengers on an international journey, where the insurance of those passengers is provided under a single inbound or outbound insurance policy in respect of which a single premium is levied.
Transport of exported or imported goods
Section 11(2)(e)

The services comprise the transport of goods or any ancillary transport services supplied directly in connection with the exportation from or the importation into the Republic of goods or the movement of goods through the Republic from one export country to another export country, where such services are supplied directly to a person who is not a resident of the Republic and is not a vendor, otherwise than through an agent or other person.
Services in connection with foreign land
Section 11(2)(f)

The services are supplied directly in connection with land, or any improvement thereto, situated in any export country.
Services in connection with foreign movable property
Section 11(2)(g)

The services are supplied directly in respect of:

- movable property situated in any export country at the time the services are rendered; or

- goods temporarily admitted into the Republic from an export country which are exempt from tax on importation under Items 470 and 480 of paragraph 8 of Schedule 1; or

- goods in respect of which the provisions of paragraph (b) or (c) of the definition of “exported” in section 1 apply; or

- the repair, maintenance, cleaning or reconditioning of a foreign-going ship or foreign-going aircraft.
Services rendered outside SA
Section 11(1)(k)

The services are physically rendered elsewhere than in the Republic or to a customs controlled area enterprise or an SEZ operator in a customs controlled area.

Recipient may be resident or non-resident
Services to non-residents
Section 11(2)(i)

the services of arranging:

- the supply of goods as contemplated in paragraph (b) or (c) of the definition of “exported”; or
- the supply of services referred to in paragraph (g) (iv) or (h); or
- the transport of goods (including ancillary transport services) within the Republic,

for a person who is not a resident of the Republic and is not a vendor.
Services to non-residents
Section 11(2)(I)

The services are supplied to a person who is not a resident of the Republic.

Excluding:
- in connection with land or any improvement thereto situated inside the Republic; or
- in connection with movable property situated inside the Republic at the time the services are rendered (except if subsequently exported or if to a registered vendor)
- if recipient is in SA during time services are rendered.
Stellenbosch Farmers’ Winery Limited v CSARS [2012] ZASCA 72

- The taxpayer had the exclusive right (exclusive distribution agreement) to distribute Bell’s Whisky in South Africa.

- United Distillers PLC (UK company) wanted early termination of the exclusive distribution agreement.

- Compensation of R67 million was paid by UD to SFW.
Stellenbosch Farmers’ Winery Limited v CSARS [2012] ZASCA 72

- The question was whether the compensation amount of R67 million received could be zero-rated (in terms of section 11(2)(l))?
Stellenbosch Farmers’ Winery Limited v CSARS [2012] ZASCA 72

- The question was whether the compensation amount of R67 million received could be zero-rated (in terms of section 11(2)(l))?
The SCA confirmed that the surrender of a right constitutes a “service”.

It also ruled that the *situs* of an incorporeal right was where the debtor (United Distillers) resides.

Consequently, it ruled that the service was to a non-resident and not in connection with property situated in SA.

Therefore subject to VAT at 0%.
Master Currency v CSARS (155/2012 [2013] ZASCA 17)

- Master Currency supplied foreign exchange services to non-residents in the duty free area of an international airport and sought to apply the zero rate to such services.

- Master Currency relied on a SARS ruling which indicates that supplies of goods in duty free areas were subject to VAT at the zero-rate.

Fee-based financial services are not exempt
Master Currency v CSARS (155/2012 [2013] ZASCA 17)

Section 11(1)(v) provides for VAT at 0% on the supply of goods by an inbound duty and tax free shop.
The court concluded that Master Currency could not rely on the ruling because the ruling was limited in its application to goods supplied by duty free shops in duty free areas and therefore did not apply to services.

The SCA confirmed that foreign exchange services supplied in the duty free area of an international airport are subject to VAT at the standard rate.

The zero-rating is not applicable if the non-resident is in the Republic at the time the services are rendered.

The duty free area of an international airport is therefore not regarded to be outside the Republic.
Municipal rates and taxes
Section 11(2)(w)

A “municipal rate” as defined in section 1, is levied by a municipality.
Municipal rates and taxes
Section 11(2)(w)

Definition **excludes** a single charge imposed for rates and other supplies (water, electricity, refuse etc).
Section 8(15) provides that where a single supply of goods or services would, if separate considerations had been payable, have been charged partly at the standard rate and partly at the zero rate, each part of the supply is deemed to be a separate supply.
CSARS v British Airways
CSARS v British Airways

The SCA held the following:

▪ a single supply of service is only capable of separation into its component parts, as contemplated by s 8(15), when the same vendor supplies more than one service.

▪ The passenger service charge that ACSA charged BA was merely a cost of doing business for BA and did not constitute a supply made by BA to the passengers.

▪ The full airfare was therefore subject to VAT at the zero rate.
Davis Tax Committee views

- It is clear that the zero rating of such basic foodstuffs, taken in isolation, addresses to some extent the regressivity of the VAT.

- However, there is clear evidence that this approach is not optimal from an economic efficiency perspective given that, in absolute terms, the concession is of significantly greater benefit to the more affluent households.

- Theoretically, it must always be better to rather collect the tax revenue and redistribute the additional income through a targeted transfer to the poor.
Davis Tax Committee views

- However, while the DTC is of the view that zero-rating is an extremely blunt and second-best instrument for addressing equity considerations, the DTC takes the view that it would be very difficult to eliminate the current zero-ratings.
However, while the DTC is of the view that zero-rating is an extremely blunt and second-best instrument for addressing equity considerations, the DTC takes the view that it would be very difficult to eliminate the current zero-ratings.

At best, it may be appropriate to consider only retaining those items that more clearly benefit the poor households, such as maize meal, brown bread, rice and vegetables, while withdrawing those items more clearly consumed by the more affluent households, such as fruit and milk.
Davis Tax Committee views

- The strong recommendation of the Committee is, however, that no further zero-rated food items should be considered.
Davis Tax Committee views

- What about multiple VAT rates?

- There is a view that the goods and services consumed by the more affluent households should bear a higher VAT burden.
Davis Tax Committee views

- There is no empirical evidence that suggests that higher rates on so-called luxury goods addresses in any meaningful way equity in the VAT system.

- There is instead clear evidence that multiple rates add significantly to the complexity and administrative burden of the tax.

- Importantly, high rates generally (except possibly in the case of motor vehicles) apply to goods that account for a relatively small proportion of total consumption.

- Already *ad valorem* excise duty on luxury goods and motor vehicles.
Questions?