



VAT proposals for 2022

The National Treasury published the draft Taxation Laws Amendment Bill for comment on 29 July 2022. It includes a number of VAT proposals. This article considers proposals that relate to pooling arrangements and the registration requirements for foreign persons.

VAT vendors can expect a number of amendments that affect specific classes of vendors in 2023. The National Treasury published the draft Taxation Laws Amendment Bill ('TLAB') for comment on 29 July 2022. It contains a number of proposals for amendments to the Value Added Tax Act ('VAT Act').

The VAT proposals deal with matters previously covered by rulings under section 72 that ceased to apply (see note at the end). Some of the VAT proposals have a very narrow focus and are likely to be of limited relevance to the broader community of vendors, for example, a proposal that deals with cross-border leasing of foreign ships, airplanes and rolling stock. This article considers VAT proposals that may be of broader interest.

Pooling arrangements

The VAT Act provides that two specific pooling arrangements may register as enterprises separate from their members. The one is agricultural, pastoral or farming pools as contemplated in the Marketing of Agricultural Products Act. The other relates to rental pool schemes operated for the benefit of all or some persons who holds interests in fixed properties.

Vendors however also enter into pooling arrangements in other instances. The draft explanatory memorandum provides a pool of incorporated medical practices as an example. Vendors may also enter into pooling arrangements voluntarily to gain some commercial advantage.

The proposal extends the pooling arrangements that qualify to register as separate enterprises from their members. The proposal has a limited scope. It only relates to pooling arrangements established in order to comply with the provisions of the laws of the Republic or regulations or rules promulgated by a professional body.

Registration of foreign persons

Persons who carry on an enterprise or activity continuously or regularly in South Africa or partly in South Africa should register as VAT vendors if they exceed the registration threshold. This includes foreign

persons, some of whom have little or no presence in South Africa, for example, electronic service providers. A number of VAT proposals relate to the registration of such persons as vendors.

The first proposal in this regard aims to alleviate the administrative difficulties for foreign groups. These groups may be required to register and administer multiple foreign entities as vendors in South Africa. The draft TLAB proposes that an existing vendor who forms part of the same group of companies as the foreign entities should be allowed to register a separate branch as a vendor. This branch will then account for and administer the VAT of all the foreign entities in the group.

The TLAB and Tax Administration Laws Amendment Bill also contain further VAT proposals to exclude certain foreign persons from having to register as vendors. The first proposal relates to flash title sales of goods in South Africa by a non-resident. The other proposal aims to accommodate electronic service providers who exceed the registration threshold due to abnormal circumstances.

In conclusion

The VAT proposals discussed above are open for comment during August. Persons affected by them should keep an eye on their development. The amendments are normally enacted towards the end of the year.

(Note: Section 72 allows the Commissioner to make decisions on how the VAT Act applies or how a vendor should calculate or pay tax. These decisions relate to instances where difficulties, anomalies or incongruities arise in respect of the application of the VAT Act. The scope of the provision changed in 2019. The amendment limited the issuance of such decisions. The Commissioner may only make such decisions where similar difficulties, anomalies or incongruities have arisen or may arise for any other vendor or class of vendors of the same kind or who make similar supplies of goods or services. Various decisions previously made under section 72 ceased to be effective on 31 December 2021.)

