



DIFFERENCE
MAKERS

TAX GUIDE
Notional Input VAT



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Table of Contents

1.	INTRODUCTION	4
2.	PURPOSE, SCOPE AND LIMITATIONS OF THE GUIDE	4
3.	LEGISLATION	4
4.	TERMINOLOGY	5
5.	ENTITLEMENT TO NOTIONAL INPUT TAX	5
5.1	Overview	5
5.1.1	Example	6
5.2	Non-taxable sale.....	6
5.2.1	Example	6
5.2.2	Seller	6
5.2.3	Sale	7
5.2.4	Non-taxable supply	7
5.2.5	On or after 30 September 1991	8
5.2.6	Situated in the RSA	8
5.3	Second-hand goods.....	8
5.3.1	Overview	8
5.3.2	Goods previously owned and used	9
5.3.3	Converted sectional title unit	10
5.3.4	Animals [exclusion from second hand goods].....	10
5.3.5	Certain gold products [exclusion from second hand goods]	11
5.3.6	New order prospecting or mining rights [exclusion from second hand goods]	12
6.	DEDUCTION OF NOTIONAL INPUT TAX.....	13
6.1	Calculation of notional input tax	13
6.1.1.	Tax fraction	13
6.1.2	Consideration.....	13
6.1.3	Open market value of the supply	13
6.1.4	Example:	15
6.2	Deductible notional input tax	16
6.2.1	Calculation	16
6.2.2.	VAT201 return.....	18
6.2.3	Example:	18
7.	EVENTS, SUBSEQUENT TO THE DEDUCTION OF NOTIONAL INPUT TAX	20
7.1	Cancellation, price changes or returns	20
7.2	Change in use	21
7.2.1	Overview	21
7.2.2	Application wholly for non-taxable or input tax denied use	21
7.2.3	Decreased taxable use	21
7.2.4	First application for taxable purposes	22
7.2.5	Increased taxable use	22
7.3	Sale of second-hand goods	23
7.3.1	Taxable supply	23
7.3.2	Export sales	23
7.3.3	Example:	23
7.3.4	Example:	24
7.3.5	Deduction for previous non-taxable use	25
8.	Deregistration	26
9.	General	26
9.1	Documentary requirements.....	26
9.1.1	Deduction of notional input tax	26

9.1.2	Adjustments	27
9.2	Penalty, interest and understatement penalty.....	27
9.3	Schemes for obtaining undue VAT benefits	27
9.4	Disputes	27
10.	Conclusion.....	28

1. INTRODUCTION

Notional input tax (also called 'notional input VAT') may, in certain instances, be claimed by a vendor as a deduction from its output tax liability, even though the vendor has not paid (and will not pay) any value-added tax (VAT).

The deduction of notional input tax is aimed at the prevention of cascading of VAT, that is, where VAT is paid on a price which includes a trapped VAT cost.¹ However, the deduction may not be made in all instances where a price includes a trapped VAT element (i.e. where input tax could not be claimed by the original purchaser and is thus still reflected within the cost of the second-hand good). The deduction is available only in respect of the purchase of certain second-hand goods in specific circumstances, and provided all the standard requirements for input tax deductions are met.

2. PURPOSE, SCOPE AND LIMITATIONS OF THE GUIDE

This Guide provides an overview of the requirements relating to a vendor's entitlement to a deduction of notional input tax (the input tax as envisaged in paragraph (b) of the Value-Added Tax Act, No. 89 of 1991 (the VAT Act)), the calculation of the amount of notional input tax and the time when the deduction may be made. In addition, this Guide briefly outlines some consequential matters which should be taken into account and would have to be considered in more detail in specific second-hand goods acquisitions.

This Guide does not constitute tax or legal advice and, as a person's VAT obligations depend on their personal circumstances, professional advice should be obtained in respect of a vendor's specific circumstances before the conclusion of agreements.

3. LEGISLATION

This guide deals with the:

- Vat Act; and
- Tax Administration Act 28 of 2011 (TA Act).

¹ For more information, see the Report of the Value-Added Tax Commission (1991) ('VATCOM Report'), par 3.34.

4. TERMINOLOGY

The meaning of certain abbreviations or terms, which are used in this Guide, are as follows:

Abbreviation or term	Meaning
BGR 43	Binding General Ruling (VAT) 43 (12 September 2017): Deduction of input tax in respect of second-hand gold
BGR 57	Binding General Ruling (VAT) 57 (21 October 2021): Whether the term “consideration” includes an amount of transfer duty for the purposes of calculating a notional input tax deduction on the acquisition of second hand-hand fixed property
He (etc.)	Also includes ‘she’ (etc.)
Non-vendor	Person who is not a vendor
RSA	Republic of South Africa, South African, or Republic, as the context indicates
SARB Act	South African Reserve Bank Act 90 of 1989
SARS	South African Revenue Service or (where appropriate) Commissioner for SARS
Section	A section of the VAT Act, unless stated otherwise
Standard rate	The standard VAT rate, which is currently 15%
Tax fraction	$\text{VAT rate} \div (100 + \text{VAT rate})$, i.e. currently 15/115
The VAT Act	The Value-Added Tax Act 89 of 1991
VAT201 return	VAT201 Vendor Declaration
Guide VAT 404	Guide for Vendors (2024 edition)
Guide VAT 409	Guide for Fixed Property and Construction (2023 edition)
Guide VAT 411	Guide for Entertainment, Accommodation and Catering (2016 edition)
Guide VAT 412	Guide for Share Block Schemes
Guide VAT 420	Guide for Motor Dealers (2025 edition)
Vendor	Person who is, or who must be, registered with SARS as a vendor for VAT purposes
Guide Section 72 Decision Process	Reference Guide

5. ENTITLEMENT TO NOTIONAL INPUT TAX

5.1 Overview

‘Input tax’ is:

- the tax charged by the supplier (and therefore the VAT incurred by a vendor on the acquisition of goods or services) under a taxable supply, to the extent of the intended use of the goods or services for taxable purposes; and
- on the importation of goods by a vendor

Input tax may be recovered from SARS by way of a deduction from the total amount of VAT payable for a tax period. Therefore, if vendor A buys an office desk from vendor B for R2 300 (including VAT)

for use by its new VAT manager, vendor A may deduct the VAT of R300 (i.e. R2 300 x 15/115),² which is included in the purchase price (known as consideration), as input tax in its VAT201 return.³

'Notional input tax', on the other hand, is notional or theoretical VAT that a vendor is (in certain instances) 'deemed' to incur, although no VAT was charged or is payable by the supplier.⁴

5.1.1 Example

If not prohibited by section 17, a vendor may deduct notional input tax on second-hand goods purchased by it under a non-taxable supply:

- calculated as the tax fraction of the lesser of the consideration paid for or the open market value of the supply,
- to the extent that the goods are acquired for taxable purposes, provided all the requirements set out below, as well as all procedural and documentary requirements are met.

The vendor making the deduction of notional input tax bears the burden of proving that it is entitled to make the deduction.⁵ It is thus essential to ensure that all the requirements listed below are met, as non-compliance may result in a late payment penalty, interest and/or an understatement penalty.

5.2 Non-taxable sale

To qualify for notional input tax, the second-hand goods must be situated in the RSA and be acquired from an RSA resident under a non-taxable sale.⁶

5.2.1 Example

Non-vendor C who bought a new bookshelf a year ago for R3 450 (including VAT), sells the bookshelf to vendor D for R2 000 cash.

Vendor D will not pay any VAT to C. However, vendor D will be entitled to a deduction of notional input tax of R260.87 (i.e. R2 000 x 15/115), if all requirements have been met. In effect, an average amount of VAT which is estimated to be included in the holding cost of the second-hand goods is allowed as an input tax deduction.

5.2.2 Seller

The seller of the second-hand goods:

- must be a resident of the Republic; and
- may not be a person or diplomatic or consular mission of a foreign country established in the RSA that was granted VAT relief by way of a VAT refund,⁷ as the second-hand goods will in such a case not include a trapped VAT cost.

² The tax fraction is used to calculate the amount of VAT included in the purchase price. Prices are deemed to include VAT – refer to section 64(1).

³ It is assumed, of course, that the vendor makes only taxable supplies, and that all procedural and documentary requirements for claiming input tax deductions are met.

⁴ Refer to par (b) of the definition of 'input tax' in section 1(1), read with section 16(3)(a)(ii) and (b)(i), and section 16(2)(c).

⁵ In terms of section 102(1) of the TA Act.

⁶ Refer to par (b) of the definition of 'input tax' in section 1(1).

⁷ In terms of section 68 of the VAT Act.

A resident of the Republic is:⁸

- a resident for income tax purposes;
- carries on an enterprise in the Republic; or
- any other person, to the extent that the person carries on any enterprise or other activity in the RSA and has a fixed or permanent place in the RSA relating to such enterprise or other activity.

Note: Such an activity does not have to be one that constitutes a VAT enterprise for VAT registration purposes. An exempt activity carried on in the RSA can thus also result in the supplier being regarded as a resident of the RSA.

The documentary proof required by SARS in relation to notional input tax deductions (refer to paragraph 0) does not provide for a declaration by the seller of the second-hand goods confirming that he is a resident of the Republic (RSA resident). As a seller's identity number and address do not necessarily prove that he is in fact an RSA resident, the vendor may be at risk if it does not take reasonable steps to confirm that the seller is an RSA resident.

It is not a requirement for notional input tax that the seller must be a non-vendor. However, if the seller is a vendor, the sale of the second-hand goods may not take place in the course or furtherance of an enterprise carried on by it.

Furthermore, it does not matter whether the seller and the purchasing vendor are connected persons or are not dealing at arm's length. The risk relating to price manipulation is addressed by the general rule that the amount of the notional input tax is calculated on the basis of the lesser of the consideration actually paid and the open market value of the supply (refer to paragraph 0).⁹

5.2.3 Sale

'Sale' means:¹⁰

- an agreement of purchase and sale;
- including any transaction or act whereby or in consequence of which ownership of goods passes or is to pass from one person to another.

The barter of goods will thus also constitute the sale of goods.

A deduction of notional input tax can, however, not be made in respect of a supply of services, e.g., rental payments for second-hand goods. Furthermore, a deduction of input tax cannot be made on the importation of second-hand goods, because the other party is not a resident and there is already tax payable on importation, which is input tax.

5.2.4 Non-taxable supply

A non-taxable supply of second-hand goods is a supply by a supplier—

- who is not a vendor, i.e. a person who:
 - is not registered as a vendor with SARS; and
 - is not required to be registered as a vendor with SARS; or

⁸ Refer to the definition of 'resident of the Republic' in section 1(1).

⁹ However, refer to paragraph 6.2.1.3 as to schemes involving the exploitation of the notional input tax dispensation.

¹⁰ Refer to the definition of 'sale' in section 1(1).

- who is a vendor, but the sale of the second-hand goods does not take place in the course or furtherance of the vendor's VAT enterprise,¹¹ e.g. where:
 - the goods did not form part of the vendor's enterprise, e.g. where an accountant in Gauteng, who is registered as a vendor, sells his beach holiday house that has been used only for private residential purposes;
 - a bank, which is a 'mixed vendor' as it makes both taxable supplies and exempt supplies of financial services, sells old office furniture used by a division which makes only exempt supplies,¹² or
 - the sale is expressly deemed not to be a taxable supply,¹³ as the second-hand goods are entertainment-related goods or a motor car and the vendor was denied an input tax deduction on the acquisition of such entertainment-related goods or the motor car (refer also to paragraph 0).

5.2.5 On or after 30 September 1991

The supply of the second-hand goods must have taken place on or after the commencement date of the VAT regime in the RSA, i.e. 30 September 1991. This means that the time of supply, under the original time of supply rules which applied when VAT was introduced,¹⁴ must fall on or after that date.

This could still be relevant in relation to audits (where prescription does not apply), or in the case of certain adjustments (refer to paragraph 0).

5.2.6 Situated in the RSA

The purchase of second-hand goods can result in a deduction of notional input tax only if the goods are situated in the RSA, namely the geographical territory of the RSA, including the territorial waters, the contiguous zone and the continental shelf.¹⁵ Second-hand goods situated on a boat while in an RSA harbour would thus (in principle) qualify for a deduction of notional input tax.

The location of the goods must be determined at the time of the supply under section 9. Under the general time of a supply rule, a supply takes place at the earlier of the issuing of an invoice (notifying an obligation to make payment) or the receipt of any payment of consideration (except a deposit) by the supplier.¹⁶ Various special rules also apply, e.g. for fixed property and connected persons transactions.

5.3 Second-hand goods

5.3.1 Overview

¹¹ Refer to the definition of 'taxable supply' in section 1(1) and section 7(1)(a).

¹² If the furniture was used by a mixed division, and thus for purposes of taxable and exempt purposes, the subsequent sale of the furniture will be fully taxable – refer to section 8(16).

¹³ In terms of section 8(14)(a).

¹⁴ In terms of section 9, applicable at 30 September 1991.

¹⁵ Referred to respectively in sections 4, 5 and 8 of the Maritime Zones Act 15 of 1994. Refer to the definition of 'Republic' in section 1(1).

¹⁶ Refer to section 9(1) and the definitions of 'invoice' and 'consideration' in section 1(1).

If the goods which are sold are not ‘second-hand goods’ as defined – for example, new goods acquired from a person not registered as a vendor – the vendor may not deduct any notional input tax. In essence, ‘second-hand goods’ means:¹⁷

- (a) goods which were previously owned and used; or
- (b) a sectional title unit (which has been converted from a share block share), but does not include:
 - (i) animals;
 - (ii) certain gold products; or
 - (iii) ‘old order’ mining rights.

5.3.2 Goods previously owned and used

5.3.2.1 Goods

If the item that is bought by a vendor does not fall within the scope of ‘goods’, it cannot be second-hand goods, which means that the vendor cannot be entitled to a deduction of notional input tax.

‘Goods’ means corporeal movable things, fixed property, real rights in such things or fixed property, and electricity, but ‘goods’ excludes money, a mortgage right or a right under a pledge, and stamps sold for the payment of tax or duty, except when subsequently sold or imported as a collector’s piece.¹⁸

‘Goods’ thus include:

- corporeal (tangible) movable things, e.g. motor vehicles, antiques, jewellery, memorabilia, weapons, furniture, equipment, tools, clothes, postage stamps and water;
- ‘fixed property’, i.e. land, buildings, sectional title units, share block shares, time-share interests, and real rights in such fixed property. A real right can be enforced against the whole world and be registered in a deeds registry, e.g. property rights, mineral rights and limited real rights such as bare dominium and servitude.¹⁹ A right to purchase fixed property is not ‘fixed property’ and thus not ‘goods’, but is a service and can thus not be second-hand goods;²⁰ and
- electricity (but it is doubted whether electricity would qualify as second-hand goods).

On the other hand, ‘goods’ specifically excludes:

- (a) money, namely:

- coins issued, or which remain in circulation in terms of the SARB Act, but
 - excluding coins made wholly or mainly from a precious metal (i.e. gold, silver, platinum and iridium), other than silver,
 - therefore, RSA silver coins are money (and thus not goods), while RSA gold coins are not money (and are thus goods);
- any paper currency which is a legal tender under the SARB Act;
- any coin (other than a coin made wholly or mainly from a precious metal) or paper currency of another country, which is currency. Therefore, foreign gold coins are not money and are thus goods;
- any bill of exchange, promissory note, bank draft, postal order or money order,

but when any such item that is ‘money’ is sold or imported as a collector’s piece, investment article or item of numismatic interest, it is not money but is regarded as ‘goods’.

¹⁷ Refer to the definition of ‘second-hand goods’ in section 1(1).

¹⁸ Refer to the definition of ‘goods’ in section 1(1).

¹⁹ Refer to the definition of ‘fixed property’ in section 1(1) and also Guide VAT 409, par. 2.3.

²⁰ Refer to Guide VAT 409, par. 2.4.

Therefore, if RSA coins are sold, e.g. by a numismatic dealer to a collector, the sale will be a taxable supply of goods (and not a supply of 'money'), even though the coins are still legal tender;

- (b) any right under a mortgage bond or pledge of any such thing or fixed property; and
- (c) any stamp, form or card which has a money value and has been sold or issued by the State for the payment of any tax or duty (e.g. value cards and revenue stamps), except when subsequently sold or imported as a collector's or investment item.

5.3.2.2 *Previously owned and used*

Whether the goods have been previously owned and used, is a question of fact.

It is our understanding that the goods must have been owned and used as an asset, whether by a private individual or a business. Therefore:

- if goods were merely 'owned and used' on the basis that the goods were held as trading stock by a dealer, the goods cannot be said to have been used before;
- vacant land is generally regarded as having been previously owned and used by someone.

However, even if the item that is bought by a vendor is goods which have been previously owned and used, the item will not be 'second-hand goods' if one of the specific exclusions apply to the type of item bought, or to the circumstances of the sale (refer to the exclusions below).

5.3.3 Converted sectional title unit

Where a share block share is converted to a sectional title unit, which is transferred to the former share block holder, such converted sectional title unit is regarded as second-hand goods.

Prior to 1 April 2014, the supply of a sectional title unit by the share block company to the former share block holder, who then became the owner of the unit, was deemed not to be a taxable supply. As transfer duty was originally payable on the transfer, the newly created sectional title unit was deemed to be second-hand goods, with the result that a vendor who acquired the sectional title unit for purposes of making taxable supplies could make a deduction of notional input tax. However, as a transfer duty exemption was subsequently introduced, the conversion of a share block share into a sectional title unit no longer results in a transfer duty cost. Furthermore, to ensure that VAT costs incurred in relation to the conversion may be deducted as input tax, amendments were introduced to the effect that the conversion from a share block share to a sectional title unit is a taxable supply, but at a nil value. The recipient vendor is thus no longer entitled to make a deduction of notional input tax in respect of the acquisition of the sectional title unit upon the conversion.²¹

5.3.4 Animals [exclusion from second hand goods]

Animals can never be second-hand goods. An animal is a living organism which feeds on organic matter.²² It does not matter whether an animal is new-born or old, a bird, a pet or a farm, working or wild animal. All animals are thus categorically excluded from the scope of a deduction of notional input tax.

²¹ Refer to sections 8(19) and 10(27) of the Vat Act, and section 9(19) of the Transfer Duty Act 40 of 1949. See also the Explanatory Memorandum on the Taxation Laws Amendment Bill, 2013, clause 6.4.

²² According to the Concise Oxford Dictionary.

5.3.5 Certain gold products [exclusion from second hand goods]

SARS has issued [BGR 43](#) to clarify which gold products are excluded from the ambit of second-hand goods.

5.3.5.1 Goods consisting solely of gold

Goods consisting solely of gold are not second-hand goods, unless the goods are acquired for the sole purpose of supplying such goods in the same state without any further processing.

As goods with pure gold content of at least 99,5% are regarded as consisting solely of gold, the following goods are regarded as 'consisting solely of gold':

- 24 carat gold;
- Gold bars and ingots;
- Foreign 24 carat gold coins, e.g. the Australian Lunar series, Chinese Panda series, One Ounce Britannia (minted since 2013), Canadian Maple series and Australian Nuggets; and
- Any other certified 24 carat gold item.

However, such gold products (which are in principle excluded from the ambit of second-hand goods) can qualify as second-hand goods and be eligible for notional input tax if they are acquired for the sole purpose of supplying such goods in the same state without any further processing:

- The vendor's only intention must, at the date of acquisition, be to supply the gold to another person in the course and furtherance of the vendor's enterprise. Any goods acquired for a dual purpose do not qualify as 'second-hand goods'.
- The vendor may not melt the gold or subject the gold to any transformational process which may change the purity, quality or form of the gold in any way. The vendor may, however, clean and polish the gold before supplying it to another person.

Whether the following items, which do not consist solely of gold, qualify as second-hand goods, must be considered under paragraph 0 below:

- Gold items to which other metals (e.g. silver, copper, zinc or palladium) have been added to improve the durability of gold, which is a very soft metal, to make other products, e.g. jewellery. These alloys, including yellow, white and rose gold, therefore, do not consist solely of gold;
- Any goods consisting of less than 24 carats gold, e.g. an 18 carat wedding ring.

5.3.5.2 South African gold coins

Gold coins, the supply of which qualifies for zero-rating under section 11(1)(k) of the VAT Act, are not second-hand goods. Gold coins issued by the SA Reserve Bank (SARB) in accordance with section 14 of the SARB Act, No. 90 of 1989 (the SARB Act), or that remain in circulation under the SARB Act are thus not second-hand goods. These coins include Kruger Rands, gold coins in the National Geographic, Natura, Protea, and R1 series, as well as any other gold coins declared by the Minister of Finance to be legal tender.

Therefore, even though some RSA gold coins (the National Geographic, Natura and Protea series which consist of 24 carat gold) consist solely of gold and are sold in the same state, these coins will not be regarded as second-hand goods due to the specific exclusion from the ambit of second-hand goods. A vendor may thus not deduct any notional input tax in respect of such coins.

5.3.5.3 Any other goods containing gold

Any other goods containing gold are also excluded from the ambit of 'second-hand goods', unless the goods are acquired for the sole purpose of supplying the goods in the same or substantially the same state to another person.

This residual category includes all other goods that contain gold (which do not fall under the previous two categories), e.g.:

- Gold jewellery, including 9 and 18 carat gold items;
- Foreign gold coins consisting of less than 99% gold, such as the American Eagle series and British Gold Sovereign;
- Computer components;
- Medical equipment;
- Electronic appliances; and
- Dentures.

However, such gold products (which are, in principle, excluded from the ambit of second-hand goods) can qualify as second-hand goods and be eligible for notional input tax if they are acquired for the sole purpose of supplying those goods in the same or substantially the same state to another person:

- The term 'substantially' means the principal essentials of the gold contained in the goods are not altered or transformed. Therefore, if the vendor changes a small or nominal detail of the goods containing gold, it will not preclude the vendor from deducting notional input tax.²³
- However, where the vendor acquires goods containing gold and changes the nature thereof, e.g. where the vendor buys gold rings which are melted before being sold as earrings, no notional input tax is allowed on acquisition of the gold from a non-vendor. The transformational nature of the intended process will thus result in the gold product not being second-hand goods and thus not qualifying for a deduction of notional input tax.

In the following circumstances, goods will be regarded as 'other goods containing gold' which are supplied in substantially the same state thus qualifying as 'second-hand goods':²⁴

- Where a jeweller resizes a ring before resale;
- The replacement of a precious stone in a gold ring before resale;
- Where single 22 carat gold coins are combined to form a set for resale;
- The upgrading of a computer before resale;
- The replacement of faulty parts before reselling medical equipment or electronic appliances.

5.3.6 New order prospecting or mining rights [exclusion from second hand goods]

Any prospecting right, mining right, exploration right, production right, mining permit, retention permit or reconnaissance permit or any reconnaissance permission, granted or renewed or received upon conversion under the Mineral and Petroleum Resources Development Act, No. 28 of 2002 (MPRD Act) is not 'second-hand goods', except when that right or interest in that right is transferred, ceded, let, sublet, alienated, varied or otherwise disposed of.

²³ Refer to BGR 43 par. 3.3.2.

²⁴ Refer to BGR 43 par. 4.2.

The MPRD Act vests custodianship of the RSA's mineral resources in the State, which issues prospecting rights or mining rights to applicants. As the introduction of the MPRD Act terminated the previous common-law prospecting, mining and mineral rights, transitional provisions grant holders of rights existing at that stage the opportunity to convert their old order rights into new order rights.

Therefore, a mineral right holder which is a vendor may not deduct notional input tax on the acquisition of second-hand goods on the acquisition of a new order right as a result of the issue thereof or renewal of a right, except where the vendor purchases a mineral right from a private non-vendor.

6. DEDUCTION OF NOTIONAL INPUT TAX

6.1 Calculation of notional input tax

The amount of notional input tax which may, in principle, be deducted from output tax when calculating the vendor's VAT liability for a tax period, is calculated as follows:

Notional input tax =
tax fraction x (lesser of consideration for or open market value of the supply)

6.1.1. Tax fraction

At the standard rate of 15%, the tax fraction is 15/115. In the case of a VAT rate change, the standard rate which applied at the time when the supply of the second-hand goods is deemed to have taken place must be used. As to the time of a supply, refer to paragraph 2.4.

6.1.2 Consideration

The consideration in relation to the supply of goods or services to any person, includes any payment made or to be made (including VAT), whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods or services, whether by that person or by any other person, except a deposit which has not yet been applied as consideration for the supply, or has been forfeited.

The consideration can, therefore, be in money or in kind, and can be paid by the recipient of the supply or by any other person.

6.1.3 Open market value of the supply

The open market value of a supply includes the VAT payable on the supply. The open market value of the supply of goods (including second-hand goods) must be determined as set out below.²⁵

6.1.3.1 *The same supply*

The open market value of the supply of second-hand goods at any date is the consideration in money which the supply of those goods would generally fetch if supplied in similar circumstances at that

²⁵ In terms of section 3.

date in the RSA, being a supply freely offered and made between persons who are not connected persons.

6.1.3.2 *Similar supply*

If the open market value of the supply of second-hand goods cannot be determined under the previous method, this method must be used. The open market value is the consideration in money which a similar supply would generally fetch if supplied in similar circumstances at that date in the RSA, being a supply freely offered and made between persons who are not connected persons.

A 'similar supply', in relation to a supply of goods, is any other supply of goods that, in respect of the characteristics, quality, quantity, functional components, materials and reputation of the first-mentioned goods, is the same as, or closely or substantially resembles, that supply of goods.

6.1.3.3 *Approved method*

If the open market value of the supply of second-hand goods cannot be determined under the first or the second methods above, the open market value is determined in accordance with a method, approved by SARS, which provides a sufficiently objective approximation of the consideration in money which could be obtained for that supply of those goods.

6.1.3.4 *Motor dealers*

Motor dealers usually determine the market value of second-hand vehicles according to the 'Auto Dealer's Guide'. However, motor dealers sometimes agree to pay an amount in excess of the generally accepted trade-in market value of the vehicle. The difference between this value and the amount actually credited or paid to the customer is referred to as an 'over-allowance'.²⁶

In order for motor dealers to deduct notional input VAT they would need to comply with section 72 of the VAT Act. Please follow the SARS reference Guide for this purpose.

6.1.3.5 *Barter transaction*

If payment is made by way of a barter transaction, i.e. where payment for the second-hand goods is made by way of a supply of goods or services, the consideration paid for the second-hand goods is the open market value of the supply of goods or services made as payment for the second-hand goods.²⁷

Technically, the open market value of the consideration (i.e. the goods or services) for the supply of the second-hand goods, and the open market value of the consideration (i.e. the second-hand goods) for the supply of the goods or services, must be determined separately.

The high court has however accepted in the case of *South Atlantic Jazz Festival (Pty) Ltd v Commissioner for SARS*²⁸ (which dealt with sponsorship agreements) that where the transactions constituting a barter agreement were at arm's length, the value of the goods and services provided

²⁶ Refer to Guide VAT 420, paragraph 2.11.

²⁷ Refer to section 3(5) of the VAT Act.

²⁸ 2015 (6) SA 78 (WCC).

can be accepted to be the same as that of the counter-performance. SARS have accepted the application of this principle.²⁹

6.1.4 Example:

Mr L, a vendor and owner of a guesthouse in Knysna, is looking for a second-hand piano for the guesthouse's lounge, for use by guests, and for his plan to earn extra income by way of music evenings, where famous musicians and singers can perform in the cosy atmosphere of the guesthouse. When he sees an advertisement by Mrs K for a piano for R5 000, he visits her and falls in love with her 50-year-old piano. When Mr L tries to negotiate about the price, she explains that she has seen online advertisements for the same type of piano for between R8 000 and R15 000, and knows that a music shop in Cape Town has a similar one on display for R20 000, although she must admit that a local piano tuner offered her R2 000 for the piano, saying that people do not have money for pianos after COVID-19, and in any case, children prefer keyboards.

She tells Mr L that, as she has sold her house and will be moving to a retirement village and therefore cannot take the piano with her and, to make matters worse, she must move out of her house a week before she can move into her new house at the retirement village.

Due to all the expenses with the move and the fact that the transfer of her house has not taken place yet, she needs the cash from the sale of the piano to help pay for a week's accommodation, therefore she cannot reduce the price. Of course, Mr L then immediately suggests that if she gives the piano to the guesthouse, she can stay for free in the guesthouse for a week, with breakfast and lunch included. Mrs K is delighted and says that would be perfect!

To determine the deduction of notional input tax that may be made by Mr L, it must be determined which value is the lesser:

- the consideration, i.e. the provision of accommodation, for the sale of the piano; or
- the open market value of the supply of the piano.

As the consideration is in the form of the provision of accommodation and meals, the open market value of the supply of the provision of accommodation and meals must be determined.³⁰ This is the consideration which the supply of accommodation and meals for seven nights would generally fetch if supplied in similar circumstances in the RSA under an arm's length transaction.³¹ Mr L normally charges R1 200 per night per person, therefore the open market value of the consideration given by him is R8 400. The question is then whether he may apply the tax fraction to R8 400, or whether he must accept that Mrs K's advertised price of R5 000 constitutes the open market value of the supply of the piano and must use the amount of R5 000 for calculating his notional input tax.

Firstly, applying the *South Atlantic Jazz Festival* case, the value of the two supplies made under an arm's length barter agreement may be accepted to be the same, when the parties agree to this. Therefore, to check whether the open market value of the supply of the accommodation and meals is appropriate, we must consider the consideration given for the supply of the accommodation and meals, namely the piano. As that consideration is not in money, the open market value of the consideration must be determined.³² This is the consideration which the supply of the piano would

²⁹ Refer to the *Guide on the Taxation of Professional Sports Clubs and Players* (Issue 2), par. 5.5.3.

³⁰ In terms of section 3(5).

³¹ In terms of section 3(2).

³² In terms of section 3(5).

generally fetch if supplied in similar circumstances in the RSA under an arm's length transaction.³³ The problem is that we do not know this value.

To start with, the exact condition of each advertised piano should be taken into account (e.g. whether it has been tuned and the condition of the wood). Further, although the open market value is determined with reference to a similar sale in the RSA, demand for pianos would obviously be higher in big cities and due to the cost and risk of moving a piano, a piano in Knysna would not generally be sought-after in Cape Town, but this does not mean that the piano could in principle fetch a Cape Town price. Except for the opportunistic offer by the piano tuner, who probably wants to resell the piano at a profit, there is no circumstantial evidence to suggest that the open market value of the sale of the piano cannot be in the range of R8 000 to R15 000, or even higher. The *South Atlantic Jazz Festival* judgment, therefore, allows us to use the open market value of the consideration for the leg of the barter transaction that we can determine (i.e. the supply of accommodation and meals) and to accept that the open market value of the counter-performance will be the same. Although that judgment was given in the context of sponsorship agreements, it would be fair and equitable to apply the same principle in this case. On this basis, the consideration given by Mr L for the purchase of the piano, is R8 400.

Secondly, as the formula for calculating notional input tax expressly states that the open market value of the supply of the second-hand goods must be used to limit the amount of notional input tax, the question arises whether the open market value of the sale of the piano, as determined above, i.e. with reference to the open market value of the counter-performance, may be used. In a certain sense, such an approach could defy the purpose of the open market value limitation (for example, in instances where the open market value of the piano could never be more than R5 000). However, as the *South Atlantic Jazz Festival* approach may be used only in arm's length transactions, and as the surrounding circumstances indicate that the open market value of the piano might well be above R8 400, it is submitted that it can be accepted that the average open market value is higher than R8 400. Mr L may use the amount of R8 400 to calculate his notional input tax.

Note: this assumes that Mr L was not prepared to give a discount, and that Mrs K was prepared to enter into the barter transaction on that basis. They effectively then attributed the R8 400 to the transaction. It is also possible to use the R5 000 if the agreement was otherwise – i.e. Mr L accepts the piano in full settlement for the accommodation provided.

6.2 Deductible notional input tax

6.2.1 Calculation

6.2.1.1 *Intended taxable use*

The notional input tax amount calculated above may be deducted as input tax only to the extent that the second-hand goods are acquired by the vendor for the purpose of consumption, use or supply in the course of making taxable supplies. Where the second-hand goods are not acquired wholly for taxable supply purposes, the deductible input tax must be calculated in accordance with the apportionment provisions.³⁴ See SAICA Tax Guide: General Input VAT Apportionment for more information on input tax apportionment.

³³ In terms of section 3(2).

³⁴ In terms of section 17(1).

For example, if a second-hand house is bought for R2 million (from a non-vendor) by an accountant (a vendor) who wants to conduct his business from the house, and the house will be used 70% for residential purposes and 30% for the accountancy business, the amount of notional input tax which may be deducted (assuming all other requirements are met) is calculated as (R2m x 15/115 x 30% = R78 260.87).

6.2.1.2 Denial of input tax

In certain circumstances³⁵, an amount of VAT which, in principle, qualifies as input tax, is expressly denied as an input tax deduction even if all procedural and documentary requirements have been met.

The same principle applies to notional input tax.

Therefore, a deduction of notional input tax is specifically denied where the second-hand goods involve:

- goods acquired for purposes of entertainment,
 - i.e. the provision of food, beverages, accommodation, entertainment, amusement, recreation or hospitality of any kind by a vendor whether directly or indirectly to anyone in connection with an enterprise carried on by him,
 - unless an exception applies, such as in the case of entertainment business or a foreign donor funded project;³⁶ or
- a motor car,
 - i.e. a motor car, station wagon, minibus, double cab light delivery vehicle and any other motor vehicle of a kind normally used on public roads, which has three or more wheels and is constructed or converted wholly or mainly for the carriage of passengers, but excluding:
 - vehicles capable of accommodating only one person or suitable for carrying more than 16 persons (such as a bus);
 - vehicles of an unladen mass of 3 500 kilograms or more;
 - caravans and ambulances;
 - vehicles constructed for a special purpose other than the carriage of persons;
 - game viewing vehicles constructed or permanently converted for the carriage of seven or more passengers for game viewing in national parks, game reserves, sanctuaries or safari areas and used exclusively for that purpose, other than incidental and subordinate use; or
 - hearses;
 - unless an exception applies, such as certain acquisitions by a motor dealer for resale or rental purposes, or certain instances where the motor car is awarded as a prize or acquired by a foreign donor funded project.³⁷

6.2.1.3 Limitation to transfer duty paid (purchases prior to 10 January 2012)

Prior to 10 January 2012, the amount of notional input tax which may be deducted in respect of the purchase of second-hand fixed property, under a non-taxable supply, was limited to the transfer duty

³⁵ In terms of section 17(2)

³⁶ Refer to section 17(2)(a) and (2A), and the definition of 'entertainment' in section 1(1). For more information on the deduction of input tax in relation to entertainment, refer to Guide VAT 411, chapter 4.

³⁷ Refer to section 17(2)(c) and (2A), and the definition of 'motor car' in section 1(1). For more information on the deduction of input tax on motor cars, refer to Interpretation Note 82.

paid (or which would have been payable, had it not been for a transfer duty exemption). The deduction of notional input tax could be made only once the time of supply had occurred (i.e. the earlier of any payment (except a deposit) or the date of registration of transfer in a deeds registry) and the transfer duty had been paid to SARS.

This limitation of the amount of notional input tax to the amount of transfer duty paid was introduced in order to prevent promissory note schemes and other avoidance and/or fraudulent schemes aimed at artificially inflating notional input tax claims, shortly after VAT was introduced in the RSA.³⁸ However, some two decades later, National Treasury was satisfied that the risk of such exploitation no longer exists and as the transfer duty ceiling for notional input tax was arguably unfair, the transfer duty limitation was removed with effect from 10 January 2012.³⁹

With reference to BGR 57 issued on 20 October 2021 if the person acquiring fixed property is a registered VAT vendor and is using that property for taxable purposes in an enterprise, that vendor will, in principle (and subject to certain requirements), be entitled to a notional input tax deduction. The deduction is made under section 16(3)(a)(ii)(aa) and (bb) if the vendor is registered on the invoice basis of accounting or section 16(3)(b)(i) if the vendor is registered on the payments (or cash) basis of accounting.

The issue that arises in this regard is whether the transfer duty on the transaction is included in the meaning of the term “consideration” as defined in section 1(1) of the VAT Act, for the purposes of claiming a notional input tax deduction.

The ruling found that the term “consideration” as defined in section 1(1) does not include any transfer duty imposed under section 2 of the Transfer Duty Act, No. 40 of 1949. As a result, the amount of transfer duty paid or payable by a vendor to acquire second-hand fixed property for taxable purposes cannot be included in the calculation of any notional input tax deduction which may be available to that vendor under section 16(3)(a)(ii)(aa) and (bb) or 16(3)(b)(i).

6.2.2. VAT201 return

6.2.2.1 General payment rule

A vendor, whether on the invoice or payments basis of VAT accounting, may deduct the amount of deductible notional input tax⁴⁰, from its output tax, in field 14 or 15 of its VAT201 return, to the extent that payment of any consideration which has the effect of reducing or discharging any obligation (whether an existing obligation or an obligation which will arise in the future) relating to the purchase price for the supply of the relevant second-hand goods has been made by him during that tax period.⁴¹

6.2.3 Example:

Mr Plumber, a vendor with a category A tax period (i.e. January, March etc.), buys a second-hand delivery van from Mrs M in January 2021. Mrs M, a non-vendor, could use the delivery van solely to transport plants for her small nursery, which she conducts from home, but has decided to rather buy

³⁸ For more information on these schemes, refer e.g. *Amor van Zyl Trust v Kommissaris van Binnelandse Inkomste* 1995 (4) SA 1007 (T) and *Society of Advocates of South Africa (Witwatersrand Division) v Edeling* 1998 (2) SA 852 (W).

³⁹ Refer to the Explanatory Memorandum on the Taxation Laws Amendment Bill, 2011, paragraph 5.2.

⁴⁰ In respect of supplies of second-hand goods to which paragraph (b) of the definition of 'input tax' in section 1(1) applies.

⁴¹ Refer to section 16(3)(a)(ii)(aa) and (b)(i).

a dual-purpose vehicle which can be used for family trips as well. She agrees to sell the delivery van to Mr Plumber for R80 000 (after she phoned a motor dealer to find out what the trade-in value of the delivery van would be).

After hearing about Mr Plumber's financial difficulties, Mrs M allows him to pay the purchase price in eight instalments of R10 000 each, with effect from 1 February 2021. During June 2021, Mr Plumber hears from his friend that similar delivery vans are now being sold for R90 000 and that notional input tax can thus be claimed on R90 000. Mr Plumber's wife, who deals with his bookkeeping and VAT returns, is not convinced, therefore Mr Plumber asks his father-in-law's accountant, Ms Vatone, for VAT advice.

Ms Vatone says that the good news is that Mr Plumber may indeed deduct notional input tax on the purchase of the delivery van, as long as he sorts out the required paperwork to meet SARS's documentary requirements. Ms Vatone explains that the notional input tax is calculated on the lesser of the purchase price and the open market value, therefore it does not help Mr Plumber if similar delivery vans are now selling at a higher price. Furthermore, she adds that the input tax calculation must be done at the time of the supply, and cannot change for each instalment subsequently paid, whether the open market value subsequently decreases or increases. Therefore, the deductible notional input tax will be calculated as (R80 000 x 15/115 = R10 434.78).

Ms Vatone's colleague, Mr Vattwo (recognising Mr Plumber, who previously had to fix his geyser) joins the conversation. After asking what the issue is, he phones his neighbour, a motor dealer, just to find out that the trade in value of the vehicle in fact was R75 000 at the time of the purchase, and not R80 000. Ms Vatone then explains to Mr Plumber that this means that his input tax claim must be calculated on the open market value of R75 000. Just when Mr Plumber thinks that the issue has now been resolved, Mr Vattwo says that he does not agree that the trade-in value is necessarily the open market value of the vehicle sold between, e.g., two private individuals. This is on the basis that the trade-in value is used by motor dealers for the purpose of determining the value for trading in a vehicle, and is different to the value that the motor dealer would sell the vehicle for. Mr Plumber is, however, quite happy with the news that he will be getting some money back from SARS and fearing that this consultation is going to cost him more than a potential input tax claim on the R5 000 difference, he feigns another appointment and leaves.

Continuing their discussion, Ms Vatone and Mr Vattwo agree that the motor dealer's trade-in value is not necessarily the open market value, but decide to advise Mr Plumber that, if he wants to eliminate any risk of a VAT dispute, he should use the trade-in value, in which case the amount of notional input tax will be calculated as follows: 15/115 x R75 000 = R9 782.61. As the amount of the notional input tax may be deducted only to the extent that payment of consideration has been made, Ms Vatone sends Mr Plumber an email, setting out the deductible notional input tax as follows:

Payment date (20X1)	Amount paid or payable	Tax period when notional input tax may be deducted	Notional input tax
1 February	R10 000	March 20X4	15/115 x R75 000 x 2/8 = R2 445.65
1 March	R10 000		
1 April	R10 000	May 20X4	15/115 x R75 000 x 2/8 = R2 445.65
1 May	R10 000		
1 June	R10 000	July 20X4	15/115 x R75 000 x 2/8 = R2 445.65
1 July	R10 000		
1 August	R10 000	September 20X4	15/115 x R75 000 x 2/8 = R2 445.65

Payment date (20X1)	Amount paid or payable	Tax period when notional input tax may be deducted	Notional input tax
1 September	R10 000		

Note: Settlement by way of promissory notes, loan accounts or seller-financing does not constitute a payment that reduces or discharges an obligation to make payment.⁴² Set-off of debts can constitute payment only if (inter alia) the two debts are payable by and to the same persons in the same capacities.⁴³

6.2.3.1 *Fixed property*

A vendor on the invoice basis may deduct the amount of deductible notional input tax in respect of second-hand fixed property in field 14 or 15 of its VAT201 return for the tax period during which:⁴⁴

- the transfer of the fixed property was affected by registration in a deeds registry and the fixed property was registered in the name of the vendor that makes the deduction (if applicable); or
- a signed use agreement in respect of a share in a share block company which confers a right to or an interest in the use of immovable property has been entered into between the share block company which operates the share block scheme and a member of the share block company,

but the notional input tax may be deducted only to the extent that payment of any consideration which has the effect of reducing or discharging any obligation (whether an existing obligation or an obligation which will arise in the future) relating to the purchase price for the supply of the relevant second-hand fixed property has been made by him during that tax period.

A vendor on the payment's basis may deduct notional input tax to the extent that such payment has been made. The requirements in respect of fixed property registration of transfer and use agreements do not apply to a vendor on the payment's basis.⁴⁵

6.2.3.2 *Time allowed to make deduction*

The notional input tax which is deductible in a specific VAT201 return may be deducted in the VAT201 return for any later tax period which ends no later than:⁴⁶

- five years after the end of the tax period during which the second-hand goods were acquired; or
- six months after the end of the tax period during which the second-hand goods were acquired, where SARS is satisfied that the deduction was not permissible in accordance with the practice generally prevailing prior to that deduction.

7. EVENTS, SUBSEQUENT TO THE DEDUCTION OF NOTIONAL INPUT TAX

7.1 Cancellation, price changes or returns

⁴² Refer to the Explanatory Memorandum on the Taxation Laws Amendment Bill, 2011, par. 5.2.

⁴³ Refer to Case VAT 616 (Tax Court (Durban), 15 November 2007), par. 30.

⁴⁴ Refer to section 16(3)(a)(ii)(aa) and (bb).

⁴⁵ Refer to section 16(3)(b)(i) and Guide VAT 409, par. 2.7.

⁴⁶ Refer to the first proviso to section 16(3).

Where a notional input tax deduction has been made by a vendor in respect of the sale to it of any second-hand goods and subsequently:⁴⁷

- that sale is cancelled; or
- the nature of that sale is fundamentally varied or altered; or
- the previously agreed consideration for that sale is reduced; or
- the second-hand goods or part of the second-hand goods sold are returned to the supplier, resulting in the deduction of too much notional input tax—
- the amount of the excess must be accounted for as output tax in the tax period during which the said event has occurred, or
- the input tax for the tax period must be reduced by the amount of the excess.

Where the price for the sale of the second-hand goods is increased, the vendor will be entitled to make a further notional input tax deduction, calculated on the additional amount of consideration paid to the seller.⁴⁸

7.2 Change in use

7.2.1 Overview

Where the actual use of goods or services differs from the intended use thereof (when the goods or services were acquired), the vendor must account for output tax (for decreased taxable use) or may deduct input tax (for increased taxable use), to effectively adjust the input tax in line with the current actual use of the goods or services.⁴⁹

The same principle applies to a change in use in respect of second-hand goods.

7.2.2 Application wholly for non-taxable or input tax denied use

Where goods or services were acquired or held by a vendor wholly or partly for taxable supply purposes (and input tax was not expressly denied), the goods or services are deemed to have been supplied by the vendor by way of a taxable supply if they are subsequently applied by it wholly for non-taxable purposes, or for input tax denied purposes. The vendor must include the open market value (refer to paragraph 0) of the goods or services in field 10 of its VAT201 return.⁵⁰ The same principle applies to second-hand goods which are applied wholly for non-taxable or input tax denied purposes, whether or not a deduction of notional input tax was in fact made. However, a deduction may in certain circumstances be made for previous non-taxable use (refer to paragraph 0).

7.2.3 Decreased taxable use

A vendor must account for output tax in field 11 of its VAT201 return in respect of decreased taxable use, or decreased input tax allowed use, of capital goods or services (except to the extent that an input tax deduction was expressly denied), but only if the cost of the capital goods or services is R40,000 or more and the said decreased use exceeds 10%. The consideration for the deemed

⁴⁷ Refer to section 18(8).

⁴⁸ Refer to the Explanatory Memorandum on the Taxation Laws Amendment Bill, 1994, clause 18(h).

⁴⁹ Refer to section 18(1) – (7) as well as Guide VAT 404, par. 9.5.

⁵⁰ Refer to sections 18(1) and 10(7).

supply (refer to the newly added section 20(8A) of the VAT Act for invoice requirements for deemed supplies) must be included in field 10 of the VAT201 return and is calculated as:⁵¹

A x (B – C), where:

- 'A' is the lesser of the cost or the open market value of the supply at the time of the reduction in taxable use;
- 'B' is the old taxable use percentage, in the previous 12-month period; and
- 'C' is the new taxable use percentage, in the current 12-month period.

7.2.4 First application for taxable purposes

Where second-hand goods acquired since 30 September 1991, under a non-taxable supply in respect of which no deduction of notional input tax has been made, are subsequently applied wholly or partly for taxable supply purposes (not being input tax denied use), the goods are deemed to be supplied to the vendor. The vendor may make a deduction in field 16 of its VAT201 return in respect of taxable use (not being input tax denied use), calculated as:⁵²

A x B x C x D, where:

- 'A' is the tax fraction⁵³;
- 'B' is the lesser of the cost or the open market value at the time the supply is deemed to be made;
- 'C' is the new percentage of taxable use; and
- 'D' is the percentage of payment made for the second-hand goods.

7.2.5 Increased taxable use

Where capital goods or services have been acquired, manufactured, assembled, constructed or produced or applied by a vendor partly for taxable purposes (other than input tax denied purposes), such goods or services are, if the extent of the taxable application or use thereof (other than input tax denied use) is subsequent to 30 September 1991 increased, the vendor may make a deduction if the cost of the goods or services is not less than R40,000 and the increased taxable use exceeds 10%.⁵⁴

The deduction, which must be included in field 16 of the vendor's VAT201 return, is calculated as:

A x B x (C – D), where:

- 'A' is the tax fraction⁵⁵;
- 'B' is the lesser of the cost or the open market value when the increase in taxable use takes place;
- 'C' is the new taxable use percentage, in the current 12-month period; and
- 'D' is the old taxable use percentage, in the previous 12-month period.

⁵¹ Refer to section 18(2) and the formula in section 10(9).

⁵² Refer to section 18(4) (as to the principle), read with section 16(3)(f) (as to the deduction), and section 16(2)(f) (as to documentary proof).

⁵³ Section 16(3)(f) determines the time of supply to be the tax period when the taxable application takes place. Accordingly, the prevailing rate of tax in terms of section 7(1)(a) must be used in determining the tax fraction.

⁵⁴ Refer to section 18(5) and section 16(3)(f). While it is not expressly stated that the second-hand goods must have been acquired since 30 September 1991, it can be assumed that this limitation must be applied.

⁵⁵ Section 16(3)(f) determines the time of supply to be the tax period when the taxable application takes place. Accordingly, the prevailing rate of tax in terms of section 7(1)(a) must be used in determining the tax fraction.

7.3 Sale of second-hand goods

7.3.1 Taxable supply

The sale of second-hand goods is a taxable supply of goods if the supply is made by a vendor in the course or furtherance of its VAT enterprise, regardless of whether—

- the second-hand goods were acquired by the vendor prior to or since the introduction of VAT;
- the vendor has made a deduction of notional input tax on the acquisition of the second-hand goods; or
- the second-hand goods have been used only partially for taxable supply purposes.⁵⁶

7.3.2 Export sales

7.3.2.1 *Zero-rating of the export sale of second-hand goods not allowed*

A taxable supply of second-hand goods, in respect of which notional input tax has been deducted by the vendor (or a connected person in relation to the vendor) does not qualify for zero-rating upon the exportation of the goods.⁵⁷ The consideration for that supply is, however, not the vendor's selling price of the second-hand goods, but is equal to the purchase price of those second-hand goods for the vendor (who is now making the export supply). If the deduction of notional input tax has been made by a connected person in relation to the vendor, the consideration for the export sale is the greater of the purchase price of the goods for the vendor and the purchase price of the goods for the connected person. Such purchase price may not be reduced by the amount of notional input tax deducted by the vendor or the connected person.⁵⁸ The vendor must include such purchase price as the consideration for the supply of the second-hand goods made by it, in field 10 of its VAT201 return.

Therefore, the vendor must in effect account for output tax equal to the notional input tax originally deducted on the acquisition of the goods now being exported. Effectively, the zero rate applies only to the difference between the selling price and the purchase price of the second-hand goods in instances where the selling price is greater than the purchase price.

7.3.3 Example:

Antiques For All, a vendor which is an antiques and second-hand goods dealer in Johannesburg, buys an antique 19th century silver tea and coffee set from Mrs B (a non-vendor) for R8,000 cash, for resale purposes and deducts notional input tax calculated as (R8 000 x 15/115 = R1 043.48).⁵⁹ *Antiques For All* subsequently displays the silver tea and coffee set at a price of R15 000 (including VAT) in its shop, where Mr N, during a business trip from Namibia, sees it and immediately decides to buy it. As Mr N will still be travelling to Durban, before returning to Windhoek, he requests *Antiques For All* to consign and deliver the silver set to his address in Windhoek. He excitedly informs the salesman that he then only has to pay R13 043.48 (after quickly calculating R15 000 x 100/115 on his phone) as it will be a zero-rated direct export sale.

As Mr N is a bit surprised to hear that the sale cannot be zero-rated, the salesman explains to him that as *Antiques For All* made a deduction of notional input tax on the purchase of the silver set from

⁵⁶ Refer to section 8(16).

⁵⁷ Under section 11(1)(a), (b), (c), (d) or (i) – see proviso to section 11(1).

⁵⁸ Refer to section 10(12) and Interpretation Note 30 (Issue 3), paragraph 8.1.

⁵⁹ Assuming all requirements have been met.

Mrs B, it cannot zero-rate the full selling price. The salesman then (awkwardly) explains to Mr N that, as VAT must be charged on an amount equal to the purchase price paid for the goods by *Antiques For All*, namely R8 000, Mr N must pay VAT of R1 043.48. They then go through the calculation together:

Price as advertised

- Normal VAT-inclusive selling price ('consideration')⁶⁰ = R15 000
- Normal VAT-exclusive selling price ('value')⁶¹ = $R15\ 000 \times 100/115 = R13\ 043.48$

Price on export Sale

- Deemed VAT-inclusive selling price (consideration)⁶² = R8 000
- VAT payable to SARS = $R8\ 000 \times 15/115 = R1\ 043.48$
- Total price payable by Mr N = $R13\ 043.48 + R1\ 043.48 = R14\ 086.96$.

As Mr N does not want to appear to be stingy, and as he has seen online advertisements for similar silver sets at higher prices, he says that he is still happy, as he does not have to pay VAT on *Antiques for All*'s overheads cost and the mark-up, i.e. $R7\ 000 \times 15/115 = R913.04$.

Antiques For All's VAT201 return:

- Standard-rated consideration (in field 1) = R8 000
- VAT (in field 4) = R1 043.48

Note that, while R6 086.96 (i.e. $R7\ 000 \times 100/115$) is effectively zero-rated, this amount is not consideration for a zero-rated supply and must not be included in field 2A of the VAT201 return.⁶³

7.3.3.1 Limited VAT refund on the export of second-hand goods

Where VAT must be levied at the standard rate on the taxable supply of goods under an indirect export sale, a VAT refund may in certain instances be claimed by a qualifying purchaser from the VAT Refund Administrator (VRA).⁶⁴

When a taxable supply of second-hand goods are made under an indirect export sale and a notional input tax deduction has been made by the vendor (or a connected person in relation to him) on the acquisition of those goods, the VRA will not refund the full amount of VAT charged on the selling price to the purchaser. Instead, the VRA will refund only the difference between the VAT charged on the full selling price, and the VAT on the vendor's purchase price for the goods (i.e. the notional input tax previously deducted), less the VRA's commission.⁶⁵

7.3.4 Example:

Assume that Mr N, in the previous example, did not have to travel to Durban, and decides to take the silver tea and coffee set with him to Namibia. As it will be an indirect export which does not qualify

⁶⁰ Refer to section 10(2).

⁶¹ Refer to section 10(2).

⁶² Refer to section 10(12).

⁶³ This is as the exportation of second-hand goods for which *Antiques For All* claimed a deduction of notional input tax can, in principle, not be zero-rated – refer to the proviso to section 11(1).

⁶⁴ Refer to the proviso to section 11(1)(a)(ii), read with par. (d) of the definition of 'exported' in section 1(1) and Government Notice R316 in *Government Gazette* 37580 of 2 May 2014 (the Export Regulations). See also Guide VAT 404, par. 12.1.3.

⁶⁵ Refer to section 10(12), read with regulation 6(5) of the Export Regulations. See also Guide VAT 404 par. 12.1.3.

for zero-rating, *Antiques For All* will charge VAT on the full selling price of R15 000 (inclusive of VAT) to Mr N.

The tax invoice must contain a full and proper description of the goods supplied (indicating that the goods are second-hand goods).⁶⁶ The VRA will refund only the VAT in excess of the notional input tax that has been deducted by *Antiques For All*, less the VRA's commission (provided all requirements have been met):

- VAT on full selling price = R15 000 x 15/115 = R1 956.52
- VAT on purchase price paid by *Antiques For All* = R8 000 x 15/115 = R1 043.48
- VAT refund by VRA = R1 956.52 – R1 043.48 = R913.04 (less VRA's commission)

Therefore, the amount of VAT 'saved' under a direct export (where VAT is charged only on the purchase price paid by *Antiques For All*) and the VAT refund allowed for a standard-rated indirect export is equal to R913.04.

SARS has stated that vendors should, to assist the purchaser to obtain a refund from the VRA, reflect the amount of the notional input tax deducted on the acquisition of the second-hand goods, on the tax invoice, so that the amount of the VAT refundable by the VRA is contained in the tax invoice.⁶⁷

7.3.5 Deduction for previous non-taxable use

Where second-hand goods are acquired or applied only partly for taxable supply purposes, the full amount of notional input tax is not deductible. If such second-hand goods are subsequently sold, VAT must be charged and accounted for as output tax on the consideration (the full selling price) for the taxable supply.⁶⁸ To prevent losing the input tax deduction that was not claimable on acquisition of the second-hand good, the vendor may then, effectively, recover the notional input tax that was previously (due to the non-taxable use) not allowed as input tax.⁶⁹ The deduction is calculated as:

A x B x C, where:

- 'A' is the tax fraction;
- 'B' is the lesser of the cost or the open market value of the supply of the second-hand goods at the time of the supply;
- 'C' is the percentage that, immediately before the time of the supply, the non-taxable use of the goods was of the total use of the goods or services.

This deduction may also be made where:

- output tax must be accounted for on the non-taxable application of second-hand goods (refer to paragraph 0); or
- output tax or exit VAT must be accounted for due to the cancellation of a vendor's registration (refer to paragraph 0), if the goods or services were used for mixed purposes (i.e. taxable and non-taxable purposes).

⁶⁶ Refer to section 20(4)(e).

⁶⁷ Refer to Guide VAT 404, par. 12.1.3, example 33.

⁶⁸ Refer to section 8(16).

⁶⁹ Refer to section 16(3)(h) for full details of the calculation of the deduction. The deduction should be available only for second-hand goods acquired since 30 September 1991.

8. Deregistration

When a vendor's VAT registration is cancelled, the vendor must pay output tax (also called exit VAT) on any goods or rights capable of assignment, cession or surrender which then forms part of the assets of its enterprise.⁷⁰ The same principle applies to second-hand goods.

The exit VAT is calculated as the tax fraction of the lesser of the cost or the open market value of the second-hand goods, immediately before it ceased to be a vendor, whether or not the second-hand goods were applied partly for non-taxable purposes. A deduction for previous non-taxable use may be made to prevent double taxation (refer to paragraph 0).

9. General

9.1 Documentary requirements

9.1.1 Deduction of notional input tax

Notional input tax may be deducted only if the required documentary proof is obtained and retained.⁷¹ See also our SAICA's Tax Guide: General Input VAT Apportionment on documentary proof.

Where a person makes a non-taxable supply of second-hand goods to a recipient who is a registered vendor, that vendor must maintain a declaration by the supplier ([in form VAT264 Declaration for the supply of second-hand goods](#)) stating whether the supply is a taxable supply or not and must maintain sufficient records to enable the following particulars to be ascertained:

- The name and address of the supplier, and if the supplier is:
 - a natural person, his identity (ID) number; or
 - not a natural person,
 - the name and ID number of the natural person representing the supplier in respect of the supply; and
 - any legally allocated registration number of the supplier (issued by the relevant regulatory authority, e.g. the Company and Intellectual Property Commission, where the company is registered in the RSA) appearing on the letterhead or other similar document, and the vendor must verify the name and registration number with reference to that person's business letterhead and retain a photocopy of the name and registration number appearing on the letterhead; and
- the date upon which the second-hand goods were acquired;
- a description of the goods;
- the quantity or volume of the goods;
- the consideration for the supply; and
- proof and date of payment.

The vendor must verify the name and ID number of a natural person with reference to the person's ID document/card and retain a photocopy of the name and ID number appearing in the ID document/card, or of his valid driver's license.

In the case of second-hand fixed property, the following records must, in addition to the above records (except the VAT264 form, which applies only to movable goods), be obtained and retained:

⁷⁰ Refer to section 8(2), read with section 10(5).

⁷¹ See section 16(2)(c), read with section 20(8), as well as Interpretation Note 92.

- A copy of the completed TDC01 form; and
- A copy of the purchase or sale agreement.

9.1.2 Adjustments

Where an adjustment must or may be made in respect of an increase in taxable application or use of second-hand goods (see para. 0 and 0), or to recover notional input tax in respect of former non-taxable use, where the second-hand goods are subsequently sold, or where an adjustment has to be made for decreased taxable use, or in the case of deregistration (refer to paragraph 0.5), the following records must be obtained and retained:⁷²

- If the second-hand goods were acquired on a date falling within a period of five years immediately preceding the date of the adjustment, the same documents which are required to deduct notional input tax; and
- If the second-hand goods were acquired on a date prior to a period of five years immediately preceding the date of the adjustment:
 - A copy of the asset register (where relevant);
 - A copy of the financial statements; and
 - A calculation (using the formula provided in the VAT Act) reflecting the determination of the amount of the deduction.

9.2 Penalty, interest and understatement penalty

The incorrect calculation of notional input tax, or the deduction of notional input tax in an incorrect tax period will result in a VAT liability for the vendor. SARS will raise assessments and interest, penalty and understatement penalty may become payable.⁷³

9.3 Schemes for obtaining undue VAT benefits

If SARS is of the view that a vendor has entered into a scheme to obtain undue VAT benefits by way of, *inter alia*, deductions of notional input tax, SARS may assess the vendor as if the scheme has not been entered into, or in a manner to prevent the undue VAT benefit.⁷⁴

9.4 Disputes

In the case of any disputes as to the deduction of notional input tax or adjustments in respect thereof, the vendor bears the burden of proof as to the entitlement to make the deduction and the amount thereof.⁷⁵

A vendor who is aggrieved by an assessment in which the deduction of notional input tax is denied, or the amount of the deduction is altered (e.g. in the case of a dispute regarding the open market value of the goods, or whether payment has been made), the vendor may object to the assessment and, if applicable, lodge an appeal against the disallowance of his objection to the tax court.⁷⁶

⁷² See section 16(2)(f) and Interpretation Note 92, par.3, items B, E and G.

⁷³ See section 39 of the VAT Act and chapters 15 and 16 of the TAAct.

⁷⁴ In terms of section 73 of the VAT Act.

⁷⁵ See section 102 of the TA Act.

⁷⁶ In terms of chapter 9 of the TA Act.

10. Conclusion

The entitlement to deduct an amount of VAT included in a purchase price of second-hand goods, by way of a deduction of notional input tax, is a dispensation aimed at eliminating the payment of VAT on trapped VAT costs.

In order to ensure that the dispensation is not exploited, various factors must be taken into account when calculating the amount of notional input tax, and various requirements must be met before the deduction will be allowed.

As these factors and requirements are contained in various provisions of the VAT Act, vendors might unknowingly make undue deductions of notional input tax, exposing themselves to the risk of being assessed for VAT, penalty, interest and understatement penalty. On the other hand, vendors who do not realise that they are entitled to deduct notional input tax will forfeit the right to eliminate trapped VAT cost in their purchases.

It is, accordingly, essential that vendors and their advisers meticulously consider the requirements for deducting notional input tax whenever they are engaged in second-hand goods purchases.

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