



November 2020

Value-Added Tax: Apportionment calculations and dividends (continued)

Following our [Tax News of 9 November 2020](#), (Newsletter) and a subsequent meeting with representatives from SARS, on Monday 16 November, SARS brought to our attention that the Newsletter has solicited widespread reaction, both from taxpayers and tax practitioners, including multiple enquiries submitted to SARS. At the outset we wish to place on record, as we did during our meeting with SARS, that it was not our intention to suggest in any way that our experiences with SARS on applications for alternative turnover-based apportionment methods, constitute SARS' official policy. Instead our reference to "according to SARS" was purely intended as reference to our recent experiences with certain applications submitted to SARS on behalf of our clients. Nevertheless, given the apparent interpretation by many, we acknowledged the importance for SARS to issue a letter to the recognised controlling bodies for distribution to its members to confirm that:

- our experiences expressed cannot be interpreted or assumed to constitute SARS policy; and
- to clarify that an apportionment ruling issued in terms of section 41B of the VAT Act, does not constitute an 'official publication' as defined in the Tax Administration Act (TAA).

Following the letter issued by SARS, dated 17 November, we had a further meeting with representatives from SARS to clarify our position and agreed that it would be appropriate for us to also clarify our position in this Newsletter.

As mentioned in our previous Newsletter, BGR 16 is the only pre- approved method of apportionment (i.e. the standard turnover-based method) that vendors may apply, provided it yields equitable results. Should this method not yield equitable results, the vendor is required to request approval from SARS in terms of section 41B of the VAT Act, to use an alternative method of apportionment.

Since alternative apportionment methods are issued at the discretion of SARS, SARS strives to ensure impartiality and fairness. Should SARS notify a vendor in writing that they refuse to approve the alternative method of apportionment applied for by a vendor, such vendor may object to such a decision, in terms of section 32(1)(a)(iv) of the VAT Act read with section 104(2)(c) of the TAA.

In our experience SARS has, since the inception of VAT, developed various guiding principles (meaning, informal principles not published in any official publication, but which are consistently considered when considering alternative apportionment methods). These guiding principles are undoubtedly relied on in an attempt to keep tract of new developments, to ensure fairness and presumably to also curb tax evasion. To date, we have also experienced that SARS most often share some of these guiding principles with taxpayers to assist them in formulating applications which SARS is likely to consider appropriate in their circumstances.

It is common cause that all income, including dividends received in respect of non-supplies, are to be included in the denominator when applying the standard turnover-based method per BGR 16. Since this BGR is a 'public notice' as defined, it follows that SARS' policy is to have regard to all non-taxable receipts, including dividends. It is presumably for this reason that our experience shows that SARS endeavoured to equally recognise this income in alternative apportionment methods. Historically, these varied from the inclusion of net dividends received, average dividends over three years, limiting dividends to management/admin fees, etc. depending on the circumstances of the vendor.

The experiences relayed in our previous Newsletter are in our view potential further guiding principles which SARS shared with us for consideration. Nevertheless, it goes without saying that these guiding principles cannot find application in all circumstances since they cannot give effect to an equitable result in all cases. Instead, we consider these as potentially further guiding principles to be considered where they are believed to be appropriate and equitable. As mentioned, should a vendor seek to rely on any one of these guiding principles, and SARS is of the opinion that it does not give effect to an equitable result, SARS may disallow the application.

We trust that the above clarifies the content of and our intention with the previous Newsletter. We also noted in the said SARS letter that SARS is in the process of formulating policy with regards to certain principles associated with apportionment methodology which will be published for public comment before it is finalised. We certainly welcome this initiative and believe that it will serve to provide better clarity and transparency and look forward to being part of this initiative.

For additional information or assistance, please contact us.

Contact us



Andre Meyburgh

Director: Indirect Tax - VAT
Email: andre.meyburgh@kpmg.co.za
M: +27828516587



Liezl Crause

Associate Director, Indirect Tax - VAT
Email: liezl.crause@kpmg.co.za
M: +27827195760



Martin Delport
Associate Director: Indirect Tax - VAT
KPMG South Africa
Email: martin.delport@kpmg.co.za
M: +27827191948



Etienne Pretorius

Senior Tax Consultant: Indirect Tax - VAT

Email: etienne.pretorius@kpmg.co.za

M: +27609760398

Regards

KPMG Tax and Legal

[Privacy](#) | [Legal](#)

[Unsubscribe](#)

kpmg.co.za

You have received this message from KPMG in South Africa.

© 2020 KPMG Services Proprietary Limited, a South African company with registration number 1999/012876/07 and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.