

LANDLORDS CAN'T LEVY VAT ON ELECTRICITY ETC: By Jonathan Hore

It is month-end and you are going through your emails to check if you have any that are urgent. As you search through your mail, you see the common one from your landlord pop into your inbox with the usual heading, 'Rental bill for this month – don't ignore.' You immediately open the email and as usual, your rent is P 6 700, water and electricity recoveries are P300 and VAT on these two amounts to P 840. That makes your total bill P 7 840 and you know you have to pay this amount before the due date. However, as you analyse the bill, you start asking yourself whether the landlord was supposed to charge you VAT on the water and electricity (utilities) as you once read that landlords shouldn't do so. Ummh; you seem not be able to figure out what's right or wrong as this VAT issue is not your area of specialty. Keep reading and Yours Truly will show you the correct position regarding this issue. Throughout this article, words importing the masculine shall be deemed to include the feminine.

HOW DO THESE CHARGES ARISE?

Under normal circumstances, the moment a landlord offers you an office or any such place to use, he should change the meter into your name to enable the Water Utilities Corporation and BPC, among others, to invoice you for your utilities consumption. Further, the electricity consumption should also be such that BPC & WUC can issue you with individualised tax invoices. However, that is the ideal situation but it certainly isn't what always happens on the ground. The reality of the matter is that due to a number of factors such as high tenant movements, the landlords prefer to keep the utility bills in their names. They then go on to make recoveries of the cost incurred on the utilities from the tenants, via invoicing. Supposing that the total utilities bill for 10 tenants was P 3 000 before VAT of P 360, landlords usually add the utility charge of P 300 to the rent and then charge VAT on the total, i.e. they charge VAT on the rent and the utilities recoveries. Technically, they then collect the total of P 3 360 that they would have paid for the utilities. It is also common that some landlords may do this in a slightly different way but one way or the other, they charge VAT on the utilities as if they are the ones who provided the services to the tenants.

DON'T CHARGE VAT, MR LANDLORD!

VAT can be charged by persons registered with BURS for VAT purposes on services or goods which such persons supply. In other words, the VAT registrant should have either sold goods or in our case, provided a service in order for them to charge VAT. Given the picture that we painted above, the following is a summary of why landlords can't charge VAT on the utilities:

- Landlords do not supply water or electricity and as such, they do not have a basis for levying VAT on such utilities to their tenants. The landlords are charged VAT on the utilities by BPC and WUC simply because the accounts are in their names. That does not mean that they are the ones who are consuming the utilities. In fact, they are not even entitled to claim the VAT that they are charged. It should be claimed by the tenants.
- The VAT Act paints the landlords as agents of the tenants, in other words, BPC and WUC will in fact be providing the utilities to the tenants who are the actual consumers of the utilities. The service providers however do this through the landlords, who will be acting as agents for the tenants. The said Act goes further to state that a supply made to an agent as agent of a principal is a supply to the principal. In the case at hand, the landlords are merely a conduit pipe through which the services are made and as such, BPC and WUC supply the services to the tenants (principals) via the landlords (agents). Therefore, BPC and WUC are indeed offering

services to the tenants, just that there are self-imposed middlemen called the landlords. Legally therefore, the landlords should not claim the VAT but pass the necessary documents to the tenants, who should then claim the VAT thereon.

CONCLUSION

The conclusion of the matter is that the tenants should not accept tax invoices in which landlords charge VAT on utilities. Such arrangements are a direct infringement of the VAT principles, which gives the false impression that the landlords out of nowhere become suppliers of water and electricity; which we all know is not correct. On the other hand, the landlord should simply pass the VAT incurred on the utilities as a cost-recovery, which will not count as part of their taxable supplies. The landlord's supplies end on the rent and any other service which they actually provide. I must in closing state that our principal-agent rules in the VAT Act are not very elaborate and this may be the reason why this issue occurs.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him.