

THE DICEY TAX TREATMENT OF DEPOSITS: By Jonathan Hore

It often happens that traders request for deposits, as a way of securing clients' commitment or to cushion them cashflow-wise. It is critical to fully comprehend the tax implications of deposits in order to accord the tax treatment. It is also necessary to consider both the VAT and income tax effects of the deposits. Due to its complexity, the tax treatment may, in practice, vary from one taxpayer to the other depending on their understanding or interpretation of the applicable tax laws. Below is a detailed analysis of the VAT and income tax treatment of deposits.

VAT TREATMENT

When a business receives a deposit, that deposit does not trigger any VAT consequences. In terms of the VAT Act, VAT can only be charged on consideration, a term which refers to the price of goods or services. There are rare circumstances where VAT is charged on deemed consideration, i.e. an alternative of a price is prescribed when no payment is actually made. It is critical to note that the definition of 'consideration' in terms of section 2 of the VAT Act stipulates that the term, 'means the total amount in money or kind, paid or payable ... for the supply or import by any person ... but does not include ... a deposit... whether refundable or not, given in connection with a supply of goods or services, unless and until the supplier applies the deposit as consideration for the supply or such deposit is forfeited.' That definition makes it apparent that a deposit received by a VAT registrant does not form part of consideration and as such, no VAT consequences arise on receipt.

It is usually tempting to think that VAT is triggered on receipt of a non-refundable deposit but the VAT Act also excludes such deposits from the ambit of transactions which trigger VAT. This means that the VAT registrant cannot issue a tax invoice on receipt of a deposit. Instead, it would be ideal to issue a receipt or some form of acknowledgment of receipt of the money but a tax invoice cannot be issued in respect of deposits. Some traders in the tourism & entertainment industry find themselves struggling to establish the correct VAT treatment of deposits as they require that a client must book if they have to reserve a booking. Such bookings can be cancelled at any time by the customer and the money they pay does not, in most cases, result in an unconditional sale. This makes deposits expressions of an interest to buy in the future. As stated above, such purchases may never materialize due to a number of reasons.

VAT can only be accounted for on a deposit when the actual unconditional sale occurs. For example, if a client deposits a car in November and pays the final balance in December, the sale occurs in December and it is then that VAT must be accounted for on both the deposit and final payment. The other circumstance where a deposit would trigger VAT is when it is forfeited by the trader. In the event that a business receives P 112 000 as a deposit towards a car and the customer fails to pay, resulting in forfeiture of the deposit, then VAT is triggered by the forfeiture. In such a case, the business would not have supplied any good or service but VAT is due on the forfeited amount.

INCOME TAX

The basis of subjecting any amount to income tax is that the income must have accrued to the taxpayer. The word 'accrued' means that the income must have become 'due and payable' to the business. Alternatively, the business must 'be entitled' to the income. Applying these principles will make it clear that a deposit is not subject to income tax as the business only becomes entitled to the amount when full payment is made, i.e. when the deposit forms part of the full purchase price payable. Alternatively, if a deposit is forfeited in

terms of a contract, income tax will only arise on the point of forfeiture. If the deposit can be repayable in full, no income tax arises as stated above.

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