

## **VAT CAN'T BE CHARGED ON DEPOSITS: By Jonathan Hore**

VAT is charged whenever a VAT registrant sells goods or provides services which are taxable. This is done only when actual sales are made. I want to analyse in detail why VAT is generally not charged on deposits. I am aware that there are some VAT registrants who charge VAT on any amount that they receive, including deposits. In this article, words importing the masculine shall be deemed to include the feminine.

### **NO VAT WITHOUT A PRICE**

One thing that is striking about the VAT system is that one cannot talk about VAT if a trade or business is not carried on for some price, technically referred to as 'consideration' in VAT lingo. In other words, one is considered to be conducting a taxable activity or business subject to VAT if they charge a price for their sales. If an organisation makes donations, then there is no VAT business to talk about. In fact, donations are exempt from VAT simply on the basis that it would be irrational to expect an organisation which hands out goods or offers services for free to account for any VAT. There is no sale in those instances. I don't want you to confuse this concept with the other circumstances where a VAT registrant may be deemed to have rendered taxable goods/services such as when related parties trade with each other for free. Notice that their primary business will not be to trade for free with third parties, it's just that the related party transactions are deemed to have been conducted at market value, even when no price is charged. This is done to ensure that BURS does not get prejudiced by business relationships.

### **DEPOSITS NOT CONSIDERATION**

Having established above that VAT cannot be charged where there is no consideration, I now want to show you that the term consideration as used in the VAT Act does not include a deposit. The VAT Act states that consideration, '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.'

The above portion of the VAT Act can be analysed in detail as follows:

- **Deposits are not consideration:** VAT cannot be charged on a deposit that is made in relation to a sale. In the tourism industry for example, some service providers require that their clients make a deposit of some amount if they have to secure a booking. The receipt of the deposit is not a receipt of payment for VAT. Per the above definition, deposits are clearly not part of the price of goods or services.
- **Whether or not refundable:** You will realise that there are some businesses which require clients to pay non-refundable deposits. The fact that the deposit is non-refundable does not make it part of the price of a good/service. A deposit is essentially an intention to buy and the purchase does not happen when the deposit is made.
- **Application to price:** VAT can only be charged on a deposit if such deposit is applied towards the consideration. For example, if a client paid a deposit of P 10 000 in June 2019 and later pays the balance of P12 000 today, then the deposit is then applied to the consideration, which triggers VAT.
- **Forfeiture:** It happens that some clients may pay a deposit and then fail to pay the balance, especially in lay-byes. In such cases, the businessperson forfeits the deposit so paid and that forfeiture in itself makes the deposit consideration. VAT must therefore be accounted for at the time of forfeiture. This does not necessarily mean that the goods or services would have been provided. Actually, nothing may have been sold; as long as the deposit is forfeited, VAT must be charged. Technically, the

deposit is deemed to be VAT inclusive. For example, a deposit of P1 120 will be deemed to have P120 as VAT and P 1 000 as the consideration.

## **CONCLUSION**

I stated above that VAT must never be accounted for on deposits, regardless of whether or not they are non-refundable. This is so as a deposit only becomes part of the selling price when the full payment is made or when the deposit is forfeited. It follows that those VAT registrants who charge VAT on deposits incorrectly account for VAT. According to section 8 of the VAT Act, a sale occurs on the earlier of the issuance of an invoice or receipt of payment. But remember that the payment does not include a deposit, which is a mere expression of an intention to buy.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him. If you want to join our Tax Whatsapp group, send me a text on the cell number below.