

DIVIDENDS & PENALTIES DON'T TRIGGER VAT

One of the most common perplexing tax issues that usually boggles the mind of some professionals is whether or not VAT is applicable on payments of dividends and penalties of any kind, including those levied for failure to comply with a contract. VAT is a complex subject requiring the utmost technical prowess when dealing with most transactions. However, allow us to simplify this aspect and clarify the inapplicability of VAT on dividends and penalties. In this article, words importing the masculine shall be deemed to include the feminine.

The basics

In as much as a simple no can conclude and resolve the quandary of whether VAT applies to dividends or penalties, it is however vital that we understand the basics of VAT and the applicable provisions of the law. Firstly, we must understand that VAT applies when there is a supply or deemed supply of goods or services. For VAT purposes, the term 'supply' is basically used to cover almost all types of transactions. The definition of this term as provided in the Act is extremely wide. Accordingly, it is on this basis that individuals and corporations should be extremely careful not to ignore unusual or rather uncommon transactions for VAT purposes. However, in as much as supply may seem to include all forms of supply, there are certain transactions or events which specifically do not fall within the ambit of the said 'supply.'

As alluded to above, it is of paramount importance to note that a supply takes into account a scenario where goods or services are either sold or exchanged. Therefore, it is critical to interrogate whether or not a payment of dividends to shareholders or a penalty levied on say construction company fits squarely as a supply of goods or services.

Enter dividends & penalties.

Essentially, a dividend is commonly known as a distribution of profits by a company to its owners. Technically, the distribution of profits is inconsequential to the applicability or inapplicability of VAT. Accordingly, the big question to answer is whether a dividend is considered as a good or service for VAT purposes.

The Act defines 'goods' as 'all kinds of corporeal movable or immovable property, thermal or electrical energy, heat, gas, refrigeration, air conditioning, and water, but does not include money' whereas a 'service' is anything that is not goods or money. So is a dividend a good, a service or none of the above? The same analogy can be applied to a penalty which is levied on someone for failure to perform a contractual obligation. Does the one who levies the penalty supply anything? Well, it appears not. No goods or services are supplied in such instances.

The non-supply

As you can see, if one is to charge VAT on a dividend or penalty, it first has to qualify as a supply of either goods or services. It is apparent that a dividend is simply profit distribution which neither qualifies as a supply of goods nor a service. On the other hand, a penalty is equally neither a supply of goods or services. Nothing of value is provided by the one who

levies the penalty. Consequently, both dividends and penalties fall outside the purview of transactions subject to VAT.

Conclusion

As highlighted above, a dividend or a penalty are not supplies for VAT and therefore they are of no significance in the determination of one's VAT.

Well, folks, we hope that was insightful. As we say goodbye, remember to pay Caesar what belongs to him. If you want to consult, join our free Tax WhatsApp group or to know about our 9 Tax e-books, send a text to +267 7181 5836 or email us at jhore@aupracontax.co.bw. You can read more tax articles on our website, www.aupracontax.co.bw under the 'Tax articles' tab