

SPECIAL CASES

1. SECOND-HAND GOODS

Although the general rule is that a vendor must have a tax invoice before being allowed to claim any input tax in relation to the supply, there are a few exceptions to the rule.

Where a vendor purchases second-hand goods from a non-vendor, the purchaser (vendor) has to record the details of the transaction in terms of section 20(8) of the Value-Added Tax Act, 1991 (“the VAT Act”) to substantiate the input tax claim. Form [VAT 264](#) has been designed specifically for the purpose of assisting vendors to keep all the required records in this regard, which are as follows:

- Name, address and I.D. No. of the supplier (I.D. No. of the representative person if it is a company or close corporation);
- Date of acquisition;
- Quantity or volume of goods;
- Proper description of the goods;
- Consideration for the supply;
- Declaration by the supplier stating that the supply is not a taxable supply;
- The vendor must verify the person’s I.D. No. with the I.D. book or passport; and
- Where the value of the supply is R1 000 or more, the vendor must obtain and retain a copy of the person’s I.D., and, in the case of a company or cc, a business letterhead or similar document is also required which shows the name and registration number allocated by the Registrar of Companies.

2. REPOSSESSION OF GOODS

Where goods supplied under an instalment credit agreement are repossessed, it is impractical to require the person from whom the goods were repossessed (i.e. the debtor) to issue an invoice or tax invoice to the financier, therefore:

- ☛ If the **goods are repossessed from a vendor**, the person exercising the right of repossession (normally a bank or other financier who is also a vendor), is required to create and furnish a tax invoice to the debtor.
- ☛ If the **goods are repossessed from a non-vendor**, the person exercising the right of repossession (vendor) is required to keep details as mentioned in the paragraph above relating to second-hand goods.

3. OTHER CASES

- ☛ Where the purchase price is less than R50 and the total consideration is in money, no tax invoice is required.
- ☛ Where the Commissioner is satisfied that there will be sufficient records, and that it will be impractical for a tax invoice to be issued, permission may be granted for tax invoices not to be issued, or for the information on the tax invoice to vary from the standard requirements (see paragraph 6 below “**ALTERNATIVES TO TAX INVOICES**”).
- ☛ A bill of entry together with the proof of payment to Customs serves as the supporting documentation to claim the VAT paid on any goods imported.
- ☛ Where the tax invoices are held by an agent, the necessary details in the required schedules from the agent must be held.

4. ELECTRONIC TAX INVOICES

[VAT NEWS 20](#) sets out the requirements for vendors who wish to issue tax invoices, debit notes and credit notes in electronic format instead of the traditional paper version (hard copy). It is, however, not practical to verify beforehand that each vendor meets all the requirements, as this can only be ascertained when conducting an audit. Since the requirements have already been published in the VAT NEWS, it is not necessary for vendors to make individual applications for approval in this regard.

Vendors wishing to implement an electronic system must, however, ensure that they do not replace their existing paper based documentary systems before ensuring that they meet all the requirements.

The requirements for these electronic documents are as follows:-

- The arrangement applies to tax invoices, debit or credit notes. The mandatory information as set out in sections 20(4), 21(3)(a) and 21(3)(b) of the VAT Act respectively must appear on these documents;
- The intended recipients must confirm in writing that they are prepared to accept electronic documents under the conditions set out. (This authorisation must be retained by the supplier for a period of five years after the last electronic document issued to the recipient.);
- Documents must be transmitted in encrypted form of at least 128 bit encryption format;
- Both the supplier and the recipient of the supply must retain the documents in readable and encrypted form for a period of five years from the date of the supply. They must also have access to the necessary codes or other means available to enable SARS auditors to compare the documents in readable form with those in encrypted form;
- If a service provider is used, that person must also retain the documents for a period of five years;
- The transmitted electronic document will constitute the original tax invoice, credit or debit notes. Hard copies extracted from the system must bear the words “computer generated copy tax invoice”, “computer generated copy credit note” or “computer generated copy debit note” thereon. All further copies must also bear such words; and
- No other tax invoice, credit or debit note may be issued in respect of the specific supply, unless such document is marked as a copy of the original document.

5. LOST OR MISPLACED TAX INVOICES

If a tax invoice in respect of a particular supply is lost, you may not request the supplier to issue another tax invoice as it is an offence to issue more than one tax invoice per taxable supply.

In order to meet the documentary requirements for claiming input tax, you can request the supplier to issue you with a copy tax invoice as long as the document is clearly marked “copy”. A photostat copy which has been clearly marked “COPY” ***after*** it has been photostated can also be used in such instances.

A facsimile of a tax invoice is not acceptable unless printed by a plain paper facsimile machine. Also, a tax invoice sent by e-mail is not acceptable unless the parties to the transaction have implemented electronic invoicing as per the requirements set out above.

6. ALTERNATIVES TO TAX INVOICES

The VAT Act does provide that in certain instances, it may be acceptable to deviate from the normal requirements of a tax invoice, debit or credit note as provided for in the VAT Act where the Commissioner is satisfied with alternative documentation which will serve as the tax invoice for input tax purposes. These requirements are contained in sections 20(7) and 21(5) of the VAT Act.

Two requirements must be met with regard to the supplies or category of supplies concerned for an application for an alternative to a tax invoice to be acceptable to the Commissioner, namely:-

- ☛ There must be sufficient records available to establish the relevant particulars of the supply; **and**
- ☛ In the circumstances, it must be impractical to require a full tax invoice, debit or credit note to be issued.

In many instances invoices (and tax invoices) are not issued automatically to the recipient, for example, the payment of the monthly rental for the business premises may be made by the lessee without any invoice or tax invoice being issued by the lessor.

SARS has ruled in terms of section 20(7) of the VAT Act (and Practice Note 2 dated 25 September 1991) that if certain criteria are met, it will not be necessary to obtain a specific ruling regarding the issuing of tax invoices for progressive taxable supplies.

The criteria are as follows:

- ☛ The transactions in question must consist of a number of progressive taxable supplies made by a registered vendor in accordance with a written contract for a supply of services that provides for a regular payment of a determinable amount (such as a rental or lease agreement for movable or immovable property or a royalty agreement).
- ☛ The recipient must be in possession of the contract document.
- ☛ The contract document must contain the supplier's name, address and VAT registration number; or the supplier must have provided the recipient with a supplementary document setting out these details.
- ☛ The recipient must retain proof of payment of each regular amount in the form of bank statements or paid cheques.
- ☛ If all these criteria have been met, no tax invoice in relation to the taxable supply need be issued, nor will the recipient have to hold a valid tax invoice in order to claim the relevant input tax deduction.

7. TAX INVOICES FOR MIXED SUPPLIES

Where the supply is a zero-rated supply, a full tax invoice must be issued. Where the supply is exempt from VAT, no tax invoice may be issued and since no tax is charged, no input tax may be claimed in respect thereof. There may, however, be a situation where various supplies are made by the same supplier and where each supply is treated differently for VAT purposes (for example, in the tourism industry). Where this occurs, the tax invoice must clearly distinguish between the various supplies and indicate separately the applicable values, and the tax charged (if any) on each supply.

8. TAX INVOICES PREPARED BY THE RECIPIENT (“RECIPIENT-CREATED INVOICING”)

In some instances the consideration for a supply is determined by the recipient of the goods/services rather than by the supplier. An example of this is where a farmer (the supplier) takes produce to a co-operative which will only be sold at a later stage, once the quality and quantity of the produce has been determined. Since the price that will eventually be obtained for the goods depends on factors outside the farmer’s control (and often the co-operative merely acts as agent for the supplier), the farmer is not in a position to issue an invoice or tax invoice for the produce when it is delivered for sale. In such cases, SARS may permit the co-operative (recipient) to issue the tax invoice for the supply. This is referred to as recipient–created invoicing (or self-invoicing).

The vendor must, however, first obtain written authorisation from the SARS office where they are registered before being allowed to apply this method of invoicing. Note that approval for recipient–created invoicing procedures will not be granted where the purpose is merely to facilitate the obtaining of a tax invoice by the recipient. Approval will only be granted in the case of those industries and transactions where an effective recipient–created invoicing system has traditionally been followed in the past.

Examples of industries and transactions where approval is likely to be granted in terms of the above criteria are farmers, sub-contractors, commission agents, licensees under royalty agreements and transport contractors. For more details, refer to VAT Practice Note No. 2, dated 25th September 1991.

A written application to apply self-invoicing must provide the following details:-

- A description of the nature of the businesses respectively carried on by the supplier and the recipient;
- A full description of the transactions in respect of which self-invoicing is required;
- The existing invoicing procedures being followed for such transactions; and
- Include an undertaking by the recipient that he/she will comply with the administrative requirements of sections 20(2) and 21(4) of the VAT Act, and will obtain and retain the written agreement of each affected supplier who is a registered vendor as to the adoption of the self-invoicing procedures and written confirmation from each such supplier that he/she will not issue tax invoices, debit notes or credit notes in respect of the transactions in question.

9. AGENTS & AUCTIONEERS

As an agent merely acts on behalf of the principal, the VAT on the transactions concerned (e.g. local sales/purchases, exports, importations, etc.) must be accounted for by the principal and not the agent. Strictly speaking, any tax invoice, credit or debit note or bill of entry (or other document prescribed by Customs and Excise) relating to a supply by the agent on the principal’s behalf should contain the principal’s particulars.

However, the VAT Act does provide, that if an agent (being a vendor) makes a supply on behalf of another vendor, the agent may issue a tax invoice or a credit or debit note relating to that supply as if the supply had been made by the agent. In such a case, the agent’s details may be reflected on the tax invoice or credit or debit note and the principal may not also issue a tax invoice in respect of that same supply.

Where an agent has issued a tax invoice on the principal's behalf in respect of a supply made to another vendor (recipient), the recipient may claim the relevant input tax deduction on the document issued by the agent.

When a supply has been made to an agent acting on behalf of a principal, the agent's details may be reflected on the tax invoice. The principal (being the recipient of the supply or importer – as the case may be) may claim an input tax credit only if in possession of the tax invoice or bill of entry concerned. This condition will be met if the agent holds the relevant original documentation, as long as sufficient information is maintained to enable the details of the principal to be determined.

If a vendor makes a supply to an agent, that agent may ask to be provided with a tax invoice in his/her own name (i.e. the agent's name). It is not a requirement for the agent who is acting as recipient of the supply for the principal to be a vendor in such a case.

When a tax invoice or a credit or debit note has been issued by or to an agent in the circumstances described above, the agent must maintain sufficient records so that the name, address and VAT registration number of the principal can be ascertained.

In addition, for supplies made on or after 1 January 2000, the agent must notify its principal in writing of the following —

- ☛ a description of the goods supplied;
- ☛ the quantity or volume of the goods supplied; and
- ☛ either —
 - the value of the supply, the amount of tax charged and the consideration for that supply; or
 - where the amount of tax charged is calculated by applying the tax fraction to the consideration, the consideration for the supply and either the amount of tax charged, or a statement that includes a charge in respect of the tax and the rate at which the tax was charged.