INTERPRETATION NOTE: NO. 41 (Issue 3)

DATE: 31 March 2014

ACT : VALUE-ADDED TAX ACT NO. 89 OF 1991

SECTIONS : SECTIONS 1(1), 8(13), 8(13A), 9(3)(*e*), 16(3)(*a*), 16(3)(*d*), 16 (3)(*e*), 17(2)(*a*), 17(2)(*c*) AND 72

SUBJECT : APPLICATION OF THE VAT ACT TO THE GAMBLING INDUSTRY

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Preamble

In this Note unless the context indicates otherwise –

- **"bookmaker"** means a person who accepts and pays out bets on the outcome of sports contests, including horse races or any other events;
- **"punter"** means a person who places a bet;
- **"section"** means a section of the VAT Act;
- **"VAT Act"** means the Value-Added Tax Act No. 89 of 1991; and
- any word or expression bears the meaning ascribed to it in the VAT Act.

1. Purpose

This Note provides clarity on the value-added tax (VAT) implications of specific transactions undertaken in the gambling industry.

2. The law

The relevant sections of the VAT Act are quoted in **Annexure A**.

3. Application of the law

3.1 Definitions and concepts

3.1.1 Registration as a vendor

A person conducting an enterprise where the value of the taxable supplies made by that person exceeds R1 million in a consecutive 12-month period or will exceed that amount under a contractual obligation in writing, will be required to register for VAT.[1] Alternatively, a person who has made taxable supplies that have exceeded R50 000 but not R1 million in a consecutive 12-month period or under certain instances where such person has not reached the R50 000 threshold but has met certain requirements, can voluntarily register as a vendor for VAT purposes.[2]

3.1.2 Output tax

Output tax refers to the tax levied by a vendor on the taxable supply of goods or services. The output tax is determined by applying the standard rate of VAT (currently 14%) to the value of a supply of goods or services. For example, if the value of supply is R500, the VAT will be R70 (R500 × 14%). Output tax on an amount charged (consideration) for the supply of goods or services which includes VAT at 14% is determined by applying the tax fraction (14/114) to the consideration.

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1 From 1 April 2014, the requirement of a reasonable expectation to exceed R1 million taxable supplies is replaced with the requirement that the threshold will be exceeded under a contractual obligation in writing.

2 For more information regarding voluntary registration, see paragraph 2.5 of the *VAT 404 – Guide for Vendors*.

For example, if the charge including VAT is R500, output tax included in the amount is R61,40 (R500 × 14 / 114).

3.1.3 Deemed supplies

A vendor may sometimes be required to declare an amount of output tax even though it has not actually supplied any goods or services. Section 8 contains deeming provisions which widen the range of transactions subject to VAT and clarify the instances when certain transactions will be deemed to be taxable or not. Relevant to this Note is section 8(13) and (13A) which contains deeming provisions particular to the gambling industry.

Under section 8(13), where a person bets an amount on the outcome of any other event or occurrence, the person with whom the bet is placed is deemed to supply a service to the person placing the bet. As a result, the person with whom the bet is placed is required to account for output tax on the amount received.

In addition, section 8(13A) provides that a vendor, who makes supplies under section 8(13) and who receives a prize or winnings as a result of placing a bet with another vendor, is deemed to supply a service to the other vendor.

3.1.4 Input tax and deductions

The term “input tax” as defined in section 1(1) refers to the tax paid by a vendor on the acquisition of goods or services that are to be consumed, used or supplied by that vendor either wholly or partly in the course of making taxable supplies. The VAT incurred on goods or services that are acquired partly for the purpose of making taxable supplies and partly for some other purpose (for example, exempt or out-of-scope supplies or private use), qualifies as input tax to the extent that the goods or services are acquired for the purpose of making taxable supplies. The apportionment method as contemplated in section 17(1) for determining the ratio is determined by the Commissioner in accordance with a ruling as contemplated in Chapter 7 of the Tax Administration Act, No. 28 of 2011 or section 41B. The VAT incurred in the course of making exempt or other non-taxable supplies does not fall within the definition of the term “input tax”.

A vendor may deduct “input tax” from the amount of tax payable in respect of a tax period under section 16(3)(*a*), subject to the requirements in sections 16, 17 and 20 being met.[3] However, the proviso to section 16(3)(*a*) specifically excludes the deduction of input tax under this subsection on goods or services acquired by a vendor for the purposes of awarding such goods or services as a prize or winnings. In this regard, the vendor would only qualify for a deduction under section 16(3)(*d*), as discussed below.

Section 16(3) also makes provision for certain other deductions[4] to which a vendor is entitled in calculating the VAT payable or refundable for a specific period. Deductions specific to the gambling industry are contained in section 16(3)(*d*) and (*e*).

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[3] Also refer to Interpretation Note No. 49 (Issue 2) and any update thereto for the documentary proof required to substantiate a vendor's entitlement to ‘input tax’ or a deduction as contemplated in section 16(2).

[4] These deductions are subject to section 16(2). Also refer to Interpretation Note No. 49.

Section 16(3)(*d*) allows a deduction equal to the tax fraction of amounts paid by a supplier of betting services contemplated in section 8(13) as prizes or winnings to the recipient of the betting services.

Under section 16(3)(*e*), a vendor making the payment of betting tax may deduct an amount equal to the tax fraction of such payment.

3.1.5 Entertainment

The term "entertainment" is defined in section 1(1) as the provision of any food, beverages, accommodation, entertainment, amusement, recreation or hospitality of any kind by a vendor whether directly or indirectly to anyone in connection with an enterprise carried on by him.

3.2 Horseracing industry

3.2.1 Racing operators

The principal activities of racing operators in SA are to –

- operate racecourses and training centres in South Africa for the benefit of the thoroughbred racing industry; and
- operate wagering outlets to facilitate betting on horseracing and other sport activities.

In this regard, the racing operators conduct activities that fall within the ambit of an "enterprise" as defined in section 1(1). Accordingly, racing operators may be required to register as vendors under section 23. The supply of goods or services by racing operators, being vendors, in the course or furtherance of their enterprise is subject to VAT.

3.2.2 Racehorse owners

The racehorse owner makes available the "services" of its racehorse to the racing operator for a consideration. Should this service be supplied on a continuous or regular basis, the racehorse owner will be conducting an enterprise for VAT purposes. Accordingly, the racehorse owner will be required to register as a vendor or may voluntarily register as a vendor, subject to the requirements in section 23 being met.

The services supplied will constitute taxable supplies if the racehorse owner is a vendor, and the owner may receive consideration from the racing operator for these services. The consideration payable by the racing operator is dependent on the success of the racehorse participating in the event staged by the racing operator.

Under section 11(2)(*x*), the abovementioned services supplied to the racing operator are zero-rated for VAT purposes, to the extent of any consideration paid by the racing operator to the racehorse owner as a result of the successful participation of that horse in an event.

The racehorse owner will, therefore, be liable to declare the zero-rated supply on the VAT201 return. There is no VAT incurred or deductible by the racing operator for these supplies as VAT is charged at the zero rate.

The provisions of section 11(2)(*x*) do not apply to payments received by jockeys, managers and trainers from the racing operator.

3.2.3 The manager and/or trainer

The manager and/or trainer of the racehorses supplies a service to the racehorse owner in that the manager and/or trainer is responsible for the stabling, training and well-being of the racehorses. These services may vary according to the agreement between both parties. If the services are supplied on a continuous or regular basis for a consideration, the manager and/or trainer will be conducting an enterprise for VAT purposes and will be required to register as a vendor or may voluntarily register as a vendor, subject to the requirements in section 23 being met.

A manager and/or trainer who is a vendor, is liable to levy VAT at the standard rate of 14% on the service supplied to the racehorse owner. The manager and/or trainer must account for output tax, while the racehorse owner being a vendor, will be entitled to an input tax deduction for the consideration paid to the VAT-registered manager and/or trainer (subject to the provisions of sections 16, 17 and 20 being met).

3.2.4 Bookmakers

A bookmaker operates a business of accepting and paying off bets on the outcome of sports contests, especially horse races or any other events or contingencies.

In this regard, the bookmaker conducts activities that fall within the ambit of an "enterprise" as defined in section 1(1). Accordingly, the bookmaker may be required to register as a vendor or may voluntarily register as a vendor, subject to the relevant requirements in section 23 being met.

The supply of goods or services by bookmakers, being vendors, in the course or furtherance of their enterprises is subject to VAT.

3.2.5 Betting transactions

The racing operator or bookmaker receiving a bet for the deemed supply contemplated in section 8(13) (see **3.1.3**) is required to account for output tax on the amount received (that is, applying the tax fraction to the amount received for the bet).

In the event that the bet, under section 8(13) is successful, the racing operator or bookmaker is, under section 16(3)(*d*) read with section 16(2), entitled to an input tax deduction (refer to **3.1.4**).

In addition, racing operators or bookmakers in certain provinces are, under provincial statute, liable for the payment of betting taxes on all betting transactions to the Provincial Revenue Fund (PRF).[5] A racing operator or bookmaker who makes the payment to the PRF as principal, will be entitled to a deduction under section 16(3)(*e*) (refer to **3.1.4**).

[5] The PRF is not required to register as a vendor for VAT purposes as it forms part of the provincial Department of Finance and is a "public authority" as defined in section 1(1). Accordingly, the taxes imposed under the Provincial Ordinances, which accrues for the benefit of the Provincial Revenue, will not have any VAT consequences in the hands of the PRF.

Example 1 – VAT implications of a successful bet

Facts:

X places a bet of R10 with Bookmaker A. In the event of the bet being successful, X will receive R110 as winnings from Bookmaker A. In this regard, X's bet was successful, and he received a total payment of R104 (that is, the R110 as a winning less the deduction of the provincial tax of R6 payable by X) from Bookmaker A.

Result:

Description of transaction	**Section**	**Tax payable (+) / Deductible (-)**
		R
X places a bet of R10	8(13)	+ 1,23
Winnings paid out by Bookmaker A is R110	16(3)(*d*)	- 13,51
Total VAT payable (+) / refundable (-)		**- 12,28**

Note: The deduction under section 16(3)(*e*) is not applicable, as the provincial tax is paid by X.

On the assumption that the VAT201 return has been submitted and the aforementioned example was the only transaction for that tax period, the following net cash flow of the bookmaker (for this specific transaction) will confirm the VAT liability of the bookmaker:

	R
Bet received	+ 10,00
Output tax payable under section 8(13) – R10 × 14 / 114	- 1,23
Amount paid to punter (R110 – R6)	- 104,00
Amount paid to Provincial Revenue Fund	- 6,00
Deduction under section 16(3)(*d*) – R110 × 14 / 114	+13,51
Total amount paid / cost to Bookmaker A	**- 87,72**

3.2.6 Payment of betting taxes

Punter is liable for the tax

Generally, under certain provincial statutes, the punter is liable for a provincial betting tax. In these provinces, the bookmaker is required to deduct the provincial betting tax on a winning bet and pay this to the PRF. This payment is made by the bookmaker for and on behalf of the punter. It therefore follows, that in the aforementioned example, the tax fraction applied to the payment of the R6 betting tax by the bookmaker to the PRF is not deductible under section 16(3)(*e*) in the hands of the bookmaker, as the betting tax is borne by the punter and not the bookmaker.

Bookmaker is liable for the tax

Under certain provincial statutes, the bookmaker is liable for betting taxes. In these instances, the bookmaker is liable to pay the betting taxes as principal and may, under section 16(3)(*e*), deduct an amount equal to the tax fraction of the amount of

the tax on totalizator transactions or tax on betting levied and paid for the benefit of any PRF.

This can be illustrated as follows:

Description of transaction	**Section**	**Tax payable (+) / Deductible (-)**
		R
X places a bet of R10	8(13)	+ 1,23
Winning paid out by Bookmaker A is R110	16(3)(*d*)	
Bookmaker A pays PRF R6 for the tax imposed by the PRF	16(3)(*e*)	- 13,51
Total VAT payable (+) / refundable (-)		**- 12,28**

3.2.7 Bookmaker-to-bookmaker transactions

In some instances, the bookmaker is of the view that the bets it has received are too much of a risk for the bookmaker to bear (that is, there is a good possibility of the bets being successful). In order to minimise the risk and exposure of large payouts to punters, the bookmaker will pass on either the whole bet or part of it to another bookmaker. This is common practice in the betting industry and is referred to as *take back bets*.

When a bookmaker (1st Bookmaker) places a *take back bet* with another bookmaker (2nd Bookmaker) and both bookmakers are registered vendors for VAT purposes, the 1st Bookmaker is entitled to deduct input tax on the amount placed with the 2nd Bookmaker under section 16(3)(*a*). This implies that the 2nd Bookmaker must issue a tax invoice to the 1st Bookmaker.

The 2nd Bookmaker is under section 8(13) liable to account for output tax on the amount received from the 1st Bookmaker.

In the event that this *take back bet* is successful, the 2nd Bookmaker is entitled to deduct an amount equal to the tax fraction of any amount paid as a prize or winnings to the 1st Bookmaker being the recipient of such services.

The 1st Bookmaker is, under section 8(13A), deemed to supply services to the 2nd Bookmaker. Therefore, the 1st Bookmaker is liable to account for output tax on the amount received from the 2nd Bookmaker.

Example 2 – VAT implications of a *take back* bet

Facts:

1st Bookmaker places a take back bet of R100 with 2nd Bookmaker. In the event of the bet being successful, 1st Bookmaker will receive R1 100 as winnings from 2nd Bookmaker. In this regard, 1st Bookmaker's bet was successful, and received a total payment of R1 100 from 2nd Bookmaker.

Result:

1st Bookmaker

Description of transaction	**Section**	**Tax payable (+) / Deductible (-)**
		R
1st Bookmaker places a bet of R100	16(3)(a)	- 12,28
2nd Bookmaker pays R1 100	8(13A)	+ 135,09
Total VAT payable (+) / refundable (-)		**+122,81**

On the assumption that the VAT201 return has been submitted and this was the only transaction for that tax period, the following net cash flow of the 1st Bookmaker (for this specific transaction) will confirm the VAT liability of that bookmaker:

	R
Bet placed	- 100,00
Input tax on bet placed under section 16(3)(*a*)	+ 12,28
Amount received from 2nd Bookmaker	+ 1 100,00
Output tax payable under section 8(13A)	- 135,09
Total amount receivable	**+ 877,19**

2nd Bookmaker

Description of transaction	**Section**	**Tax payable (+) / Deductible (-)**
		R
1st Bookmaker places a bet of R100	8(13)	+ 12,28
Amount paid to 1st Bookmaker of R1 100	16(3)(*d*)	- 135,09
Total VAT payable (+) / refundable (-)		**- 122,81**

On the assumption that the VAT201 return has been submitted and this was the only transaction for that tax period, the following net cash flow of the 2nd bookmaker (for this specific transaction) will confirm the VAT liability of that bookmaker:

	R
Bet received	+ 100,00
Output tax payable under section 8(13)	- 12,28
Amount paid to punter (1st Bookmaker)	- 1 100,00
Deduction under section 16(3)(*d*)	+ 135,09
Total amount paid / Cost to Bookmaker A	**- 877,19**

3.3 Casinos

3.3.1 Calculation of VAT

Under section 16(4), a vendor must determine the output tax charged for all supplies made during the tax period. This calculation of the output tax attributable to the tax period is to be done by reference to the accounting basis which has been used during that period.

The amount of tax payable is calculated by deducting from the amount of output tax referred to above, certain amounts of input tax and other deductions contemplated under section 16(3) (refer to **3.1.4**).

The casino industry is under section 9(3)(*e*) required to account for output tax when payment is received for the supplies of betting transactions. All other supplies by the casino will follow the normal time of supply rules (that is, the earlier of an invoice being issued or payment being received for the supply).

The nature of betting transactions, especially the table game of chance (for example, Roulette, Poker), makes it difficult to separate bets placed by and winnings paid to punters. It therefore follows that casinos experience practical difficulties reflecting output tax under section 8(13), separately from the amount deducted under section 16(3)(*d*). As a result, an arrangement has been made in Binding General Ruling (VAT) No. 13 (Issue 2) (BGR 13) as indicated below.

Binding General Ruling (VAT) No. 13 (Issue 2)

An arrangement is made under section 72 whereby casinos are permitted to account for VAT by applying the tax fraction to the net amount resulting from betting transactions, that is, the amount remaining after winnings paid out have been deducted from the bets placed (known as the “net drop method”). This could result in either the casino showing a net liability payable to SARS or a refund due to it.

In addition, the casino will –

- not be entitled to any deductions under section 16(3)(*d*), on any amount paid during the tax period by the casino as a prize or winnings to the recipient of services contemplated in section 8(13), if such amount has been included in calculating the “net drop method”; and
- be required to maintain adequate records to enable SARS to verify the validity and accuracy of the tax liability calculated under this method.

3.3.2 Deductions by casinos

Casinos are not entitled to an input tax deduction under section 16(3)(*a*) for any prize or winnings to any person who has placed a bet with such vendor. Casinos will however be entitled, under section 16(3)(*d*), to deduct from the output tax, an amount equal to the tax fraction of any amount paid as a prize or winnings in relation to the deemed supply made.

In addition, casinos are, under a provincial statute, liable for the payment of betting taxes to the PRF, on all betting transactions received. In this regard, the casino makes the payment to the PRF as principal. The casino is entitled to a deduction equal to the tax fraction of such payment under section 16(3)(*e*).

3.3.3 Entertainment

(*a*) General

The main activity of a casino falls within the ambit of "entertainment" as defined in section 1(1). This is due to the fact that it supplies entertainment in the form of gambling services in the ordinary course of an entertainment enterprise and such entertainment is provided for a charge that covers all direct and indirect costs of the entertainment provided.

The casino is, therefore, entitled to deduct input tax on all goods or services acquired for the purposes of supplying the gambling service which includes the acquisition of slot machines, tables for card games such as blackjack and poker, roulette wheels, rental of the floor space, maintenance of the building and so forth. This deduction is subject to the requirements of sections 16, 17 and 20 being met.

(*b*) Prizes

The casino will be entitled to a deduction under section 16(3)(*d*) on the acquisition of entertainment that is awarded as a prize as a result of a bet being placed and such placing of the bet is a supply under section 8(13). In these instances, however, the deduction will be limited to the VAT incurred on the initial acquisition of such entertainment. In addition, this deduction can only be made in the tax period in which such entertainment is awarded as a prize. In order for a vendor to make a deduction on the acquisition of such entertainment, there must be a direct link to a supply that originated under section 8(13). The deduction in this circumstance must be substantiated by a tax invoice.

Example 3 – VAT implications of a prize awarded

Facts:

Joe Soap's Casino makes only taxable supplies and is a registered vendor for VAT purposes. Its activities include the supply of betting transactions, accommodation, meals and beverages. On 23 January 2014, a client of Joe Soap's Casino won the jackpot and, in addition, was awarded free accommodation for a weekend at a hotel of Lucky's choice. The client elected to spend this free weekend at the Leisure Hotel, a hotel that is not owned by Joe Soap's Casino. Joe Soap's Casino incurred the cost of such accommodation and received a tax invoice from the Leisure Hotel.

Result:

By participating in the jackpot, the client had to place a bet. Joe Soap's Casino is deemed to have made a supply under section 8(13) and is entitled to deduct an amount, under section 16(3)(*d*), for the accommodation acquired from Leisure Hotel as the prize is directly linked to the supply contemplated in section 8(13) by Joe Soap's Casino.

It is common practice for casinos to hold promotional competitions where there is no entry fee payable to participate in such competitions. At the time of issue of this Note, a draft Interpretation Note dealing with the provisions of section 8(13) has been published. Upon finalisation of the said draft Note, this Note will be updated accordingly.

If a prize, being entertainment, is awarded and there is no direct link to a supply contemplated in section 8(13), the normal rules relating to entertainment must be followed in order to determine the deductibility of input tax on such acquisitions.

(*c*) In-house entertainment

Casinos operating its own hotels, restaurants, bars or other food and beverage outlets on the premises (that is, all activities are registered under one VAT registration number) are entitled to input tax on goods or services acquired for the purpose of use, consumption or supply in the course of making a taxable supply of such accommodation, food and beverages. This is conditional on the restaurant, bar or other food and beverage outlet on the premises charging a specific consideration for such supply and the consideration charged covering all direct and indirect costs or is equal to the open market value of the supply. The exception to this rule is where the casino makes a supply for no consideration under a *bona fide* promotion. Importantly, the supply of the promotional entertainment of goods or services must be to clients or customers of the casino and the goods or services must in all respects be similar to the entertainment continually or regularly supplied to clients and customers of the casino for a consideration.

In this instance, the casino supplying accommodation, food or beverages to its clients or customers, free of charge, will be entitled to deduct input tax on the acquisition of such accommodation, food or beverages provided to punters (being clients or customers of the casino) free of charge, as it normally supplies accommodation, food or beverages for a consideration. Such entertainment is viewed as being provided as a *bona fide* promotion by the casino and the goods or services are in all respects similar to the entertainment continually or regularly supplied to clients and customers of the casino for a consideration.

In addition, a casino that awards a prize, being entertainment, and there is no direct link to a supply contemplated in section 8(13), will be entitled to deduct input tax, under section 16(3)(*a*) read with section 17(2)(*a*), on such acquisitions as such entertainment is provided as a *bona fide* promotion by the casino. This deduction is subject to the requirements of sections 16, 17 and 20 being met.

Example 4 – VAT implications of a prize due to promotional event by a casino

Facts:

Lady Luck Casino makes only taxable supplies and is a registered vendor for VAT purposes. Its activities include the supply of betting transactions, accommodation, meals and beverages for a consideration. Betright, a client of Lady Luck Casino was the 1 000th patron to enter the casino and was awarded a free meal for two at the Lady Luck Casino's restaurant.

Result:

Lady Luck Casino is entitled to deduct input tax on the free meal supplied to Betright as the free meal provided is a *bona fide* promotion as contemplated in section 17(2)(*a*).

Example 5 – VAT implications of a prize due to promotional event by a casino

Facts:

Lady Luck Casino makes only taxable supplies and is a registered vendor for VAT purposes. Its activities include the supply of betting transactions, accommodation, meals and beverages for a consideration. Betright, a client of Lady Luck Casino won the lucky draw hosted by the casino and was awarded free accommodation for a weekend at a hotel of Betright's choice. Betright did not pay any entrance fee to participate in this lucky draw and was entered into the lucky draw as a consequence of him previously spending a night at the Lady Luck Casino's hotel. Betright elected to spend this free weekend at the Seventh Heaven Hotel, a hotel that is not owned by Lady Luck Casino. In this regard, Lady Luck Casino incurred the cost of such accommodation and received a tax invoice from the Seventh Heaven Hotel.

Result:

Lady Luck Casino is entitled to deduct input tax on the tax invoice received from the Seventh Heaven Hotel as the free accommodation provided is a *bona fide* promotion as contemplated in section 17(2)(*a*).

(*d*) Outsourced entertainment

The casino will not be allowed an input tax deduction on the accommodation, food or beverages provided to punters free of charge, if the casino rents space on its premises to third parties to operate the hotel, bars, restaurants or fast food outlets, and the casino does not operate any hotel, food and beverage outlets on the premises as an enterprise activity for its own account, as it does not normally supply accommodation, food or beverages for a consideration to its clients. In these circumstances, the aforementioned entities would all be registered separately from the casino for VAT purposes.

It therefore follows that the casino, which does not supply entertainment that is similar in all respects for a consideration to its clients or customers in awarding a prize, being entertainment, and where there is no direct link to a supply contemplated in section 8(13), will not be entitled to deduct input tax on acquisition of such prizes.

Example 6 – VAT implication of prize (meal) due to a promotional event by a casino

Facts:

Lady Luck Casino makes only taxable supplies and is a registered vendor for VAT purposes. Its only activity is the supply of betting transactions. Betright, a client of Lady Luck Casino was the 1 000th patron to enter the casino and was awarded a free meal for two at the Meaty Restaurant (that is, a restaurant not owned by Lady Luck Casino). In this regard, Lady Luck Casino incurred the cost of such meal and received a tax invoice from the Meaty Restaurant.

Result:

Lady Luck Casino is **not** entitled to deduct input tax on the meal supplied to Betright by Meaty Restaurant as there is no link to the supply contemplated in section 8(13).

Example 7 – VAT implications of a prize (accommodation) due to a promotional event by a casino

Facts:

Lady Luck Casino makes only taxable supplies and is a registered vendor for VAT purposes. Its only activity is the supply of betting transactions. Betright, a client of Lady Luck Casino was awarded free accommodation for a weekend at a hotel of Betright's choice. This was awarded to Betright as reward for loyalty to the casino. Betright elected to spend this free weekend at the Leisure Hotel, a hotel that is not owned by Lady Luck Casino. In this regard, Lady Luck Casino incurred the cost of such accommodation and received a tax invoice from the Leisure Hotel.

Result:

Lady Luck Casino is **not** entitled to deduct input tax on the tax invoice received from the Leisure Hotel as there is no link to the supply contemplated in section 8(13).

3.3.4 Motor cars

Under section 17(2)(*c*), a vendor is entitled to deduct input tax on the acquisition of a motor car that is acquired for the purpose of awarding the motor car as a prize. This prize must be awarded as a result of a bet being placed and such bet being a deemed supply under section 8(13). The deduction in this regard will be limited to the VAT incurred on the initial acquisition of the motor car and can only be deducted in the tax period in which the motor car is awarded as a prize. This prohibits vendors acquiring the motor car at a lower price and then deducting input tax on such motor car at a higher value (that is, the input tax deduction is limited to the VAT that was actually incurred).

Example 8 – VAT implications of a motor car acquired to be awarded as a prize

Facts:

Joe Soap's Casino, on 1 February 2013, acquires a motor car in an arm's length transaction at 10% below the market value (that is, R205 200 including VAT) for the purposes of awarding it as a prize to a successful punter playing on its "Car Mania" slot machines. The motor car is awarded as a prize on 15 June 2013 on the outcome of a betting transaction when the market value is R228 000.

Result:

Joe Soap's Casino is entitled to a deduction under section 16(3)(*d*) on the amount paid for the motor car (that is, R205 200 × 14 / 114) in the tax period covering 15 June 2013.

Example 9 – VAT implications of a motor car acquired to be awarded as a prize

Facts:

Joe Soap's Casino, on 1 February 2013, acquires 10 motor cars in an arm's length transaction at 10% below the market value (that is, R205 200 each including VAT) for the purposes of awarding the motor cars as prizes to successful punters playing on its "Car Mania" slot machines. The 10 motor cars are awarded as prizes on the following dates when the market value is R228 000:

Car 1	21 February 2013
Car 2	23 February 2013
Car 3	10 March 2013
Car 4	25 March 2013
Car 5	1 April 2013
Car 6	April 2013
Car 7	27 April 2013
Car 8	1 May 2013
Car 9	31 May 2013
Car 10	7 June 2013

Result:

Joe Soap's Casino is, under section 16(3)(*d*), entitled to a deduction of R25 200 (that is, R205 200 × 14 / 114) on each car which is limited to the amount paid for the motor cars in the following tax periods:

Car 1	February 2013
Car 2	February 2013
Car 3	March 2013
Car 4	March 2013
Car 5	April 2013
Car 6	April 2013
Car 7	April 2013
Car 8	May 2013
Car 9	May 2013
Car 10	June 2013

3.3.5 Wide Area Progressive Jackpots (WAPJ)

Under the WAPJ system, various casinos in the same group of companies will each allocate a fixed percentage of their gross gaming revenue (GGR) earned from certain slot machines on its premises towards a provision for the WAPJ. Gaming legislation compels the casinos participating in the WAPJ to appoint either one casino or an outside party as the WAPJ administrator.

The WAPJ administrator collects the provisions of gross gaming revenue from each casino and deposits the money in a separate trust account. A punter can win the WAPJ by playing on the designated slot machines on the premises of any of the casinos participating in the WAPJ. The respective casinos will be interconnected electronically. The WAPJ, when won as a prize or winnings, will be paid out to the punter by the participating casino where the WAPJ is won. The WAPJ administrator will reimburse the casino making the pay-out from the pool of money allocated to the WAPJ.

For VAT purposes, the activities of the WAPJ administrator do not fall within the ambit of "enterprise" as defined in section 1(1). Accordingly, the WAPJ administrator cannot register as a "vendor" for VAT purposes. The contributions paid by casinos (that is, which will ultimately be paid as a prize) to the WAPJ administrator will not have any VAT implications until such time that the WAPJ is paid out as a prize. Only once the WAPJ is paid out as a prize, will the respective casinos be entitled to a deduction under section 16(3)(*d*) limited to the tax fraction of the amount contributed to the WAPJ in the tax period when the WAPJ is paid out.

Example 10 – VAT implications of pay-out of winnings by WAPJ

Facts:

Casino 1, Casino 2 and Casino 3 are individual legal entities separately registered as vendors for VAT purposes. The three casinos enter into an agreement to operate a WAPJ. Under this agreement, the three entities are required to contribute a percentage of their revenue to the WAPJ pool. For the duration of this agreement, the contributions by each casino to the WAPJ pool are as follows:

	R
Casino 1	570 000
Casino 2	456 000
Casino 3	912 000

On 1 December 2013, the WAPJ was won at Casino 3 and an amount of R1 938 000 was paid out to the successful punter.

Result:

There will be no VAT implications for the three casinos concerned on their contributions to the WAPJ pool until such time the WAPJ is won. When the WAPJ is won, each casino will be entitled to a deduction under section 16(3)(*d*) on their contributions to the WAPJ at the end of the tax period covering the date of 1 December 2013, as follows:

	R
Casino 1 (R570 000 × 14 / 114)	70 000
Casino 2(R456 000 × 14 / 114)	56 000
Casino 3 (R912 000 × 14 / 114)	112 000

Casino 3 will not be entitled to a deduction under section 16(3)(*d*) on the full amount of the WAPJ paid (that is, R1 938 000) to the successful punter.

4. Conclusion

This Note sets out the VAT implications of the various supplies made by and to a vendor in the gambling industry. It contains, for ease of reference, an extract from Binding General Ruling No. 13, which allows VAT to be calculated using the net drop method, subject to certain conditions being met.

Should any person require further clarity on any of the matters dealt with in this Note, it is recommended that an application for a VAT ruling be made as envisaged in section 41B read with Chapter 7 of the Tax Administration Act No. 28 of 2011 (the TA Act). A VAT 301 application form together with supporting documents should be submitted to SARS by email to **VATRulings@sars.gov.za** or facsimile on 086 540 9390. The application should be headed “Application for a VAT Class Ruling” or “Application for a VAT Ruling" and it must meet all the requirements as set out in section 79 of the TA Act.

Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE
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Annexure A – The law

Section 1(1) – Definitions

"consideration", in relation to the supply of goods or services to any person, includes any payment made or to be made (including any deposit on any returnable container and tax), whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods or services, whether by that person or by any other person, but does not include any payment made by any person as a donation to any association not for gain: Provided that a deposit (other than a deposit on a returnable container), whether refundable or not, given in respect of a supply of goods or services shall not be considered as payment made for the supply unless and until the supplier applies the deposit as consideration for the supply or such deposit is forfeited; "consideration in money" includes consideration expressed as an amount of money;

"enterprise" means—

(*a*) in the case of any vendor other than a local authority, any enterprise or activity which is carried on continuously or regularly by any person in the Republic or partly in the Republic and in the course or furtherance of which goods or services are supplied to any other person for a consideration, whether or not for profit, including any enterprise or activity carried on in the form of a commercial, financial, industrial, mining, farming, fishing or professional concern or any other concern of a continuing nature or in the form of an association or club;

"input tax", in relation to a vendor, means—

(*a*) tax charged under section 7 and payable under that section by—

(i) a supplier on the supply of goods or services made by that supplier to the vendor; or

(ii) the vendor on the importation of goods by him; or

(iii) the vendor under the provisions of section 7(3);

…

where the goods or services concerned are acquired by the vendor wholly for the purpose of consumption, use or supply in the course of making taxable supplies or, where the goods or services are acquired by the vendor partly for such purpose, to the extent (as determined in accordance with the provisions of section 17) that the goods or services concerned are acquired by the vendor for such purpose;

"services" means anything done or to be done, including the granting, assignment, cession or surrender of any right or the making available of any facility or advantage, but excluding a supply of goods, money or any stamp, form or card contemplated in paragraph (*c*) of the definition of "goods";

Section 8(13) and (13A) – Certain supplies of goods or services deemed to be made or not made

(13) For the purposes of this Act, where any person bets an amount on the outcome of a race or on any other event or occurrence, the person with whom the bet is placed shall be deemed to supply a service to such first-mentioned person.

(13A) For the purposes of this Act, except section 16(3), where any vendor who makes taxable supplies of services contemplated in subsection (13) of this section, receives any amount paid by any other vendor as a prize or winnings in consequence of a supply of such services made by the last-mentioned vendor to the first-mentioned vendor, the first-mentioned vendor shall be deemed to supply a service to the last-mentioned vendor.

Section 9(3)(*e*) – Time of supply

(3) Notwithstanding anything in subsection (1) or (2) of this section—

…

(*e*) where any supply of a service is deemed to be made as contemplated in section 8 (13), the service shall be deemed to be supplied to the extent that payment of any amount of the bet is made, and each such supply shall be deemed to take place whenever any payment in respect of such supply is received by the supplier;

Section 16(3) – Calculation of tax payable

(3) Subject to the provisions of subsection (2) of this section and the provisions of sections 15 and 17, the amount of tax payable in respect of a tax period shall be calculated by deducting from the sum of the amounts of output tax of the vendor which are attributable to that period, as determined under subsection (4), and the amounts (if any) received by the vendor during that period by way of refunds of tax charged under section 7(1)(*b*) and (*c*) and 7(3)(*a*), the following amounts, namely—

(*a*) …

Provided that this paragraph does not apply where a vendor acquires goods or services that are to be awarded as a prize or winnings and in respect of which that vendor qualifies or will qualify for a deduction under paragraph (*d*);

(*b*) …

Provided that this paragraph does not apply where a vendor acquires goods or services that are to be awarded as a prize or winnings and in respect of which that vendor qualifies or will qualify for a deduction under paragraph (*d*);

…

(*d*) an amount equal to the tax fraction of any amount paid during the tax period by the supplier of the services contemplated in section 8(13) as a prize or winnings to the recipient of such services: Provided that where the prize awarded constitutes either goods or services, input tax must be limited to the tax incurred on the initial cost of acquiring those goods or services;

(*e*) an amount equal to the tax fraction of any amount of tax on totalizator transactions or tax on betting levied and paid for the benefit of any Provincial Revenue Fund by the supplier of the services contemplated in section 8(13);

Section 17(2) – Permissible deductions in respect of input tax

(2) Notwithstanding anything in this Act to the contrary, a vendor shall not be entitled to deduct from the sum of the amounts of output tax and refunds contemplated in section 16(3), any amount of input tax—

(*a*) in respect of goods or services acquired by such vendor to the extent that such goods or services are acquired for the purposes of entertainment: Provided that this paragraph shall not apply where—

…

(ix) that entertainment is acquired by the vendor for the purpose of awarding that entertainment as a prize contemplated in section 16(3)(*d*) in consequence of a supply contemplated in section 8(13).

(*c*) in respect of any motor car supplied to or imported by the vendor: Provided that –

(i) this paragraph shall not apply where such motor car is acquired by the vendor exclusively for the purpose of making a taxable supply of such motor car in the ordinary course of an enterprise which continuously or regularly supplies motor cars, whether such supply is made by way of sale or under an instalment credit agreement or by way of rental agreement at an economic rental consideration;

(ii) for the purposes of this paragraph a motor car acquired by such vendor for demonstration purposes or for temporary use prior to a taxable supply by such vendor shall be deemed to be acquired exclusively for the purpose of making a taxable supply;

(iii) this paragraph shall not apply where –

(*aa*) that motor car is acquired by the vendor for the purposes of awarding that motor car as a prize contemplated in section 16(3)(*d*) in consequence of a supply contemplated in section 8(13);

Section 72 – Arrangements and deci sions to ov ercome d ifficulties, anom alies or incongruities

If in any case the Commissioner is satisfied that in consequence of the manner in which any vendor or class of vendors conducts his or their business, trade or occupation, difficulties, anomalies or incongruities have arisen or may arise in regard to the application of any of the provisions of this Act, the Commissioner may make an arrangement or give a direction as to—

(*a*) the manner in which such provisions shall be applied; or

(*b*) the calculation or payment of tax or the application of any rate of zero per cent or any exemption from tax provided in this Act,

in the case of such vendor or class of vendors or any person transacting with such vendor or class of vendors as appears to overcome such difficulties, anomalies or incongruities: Provided that such direction or arrangement shall not have the effect of substantially reducing or increasing the ultimate liability for tax levied under this Act