

DRAFT INTERPRETATION NOTE

DATE:

ACT : VALUE-ADDED TAX ACT NO. 89 OF 1991
SECTIONS : SECTIONS 8(13), 9(3)(e), 10(17) and 16(3)(d)
SUBJECT : THE VALUE-ADDED TAX TREATMENT OF BETS

Preamble

In this Note unless the context indicates otherwise –

- “**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 what constitutes a bet and the concomitant value-added tax (VAT) treatment of bets.

2. Background

Vendors operate various competitions that provide participants (subject to competition rules) with the opportunity to win prizes or awards. Entry to these competitions may be in the form of a purchased entry, free entry or free entry subject to the purchase of specified goods or services.

The issue at hand is whether or not the free entry to these competitions constitute a “bet” on the outcome of an event for purposes of section 8(13). Should the provisions of section 8(13) apply, vendors are entitled to a deduction determined in accordance with section 16(3)(d) for the prizes or awards given to competition winners.

3. The law

For ease of reference the relevant sections of the VAT Act are quoted in the **Annexure**.

4. Application of the law

4.1 Supply of betting services

The supply of betting transactions in South Africa by a vendor is subject to VAT. In this regard, section 8(13) deems a vendor to supply a service to any person who places a bet with such vendor on the outcome of an event or occurrence.

The supply of the betting services by the vendor is, under section 9(3)(e), deemed to take place to the extent that payment of any amount for the bet is received. In the event that there are multiple payments received in relation to the supply of the bet, the supply of the betting services will be deemed to take place each time a payment

is received. Output tax must therefore be declared to the extent that payment is received.

The value to be placed on this supply is, under section 10(17), the consideration in money received for the bet.

The above can be summarised as follows:

- Betting services are taxable supplies and output tax must be accounted for when payment is received;
- A supply is deemed to take place when and to the extent payment for the betting service is received and if multiple payments are received, then each payment is consideration received for a separate supply of betting services;
- The value to be placed on the supply of betting services is the amount of money received for that supply; and
- Output tax payable is calculated by applying the tax fraction (14/114) to the amount received.

4.2 Deductions on prizes and winnings

The vendor is under section 16(3)(d) entitled to deduct an amount, calculated by applying the tax fraction to any amount of money paid as a prize or winnings in relation to a supply of betting services.

An input tax deduction on goods or services acquired for the purpose of awarding goods or services as a prize or winnings is specifically excluded by the proviso to section 16(3)(a) insofar as the vendor qualifies for a deduction under section 16(3)(d). The proviso to section 16(3)(d) limits the deduction to input tax on the initial cost of the goods or services acquired to be awarded as a prize.

4.3 Other governing legislation

The ordinary meaning of a “bet”¹ is the act of risking a sum of money to predict the outcome of an event. Importantly, in the South African context, there are statutes that govern betting transactions. For the purpose of contextualising the use of the term “bet” in section 8(13), consideration must be given to these statutes.

4.3.1 The National Lotteries Act and the National Gambling Act

The National Lotteries Act No. 57 of 1997 (Lotteries Act) and the National Gambling Act No. 33 of 1996 (Gambling Act) regulate betting or gambling transactions in South Africa. Effectively, every betting transaction conducted in South Africa must comply with either of these acts. Accordingly, betting transactions falling within these acts will be regarded as a bet for purposes of section 8(13).

¹ www.oxforddictionaries.com [Accessed 11 March 2014].

4.3.2 The Consumer Protection Act

Promotional competition

The ordinary meaning of “competition”² is any event in which people compete, which would generally be in the form of a game of skill or a contest to be chosen as a lucky winner. Promotional competitions are regulated under section 36 of the Consumer Protection Act No. 68 of 2008 (the CPA). Section 36 of the CPA defines a “promotional competition” as –

“any competition, game, scheme, arrangement, system, plan or device for distributing prizes by lot or chance if—

- (a) it is conducted in the ordinary course of business for the purpose of promoting a producer, distributor, supplier, or association of any such persons, or the sale of any goods or services; and
- (b) any prize offered exceeds the threshold prescribed in terms of subsection (11),

irrespective of whether a participant is required to demonstrate any skill or ability before being awarded a prize”.

Under section 36(3)(a) of the CPA, a promoter of a promotional competition must not require any consideration to be paid by a participant exceeding that of the reasonable cost of posting or otherwise transmitting an entry form. In order to determine when consideration is charged in excess of the reasonable costs, section 36(4) of the CPA provides further clarity regarding the prohibition, but without limiting the generality of the requirement, of when a promoter is regarded as having received consideration –

- “(a) a participant is required to pay any consideration, directly or indirectly, for the opportunity to participate in the promotional competition, for access to the competition or for any device by which a person may participate in the competition; or
- (b) participation in the promotional competition requires the purchase of any goods or services, and the price charged for those goods or services is more than the price, excluding discounts, ordinarily charged for those or similar goods or services without the opportunity of taking part in a promotional competition”.

Regulation 1(1) to the CPA currently limits the reasonable cost of electronically transmitted entries to R1,50 (one rand and fifty cents) for promotional competitions.

Any consideration charged for a promotional competition which is in excess of the reasonable cost of entry, is not a promotional competition as governed by section 36 of the CPA. Based on the abovementioned, consideration (that is, charges to cover the cost of posting or otherwise transmitting an entry form) paid for entry into promotional competitions that are governed under section 36 of the CPA does not constitute a bet for purposes of section 8(13). The consideration, that is, up to a maximum of R1,50 received, is for the supply of the administration services supplied by the operator of these promotional competitions to cover the cost of operating the competitions. The administration service is a supply of services for VAT purposes and output tax must be levied and accounted for by the operator under section 7(1)(a) if the operator is a vendor.

² www.oxforddictionaries.com [Accessed 11 March 2014].

5. Conclusion

Betting transactions falling within the National Lotteries and Gambling Acts will be regarded as a bet for purposes of section 8(13). As a result the vendor would be required to account for output tax as the supply would be subject to VAT under section 7(1)(a).

Consideration charged (that is, charges to cover the cost of posting or otherwise transmitting an entry form) for entrance into promotional competitions falling within section 36 of the CPA, is not a bet as envisaged by section 8(13). The consideration charged will be payment received for the supply of the administration services supplied by the operator of these promotional competitions which services are taxable under section 7(1)(a).

Competitions that do not qualify as promotional competitions (including competitions charging costs which are in excess of the reasonable costs contemplated in the CPA) may fall within the ambit of the Lotteries Act. Should the competition fall within the Lotteries Act, the person is supplying a betting service contemplated in section 8(13).

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SOUTH AFRICAN REVENUE SERVICE

Annexure – 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;

“**input tax**”, in relation to a vendor, means—

- (a) tax charged under section 7 and payable in terms of 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);
- (b) an amount equal to the tax fraction (being the tax fraction applicable at the time the supply is deemed to have taken place) of the lesser of any consideration in money given by the vendor for or the open market value of the supply (not being a taxable supply) to him by way of a sale on or after the commencement date by a resident of the Republic (other than a person or diplomatic or consular mission of a foreign country established in the Republic that was granted relief, by way of a refund of tax as contemplated in section 68) of any second-hand goods situated in the Republic; and
- (c) an amount equal to the tax fraction of the consideration in money deemed by section 10(16) to be for the supply (not being a taxable supply) by a debtor to the vendor of goods repossessed under an instalment credit agreement: Provided that the tax fraction applicable under this paragraph shall be the tax fraction applicable at the time of supply of the goods to the debtor under such agreement as contemplated in section 9(3)(c),

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;

Section 7 – Imposition of value-added tax

(1) Subject to the exemptions, exceptions, deductions and adjustments provided for in this Act, there shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the value-added tax—

- (a) on the supply by any vendor of goods or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him;

Section 8 – 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.

Section 9 – Time of supply

(3) ...

.....

(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 10 – Value of supply of goods or services

(17) Where a service is deemed by section 8(13) to be supplied to any person, the consideration in money for such supply shall be deemed to be the amount that is received in respect of the bet.

Section 16 – Calculation of tax payable

(1)

(2)

(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 in terms of 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 or winnings awarded constitutes either goods or services, the deduction must be limited to the input tax on the initial cost of acquiring those goods or services;

Section 17 – Permissible deductions in respect of input tax

(1) Where goods or services are acquired or imported by a vendor partly for consumption, use or supply (hereinafter referred to as the intended use) in the course of making taxable supplies and partly for another intended use, the extent to which any tax which has become payable in respect of the supply to the vendor or the importation by the vendor, as the case may be, of such goods or services or in respect of such goods under section 7(3) or any amount determined in accordance with paragraph (b) or (c) of the definition of “input tax” in section 1, is input tax, shall be an amount which bears to the full amount of such tax or amount, as the case may be, the same ratio (as determined by the Commissioner in accordance with a ruling as contemplated in Chapter 7 of the Tax Administration Act or section 41B) as the intended use of such goods or services in the course of making taxable supplies bears to the total intended use of such goods or services: Provided that—

.....

- (i) where the intended use of goods or services in the course of making taxable supplies is equal to not less than 95 per cent of the total intended use of such goods or services, the goods or services concerned may for the purposes of this Act be regarded as having been acquired wholly for the purpose of making taxable supplies;
- (ii) where goods or services are deemed by section 9(3)(b) to be successively supplied, the extent to which the tax relating to any payment referred to in that section is input tax may be estimated where the calculation cannot be made accurately until the completion of the supply of the goods or services, and in such case such estimate shall be adjusted on completion of the supply, any amount of input tax which has been overestimated being accounted for as output tax in the tax period during which the completion occurs and any amount of input tax which has been underestimated being accounted for as input tax in that period; and
- (iii) where a method for determining the ratio referred to in this subsection has been approved by the Commissioner, that method may only be changed with effect from a future tax period, or from such other date as the Commissioner may consider equitable and such other date must fall—
 - (aa) in the case of a vendor who is a taxpayer as defined in section 1 of the Income Tax Act, within the year of assessment as defined in that Act, or
 - (bb) in the case of a vendor who is not a taxpayer as defined in section 1 of the Income Tax Act, within the period of twelve months ending on the last day of February, or if such vendor draws up annual financial statements in respect of a year ending other than on the last day of February, within that year,during which the application for the aforementioned method was made by the vendor.

Section 20 – Tax invoices

(4) Except as the Commissioner may otherwise allow, and subject to this section, a tax invoice (full tax invoice) shall be in the currency of the Republic and shall contain the following particulars:

- (a) The words “tax invoice” in a prominent place;
- (b) the name, address and VAT registration number of the supplier;
- (c) the name, address and, where the recipient is a registered vendor, the VAT registration number of the recipient;
- (d) an individual serialized number and the date upon which the tax invoice is issued;
- (e) full and proper description of the goods (indicating, where applicable, that the goods are second-hand goods) or services supplied;
- (f) the quantity or volume of the goods or services supplied;

- (g) either—
- (i) the value of the supply, the amount of tax charged and the consideration for the supply; or
 - (ii) 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 the tax charged, or a statement that it includes a charge in respect of the tax and the rate at which the tax was charged:

Provided that the requirement that the consideration or the value of the supply, as the case may be, shall be in the currency of the Republic shall not apply to a supply that is charged with tax under section 11.