



# Legal & Policy

## Value-Added Tax

### VAT 412

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### Guide for Share Block Schemes

## Preface

The VAT 412 is a general guide concerning the application of the Value-Added Tax Act 89 of 1991 (the VAT Act) to share block schemes in South Africa. Although fairly comprehensive, the guide does not deal with all the legal detail associated with VAT and is not intended for legal reference. For details about the general operation of VAT, refer to the *VAT 404 – Guide for Vendors* which is available on the South African Revenue Service (SARS) website ([www.sars.gov.za](http://www.sars.gov.za)).

References to “sections” are to sections of the VAT Act, unless the context indicates otherwise. The Tax Administration Act 28 of 2011 is referred to as the “Tax Administration Act”. The terms “Republic”, “South Africa” or the abbreviation “RSA”, are used interchangeably in this document as a reference to the sovereign territory of the Republic of South Africa, as set out in the definition of “Republic” in section 1(1). The terms “Commissioner” and “Minister” refer to the Commissioner for SARS and the Minister of Finance respectively, unless indicated otherwise. A number of specific terms used throughout the guide are defined in the VAT Act and the Tax Administration Act. These terms and others are listed in the **Glossary** in a simplified form.

The information in this guide is based on the VAT Act (as amended) and the Tax Administration Act (as amended) at the time of publishing, up to and including the -

- Taxation Laws Amendment Act 25 of 2015 as promulgated on 8 January 2016 (as per GG 39588); and
- Tax Administration Laws Amendment Act 23 of 2015 as promulgated on 8 January 2016 (as per GG 39586).

There are various other guides available on the **SARS website** which may be referred to for more information relating to the specific VAT topics. Refer to the *VAT 404 – Guide for Vendors* for a list of the various guides published.

This guide is not an “official publication” as defined in section 1 of the Tax Administration Act and accordingly does not create a practice generally prevailing in section 5 of that Act.

All previous editions of the VAT 412 are withdrawn with effect from 24 March 2016.

Should there be any aspects relating to VAT which are not clear or not dealt with in this guide, or should you require further information or a specific ruling on a legal issue, you may –

- contact your local SARS branch;
- visit the SARS website at [www.sars.gov.za](http://www.sars.gov.za);
- contact your own tax advisors;
- contact the SARS National Call Centre –
- if calling locally, contact the SARS National Call Centre on 0800 00 7277; or
- if calling from abroad, contact the SARS National Call Centre on +27 11 602 2093; or
- submit legal interpretative queries on the Tax Administration Act by e-mail to [TAAInfo@sars.gov.za](mailto:TAAInfo@sars.gov.za);

- submit a ruling application to SARS headed “Application for a VAT Class Ruling” or “Application for a VAT Ruling” together with the VAT301 form by e-mail to **VATRulings@sars.gov.za** or by facsimile on +27 86 540 9390.

Comments on this guide may be emailed to **policycomments@sars.gov.za**.

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24 March 2016

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# Chapter 1

## Introduction

### 1.1 Scope of topics

This guide deals with the VAT implications of share block schemes in South Africa and the various types of supplies related to these schemes. The intention of this guide is not to cover each and every type of transaction that can take place, but rather to deal with the basic principles and their effect from a VAT point of view.

### 1.2 Approach of the guide

The approach of this guide is set out below.

**Chapter 1** – Describes the scope of topics that will be covered in the guide, as well as the approach adopted.

**Chapter 2** – Sets out the basic legal principles and explains the functioning of a share block scheme. It is important, for the purposes of this guide, to first understand the nature and operation of a share block scheme before dealing with the VAT consequences of the typical supplies which can be expected in such a scheme.

**Chapter 3** – Introduces the reader to the most important VAT concepts, definitions and other terms mentioned in the guide so that the VAT treatment of supplies which are explained in later chapters can be understood. Key points addressed in this chapter include an explanation of the terms, amongst others, “enterprise”, “supply”, “taxable supply” and the meaning of “fixed property”.

**Chapter 4** – Deals with how VAT should be accounted for in respect of the different types of supplies made by share block schemes. Sets out the general rules with regard to classifying supplies, record-keeping, invoicing and documentation required. It discusses the VAT treatment of the core transactions of a share block company in terms of the most recent amendments to the VAT Act.

**Chapter 5** – Provides a brief overview with subsequent VAT implications of the formation, conversion, termination or deregistration of a share block scheme. This is important since the termination, conversion or deregistration of a share block scheme may create a liability for VAT which is often overlooked.

**Annexure A** – Provides a brief overview of the historical changes to the VAT Act and other legislation as it relates to share block schemes. This information is included as an annexure to the guide as it provides a detailed analysis of the amendments and their effect on the various parties which may be involved in transactions relating to share block schemes without detracting from the purpose of this guide which is to explain the current VAT treatment.

### 1.3 Tax administration

The Tax Administration Act has brought about an enormous shift in the administration of all taxes in the RSA. It was promulgated on 4 July 2012 and came into effect on 1 October 2012, except for the provisions set out in Schedule 1 to the Tax Administration Act relating to interest as per Proclamation 51 dated 14 September 2012 (GG 35687).

The Tax Administration Act regulates the administration of all the tax Acts. The VAT Act must therefore be read together with the provisions of the Tax Administration Act (for example, both the Tax Administration Act and VAT Act contain requirements in respect of record keeping which must be complied with). This guide must therefore be read in the context of the Tax Administration Act and any public notices or proclamations issued in connection with any general tax administration matter.

Refer to the *VAT 404 – Guide for Vendors* for more details regarding the interaction between the VAT Act and the Tax Administration Act.

Further general information regarding the application of the Tax Administration Act can be obtained from the Tax Administration webpage on the **SARS website**.

## Chapter 2

### What is a share block scheme?

#### 2.1 Introduction

In terms of the Share Blocks Control Act 59 of 1980 (the Share Blocks Act), a company is presumed to operate a share block scheme if any share of that company confers a right to or an interest in the use of immovable property or any part thereof.

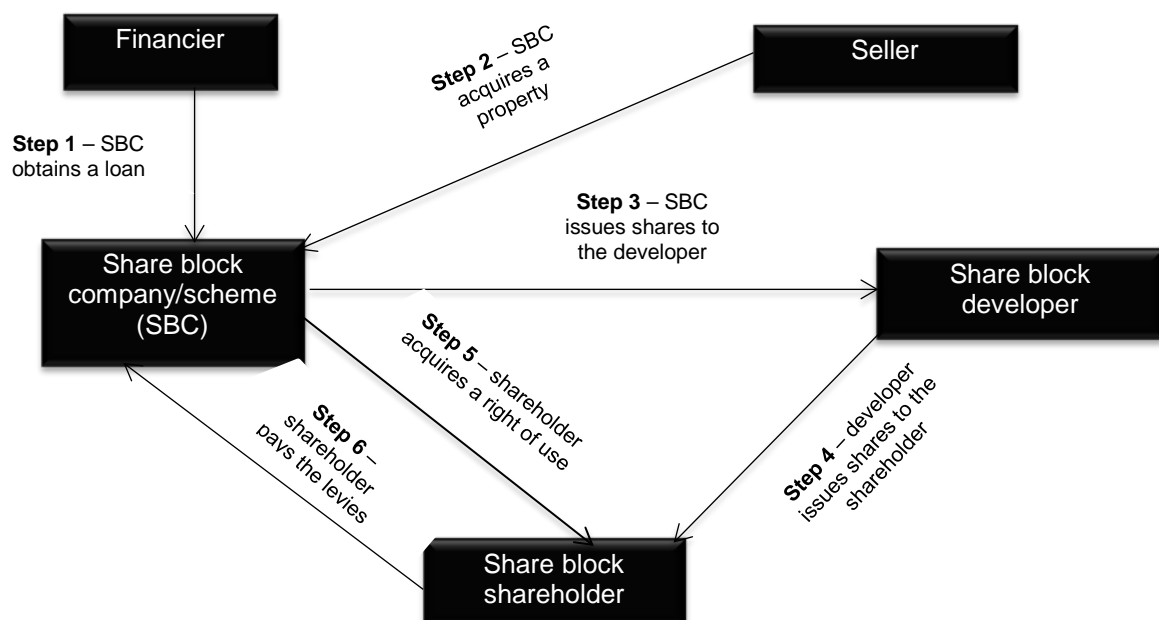
The Share Blocks Act, amongst others, -

- ensures that a prospective investor in a share block scheme is able to obtain all the necessary information to make an informed decision as to whether to invest in a share block company or not;
- regulates the operations of share block schemes and provides for certain matters connected therewith; and
- regulates the management of a share block scheme as well as the capacity and powers of the share block company and its directors to prevent misuse of the shareholder's investment.

#### 2.2 Synopsis of a share block scheme

Although several variations are possible, the functioning of a typical share block scheme may be summarised, for the purposes of this guide, in the following manner:

Diagram 1.



- The share block company obtains freehold title of the land/building from a seller, or rents the land/building (for example, by way of a 99 year notarial long-term lease), which is then marketed as a share block scheme.
- Normally a share block developer undertakes the development, although the share block company may decide to do the development itself or make use of a contractor. At the outset the share block developer takes transfer of all the share block company's issued share capital.



- The share block company's issued share capital is divided into share blocks. Each share block confers on the holder thereof the sole or exclusive right to occupy or use a distinct specified part or unit of the immovable property. The number and value of shares in a particular share block is normally in proportion to the size and value of the portion of the building which the shareholder will occupy in terms of the use agreement.
- If the share block company needs financing for the development, it may obtain such financing from an external source (for instance a commercial bank), or from the share block developer, or both. This loan obligation of the share block company is, as a rule, allocated in proportion to each share block.
- The shares in the share block company are then marketed either by the share block company or the share block developer.
- When a share in the share block company is purchased, the share is transferred into the purchaser's name (the shareholder) in the company share register and simultaneously, all rights and duties in terms of the use agreement are transferred to the shareholder.
- Each share sold to a shareholder will also include a pro-rata share of the credit loan account in the books of the share block company. The shareholder undertakes to discharge, in relation to the share block company, the pro-rata portion of the loan obligation as part of the purchase price of the share.
- The management of a share block company vests in the directors of the company. In large schemes, the board of directors will usually appoint a professional managing agent to deal with the day-to-day management of the scheme; the individual shareholders have no management powers. The directors' duties towards the company and its members are set out in Chapter II of the Companies Act 71 of 2008 (Companies Act).
- In terms of the use agreement, each shareholder will undertake to advance the pro-rata portion of the loan obligation to the company so that it can repay its debts. The manner in which the loan is advanced will also be stipulated in the use agreement, for example, in one lump sum or in instalments. During the life of the share block scheme, each shareholder accumulates a credit loan account in the books of the company as the loan obligation of the company is gradually reduced by way of the shareholder's contributions to the loan account. The shareholder is usually only entitled to repayment of his allocated loan if the company is wound up.
- The share in the share block company is commonly pledged where the shareholder of the share is not in a financial position to pay cash for the share. Consequently, the shareholder's right in respect of the loan obligation in relation to the share in the share block company is ceded back to the seller of the share up to and until the purchase price is paid in full.
- The shareholder only obtains a personal right regarding the use or occupancy of a part of the immovable property and not the ownership thereof. The share block company remains the lawful owner of the immovable property.

### 2.3 Share block schemes compared to sectional title schemes

Sectional title schemes are more common than share block schemes, probably because the rights in sectional title are real rights in property, whereas a share block scheme only confers personal rights of use and occupancy to the holders. The use of a company as the entity in

which a share block scheme operates provides additional security that the shareholders' rights will be protected by the provisions of the Companies Act.

The requirements for the marketing of a share block scheme are more lenient than those for sectional title and the rights of a shareholder are not registered in the deeds registry. This usually reduces the costs under a share block scheme and it is quicker and easier to effect transfer to the shareholder.

The Sectional Titles Act 95 of 1986 (Sectional Titles Act) requires an establishment of a sectional title scheme which is developed by the sectional title registered owner and also requires that certain legal requirements are met. One of the requirements is that a conveyancer must effect transfer into the purchaser's name in the deeds registry. This means that the purchaser under a sectional title scheme will usually be faced with higher transfer and administration costs.

Although the form of ownership under a share block scheme is different from sectional title, (shares vs real rights in immovable property), shareholders in a share block scheme are regarded, for all intents and purposes, as the "owners" of the underlying property to which their right of use relate. This is because the aim under a share block scheme is to place the shareholder, as far as possible, in the position of the owner.

The VAT Act and Transfer Duty Act 40 of 1949 (Transfer Duty Act) are therefore structured to take a similar approach. That is, irrespective of whether the supply concerned is a sectional title unit or a share in a share block company, the supplies are taxed in a similar manner under the respective Acts.

A further similarity in the tax treatment of share block companies and sectional title schemes under the VAT Act is the treatment of supplies made to members and shareholders which are funded from contributions to the levy fund. Usually these supplies will be exempt<sup>1</sup> unless the governing board of directors or the members of the body corporate elect to override the exemption and obtain written SARS' approval in that regard. Time-share schemes, whether conducted under a share block scheme or a sectional title scheme, do not qualify for this exemption.

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<sup>1</sup> Refer to section 12(f).

## Chapter 3

### VAT concepts, definitions and other terminology

#### 3.1 Time and value of supply

##### 3.1.1 Time of supply

The time of supply rules<sup>2</sup> establish the date that a supply occurs. These rules therefore have an impact on the tax period during which a vendor is –

- liable to declare the output tax; and
- entitled to deduct input tax (if the cost was incurred in the course or furtherance of the vendor's enterprise), provided that the recipient is in possession of a valid tax invoice or alternative documentation containing such information as is acceptable to the Commissioner.<sup>3</sup>

Generally, the time of supply is the earlier of the date an invoice is issued or any payment for the supply is received. This general rule will apply in most cases, but some supplies have a special time of supply rule which may deviate from the general rule. For example, the time of supply for the sale of shares in a share block company will be the same as that of fixed property, which is the earlier of the date of any payment of the consideration for the supply, or the date of the registration of the transfer of the property in the deeds registry.

Another example of a special time of supply rule which is important to discuss in the context of this guide, is when the supplier and the recipient are connected persons.<sup>4</sup> The supply of goods or services between connected persons is deemed to take place as follows:

- Goods to be removed are deemed to be supplied at the time of removal.
- Goods which are not to be removed are deemed to be supplied at the time the goods are made available to the recipient.
- Services are deemed to be supplied at the time the services are performed.

This deeming provision for connected persons will, however, not be applicable where –

- the supplier issues the invoice or receives payment for that supply on or before the day the supplier's VAT return is furnished (or is required to be furnished) for the tax period within which the supply was actually made; and
- the consideration or part thereof for the supply of goods or services cannot be determined on the date when the time of supply is deemed to take place for connected persons.<sup>5</sup>

For a more detailed discussion on the special rules relating to the time of supply on share block schemes, please refer to **4.4.1**.

##### 3.1.2 Value of supply

The value of the supply of goods or services is an amount that excludes VAT. The amount that includes VAT is referred to as "consideration". The calculation of the value of supply and the consideration (including standard-rated VAT charged at 14%) can be illustrated by using the formula:

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<sup>2</sup> Refer to section 9.

<sup>3</sup> Refer to the Binding General Ruling (BGR) and the Public Notice issued under section 16(2)(g).

<sup>4</sup> Defined in section 1(1).

<sup>5</sup> Refer to section 9(2)(a).

$$\begin{aligned} \text{VALUE} + \text{VAT} &= \text{CONSIDERATION} \\ \text{therefore} \\ \text{CONSIDERATION} - \text{VAT} &= \text{VALUE} \end{aligned}$$

The general rule for the value of a supply is the amount of consideration less so much of such amount as represents tax received for such supply. In cases where the consideration is not in money, the consideration will be the open market value of that consideration received.

As with the time of supply, there are special rules which may apply in certain cases for determining the value of the supply or the consideration. For example, the value of the supply of a share in a share block company is the sum of the consideration in money for the supply of the shares including any amount of the loan obligation that is allocated (under section 14 of the Share Blocks Act), delegated or transferred as envisaged in section 8(17).<sup>6</sup>

The normal value of supply rules also apply to connected persons. However, when a supply is made between connected persons for no consideration, for a consideration which is below the open market value or the whole of the consideration cannot be determined at the time of the supply,<sup>7</sup> the consideration for the supply is deemed to be equal to the open market value if the recipient would not have been entitled to a full input tax deduction on the goods or services acquired.

For a more detailed discussion on the special rules relating to the value of supply on share block schemes, refer to **4.4.2**.

Refer to the *VAT 404 – Guide for Vendors* for more details on the special time and value of supply rules.

### 3.2 Consideration

The term “consideration” in its simplest form means anything (money or otherwise) that is received in return for the supply of goods or services. It therefore includes for example, the cash payment in respect of the purchase price of goods, the giving of a post-dated cheque for the payment of services and the value of services received in return for providing goods under a barter transaction. However, specifically excluded from the ambit of consideration is a donation made to an association not for gain. Also, a “deposit” payment whether refundable or not, given in respect of a supply of goods or services is not regarded as payment made for the supply unless and until the supplier applies the deposit as consideration for the supply or the deposit is forfeited.

### 3.3 Enterprise

#### *Enterprise activities*

The term “enterprise” is one of the most significant concepts in the VAT Act, because –

- a person that does not conduct an enterprise cannot register for VAT; and
- only supplies made in the course or furtherance of carrying on an enterprise (referred to as taxable supplies) are subject to VAT.

A person is generally considered to be carrying on an enterprise if **all** of the following requirements are met, unless a specific inclusion or exclusion applies:

<sup>6</sup> Refer to section 10(4A).

<sup>7</sup> Refer to section 10(4).

- An **enterprise or activity** must be carried on **continuously or regularly** by a **person** in the **Republic** or partly in the Republic.
- In the course of the enterprise or activity, **goods** or **services** must be **supplied** to another person.
- There must be a **consideration** charged for the goods or services supplied.

The definition of “enterprise” specifically includes, amongst others, the activities of –

- any share block company; or
- supplying “commercial accommodation” where the total value of taxable supplies made in respect of that enterprise or activity in the preceding period of 12 months exceeds, or where it can reasonably be expected that the total value of taxable supplies will exceed, R120 000.<sup>8</sup>

#### *Non-enterprise activities*

Specifically excluded from the definition of “enterprise” is any activity that involves the making of exempt supplies, for example, the letting of a dwelling or the provision of financial services. Services supplied by a share block company to its shareholders in the course of managing the share block scheme are generally also exempt from VAT.

The shareblock company may however apply to the Commissioner in writing to direct that, having regard to the circumstances of the case, the exemption provided for in section 12(f) shall not apply. Where the shareblock company applies for the waiving of the exemption provided for in section 12(f), the Commissioner may direct that the exemption does not apply but only with effect from a future date (refer to **4.4.6**). A person that only makes exempt supplies will not be able to register for VAT.

#### **Registration**

In the event that a person conducts an enterprise and the value of taxable supplies made by that person in any 12-month period exceeds the compulsory VAT registration threshold of R1 million, the person is obliged to register for VAT.<sup>9</sup> Also where a person conducts an enterprise and in terms of a contractual obligation entered into in writing, the taxable supplies will exceed R1 million within 12 months, the person is required to register from the commencement of the contract. The term “taxable supplies” includes supplies which are subject to VAT at either the standard rate or zero rate (refer to **3.6**).

In cases where the value of taxable supplies is less than the compulsory VAT registration threshold, a person may apply for voluntary registration<sup>10</sup> if that person carries on an enterprise –

- by conducting the activities of any share block company (other than the services in respect of which section 12(f) applies); or
- the total value of taxable supplies made in the course of carrying on all enterprises in the preceding period of 12 months has exceeded R50 000; or
- the total value of taxable supplies made or to be made by that person has not exceeded R50 000 but can reasonably be expected to exceed that amount within

<sup>8</sup> Prior to 1 April 2016, the threshold for conducting an enterprise when supplying commercial accommodation was R60 000.

<sup>9</sup> Refer to section 23(1).

<sup>10</sup> Refer to section 23(3).

12 months from the date of registration, subject to the provisions of section 15(2B) and the regulation<sup>11</sup> made by the Minister in terms of the VAT Act; or

- which is a continuous and regular activity of a nature set out in any regulation<sup>12</sup> made by the Minister in terms of the VAT Act and in consequence of the nature of that activity is likely to make taxable supplies only after a period of time.

### 3.4 Goods, fixed property and second-hand goods

The term “goods” includes corporeal movable things, fixed property and any real right in such thing or fixed property. The definition basically refers to any tangible property and any real right in such tangible property, but excludes the supply of money and any right under a mortgage bond or pledge of any such thing or fixed property.

“Fixed property”, in turn, is defined to mean, amongst others, any share in a share block company which confers a right to or an interest in the use of immovable property and any real right in such share.

“Second-hand goods” includes goods which were previously owned and used. As the term “goods” also includes fixed property, if that property has been previously owned and used, it may also constitute second-hand goods. Paragraph (b) of the definition of second-hand goods includes a unit of a sectional title, where such unit is acquired by virtue of conversion of a share block share into a sectional title unit under Item 8 of Schedule 1 to the Share Blocks Act. Effectively, the supply of a newly created sectional title unit which is transferred to a shareholder as a result of the conversion of a share block share to a sectional title unit is a second-hand good for VAT purposes. Although such a newly created sectional title unit has not been used before as it has just been created, it relates to property used before.

It is necessary to determine whether goods are second-hand goods as the VAT Act may allow the deduction of notional input tax<sup>13</sup> even though no VAT was charged on the sale of the property. For example, if the vendor acquires property from a non-vendor who previously used the property, no VAT will be charged on the supply by the non-vendor but the vendor may deduct notional input tax should the property be used by the vendor in the course or furtherance of making taxable supplies.

### 3.5 Services and imported services

The term “services” is defined to mean anything done or to be done, resulting in a definition of wide inclusion. Therefore, anything that does not constitute “goods” or “money” will usually be “services”.

Imported services is –

- a supply of services;
- made by a supplier who is resident or carries on business outside the Republic;
- to a recipient who is a resident of the Republic;
- to the extent that such services are used or consumed in the Republic for non-taxable purposes.

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<sup>11</sup> Government Notice R447 on 29 May 2015 (in GG 38836).

<sup>12</sup> Government Notice R446 on 29 May 2015 (in GG 38836).

<sup>13</sup> Provided special documentary requirements are met.

Section 7(1)(c) imposes VAT on the supply of imported services, irrespective of whether the recipient is a vendor or not.

### 3.6 Supply and taxable supply

The term “supply” is defined very broadly and includes all forms of supply and any derivative of the term, irrespective of where the supply is affected. The term includes performance in terms of a sale, rental agreement, instalment credit agreement or barter transaction. The term also includes supplies which are made voluntarily (for example, a donation of goods or services) and those supplies which take place by operation of law (forced sales, expropriation etc.).

Supplies can be classified into two main types, namely, taxable supplies and non-taxable supplies. A taxable supply is any supply (including a deemed supply) of goods or services made by a vendor in the course or furtherance of an enterprise, which is potentially chargeable with VAT in terms of the VAT Act. Taxable supplies, are divided into standard-rated supplies which attract VAT at 14% and zero-rated supplies which attract VAT at 0%.

A non-taxable supply is a supply which is not subject to VAT in terms of the VAT Act. There are two types of non-taxable supplies, namely, exempt supplies and out-of-scope supplies.

Section 8 also provides for certain “deemed supplies”. These are events or transactions which are regarded as being included or excluded from the meaning of “supply”. For example, section 8(17) deems the allocation, delegation or transfer of a loan obligation to be a supply for purposes of the VAT Act. This means that if the share block company is a vendor and it increases its loan obligation and subsequently allocates this obligation to its shareholders, this increase and subsequent allocation to its shareholders is deemed to constitute a separate supply of a share in that share block company.<sup>14</sup> The VAT Act deems such an allocation to be the supply of a share even though an actual supply of a share has not taken place by the share block company. In a case where the share block company is not a vendor, the increase in the loan obligation and subsequent allocation to shareholders will have no VAT implications.

Should share block shares and their associated allocated loan obligations in a share block company be transferred between existing shareholders, or between an existing shareholder and a new incoming shareholder, a supply is not made by the share block company. The share block company merely records the change in shareholding and loan account in its records. In this case, the supply by the shareholder will be a taxable supply if that person is a vendor and the supply is made in the course or furtherance of that vendor’s enterprise. Otherwise, if the supply is not taxable in terms of the VAT Act, transfer duty may be payable by the purchaser. Section 12 contains a list of specific types of supplies of goods and services which are exempt. Examples include financial services (for example, the transfer of shares), the supply of a dwelling under an agreement for the letting and hiring thereof and certain services supplied in the course of the managing of a shareblock scheme by a share block company.

The supply of a share by a person who is not a vendor is an out-of-scope (non-taxable) supply. Similarly, the supply of a share in a share block company made by a vendor which is not in the course or furtherance of an enterprise is also a non-taxable supply which does not fall within the scope of the VAT Act. For example, if a VAT vendor is a shareholder in a share block scheme but uses the share block unit as a dwelling, the subsequent supply of

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<sup>14</sup> Refer to section 8(17)(b).

the share and the associated loan obligation by that vendor will be out-of-scope for VAT purposes.

Any payments received from activities which are not in respect of a supply to any other person are also non-taxable. These are sometimes referred to as “non-supplies”. An example of that is when dividends from investments are earned, or when any payment is received from the levying of certain statutory fines or penalties which serve as punishment for breaking rules.

### 3.7 Financial services

The VAT Act defines the concept “financial services” in section 2 which lists a number of activities which are deemed to be financial services for VAT purposes. Financial services are generally exempt from VAT under section 12(a), but certain financial services qualify to be charged with VAT at the rate of 0% in section 11 (in which case the zero rate takes precedence over the exemption).

The following are some examples of financial services which could be relevant in the context of share block schemes:

- The issue, allotment, drawing, acceptance, endorsement or transfer of ownership of a debt security.
- The issue, allotment or transfer of ownership of an equity security or a participatory security (for example, the sale of an interest in a close corporation, the creation and selling of company shares; and the sale of a share in a unit portfolio of a unit trust scheme).
- The provision of credit under an agreement – for example, the amount payable (that is, interest) for the provision of a home loan or an overdraft on a cheque account; and the finance charges (or any amount determined with reference to the time value of money)<sup>15</sup> on an instalment credit agreement (ICA).

An important exception, however, is that certain activities are deemed not to be financial services to the extent that there is a consideration payable in the form of a –

- fee;
- commission;
- merchant’s discount; or
- similar charge.

This means that the underlying supply of financial services itself is exempt, but any further fee charged by a vendor in connection with providing certain financial services (excluding an interest charge and a discounting cost) is a taxable supply.

For example, the following services are taxable under section 7(1)(a) and do not constitute exempt financial services:

- A document fee for providing credit in terms of an instalment credit agreement;
- Bank charges (excluding interest) for banking transactions such as debit orders, stop orders and deposits; and

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<sup>15</sup> This is applicable in respect of goods supplied on or after 1 January 2013.



- Debt collection fees.

Sections 2(3) and 2(4) specifically exclude certain instruments (for example, a share in a share block company) and transactions within the definitions of “debt security”, “equity security” and “participatory security” from the definition of “financial services”. For example, the issue or transfer of ownership of an equity security is a financial service,<sup>16</sup> but the transfer of shares and a loan obligation in a share block company is excluded from the definition of “financial services”.<sup>17</sup> The effect of these provisions is that the supply of shares and loan obligation in a share block company does not qualify as exempt financial services.

### 3.8 Other terminology

For the purposes of this guide the following terms are also important:

#### 3.8.1 Levy fund

A share block company is usually a non-trading company and will normally have no regular income out of which to defray its expenses, which must in consequence be borne by its shareholders. To meet its running expenses, the share block company builds up a fund from contributions levied upon its shareholders. Every share block company is obliged by the Share Blocks Act<sup>18</sup> to establish and maintain a levy fund which, in the opinion of the directors, is sufficient to meet expenses incurred by the company for the following purposes:

- The management and administration of the company and of the immovable property, including any services rendered or any losses incurred by the company.
- The repair and upkeep of the property.
- Rates, taxes and other local authority charges, including the provision of electricity, gas, water, sanitary and other services to the property.
- Insurance premiums.
- All expenses incurred, or to be incurred, to effect the opening of a sectional title register in relation to the said property.
- For the discharge of any other obligation of the company.

The application of the VAT Act to the levy fund of the share block scheme is discussed in **4.4.6**.

#### 3.8.2 Loan obligation

The concept of a “loan obligation” is widely defined as the total amount owing by the company from time to time, excluding any amount owing by the company in respect of its share capital, the aggregate of the amounts transferred in terms of the Companies Act to reserves and provisions and any debt to be discharged from moneys in the levy fund.

The principal part of the loan obligation is usually the amount borrowed from a financial institution or the share block developer to finance the cost to the share block company of acquiring the land and building. Repayment of this amount will normally be secured by a mortgage bond over the land and building subject to the share block scheme. It is also clear that amounts due to members in respect of the paid-up portion of their allocated loan are

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<sup>16</sup> Refer to section 2(1)(d).

<sup>17</sup> Refer to section 2(4)(c).

<sup>18</sup> Refer to section 13 of the Share Blocks Act.

part of the loan obligation. Despite the wide wording of the definition, the term “loan obligation” should be restricted to the total amount owing by the company in respect of loans made in order to finance the acquisition of the immovable property and the costs of improvements.

Amounts owing in respect of the acquisition of the land or the erection of the building (including such expenditure as the costs of excavation and the construction of a lateral support wall) would form part of the loan obligation and could not be recovered from the levy fund. Such expenditure is of a capital nature and is covered by the definition of “loan obligation”. If this were not so, the developer could shift any part of the costs of development and construction of the project onto the members of the company, without the need to obtain the statutory prescribed resolution under section 14(1) of the Share Blocks Act which requires the approval of at least 75% in number of the members (excluding the share block developer) who hold at least 75% of the total number of votes (excluding those of the developer). It is furthermore restricted to contractual obligations and would not include obligations arising from liability based on delict or unjustified enrichment.

The loan obligation can be distinguished from the levy fund as follows:

- Levies are determined by the directors of the share block company, but an increase in the loan obligation requires a resolution in section 14(1) of the Share Blocks Act.
- Levy fund contributions and loan obligation contributions from shareholders must be kept in separate accounts, and the restrictions on the use of the money in the separate accounts differ.
- Only the account containing loan obligation contributions has the status of a trust account exempt from attachment.

The expenses paid from the levy fund relate to the running expenses of the company and the share block scheme. In contrast, amounts owing in respect of the acquisition of the land or the erection of the buildings are part of the loan obligation which is the responsibility of each of the individual shareholders.

If the share block company decides to incur certain expenditure which cannot, in terms of the Share Blocks Act, be paid from the levy fund, this can be financed in two ways:

- A loan can be obtained from a financial institution without any direct re-allocation of the expense to individual shareholders. This type of financing arrangement will have no VAT consequences, as the supply by the financier is exempt and no supply is made by the share block company to the shareholders.
- The financing can be done by way of the shareholders contributing towards the settlement of the cost of these improvements by allocation, delegation or transfer of any such amount to their loan obligations as contemplated in section 14 of the Share Blocks Act. For the purposes of the VAT Act, the increase of the loan obligation is deemed to constitute the supply of a share in the share block company.<sup>19</sup> The share block company will therefore be required to declare output tax on this deemed supply if it is registered for VAT. If the share block company is not registered as a vendor, the deemed supply of the share will not have any VAT consequences.<sup>20</sup>

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<sup>19</sup> Refer to section 8(17)(b).

<sup>20</sup> Refer to section 23(1).

### 3.8.3 Share block scheme

Although not specifically defined in the VAT Act, the definition of a “share block scheme” is defined in the Share Blocks Act as any scheme in terms of which a share, in any manner whatsoever, confers a right to or an interest in the use of immovable property. A company is for purposes of the Share Blocks Act presumed to operate a share block scheme if any share of the company confers a right to or an interest in the use of immovable property<sup>21</sup> or any part of immovable property.<sup>22</sup>

In essence a share block scheme comes into being when a company acquires or develops a building and issues shares to individuals who, by acquiring those shares, are entitled to the use and occupation of a portion of that building, without actual ownership of any part of the building.

### 3.8.4 Share block company

The definition of a “share block company” in the VAT Act makes reference to that of a share block company in the Share Blocks Act. A share block company is a company incorporated under the Companies Act or its predecessor, the activities of which comprise or include the operation of a share block scheme.

### 3.8.5 Share block developer

A share block developer is any person who holds or controls more than 50% of the shares of a share block company.

Generally, a share block scheme will be developed by a share block developer and not the share block company itself. In order to effect the development of the share block scheme, all the shares in a share block company are initially issued to the share block developer. The share block developer will then sell shares in the share block scheme to shareholders who will acquire the use and enjoyment of a portion of the fixed property owned by the share block company which has been allocated to that share. For the purposes of the Share Blocks Act, once enough shares have been sold so that the share block developer's shareholding drops below 50%, the share block developer will lose the status of a shareblock developer and will become a normal shareholder.

## 3.9 Fractional ownership

Fractional ownership has been advertised and promoted as a new concept of ownership and investment and refers to the collective ownership of an asset. The asset concerned could be anything from an aircraft to a yacht, but typically the underlying asset is a luxury home, holiday apartment, or hotel suite of high monetary value (often with managed hospitality and support services) which is used by the fractional owners for leisure purposes.

The costs of administering the asset are divided among the fractional owners in accordance with their shareholding in the entity (normally a company) which owns the asset. Through the use of an ownership usage roster, the fractional owners are each allocated a number of days or weeks during the year within which they may enjoy the exclusive use of the property's amenities, and the related common areas of the applicable resort, or other property of similar size and type. Some fractional projects also participate in exchange programmes, which

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<sup>21</sup> Means a land, and includes any building erected or to be erected, regardless of whether the share block company owns or lease the immovable property.

<sup>22</sup> Refer to section 4 of the Share Blocks Act.

allow shareholders access to other properties located abroad which are of comparable quality and value.

The purchase of a fractional interest normally involves the sale of shares in a company which goes hand-in-hand with a use agreement which regulates how the underlying property or any part thereof is to be used by the fractional owners. The issue which normally arises in this regard is whether the supply of a fractional ownership interest in a company (which has as its underlying asset a fixed property) constitutes –

- the sale of an equity security (share) which is exempt from VAT and therefore treated the same as the normal purchase of shares in a juristic person; or
- the supply of shares in a share block company or the supply of a time-sharing interest – both of which constitute the supply of “fixed property” and “goods” (as defined) and are subject to VAT at the standard rate of 14% if the supplier is registered for VAT (or required to be registered); or
- a supply which is subject to transfer duty.

Some members of the legal fraternity have expressed the view that certain fractional ownership schemes may be operating in contravention of either the Share Blocks Act, or the Property Time-Sharing Control Act 75 of 1983 (Property Time-Sharing Act) (depending on the type of scheme). Further, any supply of fractional interests in relation to the use of fixed property owned by the company in which the shares are held, constitutes the supply of fixed property because of the occupation rights which it confers on the owners, and accordingly, the supply thereof will fall into the VAT net. SARS also subscribes to this view.

The Supreme Court of Appeal considered a similar issue involving the sale of timeshare “points” in the case of *TCT Leisure v CSARS* [2010] 3 All 325 (SCA). In this case the Appellant sought to argue that what was being supplied to the public was financial services in the form of equity securities which were exempt from VAT. The court held that the supply of the right to occupy the properties in question was not incidental to the share ownership but rather a separate right which did not form part of the rights attaching to the shares. In the circumstances, the equity security exemption was not applicable and the supply was subject to VAT at the standard rate.

From a VAT perspective, the determining factor of the taxable nature or otherwise of the supply of these fractional interests is based on whether the supply of the rights and interests under the fractional ownership scheme constitutes the supply of “fixed property” and “goods” as defined in section 1(1) (regardless of whether the fractional ownership scheme itself complies with the provisions of the Share Blocks Act or the Property Time-Sharing Act). The characteristics of the fractional ownership schemes described above which involve the underlying use of fixed property are very similar to share block and time-sharing schemes since included in the supply is a right to, or an interest in, the use of immovable property or a part thereof.

The view is that the supply of fractional ownership interests in a scheme where the objective is for the shareholders to acquire the use of fixed property, does not merely constitute the supply of equity shares, but rather, interests in share block or time-sharing schemes which confer a right of use or occupation upon the owners. Since the supply of such rights and interests constitutes fixed property, it follows that a property developer, a property agent or any other vendor supplying fractional ownership interests in fixed property is liable to levy and collect the VAT from the shareholder where the value of the supplies made by that person exceeds the compulsory registration threshold.

These supplies are, therefore, subject to VAT at the standard rate of 14% when supplied by a person who is, or who should be, registered as a vendor. Failure to charge VAT will result in the price charged for the supply being deemed to include VAT at 14%. In a case where fractional ownership interests in fixed property are supplied by a person who is not liable to register for VAT, the supply is subject to transfer duty.

## Chapter 4

### Accounting for VAT

#### 4.1 Introduction

The South African VAT system is destination based. VAT is presently levied at the standard rate of 14% on most supplies and importations, but there is a limited range of goods and services which are either exempt, or which are subject to tax at the zero rate (for example, exports are taxed at 0%). Certain importations of goods or services are not subject to VAT.

This Chapter looks at the general factors that influence the amount of VAT that must be accounted for by a vendor. The focus will be in particular on share block schemes and the different types of supplies which can be expected.

The VAT Act has undergone a number of changes in relation to share block schemes since the commencement date of 30 September 1991. These amendments are discussed in further detail in **Annexure A**.

#### 4.2 The mechanics of VAT

The South African VAT is based on a subtractive or credit-input method which allows the vendor to deduct the tax incurred on enterprise inputs (input tax) from the tax collected on the supplies made by the enterprise (output tax). Input tax may be deducted subject to the retention of prescribed documentation (for example, tax invoices, debit notes and credit notes, bills of entry etc.) and may not be deducted if the expense was incurred for non-taxable purposes (for example, for the making of exempt supplies or for private purposes). There are also some expenses in respect of which input tax is specifically denied, such as the acquisition of motor cars and entertainment. Further, since input tax may only be deducted to the extent that goods or services are acquired for taxable “enterprise” purposes, vendors who make both taxable and non-taxable supplies will have to apportion certain of their inputs which cannot be directly attributed to the making of taxable purposes.

A vendor must report to SARS at the end of every tax period on a VAT 201 return, where the input tax incurred is offset against the output tax due for the particular tax period and the balance is paid to SARS (usually by no later than the 25<sup>th</sup> day after the end of the tax period concerned, although e-Filers may pay and submit a VAT 201 return on the last business day of that month). Alternatively, if the input tax for the tax period exceeds the output tax, SARS will refund the vendor, subject to certain exceptions.

The VAT collected by vendors is usually paid over to SARS every two months, but where the value of taxable supplies in a 12-month period exceeds R30 million, the VAT must be accounted for on a monthly basis.

Refer to the *VAT 404 - Guide for Vendors* for more details in this regard.

#### 4.3 Interaction between VAT and transfer duty

Transfer duty is an indirect tax imposed on the value of fixed property acquired by any person by means of a “transaction” as defined in the Transfer Duty Act. A “transaction” is defined to include, amongst other things, transactions under a sale, donation or waiver.

“Property” is defined in section 1 of the Transfer Duty Act to mean land in the Republic and any fixtures thereon and includes a share in a share block company acquired on or after 1 September 2009.

In order to ensure that the sale of fixed property is not subject to both VAT and transfer duty, the Transfer Duty Act contains an exemption from transfer duty to the extent that a supply is subject to VAT. Therefore, the payment of VAT normally takes precedence over the payment of transfer duty where the supplier is a vendor. Sometimes the supply of fixed property may be subject to transfer duty even if the seller is a vendor. For example, the sale of a property used by a vendor for the purposes of employee housing will be subject to transfer duty as these supplies are in the course of an exempt activity.

Fixed property which is sold by a vendor will usually attract VAT at the standard rate if it is used in the course or furtherance of its enterprise (refer to **Chapter 5** for certain instances where the sale of the fixed property is deemed to occur at a value of nil). However, it is also possible for the fixed property concerned to form part of the supply of a going concern where an entire enterprise and all its assets (including the fixed property) are sold to the purchaser. In such cases, the supply of the whole business, including the fixed property, may qualify as a zero-rated supply.

Refer to the *Transfer Duty Guide* and the *VAT 409 – Guide for Fixed Property and Construction* for more details in this regard.

## 4.4 Application of VAT principles to share block schemes

### 4.4.1 Time of supply

There are special time of supply rules which apply to transactions by a shareblock scheme. For example, the time of supply for the sale of shares in a share block company, as it is fixed property, is the earlier of the date of any payment of the consideration for the supply, or the date of the registration of the transfer of the property in the Deeds Registry.

Since the transfer of shares in a share block company into the shareholder’s name is not recorded in the deeds registry, the time of supply is the date on which any payment in respect of the consideration for such supply is made.<sup>23</sup> The supplier of such shares in a share block company will only be required to account for output tax on the supply to the extent that payment of the consideration is received.

The term “payment” in this context means any amount received that has the effect of reducing or discharging the obligation relating to the purchase price. In other words, the payment received by the supplier must reduce the amount ultimately owed by the purchaser in respect of the purchase price of the property. In the context of a share block transaction, the time of supply will be the date on which any payment of the consideration is made as the supply of shares in a share block company does not require registration in the Deeds Registry.

For other fixed property transactions, the registration of transfer of the fixed property in the Deeds Registry and the full payment for the supply generally occur on the same day, or within the same tax period. In these cases, the vendor will be required to account for the full amount of output tax when the time of supply occurs. The same will apply in the case of a share transaction if full payment is only released to the supplier once the share transfer has

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<sup>23</sup> Refer to section 9(3)(d).

been effected in the share block company's share register and the use agreement has been concluded.

When only part of the consideration is received, the supplier will only be required to account for output tax to the extent that payment of the consideration has been made, regardless of the fact that the vendor may be registered for VAT on the invoice basis.<sup>24</sup>

This means that vendors account for the VAT on fixed property supplies only to the extent that payments are made and received. Until the seller has the use of the funds, and applied it as consideration received which reduces or discharges the obligation under the contract of sale for the property, no "payment" has occurred. Consequently, there is no liability to declare output tax, or right to deduct input tax until the funds have been released as "payment" to the seller.

The supply of shares in a share block company between connected persons is deemed<sup>25</sup> to take place when the shares are made available to the shareholder (refer to **3.1.1**).

#### 4.4.2 Value of supply

The value attributable to the supply of a share in a share block company is the consideration in money for the supply of such share which includes the amount of a loan obligation (as defined in section 1 of the Share Blocks Act) which is allocated (under section 14 of the Share Blocks Act), delegated or transferred as envisaged in section 8(17). This is in accordance with section 10(4A).

This means that if the share block company is a vendor and it increases its loan obligation and subsequently allocates this obligation to its shareholders, this increase and subsequent allocation to its shareholders constitutes a taxable supply of a share in the share block company. The VAT Act deems such an allocation to be the supply of a share even though an actual supply of a share has not taken place by the share block company.<sup>26</sup> In a case where the share block company is not a vendor, the increase in the loan obligation and subsequent allocation to shareholders will have no VAT implications.

In the case of a supply between connected persons, the special value of supply rule in section 10(4) may apply and not section 10(4A), should the requirements of section 10(4) be met. In terms of this special rule provided in section 10(4), VAT must be accounted for by the supplier on the open market value of the supply (refer to **3.1.2**).

The value of certain transactions relating to the conversion of a shareblock company to a sectional title as well as the sale of the property to the person who held an exclusive right in the said property is deemed, for VAT purposes, to be nil. Refer to **Chapter 5** for a detailed discussion on these transactions.

Remember that the term "open market value" includes VAT.

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<sup>24</sup> Refer to section 16(4)(a)(ii).

<sup>25</sup> Refer to section 9(2)(a).

<sup>26</sup> Refer to section 8(17)(b).



**Example 1 – Value of Supply (connected person)***Facts:*

DEF Share Block Company (vendor) operates a share block scheme in a developed residential property. Mr B (vendor) who owns a share in DEF Share Block Company sells his share in that share block company to his brother Mr V for R570 000 (including VAT). Mr B used his share in the DEF Share Block Company to make taxable supplies and Mr V acquired this share to be used exclusively as his primary residence. On the date of sale, the open market value of the share was R1 368 000.

What is the value of supply of the share for VAT purposes?

*Result:*

The consideration for the supply of the share in a share block company is less than the open market value. Mr B and Mr V are “connected persons” in relation to each other. The property will also be used exclusively for residential purposes and not in the course or furtherance of any enterprise and hence Mr V (if he is a VAT vendor) will not be entitled to deduct input tax. The requirements of section 10(4) have therefore been met and the consideration for the supply shall be deemed to be the open market value of the property. The value of supply and the VAT are calculated as follows:

$$\begin{aligned}
 \text{Value} &= \text{Open Market Value} - \text{VAT} \\
 &= \text{R1 368 000} - (\text{R1 368 000} \times 14 / 114) \\
 &= \text{R1 368 000} - \text{R168 000} \\
 &= \text{R1 200 000}
 \end{aligned}$$

The value of the supply is R1 200 000 and the output tax liability is R168 000 (R1 368 000 × 14 / 114).

**4.4.3 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 VAT rate to the value of a supply of goods or services. When the amount charged for the supply of goods or services includes VAT (consideration), the output tax is determined by multiplying the consideration by the tax fraction (14/114).

As discussed in 4.4.1, the liability to account for output tax on a share transaction (that is a sale of a share in a share block company) will be triggered only when payment (or part-payment) of the consideration for the supply has been made, even if an invoice has been issued.<sup>27</sup> Output tax must therefore be accounted for by the vendor on a VAT201 return for the tax period during which –

- full payment for the supply is received; or
- part of the consideration is received in respect of that supply, regardless of whether the vendor is registered for VAT on the invoice or cash basis. (Refer to 4.4.1.)

**4.4.4 Input tax**

Generally, the VAT charged by a vendor to another vendor on any goods or services acquired by the latter vendor wholly for the purpose of consumption, use or supply in the

<sup>27</sup> Refer to section 16(4)(a)(ii).

course of making taxable supplies or, where the goods or services are acquired by the vendor partly for such purpose, to the extent<sup>28</sup> that the goods or services concerned are acquired by the vendor for such purpose, may be deducted as input tax by the purchasing vendor, subject to the vendor being in possession of acceptable documentary proof.<sup>29</sup>

In this regard, no input tax may be deducted unless the vendor is in possession of –

- a tax invoice; or
- documentary proof acceptable to the Commissioner issued under sections 20(2), (6), (7), (8), and 21(5); or
- a statement contemplated in section 54(3)(a); or
- alternative documentary proof in section 16(2)(g). However, in order to qualify for a deduction, the following two requirements must be met:
  - The circumstances as prescribed by the Commissioner by Public Notice must apply; and
  - The vendor must be in possession of documentary proof containing the information acceptable to the Commissioner, at the time a return in respect of the deduction is furnished.<sup>30</sup>

Other restrictions include that the input tax:

- can only be deducted in the tax period in which a signed use agreement is entered into between the share block company and the shareholder;<sup>31</sup> and
- is limited to the extent that payment has been made which has the effect of reducing or discharging the obligation relating to the purchase price.<sup>32</sup>

The aforementioned are essentially anti-avoidance measures and are intended to match the output tax liability of the supplier with the input tax deductible by the recipient.

In a case where the share in the share block company acquired by a vendor constitutes second-hand goods, and the supply is not a taxable supply, that vendor is entitled to a notional input tax deduction, provided the share block unit is to be used for taxable purposes and the purchaser is in possession of any documents which may be required under section 20(8). The notional input tax is calculated by multiplying the tax fraction (14/114) by the lesser of the consideration paid or the open market value of the goods or services supplied to the seller.

### **Example 2 – Payment over more than one tax period**

#### *Facts:*

On 30 December 2015, Share Block Company (Pty) Ltd (SBC) sold a share in a share block scheme to Mr B for R500 000. Both SBC and Mr B are vendors that are required to account for VAT on the invoice basis and are registered on Category B tax period. Mr B will use the property allocated to him in the use agreement in the course and furtherance of his enterprise. Mr B is required to pay the full purchase price to SBC in two equal instalments of

<sup>28</sup> Determined in accordance with the provisions of section 17(1).

<sup>29</sup> Refer to section 16(2).

<sup>30</sup> Refer to the BGR.

<sup>31</sup> Refer to section 16(3)(a)(ii)(bb)(B).

<sup>32</sup> Refer to section 16(3)(a)(ii)(aa).

R250 000. The first payment was made on 25 January 2016 and the second payment was made on 15 April 2016. SBC issued one tax invoice to Mr B for the full purchase price on 30 December 2015.

Determine the output tax and input tax that must be accounted for by SBC and Mr B in the tax periods concerned.

*Result:*

#### SBC

Tax period ending **February 2016:**

$$\begin{aligned} \text{Output tax} &= \text{R}250\,000 \times 14 / 114 \\ &= \underline{\underline{\text{R}30\,701,75}} \end{aligned}$$

Tax period ending **April 2016:**

$$\begin{aligned} \text{Output tax} &= \text{R}250\,000 \times 14 / 114 \\ &= \underline{\underline{\text{R}30\,701,75}} \end{aligned}$$

Despite being registered on the invoice basis and the fact that a tax invoice was issued for the full purchase price on 30 December 2015, SBC only accounts for output tax to the extent that Mr B has made payment of the consideration in the relevant tax periods.

#### Mr B

As Mr B is also registered for VAT on Category B tax period, he will only be entitled to deduct the corresponding inputs in the same tax periods that SBC declared the output tax. This is despite the fact that he was in possession of a tax invoice for the full purchase price during the tax period ending December 2015.

#### **4.4.5 Tax invoices, credit notes, debit notes and other documentation**

Every vendor making taxable supplies of goods or services must, within 21 days of making the supply, issue a tax invoice to the recipient of the supply. To constitute a tax invoice, the relevant document must contain the details prescribed in section 20.

A vendor must also be in possession of a tax invoice or any documentation acceptable to the Commissioner<sup>33</sup> for any goods or services acquired for purposes of making taxable supplies before any deduction of input tax thereon will be allowed. The details on a tax invoice will vary, depending on whether the consideration for the taxable supply (the total amount including VAT) exceeds R5 000 or not. Since most transactions involving fixed property will be for a consideration exceeding R5 000, a full tax invoice must be issued by the supplier to the recipient containing the following particulars:

- Contains the words 'tax invoice', 'VAT invoice' or 'invoice'.
- The name, address and VAT registration number of the supplier.
- The name, address and VAT registration number of the recipient.
- An individual serialised number and the date on which the tax invoice is issued.
- A full and proper description of the goods or services supplied.
- The quantity or volume of the goods or services supplied; and
- Either—
  - the value of the supply, the total amount of tax charged and the consideration for the supply; or

<sup>33</sup> Published by Public Notice or as set out in Interpretation Note 49.

- 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 to the effect that it includes a charge for the tax and the rate at which the tax was charged.

Where the vendor is not in possession of a full tax invoice, the vendor must be in possession of either of the following documentation:

- A recipient created tax invoice;<sup>34</sup> or
- The documentary proof acceptable to the Commissioner issued under sections 20(7) or (8); or
- A recipient created credit or debit note;<sup>35</sup> or
- alternative documentary proof in section 16(2)(g). However, in order to qualify for a deduction, the following two requirements must be met:
  - The circumstances as prescribed by the Commissioner by Public Notice must apply; and
  - The vendor must be in possession of documentary proof containing the information acceptable to the Commissioner, at the time a return in respect of the deduction is furnished.<sup>36</sup>

#### 4.4.6 Levy fund

The supply of any services by a share block company to its members in the course of the management of the entity is exempt for VAT purposes under section 12(f) provided the cost of supplying such services is met out of contributions levied. The VAT charged on services by service providers (for example, security, water, electricity, building maintenance, garden services etc.) will therefore form an integral part of the normal running expenses of the scheme.

Where a separate charge is made by the share block company (other than a levy) in respect of meals or other goods or services, this charge is subject to VAT if the share block company is a vendor. Thus, whilst the basic levies paid by members are usually exempt, any additional or special levies or charges paid by individual members for specific goods or services, which are not in the course of the management of the entity, are subject to VAT if the share block company is a vendor.

A share block company can apply to the Commissioner to waive the exempt status of the levies paid by its members. This may occur, for example, where a building is used for commercial purposes. If the application is successful, it would mean that the levies would attract VAT and that the share block company would be entitled to deduct input tax in respect of its running expenses which must be defrayed from the levy fund.

The share block company will then only be registered for VAT by virtue of the activities conducted by the levy fund and only the VAT on the costs of the activities relating to the levy fund may be deducted in accordance with the normal provisions of the VAT Act. This registration will not have a VAT effect on the shares issued, or immovable property acquired by the share block company, as they do not form part of the activities of the levy fund.

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<sup>34</sup> Contemplated in section 20(2).

<sup>35</sup> Issued under section 21(5).

<sup>36</sup> Refer to the BGR.

Any application by a share block company to have its levies treated as taxable should be accompanied by evidence of an ordinary resolution adopted by the members of the share block company. The share block company may then register for VAT purposes (refer to 3.3 for a brief discussion on registration). For more information on compulsory and voluntary registration as a VAT vendor refer to the *VAT 404 – Guide for Vendors*.

Furthermore, the application may be made for the exemption on its levies to be only partially waived. This means that the supply of its management services may be taxable to the extent that the supply is to members who are vendors, and may be exempt to the extent that the supply is to members who are non-vendors. In such a case the expenditure of the levy fund would have to be apportioned between those expenses incurred in order to make taxable and exempt supplies. Only the VAT paid on the former would be deductible as input tax.

Levies paid to a body corporate or share block company which manages a property “time-sharing scheme” as defined, are completely excluded from this exemption and thus subject to the standard rate if the total amount of levies payable by the members exceeds the VAT registration threshold.

### Example 3 – Waiving of exempt status in regard to the levy fund

#### Facts:

S Shareblock (Pty) Ltd (S) is a share block scheme consisting of 5 units of equal size. The units were created to be used only for commercial purposes by the shareholders. On the advice of one of its shareholders, S applied to the Commissioner to waive the exempt status of the levies received from its members in terms of the proviso to section 12(f), and the application was approved with effect from the beginning of the 2016 financial year. The operating expenses (including VAT) for the year ending December 2016 are listed below and levy invoices amounting to R22 000 (including VAT) were issued to each of its 5 members to cover these expenses.

	R
Municipal costs (water, lights, refuse removal etc.)	18 240
Municipal rates and taxes	50 000
Repairs and maintenance	33 060
Stationery	399
Salaries and Wages	12 000
Telephone	<u>5 928</u>
<b>Total</b>	<b><u>112 550</u></b>

All taxable supplies made to S are by registered vendors and all the requirements under sections 16(2) and 16(3) for deducting input tax have been met.

Calculate the total VAT liability for S for the year ending December 2016 and explain the effect of waiving the exemption in section 12(f) on the share block company.

#### Result:

#### OUTPUT TAX

Levy contributions =  $(R22\ 000 \times 5) = R110\ 000$

VAT calculation =  $R110\ 000 \times 14 / 114$   
= **R13 508,77**

#### INPUT TAX

Municipal costs	= R2 240 (R18 240 × 14 / 114)
Rates and taxes	(zero-rated supply – no VAT)
Repairs and maintenance	= R4 060 (R33 060 × 14 / 114)
Stationery	= R49 (R399 × 14 / 114)
Salaries and wages	(no VAT)
Telephone	= R728 (R5 928 × 14 / 114)
<b>Total</b>	<b>= <u>R7 077,00</u></b>
<b>Total VAT payable</b>	<b>= <u>R 6 431,77</u></b>

**Notes:**

- No input tax may be deducted by the share block company on two items that make up nearly 64% of the expenses for the year, namely, “salaries and wages” and “rates and taxes.” In this example, the share block scheme only consists of five units and the salaries and wages could be regarded as high in relation to the cost per unit. In a larger development though, the proportional cost of salaries and wages per unit would be lower.
- Since the units are used for commercial purposes and the shareholders are using their rights of occupation for the purposes of making taxable supplies, input tax may be deducted on the levies paid to the share block company.
- Even though the share block company has made a loss for the year of R16 058.77, VAT is nevertheless payable. Furthermore if the directors fail to pay the VAT timeously, the share block company will incur penalties and interest.
- Share block companies are not able to take advantage of being registered on the payments basis. The company could therefore, also experience cash flow problems if there are delays in collecting the levies due by its members.

**4.4.7 Agent/Principal**

In order to correctly apply the VAT legislation to the concept of agents, it is necessary to identify and understand the concept of an “agent” as understood in common law.

An agency agreement is a contract whereby one person (the agent) is authorised and required by another person (the principal) to contract or to negotiate a contract with a third person, on the latter’s behalf. The agent in representing the principal, creates, alters or discharges legal obligations of a contractual nature between the principal and the third party. The principal is ultimately responsible for the commercial risks associated with a transaction; the agent is trading for the principal’s account. The agent therefore provides a service to the principal and normally charges a fee (generally referred to as “commission” or an “agency fee”) but does not acquire ownership of the goods and/or services supplied to or by the principal.

An agent/principal relationship is generally expressed in a written agreement or contract concluded between the parties. Where a written agreement or contract does not exist, the onus of proof is on the person who seeks to bind the principal and demonstrate that the relationship was that of a principal and an agent.

The VAT treatment of supplies made by the parties will be dependent on the contractual relationship between them. It is therefore imperative that the parties have a clear understanding of the contractual relationship and who is regarded as the principal and the agent for the purposes of the VAT Act.

For example, under section 16 of the Share Blocks Act, an agent may act on behalf of the shareholder in entering into a contract for the acquisition of a share and a use agreement between a shareholder and a share block company which is reduced to writing and signed by the parties thereto or by their representatives acting on their written authority.

### ***Supplies made by the agent***

In instances where an agent makes a supply of goods or services for and on behalf of any other person (principal), that supply is deemed to be made by that principal and not by that agent.<sup>37</sup> Provided that, where that supply is a taxable supply and that agent is a vendor, the agent may issue a tax invoice or a credit note or a debit note in relation to such supply as if the agent had made a taxable supply.

A taxable supply of goods or services made by a vendor to an agent who is acting on behalf of another person (principal), is deemed to be made to that principal and not to such agent.<sup>38</sup> Provided that such agent may nevertheless request that he be provided with a tax invoice and the vendor may issue a tax invoice, credit note or debit note as if the supply were made to such agent.

### ***Documentation***

The normal rule is that any tax invoice, credit note or debit note relating to a supply by, or to the agent, on the principal's behalf should contain the principal's particulars. However, the VAT Act provides that if an agent (being a vendor) makes a supply on behalf of another vendor (the principal), 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, credit note or debit note and the principal may not issue a tax invoice or credit or debit note in respect of that same supply. The VAT Act also makes provision for the agent to be provided with a tax invoice, credit note or debit note as if the supply is made to the agent.

When a tax invoice, credit note 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, the agent must notify its principal within 21 days after the end of each month in writing of –

- 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 it includes a charge in respect of the tax and the rate at which the tax was charged.

In these circumstances, the agent is required to retain the original tax invoices, credit notes or debit notes (if these documents are to be retained on the principal's behalf) and sufficient

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<sup>37</sup> Refer to section 54(1).

<sup>38</sup> Refer to section 54(2).

records should be maintained to enable the name, address and VAT registration number of the principal to be ascertained.



## **Chapter 5**

### **Formation, conversion, termination and deregistration**

#### **5.1 Introduction**

This chapter considers the steps necessary for the formation, termination and deregistration of a share block, the conversion of a company to a share block company and the conversion of a share block company to sectional title as well as the VAT consequences of each of these steps.

#### **5.2 Formation of a share block company**

The formation of a share block company will normally be undertaken by the share block developer. This will include the completion and submission of the share block company documents to the Companies and Intellectual Property Commission (CIPC) together with the necessary memorandum of incorporation.

In the case of a share block company, the supply of the shares is integral to the carrying on of the enterprise of the share block company which involves the supply, issue or allotment of the shares and their associated loan obligations which constitutes taxable supplies. Section 19 allows a company to deduct the tax incurred on certain goods or services that were acquired prior to the incorporation of the company provided certain requirements are satisfied. Even though these goods or services will have been incurred by another person prior to the incorporation of the company, the company will be deemed to be the recipient thereof.

The VAT on these expenses may be deducted by the share block company during the tax period when the person who incurred the expenses has been reimbursed by the company.

This can be explained by way of an example:

- The share block company acquires a vacant piece of land to be developed into the share block scheme. The land is transferred into the name of the share block company.
- All the shares in the share block company are issued to the share block developer.
- The share block developer undertakes the construction of all the necessary buildings and improvements. Despite the share block developer incurring the costs of the development, ownership of these improvements will vest in the share block company as the owner of the land on which the development is taking place.
- The share block developer will sell all the shares to the new shareholders who will each conclude a use agreement with the share block company for the exclusive use and enjoyment of a portion of the share block scheme.
- The share block developer will cease to be a share block developer and either becomes the shareholder or exits the share block scheme and the subsequent operations of the shareblock company, including the day-to-day running of the share block scheme, continues.

We will also assume that the share block company and share block developer are separately registered as VAT vendors and that they are in possession of all the necessary documents (for example, tax invoices, VAT 264, other records etc.) for the deduction of input tax and other deductions.

The steps to be undertaken in the above example in forming a share block scheme are discussed below with its VAT implications.

### **5.2.1 Acquisition of the fixed property**

The share block company will be entitled to deduct the input tax incurred on the acquisition of the vacant piece of land to be used for the development of the share block scheme. If VAT was paid on the acquisition of the property, the input tax may be deducted to the extent that payment has been made which has the effect of reducing or discharging the purchase price.

If the land is acquired from a non-vendor and transfer duty is paid by the share block company, it will be entitled to a notional input tax deduction. The share block company will be entitled to input tax on the actual consideration already paid for the acquisition of the fixed property. This notional input must however be deferred until the time of supply for fixed property has been triggered, which is the earlier of the date that the property is registered in the share block company's name in the deeds registry, or the date that payment of any consideration has been made to the supplier.<sup>39</sup> (Refer to 4.4.2.)

### **5.2.2 Issue of shares in the share block company to the share block developer**

The share block company will issue its entire shareholding to the share block developer. As discussed in 3.4, this will constitute the supply of fixed property for VAT purposes and output tax will be payable by the share block company to the extent that actual payment of the consideration has taken place<sup>40</sup> in accordance with the time and value of supply rules mentioned in 4.4.1. Similarly, the share block developer will be entitled to deduct input tax in the tax period that any payment of the consideration is made to the share block company for the issue of the shares.

### **5.2.3 Development of the share block scheme by the share block developer**

The share block developer will incur expenses in the planning and development of the shareblock scheme. For example, payments may be made to a project manager, an architect, a sub-contractor, a municipality, an estate agent etc. If these suppliers are VAT vendors, the price of any goods or services supplied in connection with the development may include VAT at the standard rate. The developer will be entitled to deduct input tax on the VAT incurred on the acquisition of these goods or services.

The general time and value of supply rules would normally be applicable and the developer would be obliged to retain the relevant tax invoices and other documentation supporting the input tax deductions.

For more information on VAT and the construction industry refer to the *VAT 409 – Guide for Fixed Property and Construction*.

### **5.2.4 Sale of shares in the share block scheme by the developer**

During and after the development of the share block scheme, the developer will market and sell the shares in the share block company. Each share sold will entitle the shareholder to uninterrupted use and enjoyment of a specific unit within the share block scheme once the use agreement has been entered into between the shareholder and the share block company. The supply by the developer of the shares in the share block company constitutes the supply of fixed property and will be subject to VAT at the standard rate.

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<sup>39</sup> With effect from 10 January 2012.

<sup>40</sup> Refer to section 9(2)(d) read with section 16(3)(a)(ii)(bb)(B).

The developer will be liable to account for output tax on the sale of these shares as and when payment of the consideration for the shares is received. The consideration in money for the supply of the shares will include the allocated loan obligation attached to the shares.<sup>41</sup>

### 5.3 Conversion from a company to a share block company

A company that owns immovable property may decide to convert to a share block company. This decision can only be taken by way of a special resolution of the company. When a company converts to a share block company, it will have to lodge an amended memorandum of incorporation with the CIPC to reflect the changes that have taken place.

These can include a change –

- of name as required by the Share Blocks Act;
- in the share capital of the company;
- to a standard copy of the share block use agreement; and
- under other special conditions attached to the issuing of shares and the use of the fixed property.

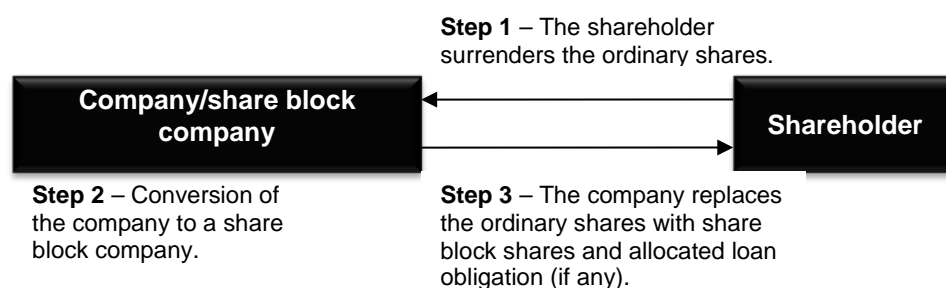
In terms of the Companies Act, the company and the share block company are considered to be one and the same person. For VAT purposes they are also treated as one person.

It follows that for VAT purposes, if a company converts to a share block company, the nature of the shareholders' shares are changed. In this regard, the ordinary shares are “replaced” with shares in a share block company, which results in two separate supplies taking place, namely, the supply of the –

- ordinary shares by the shareholder to the company; and
- shares in a share block company to the shareholder in return, which constitutes fixed property.

The position is illustrated graphically below:

Diagram 2 – Conversion of a company to a share block company



The conversion process and the VAT consequences are explained by the following steps:

**Step 1: Supply of ordinary shares** – The supply of the share by the shareholder (being a vendor) to the share block company, which is “replaced” with a share in a share block

<sup>41</sup> Refer to sections 8(17) and 10(4) and is subject to section 10(4) not being applicable.

company constitutes an exempt supply of an equity security.<sup>42</sup> Alternatively, the supply will be out-of-scope for VAT purposes, for example, in the case where the shareholder is not a vendor.

**Step 2: Conversion of the company to a share block company** – The conversion of the company to a share block company can only be effected by means of a special resolution whereupon all shareholders' shares are deemed to be converted to share block shares. This conversion has no VAT consequences.

**Step 3: Supply of shares in a share block company** – In a case where the company was a vendor before its conversion into a share block company, and remains registered after its conversion, it will be liable for VAT on the subsequent supply of its shares, together with the allocated loan obligation, to the shareholder.<sup>43</sup> Alternatively, if the company is not a vendor and is not liable to be registered as a vendor, transfer duty will be payable by the person receiving transfer of the ownership of the unit.

#### 5.4 Conversion from share block to sectional title

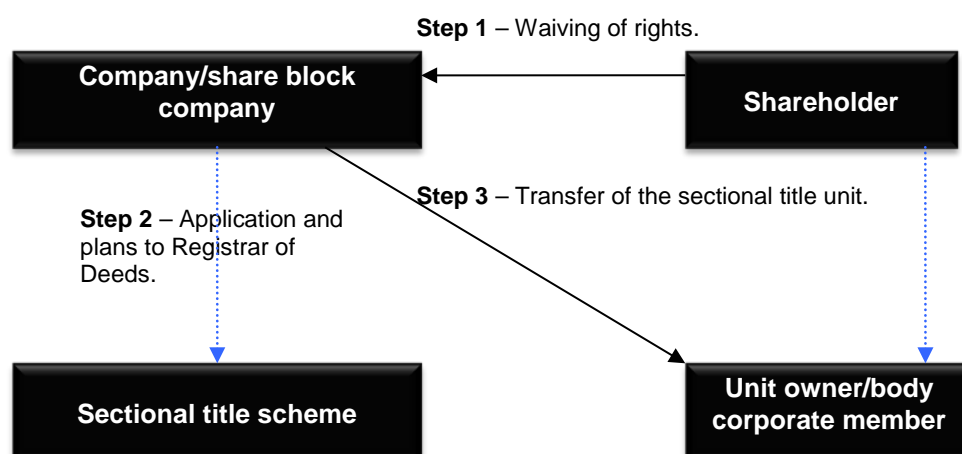
A share block company may, by special resolution, decide to convert its immovable property to sectional title units.

Sections 8(19)(a) and 8(19)(b) read with section 10(27),<sup>44</sup> provide that where a share block company (vendor) converts into sectional title, the transaction (supply) shall be deemed to have been made in the course or furtherance of that share block company's enterprise but the value of such supply is deemed to be nil.

Conversions that occurred prior to 1 April 2014 were not regarded as being made in the course or furtherance of an enterprise.

This is illustrated by means of the following diagram:

Diagram 3 – Conversion of a share block scheme to sectional title



The conversion process is discussed briefly below:

**STEP 1: The shareholder must initially waive the rights of occupation against the**

<sup>42</sup> Refer to section 12(a) read together with sections 2(2)(iv) and 2(1)(d).

<sup>43</sup> Refer to section 8(17)(a).

<sup>44</sup> Amended by the Taxation Laws Amendment Act 31 of 2013, with effect from 1 April 2014.

**share block company relating to the exclusive use of the relevant portion of the share block company's property**

The shareholder, who supplies services of waiving the rights of exclusive use against the share block company, is deemed to have supplied such services in the course or furtherance of the shareholders' enterprise.<sup>45</sup> The value of such a supply is deemed to be nil under section 10(27).

The share block company, who is the recipient of the supply of services is also deemed to have acquired the services in the course or furtherance of its enterprise at a nil value. The share block company will not be entitled to any input tax deduction on acquisition of services that comprises the waiving of rights against it by the shareholder, since the supply by the shareholder would have been at a nil value or an out of scope supply.<sup>46</sup>

**STEP 2: The share block company must apply to the Registrar of Deeds for the registration of a sectional title plan and for the opening of a sectional title register in terms of the Sectional Titles Act**

This step will include the following:

- Sectional title plans must be drafted and other formalities must be complied with and submitted in an application to the Registrar of Deeds.
- The share block company is obliged to transfer a unit to the shareholder by virtue of a use agreement with the share block company if that person submits a written request to that effect.
- The shareholder must discharge all outstanding obligations to the share block company and any other person from whom the shares were acquired, or make arrangements to the satisfaction of the interested parties, to ensure that those obligations will be discharged.
- The shareholder requesting the transfer must deliver his or her share certificate to the trustees of the body corporate together with a document in terms of which that shareholder waives any right held against the share block company as from the date of transfer.

The above steps have no output tax implications.

**STEP 3: The share block company transfers the sectional title unit to the (former) shareholder*****On or after 1 April 2014***

The supply of the sectional title unit by the share block company is deemed to have been made in the course or furtherance of the enterprise.<sup>47</sup> The value of such supply is however deemed to be nil.<sup>48</sup> In instances where the share block company is a non-vendor and it converts into sectional title, such supply of the sectional title unit to the shareholder will fall outside the scope of VAT and transfer duty is payable by the acquiring shareholder.

The acquisition of the sectional title unit by the shareholder in such conversions will be

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<sup>45</sup> Refer to section 8(19)(b)(i).

<sup>46</sup> Shareholder is not a vendor or the conversion is not part of the shareholder's enterprise.

<sup>47</sup> Refer to section 8(19)(a)(i).

<sup>48</sup> Refer to section 10(27).

exempt from transfer duty in section 9(19) of the Transfer Duty Act.

The acquisition of a sectional title unit by the shareholder who is –

- not a vendor; or
- a vendor but such services are not in respect that shareholder's enterprise,

will be subject to transfer duty, irrespective of whether the share block company is a vendor or not.<sup>49</sup>

For more information on the transfer duty treatment refer to the *Transfer Duty Guide*.

#### From 25 November 1994 to 1 April 2014

The supply of the sectional title unit by the share block company was not made in the course or furtherance of the company's enterprise and was therefore not a taxable supply for VAT purposes. Although the supply of the sectional title unit was not previously subject to VAT, this did not mean that no other taxes were payable before the conversion can be registered as a real right of ownership in the unit in the deeds registry. Section 8(19) merely had the effect of confirming that the supply was not within the ambit of the VAT Act. That meant that transfer duty was payable on the transfer of the unit (or an interest in the unit) into the former shareholder's name, as it constitutes the acquisition of "property" as defined in section 1(1) of the Transfer Duty Act.

Refer to **Annexure A** for more details with regard to the historical amendments.

## 5.5 Termination of a share block scheme

A share block scheme may be terminated for any of the following reasons:

- A decision (voluntary) by the participants in the scheme due to the destruction of the building or the obsolescence of the scheme. The building, facilities or the surrounding neighbourhood may have physically deteriorated or becomes outdated to an extent which makes its renovation impractical or economically unviable.
- The shareholders may decide (voluntarily) to continue an otherwise viable scheme in another legal form by conversion to a sectional title (in practice that is the most common method for the termination of the share block company).
- The scheme may also be terminated against the wishes of the shareholders as a result of the sale in execution or expropriation of the property or the compulsory liquidation and winding-up of the share block company.

The voluntary liquidation of the share block company can be initiated by means of a special resolution which must be passed by shareholders with sufficient votes (75%). If the shareholders who desire the liquidation of the share block company do not have sufficient votes to pass a special resolution, they will have to apply to court for the winding-up of the company.

According to general principles, any surplus on winding-up after the payment of the claims of the creditors (which would include the amounts due to shareholders in repayment of their allocated loans), is divided between all shareholders in proportion to the nominal value of their shares and without regard to any premium paid by the shareholders, unless the

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<sup>49</sup> Refer to section 9(19) of the Transfer Duty Act.

memorandum of its incorporation provides otherwise.

## 5.6 VAT deregistration of a share block company

After the issue and allotment of the shares in the share block company and giving effect to the use agreement, the share block company only owns the *bare dominium* in the property, as the shareholders have been granted the use of the property. This means that after the share block company has sold all of its shares, it is not able to supply any goods (marketing and sale of shares) and will normally have to deregister for VAT purposes (except to the extent that it elects to remain registered for the activities funded by the levy fund).

The share block company may apply for deregistration under section 24(2) as the activities for which it registered in the first place have now ceased. Alternatively, the Commissioner may deregister the share block company if satisfied that such share block company no longer complies with the requirements for registration as contemplated in section 23(3).

The normal provisions of section 8(2) would have to be applied in respect of the share block company. Although section 8(2) is applicable to the immovable property owned by the share block company, it only holds the *bare dominium* as the shareholders have the use of the property and it is accepted that the *bare dominium* normally has a nominal value in such circumstances. However, should the share block company own more than the mere *bare dominium*, and be entitled to use property that would normally be subject to a use agreement by a shareholder, the value of the deemed supply must be determined and subject to VAT in the normal manner. The value under section 10(5) in such a case will be the lesser of the cost or the open market value.

It may occur that the share block company has also applied the first proviso to section 12(f) and registered the activities of the levy fund for VAT purposes. If the share block company is registered under one VAT number for both the marketing and sale of shares and the activities of its levy fund, the cessation of the marketing and sales activities referred to in paragraph (b)(iii) of the definition of “enterprise” will not require the share block company to deregister for VAT purposes.

If the two activities of the share block company are registered as separate enterprises in accordance with the provisions of section 50, the de-registration provisions would be applicable to the VAT registration under which the activity ceases.

The time and value of supply rules in this regard are the same as for any other vendor, that is, the value of supply would be the lesser of the cost or the open market value of any rights or assets retained in the enterprise on the day before the enterprise ceased.

## 5.7 Alienation of fixed property on which a share block scheme is operated

Should the share block company for some reason wish to alienate or cede, any immovable property of which it is the owner, or any of its rights to immovable property of which it is not the owner and in respect of which it operates a share block scheme, approval by special resolution of a general meeting of the share block company must be obtained.

Before the share block company can alienate the immovable property, the shareholders will be required to surrender their right to occupy their particular unit. By implication, this process will involve a supply of this right by the shareholder to the share block company. Any consideration (other than in the form of the immovable property to which a shareholder had a right of exclusive use) received by the shareholder, either directly or indirectly, in return for

the surrender of this right will be taxable at the standard rate. In the case where the shareholder receives a consideration in the form of immovable property to which that shareholder had a right of exclusive use in return for the surrender of his right, such supply will be deemed to be in the course or furtherance of an enterprise with a value deemed to be nil.<sup>50</sup>

As from 1 January 2013 to 1 April 2014, such a supply of fixed property by the share block company to a shareholder who held a right of exclusive of use in such a property was deemed to have been made otherwise than in the course or furtherance of an enterprise.

The disposal by the share block company (vendor) of its immovable property to a purchaser (other than to a shareholder who holds a right of exclusive use to that immovable property), is subject to VAT at the standard rate, if such supply is in the course or furtherance of the share block company's enterprise, and a tax invoice must be issued to the purchaser. Alternatively, if the supply by the share block company is not a taxable supply, transfer duty will be payable on the transaction by the purchaser. In this case, the purchaser may make a notional input tax deduction if the fixed property was acquired for taxable purposes if it qualifies as second-hand goods. The input tax may only be deducted in the tax period during which any consideration has been paid that reduces or discharges the obligation, and is limited to the extent of that payment.<sup>51</sup> In addition to these restrictions, if the time of supply occurred on or before 9 January 2012, the input tax deduction is limited to the transfer duty or stamp duty (as the case may be) which was payable. In instances where the time of supply is on or after 10 January 2012, the input tax is no longer limited to the transfer duty<sup>52</sup> paid on the transaction.

If the share block company (vendor) disposes of its immovable property to a shareholder who held a right of exclusive use to that immovable property and in turn the shareholder supplies the services of waiving his right of exclusive use against the share block company, such supplies are deemed to be in the course or furtherance of an enterprise with a value deemed to be nil.<sup>53</sup>

Under certain circumstances, normally with regard to tenanted commercial property, it is also possible to apply the zero rate to supplies made by the share block company who is a vendor, to a purchaser who is also a vendor. The sale by the company of its tenanted immovable property (to a purchaser other than the tenant) together with the cession or transfer of the tenants' lease contracts to a purchaser, being a vendor, is the supply of an enterprise which is disposed of as a going concern and is also subject to VAT at the rate of 0% provided that all the conditions prescribed in section 11(1)(e) are met.

Refer also to Interpretation Note 57 "Sale of an Enterprise or Part Thereof as a Going Concern".

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<sup>50</sup> Refer to section 8(19)(b)(ii) read with section 10(27).

<sup>51</sup> Refer to section 16(3)(a).

<sup>52</sup> Only transfer duty is mentioned here as stamp duty no longer applies to share block transactions.

<sup>53</sup> Refer to section 8(19)(a)(ii) and 8(19)(b)(ii).



## Annexure A – Summary of historical VAT treatment of share block schemes

### 1. Introduction

The VAT treatment of the core activities of share block schemes has undergone some significant changes since the introduction of VAT on 30 September 1991. These amendments are included in this annexure as background information to some of the important principles set out in the preceding chapters of this guide. It also provides a historical record of the legal detail which a person may be required to consider for the purpose of dealing with older transactions on which VAT has not yet been accounted. This annexure provides a summary of the various amendments to the VAT Act or other indirect tax legislation which has an effect on the tax treatment of a particular transaction, and briefly discusses the effect of these amendments on the key role players in share block schemes.

### 2. Registration

#### 2.1 From 30 September 1991 to 8 July 1993

As a general rule a share block company was not regarded as carrying on an enterprise for VAT purposes because the allotment of its shares was not an activity carried on continuously or regularly. Therefore, in most cases a share block company could not register for VAT unless it applied to override this exemption under section 12(f) in regard to its levy fund, or if it was conducting other activities on a continuous or regular basis which were of a taxable nature. Even if the registration was approved for any of these other reasons, it would be restricted to those specific activities only and would not include the main activities of a share block company associated with the supply of its shares. This rule would also apply if a company was converted into a share block company.

Similarly, in the case of a share block company conducting a time-share operation in terms of the Property Time-Sharing Act, the general position is that the share block company would not have been able to register for any activities associated with the supply of its shares.<sup>54</sup> However, in the case of a timeshare development, the shareblock company's levy income was not (and has never been) exempt. It was therefore required from the commencement of VAT to register as a vendor in respect of the services which it provides to its shareholders, if the income from the levies exceeded the registration threshold.

In the case of the share block company itself undertaking the marketing of its shares, the company may have been carrying on an enterprise as envisaged in paragraph (a) of the definition of "enterprise" in section 1. It was therefore possible in these circumstances for a share block company to be registered as a vendor before 9 July 1993.

#### 2.2 From 9 July 1993

The definition of "enterprise"<sup>55</sup> in section 1 was amended to include the activities of any share block company (other than the services in respect of which section 12(f) applies) where that company applied for registration as a vendor under section 23(3) and was registered as such. This amendment allowed a share block company which did not previously meet the "continuous or regular" requirements of paragraph (a) of the definition of "enterprise", to voluntarily register as a vendor. The share block company is only regarded as an "enterprise" and a "vendor" for VAT purposes after it has been so registered.

Refer to paragraph 2.5 of the *VAT 404 – Guide for Vendors* which deals with voluntary registration for more information in this regard.

The question which arises in such a situation is whether only some, or all, of the activities of a share block company will be regarded as part of its "enterprise".

<sup>54</sup> Second proviso to section 12(f).

<sup>55</sup> Paragraph (b)(iii) was inserted to deal specifically with the previous inability of a share block company to register for VAT voluntarily in this situation.

It follows that should the share block company be registered as a vendor, anything done or to be done which relates to the supply of share block company's shares or the immovable property upon which the scheme is carried on will be regarded as an enterprise activity of the share block company.

Similarly, anything done or to be done regarding the loan obligation linked to the shares of the company will also be taxable. However, where the shares of a share block company and the associated allocated loan obligations change hands between existing shareholders, or between an existing shareholder and a new shareholder, this is not a supply made by the share block company. Rather, it is a supply by the shareholder of that particular share.

It would be possible for a share block company which was incorporated before 9 July 1993, to register as a VAT vendor after 9 July 1993 in respect of its unissued share capital.

### 3. VAT treatment of the core activities

#### 3.1 Supplies made before 9 July 1993

The VAT position before 9 July 1993 can be summarised as follows:

Entity	Supply / Transaction	VAT implications
<b>Share block company (non-vendor)</b>	Acquisition of fixed property.	No input tax deduction but transfer duty or VAT is payable on acquisition of fixed property by the share block company.
	Issue of shares together with loan obligation to the share block developer.	No output tax on shares or loan obligation. Stamp duty was payable by the share block developer.
<b>Share block developer (vendor)</b>	Acquisition of shares from the share block company.	No input tax but stamp duty was payable by the share block developer.
	Supply of shares and loan obligation to shareholders.	Output tax only on the value of the shares (no stamp duty). The loan obligation was regarded as an exempt financial service.
<b>Share block developer (non-vendor)</b>	Acquisition of shares from the share block company.	No input tax but stamp duty was payable by the share block developer.
	Supply of shares and loan obligation to the shareholders.	No output tax but stamp duty was payable by the shareholder on the transfer of the shares. The loan obligation was regarded as an exempt financial service
<b>Shareholder (vendor)</b>	Acquisition of shares from the share block developer (vendor).	May deduct input tax on the consideration attributable to the shares only if the shares are acquired for the purposes of the vendor's enterprise.
	Acquisition of shares from the share block developer (non-vendor).	May deduct a notional input tax credit on the consideration attributable to the shares only (not limited to the stamp duty) if the shares are acquired for the purposes of the vendor's enterprise.
<b>Shareholder (non-vendor)</b>	Acquisition of shares from the developer (vendor or non-vendor).	No input tax.

#### 3.2 Supplies made between 9 July 1993 and 24 November 1994

Fundamental amendments were introduced with effect from 9 July 1993. The purpose of the amendments was to ensure that the input tax on the acquisition of land and buildings was not trapped in the share block company as a business cost to the developer (or the share company in the case

where it markets its own shares). On the other hand, the full purchase price of the share in the share block company which comprised the acquisition of the shares and the transfer of the loan obligation became subject to VAT. The amendments also had the effect of limiting any input tax to the amount of stamp duty or transfer duty (as the case may be) which was payable on the transaction.

The following amendments were effected:

Section	Description	Details of the amendment
1	Insertion of paragraph (b)(iii) in the definition of "enterprise".	This amendment was to enable the activity of the share block company to be registered voluntarily as a vendor notwithstanding the requirements of paragraph (a) of "enterprise". The registration must be seen as being separate from the activities of the company's levy fund [section 12(f)].
2(4)(c)	Transfer of the share block company's loan obligation is not a "financial service".	This provision was inserted to ensure that the transfer of both the share and the loan obligation became subject to VAT.
10(4A)	The value of supply of a share in a share block company includes the loan obligation.	This provision ensures that the taxable value of the supply of a share in a share block company on or after 9 July 1993 includes the value of the share as well as any amount allocated to the loan obligation.
8(17)(a)	The share and the loan obligation are part of the same supply.	This provision was inserted to provide that the allocation, delegation or transfer of a share block company's loan obligation, together with the supply of a share in the share block company is deemed to be part of the supply of the share.
8(17)(b)	Transfer of the loan obligation separate from the share constitutes a separate supply of a share.	This provision prevents the potential misuse of section 8(17)(a). It provides that the allocation, delegation or transfer of a share block company's loan obligation, which occurs without the supply of a share, is deemed to constitute a separate supply of a share in a share block company.
8(18)	The supply of the shares and loan obligation are deemed for the purposes of "input tax" to be made by the developer in certain cases.	This provides for the situation where, before 9 July 1993 the shares of a share block company (or part thereof) including the allocated loan obligation, have been allocated to a share block developer as contemplated in section 1 of the Share Blocks Act and the developer disposes of the shares in the share block company on or after 9 July 1993.  Should the share block company register as a vendor on or after 9 July 1993 and the share block developer is a vendor, this section deems the taxable supply of the shares and allocated loan obligation made by the developer to be those of the share block company only for the purposes of the definition of "input tax" and either section 18(4)(a) or (b) and section 18(5).

The effect of these amendments can be summarised as follows:

Entity	Supply / Transaction	VAT implications
<b>Share block company (vendor)</b>	Acquisition of fixed property.	Can deduct input tax, subject to obtaining a tax invoice. If transfer duty was paid the input tax is no longer limited to the transfer duty paid but rather the tax fraction of the consideration paid for the property. The input tax deduction is subject to obtaining the required documents to substantiate the deduction for second-hand goods acquired.
	Issue of shares together with loan obligation to the share block developer.	Output tax must be declared on the value of the shares <b>and</b> the loan obligation.
<b>Share block company (non-vendor)</b>	Acquisition of fixed property.	Transfer duty or VAT would have been payable. No input tax may be deducted.
	Issue of shares together with loan obligation to the share block developer.	No output tax on the shares or loan obligation. Stamp duty would have been payable by the share block developer.
<b>Share block developer (vendor)</b>	Acquisition of shares from the share block company.	Input tax can be deducted if the shares were acquired from a vendor for the purposes of the developer's enterprise, subject to obtaining a tax invoice.
	Supply of shares and loan obligation to shareholders.	Output tax on the value of the shares <b>and</b> the loan obligation.
<b>Share block developer (non-vendor)</b>	Acquisition of shares from the share block company.	No input tax but stamp duty would have been payable by the share block developer.
	Supply of shares and loan obligation to shareholders.	No output tax but stamp duty would have been payable by the shareholder on the transfer of the shares.
<b>Shareholder (vendor)</b>	Acquisition of shares from share block developer (vendor)	May deduct actual input tax on the shares <b>and</b> the loan obligation if the shares are acquired for the purposes of the vendor's enterprise, subject to obtaining a tax invoice.
	Acquisition of shares from developer or other shareholder (non-vendor)	May deduct notional input tax ( <i>not</i> limited to the stamp duty) if the shares are acquired for the purposes of the vendor's enterprise, subject to obtaining the required documents to substantiate the deduction for second-hand goods acquired.
<b>Shareholder (non-vendor)</b>	Acquisition of shares from share block developer or other shareholder (vendor or non-vendor).	No input tax.

### 3.3 Supplies made between 25 November 1994 and 5 June 1996

The following amendments to the Transfer Duty Act, Stamp Duty Act and VAT Act were effective from 25 November 1994 and were taken into account in so far as they relate to supplies by share block schemes and more specifically supplies of "second-hand goods".

### The Transfer Duty Act

Section	Description	Details of the amendment
5(11)	If part of the consideration for a property is subjected to VAT, such amount is excluded from any consideration which may be subject to transfer duty.	<p>Some transactions are so inextricably linked that the conclusion of the one is reliant upon the conclusion of the other. An example is where a person concludes a contract for the acquisition of undeveloped land and also enters into a building contract for the improvement of that land (typically referred to as “plot and plan”). In these cases, the consideration payable in terms of the building contract may, having regard to the circumstances of the case, be added to the purchase price of the land, under section 6(1)(c) of the Transfer Duty Act, for purposes of the determination of the transfer duty payable on the property.</p> <p>A problem arises, however, in the sense that both VAT and transfer duty may, under certain circumstances, be payable on the value of the building contract. In order to alleviate any resultant hardship, section 5(11) of the Transfer Duty Act provides for a reduction of the transfer duty value of the transaction, by an amount equal to the value of the supply of the property made to the person acquiring the property on which VAT was levied at the standard or zero rate. In other words, the value of the building contract portion is excluded for transfer duty purposes.</p>

### The Stamp Duties Act

Section	Description	Details of the amendment
Schedule 1 item 15	A taxable supply of original issue shares qualifies for exemption.	Before 25 November 1994 the original issue of shares in a share block company could have been subject to VAT and stamp duty. The amendment to item 15 of Schedule 1 to the Stamp Duties Act by the insertion of the subparagraph under the heading “Exemptions from the duty under paragraph (1) or (2)”, provided for an exemption from stamp duty on the original issue of shares if the supply was a taxable supply.

### The VAT Act

Section	Description	Details of the amendment
Section 1 definition of “input tax”	Paragraph (b) of the definition of “input tax” limited the input to the open market value, transfer duty or stamp duty (as the case may be).	<p>Paragraph (b) of the definition of “input tax” in section 1 was amended to limit the amount of the consideration in respect of which the deduction may be made, to the open market value of the goods, both where the supply takes place between connected persons or under an arm’s length transaction.</p> <p>The amendment further provides that where second-hand goods are acquired which constitute –</p> <ul style="list-style-type: none"> <li>• fixed property and transfer duty is payable (or would have been payable had an exemption from transfer duty not been applicable); or</li> <li>• a share in a share block company in respect of the original issue or transfer of registration on which stamp duty is payable (or would have been payable had an exemption from stamp duty not been applicable),</li> </ul> <p>the amount of the deduction which may be made is limited to the amount of transfer duty or the stamp duty (as the case may be).</p>
Section 1 definition of “second-hand goods”	Definition of “second-hand goods” now includes the supply of a unit when converting to	Before the amendment, if a shareholder in a share block scheme converted to sectional title, no input tax could be deducted, as the unit was viewed as being newly created. The purpose of the amendment was to allow the transferee to deduct input tax in these circumstances.

Section	Description	Details of the amendment
	sectional title.	
Sections 16(3)(a)(ii) and 16(3)(b)(i)	Further restriction on notional input tax for second hand goods consisting of fixed property.	<p>These two provisions were amended to introduce a further restriction on the deduction of a notional input tax credit in respect of second-hand goods.</p> <p>In terms of the newly introduced proviso to section 16(3)(a)(ii), where the second-hand goods consist of –</p> <ul style="list-style-type: none"> <li>fixed property in respect of the acquisition of which transfer duty is payable, or</li> <li>a share in a share block company in respect of the original issue or registration or transfer on which stamp duty is payable,</li> </ul> <p>the input tax deduction may only be made after the transfer duty or stamp duty (as the case may be) was paid.</p>

The VAT position on or after 25 November 1994 up until 5 June 1996, between the share block company, share block developer and shareholder can be summarised as follows:

Entity	Supply / Transaction	VAT implications
<b>Share block company (vendor)</b>	Acquisition of fixed property.	Can deduct input tax (if transfer duty was paid the input is <i>limited</i> to the transfer duty).
	Issue of shares together with loan obligation to the share block developer.	Output tax on the value of the shares <i>and</i> the loan obligation.
<b>Share block company (non-vendor)</b>	Acquisition of fixed property.	No input tax but transfer duty or VAT is payable.
	Issue of shares together with loan obligation to the share block developer.	No output tax on the shares or loan obligation. Stamp duty is payable by the share block developer.
<b>Share block developer (vendor)</b>	Acquisition of shares from the share block company.	Actual input tax can be deducted on the shares <i>and</i> loan obligation if acquired from a vendor for the purposes of the developer's enterprise.
	Supply of shares and loan obligation to shareholders.	Output tax on the value of the shares <i>and</i> the loan obligation.
<b>Share block developer (non-vendor)</b>	Acquisition of shares from the share block company.	No input tax but stamp duty or VAT is payable by the share block developer.
	Supply of shares and loan obligation to shareholders.	No output tax but stamp duty is payable by the shareholder on the transfer of the shares.
<b>Shareholder (vendor)</b>	Acquisition of shares from the share block developer (vendor).	May deduct actual input tax on the shares and the loan obligation if the shares are acquired for the purposes of the vendor's enterprise.
	Acquisition of shares from the share block developer or other shareholder (non- vendor).	Can deduct notional input tax ( <i>limited</i> to the stamp duty) if the shares are acquired for the purposes of the vendor's enterprise.
<b>Shareholder (non-vendor)</b>	Acquisition of shares from the share block developer or other shareholder (vendor or non-	No input tax.

Entity	Supply / Transaction	VAT implications
	vendor).	

### 3.4 Supplies made between 6 June 1996 and 9 January 2012

Included in the definition of “fixed property” in section 1 is any share in a share block company which confers a right to or an interest in the use of immovable property. The following amendments were introduced to the VAT Act in relation to “fixed property” and must be taken into account in respect of agreements concluded for the supply of shares in a share block company between 6 June 1996 and 9 January 2012.

Section	Description	Details of the amendment
16(3)(a)(i) & (ii)	Input tax was limited on supplies of fixed property between 6 June 1996 and 9 January 2012.	This section was amended to limit the input tax deduction in the case of fixed property, which includes a share and concomitant allocated loan obligation, in relation to agreements concluded for supplies between 6 June 1996 and 9 January 2012.
16(3)(a)(iiA)	Input tax was limited to the extent of payment on taxable supplies of fixed property (invoice basis). A new subparagraph (iiA) was inserted to put effect to this amendment.	This section was amended to provide that in the case of the taxable supply of fixed property between 6 June 1996 and 9 January 2012, the input tax deduction may be deducted only to the extent of any consideration actually paid by the recipient. Vendors that were registered on the invoice basis therefore had to treat such supplies as if they were on the payments basis.
16(4)(a)(ii)	Output tax on taxable supplies of fixed property need only be accounted for to the extent of payment (invoice basis).	This section was amended to require a vendor who accounts for tax on the invoice basis to account for output tax on the supply of fixed property only to the extent that payment of consideration for that supply has been received. As with the amendment limiting the input tax, vendors had to treat such supplies as if they were on the payments basis.

The VAT position between 6 June 1996 and 9 January 2012 between the share block company, share block developer and shareholder can be summarised as follows:

Entity	Supply / Transaction	VAT implications
<b>Share block company (vendor)</b>	Acquisition of fixed property.	Deduct input tax to the extent of payment of consideration (if transfer duty was paid, the input is <i>limited</i> to the transfer duty).
	Issue of shares together with loan obligation to the share block developer.	Output tax on the value of the shares <i>and</i> the loan obligation to the extent of payment received.
<b>Share block company (non-vendor)</b>	Acquisition of fixed property.	No input tax but transfer duty or VAT is payable.
	Issue of shares together with loan obligation to the share block developer.	No output tax on the shares or loan obligation. Stamp duty is payable by the share block developer until 1 April 2009 when the Stamp Duty Act was repealed and replaced by securities transfer tax. From 1 September 2009 a share in share block company

Entity	Supply / Transaction	VAT implications
		was subject to transfer duty.
<b>Share block developer (vendor)</b>	Acquisition of shares from the share block company.	Actual input tax can be deducted to the extent of payment if shares were acquired from a vendor for the purposes of the vendor's enterprise.
	Supply of shares and loan obligation to shareholders.	Output tax on the value of the shares <i>and</i> the loan obligation to the extent of payment of the consideration if the shares are acquired for the purposes of the vendor's enterprise.
<b>Share block developer (non-vendor)</b>	Acquisition of shares from the share block company.	No input tax but stamp duty or VAT is payable by the share block developer.
	Supply of shares and loan obligation to shareholders.	No output tax but stamp duty is payable by the shareholder. Stamp duty is payable by the share block developer until 1 April 2009 when the Stamp Duty Act was repealed and replaced by securities transfer tax. From 1 September 2009 a share in share block company was subject to transfer duty
<b>Shareholder (vendor)</b>	Acquisition of shares from the share block developer (vendor).	May deduct actual input tax to the extent of payment of the consideration on the shares and the loan obligation if the shares are acquired for the purposes of the vendor's enterprise.
	Acquisition of shares from the share block developer (non-vendor).	Can deduct notional input tax ( <i>limited</i> to the stamp duty) if the shares are acquired for the purposes of the vendor's enterprise.
<b>Shareholder (non-vendor)</b>	Acquisition of shares from the share block developer or other shareholder (vendor or non-vendor).	No input tax.

### 3.5 Supplies made between 10 January 2012 and 31 March 2014

Previously where a vendor acquired fixed property from a non-vendor, the purchaser was entitled to deduct notional input tax to the extent that the property would be used in the course or furtherance of that vendor's enterprise. This input tax deduction was, however, limited to the amount of transfer duty paid. The input tax could only be deducted in the tax period in which the transfer duty had actually been paid. The transfer duty and stamp duty limitations are no longer applicable in respect of supplies on or after 10 January 2012.

A vendor is now entitled to a full input tax deduction equal to the tax fraction of the lesser of the purchase price or open market value of the property or share in the share block, subject to the provisions of section 17(1). The limitation in regard to the extent of payment of the consideration is, however, still applicable.

A further amendment was introduced to deem a conversion from a share block company to a sectional title unit as well as a disposal of the immovable property to a shareholder who had a right of exclusive use in that immovable property to have been made other than in the course or furtherance of an enterprise.



The following amendments to the VAT Act were effective from 10 January 2012.

Section	Description	Details of the amendment
16(3)(a)(ii)(aa) and 16(3)(a)(ii)(bb)	Input tax on acquisition of fixed property (including a share in a share block company).	This section was amended to remove the limit on the notional input tax deduction on the acquisition of “fixed property” where the transfer duty could previously only be deducted if the full and final amount of transfer duty or stamp duty had been paid during that period. A vendor is now entitled to deduct the tax fraction of the market value of the property as input tax.

The following amendments to the VAT Act were effective from 1 January 2013.

Section	Description	Details of the amendment
8(19)(a)(i) and 8(19)(b)(i)	Conversion from a share block company to a sectional title unit deemed to be in the course and furtherance of an enterprise.	This section was amended to remove the unintended consequence that the shareholder of the share block company can potentially claim a notional input tax deduction in respect of the immovable property acquired as part of the sectional title conversion if the shareholder is a VAT vendor. This claim is based on the argument that the acquisition of the immovable property is like the acquisition of any other second-hand good (especially in view of the wording in the “second-hand goods” definition).
8(19)(a)(ii) and 8(19)(b)(ii)	A sale of immovable property to a shareholder who holds a right of exclusive use of that immovable property, which was conferred by a reason of an ownership of a share in a share block company.	This section inserted to deem the disposal of the immovable property held by the share block company to the shareholder who holds a right to exclusive in that immovable property to have been otherwise than in the course or furtherance of an enterprise for that share block company and the shareholder.

The VAT position between 10 January 2012 and 31 March 2014, between the share block company, share block developer and shareholder can be summarised as follows:

Entity	Supply / Transaction	VAT implications
<b>Share block company (vendor)</b>	Acquisition of fixed property.	Deduct input tax to the extent of consideration paid. If transfer duty was paid, the input is <i>not limited</i> to the transfer duty and can be deducted upon registration of the transfer in the deeds registry.
	Issue of shares together with loan obligation to the share block developer.	Output tax on the value of the shares <i>and</i> the loan obligation to the extent of payment received.
<b>Share block company (non-vendor)</b>	Acquisition of fixed property.	No input tax but transfer duty or VAT is payable.
	Issue of shares together with loan obligation to the share block developer.	No output tax on the shares or loan obligation.
<b>Share block developer (vendor)</b>	Acquisition of a share from the share block company.	Input tax can be deducted to the extent of payment if shares were acquired from a vendor for the purposes of the vendor’s enterprise.
	Supply of a share and loan obligation to shareholders.	Output tax on the value of the shares <i>and</i> the loan obligation to the extent of payment of the consideration.

<b>Share block developer (non-vendor)</b>	Acquisition of a share from the share block company	No input tax but transfer duty or VAT is payable by the share block developer
	Supply of a share and loan obligation to shareholders.	No output tax but transfer duty is payable by the shareholder.
<b>Shareholder (vendor)</b>	Acquisition of a share from the share block developer (vendor).	May deduct actual input tax to the extent of payment of the consideration in respect of the shares and the loan obligation if the shares are acquired for the purposes of the vendor's enterprise.
	Acquisition of a share from the share block developer (non-vendor).	Can deduct notional input tax ( <i>which is no longer limited</i> to the stamp duty (since Stamp Duty Act was repealed on 1 April 2009) paid which can only be deducted once a signed use agreement has been entered into between the share block company and the member).
<b>Shareholder (non-vendor)</b>	Acquisition of a share from the share block developer or other shareholder (vendor or non-vendor).	No input tax.

### 3.6 Supplies made on or after 1 April 2014

Prior to 1 April 2014 a conversion from share block company to a sectional title was deemed to have been made other than in the course of an enterprise.

A share block company that–

- converts into a sectional title, the supply of goods consisting of immovable property made by a share block company and the acquisition of services comprising the waiving of rights against a share block company;
- sells immovable property, the supply of the immovable property to a shareholder that has a right of exclusive use in the immovable property and the supply by the shareholder of services of waiving his right of exclusive use in the property against the share block company,

is deemed to have been made in the course of an enterprise for that share block company.

In essence the conversion will be viewed as a deemed supply in the course or furtherance of an enterprise but the supply will be viewed as having a nil value.

The following amendments to the VAT Act were effective from 1 April 2014.

Section	Description	Details of the amendment
8(19)(a)(i) and 8(19)(b)(i)	Conversion from a share block company to a sectional title unit deemed to be in the course and furtherance of an enterprise.	This section was amended to remove the unintended consequence that the shareholder of the share block company can potentially claim a notional input tax deduction in respect of the immovable property acquired as part of the sectional title conversion if the shareholder is a VAT vendor. This claim is based on the argument that the acquisition of the immovable property is like the acquisition of any other second-hand good (especially in view of the wording in the “second-hand goods” definition).

8(19)(a)(ii) and 8(19)(b)(ii)	A sale of immovable property to a shareholder who holds a right of exclusive use of that immovable property, which was conferred by a reason of an ownership of a share in a share block company.	This section was amended to deem the disposal of the immovable property held by the share block company to the shareholder who holds a right to exclusive in that immovable property to be in the course or furtherance of an enterprise for that share block company and the shareholder.
10(27)	Where any supply of goods or services is deemed to be made under section 8 (19), the value of such supply shall be deemed to be nil.	This section was inserted to deem the value of the conversion of a share block company to a sectional title unit to be nil.

The VAT position on or after 1 April 2014, between the share block company, share block developer and shareholder can be summarised as follows:

Entity	Supply / Transaction	VAT implications
<b>Share block company (vendor)</b>	Acquisition of fixed property.	Deduct input tax to the extent of payment of consideration. If transfer duty was paid, the input is <i>not limited</i> to the transfer duty and can be deducted upon registration of the transfer in the deeds registry.
	Issue of a share together with loan obligation to the share block developer.	Output tax on the value of the shares <i>and</i> the loan obligation to the extent of payment received.
<b>Share block company (non-vendor)</b>	Acquisition of fixed property.	No input tax but transfer duty or VAT is payable.
	Issue of a share together with loan obligation to the share block developer.	No output tax on the shares or loan obligation.
<b>Share block developer (vendor)</b>	Acquisition of a share from the share block company.	Input tax can be deducted to the extent of payment if shares were acquired from a vendor for the purposes of the vendor's enterprise.
	Supply of a share and loan obligation to shareholders.	Output tax on the value of the shares <i>and</i> the loan obligation to the extent of payment of the consideration.
<b>Share block developer (non-vendor)</b>	Acquisition of a share from the share block company	No input tax but securities transfer tax or VAT is payable by the share block developer
	Supply of a share and loan obligation to shareholders.	No output tax but securities transfer tax is payable by the shareholder.
<b>Shareholder (vendor)</b>	Acquisition of a share from the share block developer (vendor).	May deduct actual input tax to the extent of payment of the consideration in respect of the shares and the loan obligation if the shares are acquired for the purposes of the vendor's enterprise.
	Acquisition of a share from the share block developer (non-vendor).	Can deduct notional input tax ( <i>which is no longer limited</i> to the stamp duty paid which can only be deducted once a signed use agreement has been entered into between the share block company and the member).
<b>Shareholder (non-vendor)</b>	Acquisition of a share from the share block developer or other shareholder (vendor or non-vendor).	No input tax.

The VAT position on or after 1 April 2014 on conversion from a share block company to a sectional title unit can be summarised as follows:

Entity	Supply / Transaction	VAT implications
<b>Shareholder (vendor)</b>	Supply of a service of a surrender or waiver of the right of exclusive use in the share block company.	Deemed to be a taxable supply of services with a value of nil, therefore no output tax.
	Acquisition of a unit from a newly created sectional title.	No input tax.
<b>Shareholder (non-vendor)</b>	Supply of a service of a surrender or waiver of the right of exclusive use in the share block company.	No output tax.
	Acquisition of a unit from a newly created sectional title.	No input tax.
<b>Share block company (vendor)</b>	Acquisition of service of a surrender or waiver of the right of exclusive use in the share block company Supply of a unit in a sectional title unit.	No input tax.
<b>Share block company/newly created sectional title (non-vendor)</b>	Supply of a unit from a newly created sectional title.	Deemed to be a taxable supply of fixed property (unit in a sectional title) with a value of nil, therefore no output tax.

## Glossary

<p><b>Association not for Gain</b></p>	<p>Any religious institution, society or organisation which is carried on, otherwise than for profit and in terms of its written constitution which governs it –</p> <ul style="list-style-type: none"> <li>• is required to use any property or income solely in the furtherance of its aims;</li> <li>• is prohibited to transfer any portion of property or income to any person, except as reasonable remuneration for services provided; and</li> <li>• is obliged, at its winding-up or liquidation to give or transfer its assets after satisfaction of debts, to another similar society.</li> </ul> <p>It can also be an educational institution of a public character which –</p> <ul style="list-style-type: none"> <li>• is carried on not for profit or gain;</li> <li>• is in terms of its memorandum or any other documentation which governs it required to use any property or income solely in the furtherance of its aims and objectives; and</li> <li>• is prohibited to transfer any portion of property or income to any person, except as reasonable remuneration for services rendered.</li> </ul> <p>A welfare organisation is a type of association not for gain.</p>
<p><b>Bare Dominium</b></p>	<p>In relation to the rights over immovable property, means that the owner of the immovable property does not have the use of the property and that the right of use, or usufruct, vests with the usufructuary as a personal right.</p>
<p><b>Commercial Accommodation</b></p>	<p>Lodging, or board and lodging supplied –</p> <ul style="list-style-type: none"> <li>• together with domestic goods and services, in any house, flat, apartment, room, hotel, motel, inn, guesthouse, boarding house, residential establishment, holiday accommodation unit, chalet, tent, caravan, camping site, houseboat, or similar establishment;</li> <li>• in a home for the aged, children, physically, or mentally handicapped persons; and</li> <li>• in a hospice.</li> </ul> <p>A dwelling supplied in terms of an agreement for letting and hiring thereof is not regarded as commercial accommodation.</p>
<p><b>Connected Person</b></p>	<p>Describes and identifies the relationships between different persons. If persons are connected in terms of the definition, it may be necessary to apply special time and value of supply rules whereby the supplier may be required to charge VAT on the open market value of the supply, rather than on the amount of consideration received.</p> <p>Examples include the following (amongst others):</p> <ul style="list-style-type: none"> <li>• Natural persons who are related</li> <li>• A company and subsidiaries of that company</li> <li>• Any close corporation and its members, and</li> <li>• A natural person and a company where that natural person owns more than 10% of the shares or voting rights in that company.</li> </ul>

<b>Consideration</b>	<p>This is generally the total amount of money (incl. VAT) received for a supply. For barter transactions where the consideration is not in money, the consideration will be the open market value of goods or services (incl. VAT) received for making the taxable supply. Section 10 determines the value of supply or consideration for VAT purposes for different types of supplies.</p> <p>Any act of forbearance whether voluntary or not for the inducement of a supply of goods or services will constitute consideration, but it excludes any donation made to an association not for gain. Also excluded is a “deposit” which is lodged to secure a future supply of goods and held in trust until the time of the supply.</p> <p>A supply for no consideration has a value of “nil”, except when the supply is between connected persons in this case of which special valuation rules apply.</p>
<b>Dwelling</b>	<p>Except where used in the supply of commercial accommodation, any building, premises, structure or any other place, or any part thereof, used or intended for use predominantly as a place of residence for any natural person, including all fixtures and fittings.</p>
<b>Enterprise</b>	<p>Any business activity in the broadest sense. It includes any activity carried on –</p> <ul style="list-style-type: none"> <li>• continuously or regularly;</li> <li>• by any person;</li> <li>• in or partly in the Republic;</li> <li>• in the course of which goods or services are supplied for a consideration, that is some form of payment;</li> <li>• whether or not for profit.</li> </ul> <p>Special inclusion</p> <ul style="list-style-type: none"> <li>• Share block companies.</li> </ul> <p>Examples</p> <ul style="list-style-type: none"> <li>• Ordinary businesses - manufacturers, traders, auctioneers, landlords, contractors etc.</li> <li>• Trades and professions - builders, electricians, plumbers, doctors, lawyers, accountants etc.</li> </ul> <p>The following activities are not enterprise activities and will therefore not attract VAT: (This list is not exhaustive)</p> <ul style="list-style-type: none"> <li>• Services rendered by an employee to his/her employer, for example, salary/wage/remuneration earners. This must, however, be distinguished from a private independent contractor who is not excluded.</li> <li>• Private occasional transactions, for example, occasional sale of domestic/household goods, personal effects or private motor vehicle.</li> <li>• Supplies by persons who are not vendors.</li> <li>• The supply of commercial accommodation where the total value of such supplies made by the vendor is less than R120 000.</li> </ul>
<b>Exempt Supplies</b>	<p>An exempt supply is a supply on which no VAT may be charged (even if the supplier is registered for VAT). Persons making only exempt supplies may not</p>

	<p>register for VAT and may not recover input tax on purchases to make exempt supplies.</p> <p>Section 12 contains a list of exempt supplies.</p> <p>Examples:</p> <ul style="list-style-type: none"> <li>• Certain financial services.</li> <li>• Supplies by any “association not for gain” of certain donated goods or services.</li> <li>• Rental of accommodation in any “dwelling” including employee housing.</li> <li>• Certain educational services.</li> <li>• Services of employee organisations, for example, trade unions.</li> <li>• Certain services to members of a sectional title, share block or retirement housing scheme funded out of levies. (Not applicable to timeshare schemes.)</li> <li>• Public road and railway transport for fare-paying passengers and their luggage.</li> <li>• Childcare services in a crèche or after school care centre.</li> </ul>
<p><b>Fixed Property</b></p>	<p>Fixed property includes land together with improvements which are attached to the land such as buildings. Fixed property is defined in the VAT Act to also specifically include the following:</p> <ul style="list-style-type: none"> <li>• Sectional title units;</li> <li>• Shares in a share block company;</li> <li>• A time-sharing interest in a property time-sharing scheme;</li> <li>• Any real right in any of the above.</li> </ul>
<p><b>Goods</b></p>	<p>The term “goods” <u>includes</u> –</p> <ul style="list-style-type: none"> <li>• corporeal (tangible) movable things, goods in the ordinary sense (including any real right in those things);</li> <li>• fixed property, land &amp; buildings (including any real right in the property, for example, servitudes, mineral rights, notarial leases etc.);</li> <li>• sectional title units (including timeshare);</li> <li>• shares in a share block company;</li> <li>• electricity;</li> <li>• postage stamps; and</li> <li>• second-hand goods.</li> </ul> <p>The term “goods” <u>excludes</u> –</p> <ul style="list-style-type: none"> <li>• money, that is notes, coins, cheques, bills of exchange, etc. (except when sold as a collectors item);</li> <li>• value cards, revenue stamps, etc. which are used to pay taxes (except when sold as a collectors item); and</li> <li>• any right under a mortgage bond.</li> </ul>

<b>Input Tax</b>	<p>This is the tax paid by the recipient to the supplier of goods or services. Input tax may only be deducted by the recipient vendor if the goods or services are acquired for making taxable supplies and if the vendor is in possession of a valid tax invoice or such other prescribed documents for the supply. Where goods or services are acquired only partly for taxable supplies, an apportionment of input tax must be made.</p> <p>In certain instances, input tax may also be deducted on non-taxable supplies of second-hand goods acquired by the vendor, but the vendor must retain a proper record of the details of the transaction. Where the second-hand goods acquired constitute a share in a share block company, the input tax is limited to–</p> <ul style="list-style-type: none"> <li>• the extent of any to the extent that payment of any consideration which has the effect of reducing or discharging any obligation (whether an existing obligation or an obligation which will arise in the future) relating to the purchase price; and</li> <li>• a signed use agreement has been entered into between the company that operates the share block scheme and a member of that company.</li> </ul> <p>Input tax may not be deducted where goods or services are acquired for making exempt supplies or other non-taxable activities or for private use.</p>
<b>Owner</b>	In relation to land, means the person in whose name the land is registered in the Deeds Registry concerned and also any successor in title of such person.
<b>Person</b>	<p>The entity which is liable for VAT registration and includes –</p> <ul style="list-style-type: none"> <li>• sole proprietor, that is a natural person;</li> <li>• company/close corporation;</li> <li>• partnership/joint venture;</li> <li>• deceased/insolvent estate;</li> <li>• trusts;</li> <li>• incorporated body of persons, for example, an entity established under its own enabling Act of Parliament;</li> <li>• unincorporated body of persons, for example, club, society or association with its own constitution;</li> <li>• foreign donor funded project; and</li> <li>• municipalities/public authorities.</li> </ul>
<b>Recipient</b>	In relation to any supply of goods or services, means the person to whom the supply is made.
<b>Rental Agreement</b>	Means an agreement entered into for the letting of goods.
<b>SARS</b>	South African Revenue Services.
<b>Second-hand Goods</b>	Means goods (including fixed property) that have been previously owned and used but excludes animals, gold coins, certain “old order” mining rights, gold, gold coins contemplated in section 11(1)(k) and goods containing gold.



<b>Sectional Title</b>	This term is not defined in the Sectional Titles Act, but it refers to a type of ownership in fixed property. An owner has full title to a particular demarcated section of a building which is known as a “unit” and is registered as such in the Deeds Registry concerned.
<b>Services</b>	<p>Broadly defined and includes the following:</p> <ul style="list-style-type: none"> <li>• The granting, assignment, cession, surrender of any right;</li> <li>• The making available of any facility or advantage; and</li> <li>• Certain acts which are deemed to be services under section 8</li> </ul> <p>but excludes:</p> <ul style="list-style-type: none"> <li>• A supply of “goods”;</li> <li>• A supply of “money”; and</li> <li>• Any stamp, form or card which falls into the definition of “goods”.</li> </ul> <p>Examples:</p> <ul style="list-style-type: none"> <li>• Commercial services - electricians, plumbers, builders.</li> <li>• Professional services - lawyers.</li> <li>• Advertising agencies.</li> </ul>
<b>Share Block Scheme</b>	Means any scheme in terms of which a share, in any manner whatsoever confers a right or an interest in the use of immovable property.
<b>Share Block Company</b>	Means a company the activities of which comprise or include the operation of a share block scheme.
<b>Share Block Developer</b>	Means any person by whom, on whose behalf or for whose benefit more than 50% of the shares of a share block company are held or controlled and, where two or more persons by whom, on whose behalf or for whose benefit more than 50% of the shares of such a company are jointly held or controlled, act in concert in relation to or are jointly connected with the business of the company, each of such persons.
<b>Supply</b>	This definition is very wide and includes all forms of supply, irrespective of where the supply is effected, and any derivative of supply is construed accordingly.
<b>Taxable Supplies</b>	<p>These are supplies (including zero-rated supplies) which are chargeable with tax under the VAT Act. There are two types of taxable supplies, namely:</p> <ul style="list-style-type: none"> <li>• Those which attract the zero rate (listed in section 11); and</li> <li>• Those on which the standard rate of 14% must be charged.</li> </ul> <p>A taxable supply does not include any exempt supply listed in section 12, even if supplied by a registered vendor.</p>
<b>Time-Sharing</b>	Means the right to or interest in the exclusive use or occupation, during determinable periods during the year, of accommodation.

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<b>VAT</b>	Value-added tax
<b>Vendor</b>	This is any person that is registered, or is required to be registered for VAT. Therefore any person making taxable supplies in excess of the R1 million threshold amount (prescribed in section 23) is a vendor, whether that person has actually registered with SARS or not.

## Contact details

The **SARS website** contains contact details of all SARS branch offices and border posts.

Contact details appearing on the website under “Contact Us” (other than branch offices and border posts) are reproduced below for your convenience.

### SARS Head Office

#### Physical Address

South African Revenue Service  
Lehae La SARS  
299 Bronkhorst Street  
Nieuw Muckleneuk  
0181  
Pretoria

#### Postal Address

Private Bag X923  
Pretoria  
0001  
South Africa

#### SARS website

[www.sars.gov.za](http://www.sars.gov.za)

#### Telephone

012 422 4000

#### SARS Fraud and Anti-Corruption hotline

0800 00 28 70

### SARS Complaints Management Office (CMO)

#### Telephone

0860 12 12 16

Via eFiling, see our step-by-step guide  
Visit your nearest SARS Branch

### Office of the Tax Ombud

#### Telephone

0800 662 837  
012 431-9105

#### Fax

012 452-5013

#### Postal Address

PO Box 12314  
Hatfield  
0028  
South Africa

#### Website

<http://www.taxombud.gov.za>

#### email

[complaints@taxombud.gov.za](mailto:complaints@taxombud.gov.za)

### e-Filing

#### Telephone

0860 00 7277

#### International Callers

+27 11 602 2093

#### Website

[www.sarsefiling.co.za](http://www.sarsefiling.co.za)

<b>National Call Centre / SARS Contact Centres</b>			
<p>You may contact SARS by phone, email, fax or visiting a SARS Branch.</p> <ul style="list-style-type: none"> <li>• Call our SARS Contact Centre on 0800 00 7277</li> <li>• International Callers may contact our Contact Centre on +27 11 602 2093</li> <li>• Email or fax one of our dedicated four contact centres:</li> </ul>			
<b>Area</b>	<b>Telephone</b>	<b>Fax</b>	<b>email</b>
<p><b>Northern South Africa</b> Vendors residing in Gauteng north (including Centurion and Pretoria), North West, Mpumalanga and Limpopo.</p>	0800 00 7277	012 6706880	<i>Contact.north@sars.gov.za</i>
<p><b>Central South Africa</b> Vendors residing in Gauteng south (including Midrand, the Greater Johannesburg area, Kempton Park, Boksburg, Vereeniging and Springs), the Free State and Northern Cape.</p>	0800 00 7277	010 2085005	<i>Contact.central@sars.gov.za</i>
<p><b>Eastern South Africa</b> Vendors residing in KZN and northern parts of the Eastern Cape (up to and including East London).</p>	0800 00 7277	031 3286018	<i>Contact.east@sars.gov.za</i>
<p><b>Southern South Africa</b> Vendors residing in the Eastern Cape, south of East London and the Western Cape.</p>	0800 00 7277	021 4138905	<i>Contact.south@sars.gov.za</i>

### **Practitioners Unit**

**Telephone / Call Centre**

0800 00 72 77

**email**

*pcc.pavilion@sars.gov.za*

**Business hours**

Weekdays 8:00 - 16:00 (except Wednesdays)

Wednesdays 9:00 - 16:00

**Physical Address**

Pavilion  
226 Bronkhorst Street  
Nieuw Muckleneuk  
Pretoria

This facility is for Tax Practitioners already registered with SARS (Pretoria area only). Appointments can be made online by visiting: **www.sars.gov.za**, then go to the Tax Practitioners' web page.

### **Application for a VAT Ruling or VAT Class Ruling**

Should there be any aspects relating to VAT on which a specific VAT ruling is required, you may submit a ruling application on a VAT301 to SARS by email to **VATRulings@sars.gov.za** or by facsimile on +27 86 540 9390. All applications must comply with section 79 of the Tax Administration Act [excluding section 79(4)(f), (k) and (6)].

