

VAT – Consequences of non-registration for VAT

The Value Added Tax Act 89 of 1991 (the VAT Act) requires VAT to be levied by a vendor on the supply of goods or services in the course or furtherance of an enterprise carried on by the vendor. A vendor is any person who is or is required to be registered in terms of the VAT Act. The fact that a vendor includes any person that is required to be registered makes it clear that a person's liability for VAT is not dependent on whether the person is in fact registered as a vendor but rather whether the person is required to be registered as a vendor.

The VAT Act requires registration as a vendor on either a prospective or retrospective basis. On a prospective basis, a person would be required to register as a vendor on the first day of the month in which the total value of the vendor's taxable supplies in terms of a contractual obligation would exceed R1 million (excluding VAT) during the following 12 months. On a retrospective basis, a person would be required to register as a vendor on the last day of the month during which the total value of the vendor's taxable supplies exceeded R1 million (excluding VAT) during the previous 12 months. Therefore, should a person's taxable supplies (which excludes exempt supplies) exceed the R1 million threshold, that person would be regarded as a vendor from the beginning of the particular month (on a prospective basis) or from the end of the particular month (on a retrospective basis) and would have to levy output tax from that point in time, irrespective of the fact that the person may not be registered as a vendor at that point in time.

Should the vendor fail to register, the VAT Act would deem all of the prices charged by the vendor after his liability for registration came into existence, to include VAT at 14%. This would be the case irrespective of whether VAT was in fact charged by the vendor. SARS would therefore be entitled to recover 14% from all prices charged by the person from the date the person should have been registered as a vendor. The 14% retrospective recovery of VAT from the prices charged by the vendor may eliminate all of the vendor's profits even before considering the penalties and interest that the vendor could be subject to. These penalties include inter alia:

- A 10% penalty of the amount of the VAT that was not paid.
- Interest at the prescribed rate on the amount of VAT that was not paid.
- The potential imposition of the understatement penalty.

Legal persona making taxable supplies who are not registered as vendors should exercise great caution when determining whether registration is required. In the event of a default, the Voluntary Disclosure Programme (VDP) may be an avenue worth exploring. The VDP in its current form would provide relief from the understatement penalty (the extent of the relief depends on whether the default has been disclosed before or after the notification of an audit by SARS). There would, however, not be any relief for the 10% penalty of the outstanding VAT as it is levied for the late payment of a tax which is excluded from VDP relief. The interest levied on the outstanding VAT would not fall within the ambit of the VDP and the VAT Act would in very limited circumstances allow the waiver of the interest.

The Tax Administration Laws Amendment Act (23 of 2015) increases the relief provided through the VDP to also provide relief for penalties resulting from the late payment of a tax. This has the effect that the 10% penalty would also qualify to be waived in case of a successful VDP application. This added relief may greatly assist non-compliant vendors wishing to come clean.

Source: SA Tax guide