

# VAT Input Tax Recoupment governed by a host of regulations

By Johan Kotze

When the word 'recoupment' is used in a tax context the first thought that crosses one's mind is a recoupment of an expense claimed for income tax purposes.

Yet the Value-Added Tax Act (VAT Act) provides for recoupment of input taxes under certain circumstances.

Thus, where a vendor has claimed an input tax deduction, but has not paid the full consideration within 12 months after the expiry of the period in which the deduction was made, the vendor has to account for output tax in relation to the amount still outstanding.

Where a written contract has been entered into, the 12 months shall only be calculated from the end of the month within which the consideration was supposed to have been paid in terms of such contract.

This 12-month rule is also applicable where the following may occur within 12 months after the expiry of the tax period within which the deduction was claimed:

- the estate of a vendor is sequestrated, whether voluntarily or compulsorily;
- the vendor is declared insolvent;

- the vendor has entered into a compromise or an arrangement in terms of section 311 of the Companies Act, 1973, or a similar arrangement with creditors; or
- the vendor ceases to be a vendor as contemplated in section 8(2) of the VAT Act.

If, however, the vendor, after the recoupment, pays any portion of the consideration, he may again make a deduction of input tax so recouped.

The draft Taxation Laws Amendment Bill, 2011, now makes special provision for a vendor which is a member of a group of companies.

The Bill proposes that this recoupment of input tax, if the consideration is not paid within the 12-month period, shall not be applicable to a taxable supply made by a vendor to another vendor, where both are members of the same group of companies.

The Bill also proposes that under certain circumstances, where a vendor makes a taxable supply to another vendor which is a member of the same group of companies, may make an input tax deduction of the amount of output tax if the amount of tax has become irrecoverable.

The Bill also proposes a de-grouping charge. It provides for a recoupment of input tax claimed by a recipient vendor when the vendors cease to be part of the same group of companies. The provision is clumsily drafted, because it is not clear to which supplies the de-grouping refers.

Currently the 12-month period refers to any situation, whether or not the supplies were between two vendors in a group of companies, and can only be suspended if an agreement between the two parties provided differently.

Vendors should be mindful of possible input tax recoupments, as they can easily be detected by SARS.

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