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Legislative provisions to businesses under Covid-19 distress

In this article we highlight the legislative provisions applicable to VAT vendors when cancelling the registration.

This article is particularly relevant to independent non-executive directors, entertainment industry businesses – caterers, Dj services, restaurants – and any business under financial distress due to COVID -19. It is intended to help you assess this important decision.

VAT Registration Cancellation

Business budgets for the 2020-2021 financial period have mostly been amended due to the impact of COVID-19. The amendments for most businesses are downward, the projected turnover has reduced. Some businesses are considering shutting down while some have already shut their doors. This has necessitated a review of the need to be VAT registered.

VAT vendors considering cancelling their VAT registration should assess the financial implications that arise from cancellation and carefully consider the legislative implications before cancelling the VAT registration. Vendors that have ceased carrying on their enterprises must inform SARS and ensure that their registration is cancelled.

It is important to note that anything done in the process of deregistration must comply with VAT regulations until the vendor's registration is cancelled. All returns must be submitted, where supplies are still made VAT must be levied at the appropriate rate and supporting documents that comply with the VAT act obtained and retained.

What is the process to cancel VAT registration?

Section 24 of the Value Added Tax Act No. 89 of 1991 (VAT act) prescribes the process that must be followed when cancelling VAT registration.

Its subsection (1) stipulates that a vendor will cease to be liable to be registered where the Commissioner is satisfied that the total value of the vendor's supplies in the period of 12 months commencing at the beginning of any tax period of the vendor will not be more than R1 million. The cessation of registration depends on the Commissioner being satisfied that the supplies will not exceed R1 million going forward.



Process to cancel registration

A vendor who wishes to cancel his registration may request the Commissioner in writing to cancel his registration. The Commissioner will cancel the registration if satisfied that the supplies will not exceed R1 million and will confirm the date of cancellation of registration, per section 24(2). It is the Commissioner who decides if the vendor's wish to cancel is granted and also decides the date of cancellation. The vendor must continue to comply with the legislative requirements of VAT Act until the date confirmed by the Commissioner as the date of cancellation. The vendor must not stop complying with VAT regulations simply because an application requesting cancellation has been submitted to the Commissioner. The vendor must comply with all regulations until confirmation of cancellation is received.

Section 24(3) and (4) stipulates that if the vendor ceases to carry on all enterprises the vendor shall notify the Commissioner within 21 days of the date of such cessation and the Commissioner shall cancel such vendor with effect from the last day of the tax period during which all such enterprises ceased or on a date that the Commissioner determines. The notification must be in writing, indicate the date of ceasing to carry all enterprises, and if the vendor intends to carry on any enterprise within 12 months of the date of ceasing to carry on any enterprise.

The vendor's liabilities under the VAT act or any act will not be affected by the cancellation of registration. The vendor will still be liable for the tax liability that arose while the vendor was registered. The cancellation of registration does not expunge the vendors liability or obligations that arose while registered. The liability must be settled and any obligations that existed must be carried out.

It is the Commissioner who decides the date of cancellation of the vendors VAT registration. The vendor must continue to comply with all VAT act regulations until the day confirmed as the date of cancellation by the Commissioner.



Deemed output on cancellation of registration

If the company chooses this method, called the simplified method, then it will. The value of this deemed supply is equal to the lesser of the cost to the vendor of the acquisition, manufacture, assembly, construction, or production of such good or service and the open market value of such supply, section 10(5).

The cancellation of registration triggers output tax for the vendor. The output tax is the lower of cost or market value of goods deemed to be supplied on cancellation of registration. These goods typically include stock on hand, delivery vehicles, office furniture and equipment, debtors and creditors owed. In some cases, the goods may include intellectual property rights. On date of cancellation of the vat registration these goods are deemed to be sold even if the vendor has not physically disposed them to anyone.

The vendor must determine the market value of these goods and compare same to their cost of acquisition and apply the lower of cost or market value to determine output tax to be declared to SARS. The process to ascertain the market value must be documented and records evidencing the determined market value of the goods must be kept.

Added attention must be paid to debtors and creditors to ensure that the requirements of section 22 are complied with. There are specific requirements for deducting input tax on bad debt write off and output tax on creditors not paid within a 12-month period. This determination will have to be done as part of the declaration of the deemed supplies mentioned above.

Cancellation of vat registration is a legislated process which must be done

Section 8(2) deems certain supplies of goods to be made where a person ceases to be a vendor. Any goods (other than any goods in respect of the acquisition of which by the vendor a deduction of input tax under section 16(3) was denied in terms of section 17(2) or would have been denied if those sections had been applicable prior to the commencement date) or right capable of assignment, cession or surrender which in either case then forms part of the assets of his enterprise, shall be deemed to be supplied by him in the course of his enterprise immediately before he ceased to be a vendor. The vendor is deemed to have made supplies of goods or services before the date of cancellation of registration by the Commissioner, an output tax arises from this deeming provision.





Conclusion

The current trading environment is difficult for most businesses and is leading to shutdowns, liquidations, and restructurings. Vendors considering ceasing trading or cancelling vat registrations due to declining supplies must be aware of the legislative requirements and comply with same. Assessing and understanding these requirements and performing the necessary assessments of cost of acquisition and market values of goods that will be deemed to be disposed on cancellation of registration will ensure that the resultant output tax liability, if any, is known before hand and the cancellation process is undertaken in accordance with the law.

Our office will gladly assist your company to structure your travel cost policy and assist payroll department to ensure compliance with the ITA as it relates to travel expenditure. For any assistance contact Tshepo Phaka on 087 802 6376 or tshepo@amphaka.co.za.



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