FAVOURABLE VAT AMENDMENT FOR VENDORS PURCHASING PROPERTY FROM NON-VENDORS

Thanks to an amendment to the Value Added Tax Act 89 of 1991, which came into effect on 10 January 2012\(^1\), VAT vendors who purchase fixed property from non-vendors will enjoy a significantly higher input tax deduction on such transactions than previously provided for.

This benefit arises due to the vendor in these circumstances being allowed to claim the input tax on the immovable property without having their claim limited to the amount of transfer duty paid, as was the situation previously.

The amendment allowing vendors the more favorable VAT input claim is created by the deletion of the proviso contained in subsection (b) of the definition of “input tax”. Previously, the proviso specifically limited the input tax claimable in respect of second hand goods (consisting of either fixed property or shares in share block schemes) to an amount which shall not exceed the amount of transfer duty or stamp duty paid on the respective purchases. The removal of this proviso enables the vendor to simply claim “an amount equal to the tax fraction”, i.e. 14/114 calculated on the lesser of the consideration in money or open market value of the supply.

There are of course other requirements which must be adhered to for the above input deduction to be claimed which include, amongst other things, that:

- the property is acquired from a resident of the Republic; and
- goods are acquired by the vendor either wholly or partly for the purpose of consumption, use or supply in the course of making taxable supplies.\(^2\)

A possible unintended consequence of the above amendment is that the vendor would be allowed to claim the input tax, whether or not any transfer duty had in fact been paid or is payable on the transaction. For example, should the fixed property purchased fall below the threshold of the applicable transfer duty rates, i.e. a property purchased for R600,000 or less, no transfer duty is payable, yet the vendor would still enjoy the input deduction of 14/114 on the purchase price of the property.

The benefit brought about by the amendment can be illustrated by way of the following example.

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\(^1\) Section 129(1)(c) of Act No. 24 of 2011

\(^2\) Paragraph (c) of the definition of ‘input tax’ in terms of the Act.
In terms of the pre-amended Act, should the vendor purchase a property to the value of R5 million from a non-vendor which it intends immediately after acquisition to use to produce vatable supplies, it would only be allowed to deduct input tax limited to the transfer duty paid (R317,000).

From 12 January 2012 (the date the amendment became effective), the vendor may deduct 14/114 of the R5 million amounting to R614,035. This provides a significant increase (R297,035) in the input claimable by the vendor.

Of particular importance for most vendors is the situation where, using the above example, fixed property is purchased from a non-vendor but not initially used or intended to be used for the supply of vatable income and the vendor subsequently changes his intention. In such instance, the Act\(^3\) provides that the vendor is allowed to claim a vat input on the fixed property in terms of the “change in use adjustments” provisions. These provisions\(^4\) specifically provide that in terms of second hand goods, being fixed property, that the VAT input claimable is limited to the transfer duty paid or that would have been payable had an exemption from transfer duty not applied. The input claimable is therefore similar to that claimable prior to the above adjustment, as the amendment does not flow through to the change of use adjustments provisions, nor were these provisions specifically amended.

For assistance with your VAT queries, contact Johan Greyling at johang@stbb.co.za.

\(^3\) Section 18(4).
\(^4\) Paragraph (ii) and (iii) to the proviso contained in section 18(4)(c) of the Act.