

DRAFT INTERPRETATION NOTE

DATE:

ACT : VALUE-ADDED TAX ACT NO. 89 OF 1991
SECTION : SECTIONS 1(1), 17(2)(c) AND 18
SUBJECT : INPUT TAX ON MOTOR CARS

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Preamble

In this Note unless the context indicates otherwise –

- “**section**” means a section of the VAT Act;
- “**VAT Act**” means the Value-Added Tax Act No. 89 of 1991; and
- any word or expression bears the meaning ascribed to it in the VAT Act.

1. Purpose

This Note sets out the –

- interpretation of the definition of a “motor car”;
- general principle that value-added tax (VAT) incurred on the acquisition of a motor car is not permissible as an input tax deduction;
- exceptions to the general principle, that is, when an input tax deduction is allowed on the acquisition of a motor car;
- instances when input tax may be deducted on the acquisition of accessories, modifications and conversions to motor cars;
- application of change in use adjustments to motor cars; and
- VAT treatment of motor cars supplied as a fringe benefit.

2. The law

For ease of reference the relevant sections of the VAT Act are quoted in the **Annexure**.

3. Application of the law

3.1 Definition of motor car

The definition of a “motor car” contains the following five categories:

- Motor car;
- Station wagon;
- Mini bus;
- Double cab light delivery vehicle; and
- Any other motor vehicle which –
 - is normally used on public roads;

- has three or more wheels; and
- is constructed or converted wholly or mainly for the carriage of passengers.

The aforementioned five categories are explained below:

- The first category refers to a motor car which is defined as “a road vehicle, typically with four wheels, powered by an internal-combustion engine and able to carry a small number of people”.¹ In addition, in *Mincer Motors Ltd v Commissioner of Customs* 1958 1 SA 652 (T) the court confirmed that “an essential connotation of the idea of a “motor car” is that it is a vehicle which is designed for carrying passengers as distinct from goods”. In light of this, the term “motor car” includes ordinary coupe (hatch-back), sedan type passenger vehicles and sport utility vehicles (SUVs) which are designed for the carrying of passengers.
- A station wagon is a car with a longer body than usual, incorporating a large carrying area behind the seats and having an extra door at the rear for easy loading.²
- A minibus is a small bus which accommodates 10 to 15 passengers.³
- A double cab light delivery vehicle is a four wheel pick-up truck with four doors and a reduced load capacity to accommodate up to five people.
- Any other motor vehicle of a kind normally used on public roads, which has three or more wheels and is constructed or converted wholly or mainly for the carriage of passengers, will generally encompass a vehicle which falls outside of the first category because it is not designed for the carriage of passengers only. As a result, vehicles which cast doubt as to whether they are designed for the carriage of passengers must be subjected to a test to determine whether they are designed wholly or mainly for the carriage of passengers. Vehicles with these characteristics include panel vans, club cabs, single cab light and heavy delivery vehicles. This category was the subject of a court case. The court case and the test are discussed in detail in **3.2**.

3.1.1 Exclusions

The definition of a “motor car” specifically excludes –

- vehicles capable of accommodating only one person;
- vehicles capable of accommodating more than 16 persons (for example, a bus);
- vehicles with an unladen mass of 3 500 kg or more;
- caravans;
- ambulances;
- vehicles constructed for a special purpose other than the carriage of persons and having no accommodation for carrying persons other than such as is incidental to that purpose;

¹ www.oxforddictionaries.com/definition/english/car [Accessed 26 March 2014].

² www.oxforddictionaries.com/definition/american_english/station-wagon [Accessed 26 March 2014].

³ www.oxforddictionaries.com/definition/english/minibus [Accessed 26 March 2014].

- game viewing vehicles (constructed or permanently converted for the carriage of seven or more passengers for game viewing in national parks and used exclusively, that is, more than 95% for that purpose); and
- hearses (as well as vehicles permanently converted into a hearse).

3.2 Vehicles constructed or converted wholly or mainly for the carriage of passengers

Once it is established that a vehicle does not fall within one of the first four categories, a determination must be made in order to confirm whether the vehicle falls within the fifth category. In order for a vehicle to fall within the fifth category, the motor vehicle must –

- (i) be of a kind normally used on public roads; and
- (ii) have three or more wheels; and
- (iii) be converted or constructed wholly or mainly for the carriage of passengers.

In this regard, the judgment in ITC 1596 (1995) 57 SATC 341 (T) (ITC 1596) sets out an objective test that must be applied in order to determine whether a vehicle was constructed or converted “mainly” for the carriage of passengers.

The court stated the following in its judgement:

- The test in determining whether a vehicle has been constructed wholly or mainly for the carriage of passengers is an objective one (objective test).
- “Mainly” used in the context of wholly or mainly, implies a quantitative measurement of more than 50%.
- Factors to consider in determining whether the vehicle in question is intended mainly for the carriage of passengers are –
 - the total construction;
 - assembly;
 - appearance;
 - space; or
 - surface of the vehicle.

Factors considered to be irrelevant and not influencing the aforementioned objective test include the –

- classification of the vehicle for licensing purposes;
- purpose for which the vehicle is actually used; or
- purpose for which it was acquired,

What is however important, is that forgoing a certain amount of loading space for the convenience of more passenger space is an indication that the vehicle is constructed mainly for the carriage of passengers and therefore the objective test is required.

Once it is established that the vehicle has been designed wholly or mainly for the carriage of passengers, provided the other two requirements stated above have been complied with, the vehicle will fall within the fifth category to the definition of a “motor car”.

Vehicles such as club cabs, extended cabs and panel vans do not fall squarely within the first four categories listed in the definition of a “motor car” and therefore the objective test must be applied to these vehicles in order to determine whether such vehicles fall within the last category.

The aforementioned vehicles must not be construed as an exhaustive list of vehicles that are subject to the objective test.

3.2.1 Club cabs and extended cabs

Motor vehicle manufacturers use a variety of terms to describe a pick-up truck, which in South Africa is commonly called a “bakkie”. A “club cab” is one of several terms used to describe a bakkie that has rear seats.

For purposes of this Note, a club cab has two traditional full-sized doors and extra space behind the driver’s seat which houses two ‘jump seats’, a full bench or fold up seats (rear seats). Alternatively the club cab may have a toolbox or storage compartment fitted behind the driver’s seat. The seating or storage area is accessed by tilting the front seat forward.

An extended cab is a club cab as described above with two traditional full-sized doors and two smaller-sized rear doors (suicide doors) on one or both sides of the vehicle.

Club cabs and extended cabs are generally used on public roads, have three or more wheels and are designed for carrying both passengers and goods. The objective test must therefore be applied to determine whether these vehicles are in fact constructed or converted wholly or mainly for the carriage of passengers.

In applying the objective test, one must determine which area measures more; the passenger area or the dedicated load area. The entire passenger cabin (enclosed passenger seating area excluding the engine and loading area), being the seating area is regarded as the area available to passengers.

It follows that if the passenger area measures more than the dedicated load area, the vehicle is designed mainly for the carriage of passengers and falls within the ambit of the definition of a “motor car”. Alternatively, if the dedicated load area of a motor vehicle is larger than the passenger area, the vehicle is constructed or converted mainly for carrying goods rather than passengers (that is, not a “motor car” as defined) and provided the vehicle is used for the purpose of making taxable supplies, a vendor will be entitled to an input tax deduction on acquisition of such vehicle.

3.2.2 Panel vans

A panel van is a small enclosed delivery vehicle with a single row of seats, two front doors, a rear door or two and no rear side windows. This vehicle is often used for the transportation of goods for short distances.

In terms of the first step in determining whether a panel van is a motor car, it is apparent that it does not fall within any one of the first four categories and it is therefore necessary to determine whether it falls within the fifth category. It is clear that a panel van meets the first two requirements contained in the fifth category as it is normally used on a public road and it has more than three wheels. The objective test must then be applied in order to confirm whether the vehicle has been constructed mainly for the carriage of passengers. In applying the objective test, if

the load area exceeds the area available to passengers, a panel van would not be constructed or converted mainly for the carriage of passengers and therefore falls outside of the fifth category. As a result, a panel van is not a “motor car” as defined. Therefore, provided the vehicle is used for purposes of making taxable supplies, a vendor would be entitled to an input tax deduction on acquisition of such vehicle.

3.2.3 Criteria for determining whether a vehicle is a “motor car” as defined

Having regard to the aforementioned, the following is a summary of how to determine whether a vehicle is in fact a “motor car” as defined:

- Determine whether the vehicle falls within any one of the first four categories referred to in **3.1**.
- If the vehicle does not fall within any one of the first four categories, determine whether it complies with the requirements in order to fall within the fifth category. The objective test must be applied in order to determine whether the vehicle is constructed wholly or mainly for the carriage of passengers. Once it is established, as a result of the objective test, that the vehicle is constructed or converted more than 50% for the carriage of passengers, the vehicle will fall within the fifth category.
- Once the vehicle has been allocated a category, determine whether any of the exclusions listed in paragraph (a) to (f) of the definition are applicable.

3.3 Permissible deduction of input tax on the acquisition of motor cars

The term “input tax” is defined, in section 1(1) to mean, amongst others, the VAT paid by a vendor on a taxable supply of goods or services acquired for the purpose of consumption, use or supply in the course of making taxable supplies. In the case of goods or services being acquired partly for the purpose of making taxable supplies and partly for other purposes (for example, exempt, private or out of scope), input tax is limited to the extent that the goods or services are acquired for the purpose of making taxable supplies.⁴

Generally, a vendor is not entitled to deduct input tax on the acquisition of a motor car under section 17(2)(c) irrespective of the purpose for which the motor car was acquired. The proviso to section 17(2)(c) contains certain exceptions which allows a vendor, in limited circumstances, to deduct input tax on the acquisition of a motor car. This is further discussed in **3.8**.

If input tax was specifically denied on acquisition of a motor car, the subsequent sale of that motor car by a vendor is not regarded as a supply made in the course or furtherance of the vendor’s enterprise, under section 8(14)(a), and the vendor is therefore not required to charge or account for output tax under section 7(1)(a).

3.4 Accessories

3.4.1 Accessories regarded as part of the standard structure of a motor car

An input tax deduction is denied, under section 17(2)(c), to the extent that accessories form part of the standard structure of a motor car (accessories fitted to the motor car at the time of purchase) regardless of whether they are separately

⁴ Any reference, in this Note, to a vendor being entitled to an input tax deduction would be subject to the vendor complying with the provisions of section 16(3) read with the definition of the term “input tax” and sections 16(2), 17 and 20.

specified on the tax invoice or not. In these instances, the accessories are regarded as forming part of the supply of the motor car.

Accessories which are regarded as forming part of the standard structure of a motor car are those which generally form part of the motor car (when it is delivered to the buyer) and include, amongst others, the alarm, spare wheel, bull bar, gear lock, tow bar, tinted windows, air conditioner, rubberising and spot lights. Accessories purchased after the vehicle has been acquired by the vendor are subject to the normal rules for an input tax deduction.

3.4.2 Accessories not forming part of the standard structure of a motor car

The provisions of section 17(2)(c) prohibiting the deduction of input tax on a motor car are not applicable if accessories are purchased separately and do not form part of the standard structure of the motor car. The supply of the accessories is seen as separate from the supply of the motor car and provided such accessories are used, consumed or supplied in the course of making taxable supplies, the VAT incurred on the cost of the accessories may be deducted as input tax.

These accessories are regarded as not forming part of the vehicle structure if the accessories are removable and did not form part of the initial standard structure of the vehicle. Examples of such accessories are a fire extinguisher, driver's repair kit, roof racks and a first aid kit.

3.5 Modifications made to a motor vehicles

A modification to a vehicle means an alteration to the engine or structure of the vehicle which does not result in the conversion of the vehicle from a passenger to a non-passenger vehicle or *vice versa*. An example would be to alter the physical appearance of the vehicle by adding a canopy to a double cab. VAT incurred on modification costs may be deducted as input tax, irrespective if the vehicle is a "motor car" as defined or not, provided the modified vehicle is used, consumed or supplied in the course of making taxable supplies.

VAT incurred on modifications made prior to the supply of the motor car cannot be deducted as input tax as the supply is considered to be that of a modified motor car.

3.6 Converting a vehicle

3.6.1 Converted before the supply of the vehicle

The supply of a vehicle which was converted into a motor car before it is delivered to the purchaser is considered to be the supply of a motor car and the vendor will not be entitled to an input tax deduction, that is, if seats were added to the loading area of a bakkie in order to convert it into a motor car.

Conversely, a vendor is entitled to an input tax deduction if a "motor car", as defined, has been converted into a vehicle wholly or mainly for a purpose other than the carriage of passengers prior to the supply thereof. An example of how a motor car can be converted into a vehicle mainly for the transport of goods is the permanent removal of seats from a bus (16-seater vehicle) and fitting a floor panel to create a loading area.

3.6.2 Converted after the supply of the vehicle

At the time the vehicle is supplied, the vendor should apply the objective test referred to in **3.2** which would determine whether the vehicle is a “motor car” as defined. If the vehicle is determined to be a motor car, the vendor would not be entitled to deduct input tax, other than in the circumstances discussed in **3.10.3**. In the event that the vendor subsequently converts such motor car to a non-passenger vehicle (that is, not a motor car) the vendor will not be entitled to deduct input tax on the original or initial purchase price of the converted vehicle.

The vendor would, however, be entitled to deduct input tax on the conversion costs, provided such motor car is used, consumed or supplied in the course of making taxable supplies.

3.7 VAT paid on expenses relating to the running and upkeep of a motor car

VAT incurred on running expenses relating to the repair, maintenance and insurance of a motor car may be deducted as input tax provided the motor car is used, consumed or supplied in the course of making taxable supplies.

In the event that the motor car is subsequently applied for an exempt purpose (for example, a property rental company acquires a motor car for the purpose of transporting clients to view commercial properties and subsequently uses that same motor car exclusively for the purpose of transporting clients to view residential properties) the vendor must account for output tax under section 18(1) as discussed in **3.10.1**. The consideration for any repairs, maintenance or insurance of that motor vehicle (which includes a “motor car” as defined) shall be equal to the cost incurred on these expenses under section 10(8). In the event that the vendor has no record of the aforementioned expenses the value of the supply shall be calculated in the manner prescribed by the Minister of Finance in Regulation No. 2835 dated 22 November 1991 (see **Annexure B**). The vendor is then required to declare an output tax adjustment equal to the sum of any input tax previously deducted for any repairs, maintenance or insurance on the vehicle.

3.8 The exceptions under the provisos to section 17(2)(c)

The provisos to section 17(2)(c) set out those instances when input tax may in fact be deducted on the acquisition of a motor car. These instances are further discussed below.

3.8.1 Motor dealers

The first proviso to section 17(2)(c) allows for an input tax deduction when a motor car is acquired by the vendor exclusively for the purpose of making taxable supplies in the ordinary course of an enterprise which continuously or regularly supplies motor cars.

The term “motor dealer” is not defined in the VAT Act. For purposes of this Note, a motor dealer would be a vendor who in the ordinary course of its enterprise activity acquires motor cars for purposes of resale or rental to third parties, and is not limited to persons who are formally set up in the trading style of a motor dealership.

3.8.2 Demonstration vehicles

The second proviso to section 17(2)(c) deems a motor car which is acquired by a motor dealer for demonstration purposes or for temporary use before making a

taxable supply of that motor car, to be acquired exclusively for the purpose of making a taxable supply. Therefore, provided the motor car is not used for an exempt purpose before making a taxable supply, a motor dealer may deduct input tax on such motor car acquired for demonstration purposes or used temporarily for other purposes in the enterprise before being sold or leased to a third party. This proviso will not apply if the motor car is used for an exempt purpose before making a taxable supply as the definition of the term “input tax” provides that a motor dealer will only be entitled to deduct input tax on a motor car which is used, consumed or supplied in the course of making taxable supplies. Refer to **3.10.2** for the treatment of a motor car, initially acquired for an exempt purpose and subsequently sold as stock (taxable purpose).

Example 1 – Motor cars acquired for a taxable purpose but used as a demonstration vehicle prior to making a taxable supply

Facts:

A motor dealer purchases a motor car for R136 800 with the intention of selling it to X but decides to use the motor car for a few months to take customers for a test drive before selling it.

Result:

In light of the fact that the motor dealer acquires the motor car for the purpose of resale, it is entitled to deduct input tax of R16 800 ($14 / 114 \times R138\,800 \times 100\%$) under section 17(2)(c)(ii), despite the fact that the motor dealer would initially be applying the motor car for another purpose immediately after acquiring it.

3.8.3 Motor cars awarded as prizes

A vendor is entitled to deduct input tax on the acquisition of a motor car that is acquired for the purpose of being awarded as a prize under proviso (iii)(aa) to section 17(2)(c). The motor car awarded as a prize must be as a result of a bet being placed, as contemplated in section 8(13). In this instance, the input tax deduction will be limited to the VAT incurred on the initial acquisition of the motor car and can only be deducted in the tax period in which the motor car is awarded as a prize.⁵

Proviso (iii)(bb) to section 17(2)(c) allows a vendor to deduct input tax on the acquisition of a motor car where the motor car has been acquired for purposes of awarding it as a prize to customers. Employees or office holders of the vendor as well as any connected persons (to the employees, office holders or to the vendor) are excluded as customers for the purpose of this proviso and as such no input tax deduction will be allowed if the prize is awarded to any of these people. A vendor who regularly supplies motor cars as prizes to customers is entitled to deduct input tax to the extent that it is awarded in consequence of a taxable supply made in the course or furtherance of an enterprise. For instance, in order to participate in a competition hosted by the vendor, customers are required to purchase a specific item and attach their till slip (evidencing their purchase) to the entry form.

⁵ For more detail on the VAT implications of specific transactions undertaken in the gambling industry, refer to Interpretation Note No. 41 (Issue 3) dated 31 March 2014 “Application of VAT to the Gambling Industry”.

Example 2 – Motor car awarded as a prize*Facts:*

Every three months Green Grocer awards one lucky customer a car upon the purchase of an item advertised that month. Green Grocer purchases the car for R228 000 (including VAT) in March 2012 and awards the car to the winner in June 2012.

Result:

The market value of the car is R250 000. In Green Grocer's June VAT return it will deduct input tax of R28 000 ($14 / 114 \times R228\ 000 \times 100\%$) under proviso (iii)(bb).

3.9 Concession for foreign donor funded projects

Under section 17(2A) the disallowance of an input tax deduction on the acquisition of a motor car does not apply to foreign donor funded projects. Foreign donor funded projects are therefore specifically allowed to deduct input tax on the acquisition of a motor car applied in the course or furtherance of the foreign donor funded project.

3.10 Change in use adjustments

Section 18 requires a vendor to make an adjustment to output tax or deduct input tax to the extent that goods or services were acquired with the intention to apply it for a specific purpose, and that it is subsequently applied for another purpose. For example, when an asset is purchased to make taxable supplies and is subsequently used to make exempt supplies or used for personal consumption and *vice versa*.

A decrease in the use of an asset initially acquired for taxable purposes would result in a deemed supply by the vendor who is required to declare output tax (that is, an increase in the output tax liability), while an increase in taxable use would result in a deemed supply to the vendor who is as a result entitled to an input tax deduction under section 16(3)(f) (that is, an increased input tax deduction).

3.10.1 Change in use from a taxable to a non-taxable purposes [section 18(1)]

A vendor who is entitled to deduct input tax on the acquisition of a "motor car" as defined (typically in the case of motor dealers) and who subsequently applies the motor car wholly for a non-taxable purpose or for purposes for which an input tax deduction would have been denied on acquisition is deemed, under section 18(1), to make a taxable supply in the course of its enterprise. The vendor must account for output tax on the open market value of such supply under section 10(7). The time of supply is deemed to take place in the tax period when the goods or services are applied for non-taxable purposes or for purposes for which an input tax deduction would have been denied.

Section 18(1) is not applicable to motor cars acquired for demonstration purposes or temporarily used for a non-taxable purpose before a taxable supply being made as discussed under **3.8.2**.

Example 3 – Motor vehicles acquired for resale and subsequently applied for another purpose*Facts:*

A motor dealer purchases a motor car with the intention of selling it and is therefore entitled to deduct input tax. The vehicle is subsequently damaged before it is sold and the motor dealer decides to use the motor car as an employee pool car.

Result:

An input tax deduction on the purchase of the employee pool car would have been denied under section 17(2)(c), if the motor car was originally acquired to be used as the employees' pool car. The motor car will still be used for purposes of making taxable supplies, however, it is now used for a purpose for which an input tax deduction would have been denied on acquisition under section 17(2). As a result the motor dealer is deemed to have made a taxable supply under section 18(1) and must make an adjustment under section 18(1)(ii) in the period the motor car was applied as a pool car.

Example 4 – Motor vehicles acquired for resale and subsequently applied for another purpose*Facts:*

A vendor, who is a motor dealer, also operates a driving school. The vendor has acquired motor cars for the dealership and deducts input tax on acquisition under section 16(3). The vendor subsequently decides to use the motor car in its driving school business.

Result:

The motor car will still be used for the purposes of making taxable supplies, however, an input tax deduction under section 17(2) will be denied. The vendor must therefore make an adjustment to output tax under section 18(1)(ii).

Example 5 – Delivery vehicles converted for the carriage of passengers*Facts:*

A construction company acquires a single cab vehicle for the purpose of delivering building supplies to the various construction sites. The vendor will be allowed to deduct input tax on acquisition of the vehicle. Ten months later the vendor inserts seats in the loading area and the vehicle is therefore converted mainly for the carriage of passengers.

Result:

The vehicle will, after being converted, constitute a "motor car" as defined and the vendor must account for output tax on the open market value of the vehicle under section 18(1)(ii).

3.10.2 Change in use from a non-taxable to taxable purpose [section 18(4)]

A vendor who acquires a vehicle, for which an input tax deduction is denied upon acquisition, and subsequently utilises such vehicle for purposes for which an input tax deduction would have been allowed on acquisition, may deduct input tax under section 18(4).

Example 6 – Motor vehicle acquired for another purpose and subsequently sold as trading stock

Facts:

A motor dealer, who also owns a taxi business, purchases a motor car from a fellow motor dealer for the purpose of using it in its taxi business.

Result:

An input tax deduction is denied on acquisition of the motor car as it is acquired for the exempt purpose of transporting fare-paying passengers and not for resale or rental to a third party. However, if the motor dealer subsequently enters this motor car as stock in its dealership and sells it to a customer, the dealer is required to declare output tax under section 7(1)(a), but may then deduct the input tax under section 18(4) read with section 16(3)(f).

Example 7 – All-inclusive example for section 18(1) and (4)

Facts:

X owns a motor dealership and on 1 February 2010 purchases the following vehicles for the business:

- Sports car at R228 000 (VAT inclusive). The sports car was acquired for the purpose of awarding it as a prize. Customers who have purchased a vehicle from the dealership within the past 12 months are eligible to enter the competition and stand a chance to win the sports car. In November 2010 the car is won by a customer.
- 5 single cab bakkies at R57 000 each (VAT inclusive). In June, the dealership sells 4 bakkies at the open market value of R68 400 each, including VAT. The remaining bakkie is taken out of stock and used as X's personal vehicle.

X wins a car in December 2011 and decides to place the bakkie back into stock at the motor dealership. At December 2011 the bakkie had an open market value of R45 600.

Result:

February VAT return

Input tax of R35 000 for the VAT incurred on the acquisition of the 5 bakkies purchased at R57 000 each is deducted as follows:

$$14 / 114 \times R57\,000 \times 5 = R35\,000$$

June VAT return

Output tax on the sale of the 4 bakkies is calculated as follows:

$$14 / 114 \times R68\,400 \times 4 = R33\,600$$

The motor dealership is deemed, under section 18(1), to supply the bakkie to X and must therefore account for output tax of:

$$14 / 114 \times R68\,400 = R8\,400$$

November VAT return

The motor dealership is, under proviso (iii)(bb) to section 17(2)(c), entitled to deduct input tax when it awards the sports car as a prize, calculated as follows:

$$14/114 \times R228\,000 \times 100\% = R28\,000$$

December VAT return

Input tax of R5 600 ($14 / 114 \times R45\,600 = R5600$) can be deducted under section 8(4).

3.10.3 Motor cars converted to game viewing vehicles and hearses [section 18(9)]

A vendor is entitled to deduct input tax, under section 16(3)(a)(i), on the acquisition of a motor car which is permanently converted into a game viewing vehicle or hearse based on the lesser of the adjusted cost⁶ or open market value of the motor car on the day before such conversion where the vehicle is used, consumed or supplied in the course of making taxable supplies.

The definition of a “motor car” was amended to specifically exclude vehicles permanently converted to game viewing vehicles and hearses. As a result, section 18(9) was introduced to allow vendors to deduct the input tax previously denied on the acquisition of the motor car converted to a game viewing vehicle or hearse. Prior to the amendment, a vendor was only allowed to claim the conversion costs under section 16(3).

3.11 Fringe benefits

Section 18(3) provides that a vendor who provides an employee the right of use of a motor car for private use, either free of charge or at a cost less than market value, is deemed to have made a taxable supply to the employee. The employer is, under section 7(1)(a), required to account for output tax on the consideration determined for that fringe benefit.

Section 10(13) sets out that the value of the supply of such benefit be calculated in the manner prescribed by the Minister of Finance in Regulation No. 2835 (see **Annexure B**). An example of the calculation is included in chapter 5 of the *VAT 404 – Guide for Vendors*.

The income tax treatment of fringe benefits, in relation to the right of use of a motor car, is dealt with in Interpretation Note No. 72 dated 22 March 2013 “Right of Use of Motor Vehicle”.

⁶ The term “adjusted cost” is defined in section 1(1) and means the cost of goods or services where VAT has been levied, or would have been levied if the Act had been applicable before 30 September 1991, or if the vendor was or would have been entitled to deduct notional input tax on second-hand goods. This definition of “adjusted cost” read with section 16(3)(h), 18(2), (4) and (5) has the effect of limiting the amount of input tax that may be deducted or output tax that must be accounted for as the result of an adjustment.

4. Conclusion

This Note provides an analysis of the definition of a “motor car” and the process to be followed in determining whether a particular vehicle constitutes a “motor car”.

A vendor is generally not entitled to deduct input tax on the acquisition of a motor car irrespective of whether it is applied for taxable purposes or not. An exception to this rule includes motor dealers who supply motor cars in the ordinary course of their business.

Input tax incurred on expenses relating to the repair, maintenance and insurance of a motor car may be deducted, subject to the provisions of sections 16, 17 and 20.

To the extent that this Note does not deal with a specific scenario, vendors may apply for a VAT ruling or VAT class ruling in writing by sending an e-mail to **VATRulings@sars.gov.za** or by facsimile to 086 540 9390. The application should consist of a completed VAT301 form and must comply with the provisions of section 79 of the Tax Administration Act, 2011 excluding section 79(4)(f), (k) and (6).

Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE

Annexure A – The law**Section 1(1) – Definitions**

“**motor car**” includes a motor car, station wagon, minibus, double cab light delivery vehicle and any other vehicle of a kind normally used on public roads, which has three or more wheels and is constructed or converted wholly or mainly for the carriage of passengers, but does not include—

- (a) vehicles capable of accommodating only one person or suitable for carrying more than 16 persons, or
- (b) vehicles of an unladen mass of 3 500 kilograms or more; or
- (c) caravans and ambulances;
- (d) vehicles constructed for a special purpose other than carriage of persons and having no accommodation for carrying persons other than such as is incidental to that purpose;
- (e) game viewing vehicles (other than sedans, station wagons, mini-buses or double cab light delivery vehicles) constructed or permanently converted for the carriage of seven or more passengers for game viewing in national parks, game reserves, sanctuaries or safari areas and used exclusively for that purpose, other than use which is merely incidental and subordinate to that use; or
- (f) vehicles, constructed as or permanently converted into hearses for the transport of deceased persons and used exclusively for that purpose;

“**input tax**”, in relation to a vendor, means—

- (a) tax charged under section 7 and payable in terms of that section by—
 - (i) a supplier on the supply of goods or services made by that supplier to the vendor; or
 - (ii) the vendor on the importation of goods by him; or
 - (iii) the vendor under the provisions of section 7(3);
- (b) an amount equal to the tax fraction (being the tax fraction applicable at the time the supply is deemed to have taken place) of the lesser of any consideration in money given by the vendor for or the open market value of the supply (not being a taxable supply) to him by way of a sale on or after the commencement date by a resident of the Republic (other than a person or diplomatic or consular mission of a foreign country established in the Republic that was granted relief, by way of a refund of tax as contemplated in section 68) of any second-hand goods situated in the Republic; and
- (c) an amount equal to the tax fraction of the consideration in money deemed by section 10(16) to be for the supply (not being a taxable supply) by a debtor to the vendor of goods repossessed under an instalment credit agreement: Provided that the tax fraction applicable under this paragraph shall be the tax fraction applicable at the time of supply of the goods to the debtor under such agreement as contemplated in section 9(3)(c),

where the goods or services concerned are acquired by the vendor wholly for the purpose of consumption, use or supply in the course of making taxable supplies or, where the goods or services are acquired by the vendor partly for such purpose, to the extent (as determined in accordance with the provisions of section 17) that the goods or services concerned are acquired by the vendor for such purpose;

Section 7 – Imposition of value-added tax

(1) Subject to the exemptions, exceptions, deductions and adjustments provided for in this Act, there shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the value-added tax—

- (a) on the supply by any vendor of goods or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him;

Section 8 – Certain supplies of goods or services deemed to be made or not made

(13) For the purposes of this Act, where any person bets an amount on the outcome of a race or on any other event or occurrence, the person with whom the bet is placed shall be deemed to supply a service to such first-mentioned.

(14) For the purposes of this Act—

- (a) where any goods are supplied by a vendor to a person otherwise than in the circumstances contemplated in paragraph 2(b) of the Seventh Schedule to the Income Tax Act, and a deduction under section 16(3) in respect of the acquisition by the vendor of those goods was denied in terms of section 17(2) or would have been denied if section 7 of this Act had been applicable prior to the commencement date, the vendor shall be deemed to have supplied the goods otherwise than in the course or furtherance of his enterprise;
- (b) where any input tax is allowed in terms of section 18(9) in respect of a game viewing vehicle or a hearse as contemplated in paragraph (e) or (f) of the definition of “motor car” in section 1, the subsequent supply of that game viewing vehicle or hearse shall be deemed to be supplied in the course of the vendor’s enterprise.

Section 10 – Value of supply of goods or services

(7) Where goods or services are deemed by section 18(1) or 18B (3) to be supplied by a vendor, the supply shall, subject to the provisions of subsection (8), be deemed to be made for a consideration in money equal to the open market value of such supply.

(8) Where any repairs, maintenance or insurance in respect of a motor vehicle is deemed to be supplied by a vendor by section 18(1), such supply shall be deemed to be made for a consideration in money equal to the cost (including tax) to such vendor of acquiring such repairs, maintenance or insurance: Provided that where such vendor does not maintain accurate data for the purposes of calculating such consideration in money, such supply shall be deemed to be made for a consideration in money equal to the amount determined in the manner prescribed by the Minister in the Gazette for the category of motor vehicle concerned.

.....

(13) Where goods or services are deemed to be supplied by a vendor under section 18(3), the consideration in money for the supply shall be deemed to be an amount equal to the cash equivalent of the benefit or advantage granted to the employee or office holder, as contemplated in section 9(7): Provided that where such benefit or advantage consists of the right to use a motor vehicle as contemplated in paragraph 2(b) of the Seventh Schedule to the Income Tax Act, the consideration in money for the supply shall be deemed to be the amount determined in the manner prescribed by the Minister in the Gazette for the category of motor vehicle used.

Section 16 – Calculation of tax payable

(1)

(2) No deduction of input tax in respect of a supply of goods or services, the importation of any goods into the Republic or any other deduction shall be made in terms of this Act, unless—

- (a) a tax invoice or debit note or credit note in relation to that supply has been provided in accordance with section 20 or 21 and is held by the vendor making that deduction at the time that any return in respect of that supply is furnished;
- (b) (i) a document as is acceptable to the Commissioner has been issued in terms of section 20(6); or
(ii) a document issued by the supplier in compliance with section 20(7) or 21(5);
- (c) sufficient records are maintained as required by section 20(8) where the supply is a supply of second-hand goods or a supply of goods as contemplated in section 8(10) and in either case is a supply to which that section relates;
- (d) a bill of entry or other document prescribed in terms of the Customs and Excise Act together with the receipt for the payment of the tax in relation to the said importation have been delivered in accordance with that Act and are held by the vendor making that deduction, or by his agent as contemplated in section 54(3)(b), at the time that any return in respect of that importation is furnished; or
- (e) a tax invoice or debit or credit note has been provided as contemplated in section 54(2), and a statement as contemplated in section 54(3)(a) is held by the vendor at the time a return in respect of the supply to the vendor is furnished; or

.

(3) Subject to the provisions of subsection (2) of this section and the provisions of sections 15 and 17, the amount of tax payable in respect of a tax period shall be calculated by deducting from the sum of the amounts of output tax of the vendor which are attributable to that period, as determined under subsection (4), and the amounts (if any) received by the vendor during that period by way of refunds of tax charged under section 7(1)(b) and (c) and 7(3)(a), the following amounts, namely—

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- (f) the amounts calculated in accordance with section 18(4) or (5) in relation to any goods or services applied during the tax period as contemplated in that section;

Section 17 – Permissible deductions in respect of input tax

(2) Notwithstanding anything in this Act to the contrary, a vendor shall not be entitled to deduct from the sum of the amounts of output tax and refunds contemplated in section 16(3), any amount of input tax—

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- (c) in respect of any motor car supplied to or imported by the vendor: Provided that—
 - (i) this paragraph shall not apply where that motor car is acquired by the vendor exclusively for the purpose of making a taxable supply of that motor car in the ordinary course of an enterprise which continuously or regularly supplies motor cars, whether that supply is made by way of sale or under an instalment credit agreement or by way of rental agreement at an economic rental consideration;

- (ii) for the purposes of this paragraph a motor car acquired by such vendor for demonstration purposes or for temporary use prior to a taxable supply by such vendor shall be deemed to be acquired exclusively for the purpose of making a taxable supply; and
- (iii) this paragraph shall not apply where—
 - (aa) that motor car is acquired by the vendor for the purposes of awarding that motor car as a prize contemplated in section 16(3)(d) in consequence of a supply contemplated in section 8(13); or
 - (bb) the supply of that motor car is in the ordinary course of an enterprise which continuously or regularly supplies motor cars as prizes to clients or customers (other than to any employee or office holder of the vendor or any connected person in relation to that employee, office holder or vendor) to the extent that it is in consequence of a taxable supply made in the course or furtherance of an enterprise; or

.....

(2A) Subsection (2) shall not apply to input tax in respect of goods or services that are applied in the course or furtherance of a foreign donor funded project.

Section 18 – Change in use adjustments

(1) Subject to the provisions of section 8(2), where—

- (a) goods or services have been supplied to or imported by a vendor; or
- (b) goods have been manufactured, assembled, constructed or produced by him;
- (c) goods or services were deemed by subsection (4) to have been supplied to him,

(excluding goods or services to the extent that, in respect of the acquisition of which by the vendor a deduction of input tax was denied by section 17(2) or would have been denied if that section had been applicable prior to the commencement date) and such goods or services were acquired, manufactured, assembled, constructed or produced by such vendor wholly or partly for the purpose of consumption, use or supply in the course of making taxable supplies or such goods were held or applied for that purpose, such goods or services shall—

- (i) if they are subsequently applied by him (otherwise than in the circumstances contemplated in section 8(9)) wholly for a purpose other than the said purpose; or
- (ii) if they are subsequently applied by him wholly for a purpose in respect of which, if such goods or services had been acquired by him at the time of such application, a deduction of input tax would have been denied in terms of section 17(2)(a) or (c),

be deemed to have been supplied by him by way of a taxable supply by him in the course of his enterprise.

(2) Where—

- (a) capital goods or services have been supplied to or imported by a vendor; or
- (b) capital goods have been manufactured, assembled, constructed or produced by him; or

- (c) capital goods or services were deemed by subsection (4) to have been supplied to him,

(excluding goods or services to the extent that, in respect of the acquisition of which by the vendor a deduction of input tax was denied by section 17(2) or would have been denied if that section had been applicable prior to the commencement date) and such goods or services were acquired, manufactured, assembled, constructed or produced by such vendor wholly or partly for the purpose of consumption, use or supply in the course of making taxable supplies or such goods were held or applied for that purpose, such goods or services shall, if the extent of the application or use of such goods or services in the course of making taxable supplies (in respect of which, if such goods or services had been acquired at the time of such application or use, a deduction of input tax would not have been denied in terms of section 17(2)(a)) is subsequently reduced in relation to their total application or use, be deemed to have been supplied by him by way of a taxable supply by him in the course of his enterprise at the time at which such reduction is deemed by subsection (6) to take place: Provided that this subsection does not apply to—

- (i) capital goods or services which have an adjusted cost of less than R40 000 (excluding tax) or where such goods or services were deemed to be supplied to the vendor by subsection (4) if the amount which was represented by "B" in the formula contemplated in that subsection was less than R40 000 when such goods or services were deemed to be supplied to such vendor;
- (ii) capital goods or services acquired by a public authority or public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), if the goods or services were acquired prior to 1 April 2005 or if an input tax deduction in respect thereof was denied under proviso (iv) to section 18(4); or
- (iii) capital goods or services acquired by a municipality, if the goods or services were acquired prior to 1 July 2006 or if an input tax deduction in respect thereof was denied in terms of paragraph (v) of the proviso to section 18(4).

(3) Notwithstanding anything in this section, to the extent that any vendor has or is deemed to have granted a benefit or advantage to an employee or the holder of any office as contemplated in paragraph (i) of the definition of "gross income" in section 1 of the Income Tax Act, read with the Seventh Schedule to that Act, and such benefit or advantage consists of a supply of goods or services, the granting of that benefit or advantage shall be deemed to be a supply of goods or services made by the vendor in the course of an enterprise carried on by the vendor: Provided that this subsection shall not apply to any such benefit or advantage to the extent that it has arisen by virtue of any supply of goods or services which is an exempt supply in terms of section 12 of this Act or is a supply which is charged with tax at the rate of zero per cent in terms of section 11 of this Act or is a supply of entertainment: Provided further that this subsection shall not apply to any such benefit or advantage to the extent that it is granted by the vendor in the course of making exempt supplies.

(4) Where—

- (a)
 - (i) goods or services have been supplied to or imported by a person prior to the commencement date; or
 - (ii) goods have been manufactured, assembled, constructed or produced by him prior to the commencement date,

and such goods or services were acquired, manufactured, assembled, constructed or produced or applied by such person wholly for purposes other than that of consumption, use or supply in the course of making supplies in the course of an activity which was an enterprise or would have been an enterprise if section 1 had been applicable prior to the date of promulgation of this Act or for a purpose in respect of which a deduction of input tax in respect of such goods or services would have been denied in terms of section 17(2) if that section had been applicable prior to the commencement date; or

- (b) (i) goods or services have been supplied to or imported by a person on or after the commencement date and tax has been charged in respect of such supply or importation; or
- (ii) goods have been manufactured, assembled, constructed or produced by him on or after the commencement date and tax has been charged in respect of the supply of goods or services acquired by him for the purpose of such manufacturing, assembling, construction or production; or
- (iii) goods or services are deemed by subsection (1) or section 8(2) to have been supplied by him,

and no deduction has been made in terms of section 16(3) in respect of or in relation to such goods or services; or

- (c) second-hand goods situated in the Republic have been supplied (otherwise than under a taxable supply) to a person under a sale on or after the commencement date by a resident of the Republic and no deduction has been made in terms of section 16(3) in respect of such second-hand goods; and

such goods or services are subsequent to the commencement date applied in any tax period by that person or, where he is a member of a partnership, by the partnership, wholly or partly for consumption, use or supply in the course of making taxable supplies (other than taxable supplies in respect of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of section 17(2)), those goods or services shall be deemed to be supplied in that tax period to that person or the partnership, as the case may be, and the Commissioner shall allow that person or the partnership, as the case may be, to make a deduction in terms of section 16(3) of an amount determined in accordance with the formula

$$A \times B \times C \times D$$

in which formula—

"A" represents the tax fraction;

"B" represents the lesser of—

- (i) the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10(4) deemed to be the open market value of the supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or
- (ii) the open market value of the supply of those goods or services at the time when the supply is deemed to be made;

"C" represents the ratio that, immediately after the supply so deemed to be made, the intended use of the goods or services (as contemplated in section 17(1)) in the course of making taxable supplies (other than taxable supplies in respect of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of section 17(2)) bears to the total intended use of those goods or services, expressed as a percentage: Provided that where the intended use of goods or services in the course of making taxable supplies (other than taxable supplies in respect of which, if such goods or services had been acquired at the time of such application, a deduction of input tax would have been denied in terms of section 17(2)) is equal to not less than 95 per cent of the total intended use of such goods or services such percentage shall be deemed to be 100 per cent; and

"D" where paragraph (c) applies represents the ratio that the amount paid, which payment reduces or discharges any obligation (whether an existing obligation or an obligation which will arise in the future) in respect of or consequent upon, whether directly or indirectly, the consideration in money for the supply of second-hand goods, bears to the total consideration in money, expressed as a percentage:

Provided that—

- (i) paragraph (b) of this subsection shall not apply where a vendor has, only as a result of not complying with the provisions of section 16(2), not been entitled to make a deduction of input tax in terms of section 16(3);
- (ii) deleted;
- (iii) deleted;
- (iv) this subsection shall not apply where a constitutional institution listed in Schedule 1 or a public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), is re-classified within the Schedules to the Public Finance Management Act, 1999 (Act No. 1 of 1999) and applies those goods or services for the purposes of consumption, use or supply in the course of making taxable supplies; or
- (v) this subsection shall not apply where a municipality applies goods or services acquired before 1 July 2006 for the purposes of consumption, use or supply in the course of making taxable supplies on or after 1 July 2006.

.....

(9) Where a vendor has acquired or imported a motor car (in respect of which input tax has been denied in terms of section 17 (2) (c)) and has subsequently converted that motor car into a game viewing vehicle or a hearse, as contemplated in paragraph (e) or (f) of the definition of "motor car" in section 1, that motor car is deemed to be supplied in that tax period to that vendor, and the Commissioner shall allow that vendor to make a deduction in terms of section 16(3) of an amount equal to the tax fraction of the lesser of—

- (a) the adjusted cost; or
- (b) the open market value,

of that motor car on the day before that conversion: Provided that this deduction excludes any amount of input tax which qualifies or has qualified for a deduction under another provision of this Act.

Annexure B – Government Gazette No. 13651**Government Gazette 13651****Notice No: 2835**

22 November 1991

Directions for purposes of section 10(8) and (13)

I, Barend Jacobus du Plessis, Minister of Finance, hereby prescribe in terms of subsections (8) and (13) of section 10 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), that the consideration in money for the supplies contemplated in the said paragraphs be determined in the manner as set out in the Schedule.

Schedule

(1) In this Schedule, any word or expression to which a meaning has been assigned in the Act, bears the meaning so assigned thereto, and, unless the context otherwise indicates -

“determined value”, in relation to a motor vehicle, means -

(a) where a motor vehicle, except a motor vehicle contemplated in paragraph (b)(ii) of this definition was acquired by a vendor under an agreement of sale or exchange concluded by parties acting at arms' length, the original cost thereof to him, excluding any finance charges, interest, sales tax or value-added tax; or

(b) where such motor vehicle -

(i) is held by the vendor under a lease; or

(ii) was held by the vendor under a lease and the ownership thereof was acquired by him on the termination of the lease,

the retail market value thereof at the time the vendor first obtained the right of use of the motor vehicle or, where at such time such lease was a financial lease for the purposes of the Sales Tax Act, 1978 (Act No. 103 of 1978), the cash value thereof as contemplated in paragraph 2 of Schedule 4 of that Act, or, where at such time such lease was an instalment credit agreement as contemplated in section 1 of the Act, the cash value thereof as defined in section 1 of the Act reduced by the amount of value-added tax; or

(c) where such vehicle was acquired otherwise than contemplated in paragraphs (a) or (b), the market value of such motor vehicle at the time when the vendor first obtained the vehicle or right of use thereof:

Provided that where an employee has been granted the right of use of such motor vehicle and such vehicle, or the right of use thereof, was acquired by the vendor not less than 12 months before the date on which the employee was granted such right of use, there shall be deducted from the amount so determined under the foregoing provisions of this definition a depreciation allowance calculated according to the reducing balance method at the rate of 15 per cent for each completed period of 12 months from the date on which the vendor first obtained such vehicle or the right of use thereof to the date on which the said employee was first granted the right of use thereof; and

“the Act” means the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

(2) (a) For the purposes of the proviso to subsection (8) of section 10 of the Act, the consideration in money for the deemed supply shall be 0,3 per cent of the determined value of the motor vehicle for each month or part thereof calculated as from 1 October 1991.

(b) If the method of determination of consideration in money contemplated in subparagraph (a) is used with reference to a motor vehicle, that method of determination of consideration in money shall also be used for the succeeding 11 months in respect of the motor vehicle in question.

(3) For the purposes of the proviso to subsection (13) of section 10 of the Act, the consideration in money for the deemed supply shall be -

(a) 0,3 per cent of the determined value of the motor vehicle (for each month or part thereof calculated as from 1 October 1991) where the motor vehicle is a motor car as contemplated in the Act and the vendor was in terms of section 17(2) of the Act not entitled, or would not have been entitled had that section been applicable prior to the commencement date, to deduct the full amount of input tax in terms of section 16(3) of the Act in respect of such motor car when it was supplied to or imported by him; or

(b) in a case other than contemplated in paragraph (a) 0,6 per cent of the determined value of the motor vehicle (for each month or part thereof calculated as from 1 October 1991): Provided that where the employee pays a consideration for the right of use of such motor vehicle, the consideration in money determined monthly in terms of this paragraph shall be reduced by the lesser of the consideration paid by the said employee or the amount of the consideration in money determined monthly:

Provided that where the employee bears the full cost of repairs and maintenance of the motor vehicle and no compensation in the form of an allowance or reimbursement is payable by the vendor to the employee in respect of the said cost, the consideration in money so determined monthly shall be reduced by the lesser of -

(i) R85; or

(ii) the amount of the consideration in money determined monthly:

Provided further that the consideration in money calculated in this paragraph, after the application of the provisos, shall be reduced to the extent that the right to use the motor vehicle is granted by the vendor in the course of making exempt supplies.