

# VAT now

15%

EFFECTIVE 1<sup>st</sup> AUGUST, 2018

## Frequently Asked Questions (FAQ's)

The Minister of Finance, Senator Martin G. Dlamini in his 2018/19 budget speech announced changes in rate of Value Added Tax (VAT) on the supply of goods and services. Legal Notice No 112 of 2018 has been published in the Government Gazette of 09 July 2018 to effect the changes. The new VAT rate are effective from 01 August 2018 and they are as follows;

- The standard rate of VAT will change from 14% to 15%,
- Zero rated supplies remain unchanged.

### IMPORTANT ASPECTS TO NOTE

#### Time of Supply

- It is important to establish when the taxable supply is made as that is the time on which VAT should be accounted for.
- This is the point at which VAT becomes payable to the Swaziland Revenue Authority (SRA).
- In simple terms, time of supply is the date on which the transaction occurs or is deemed to occur and that in turn determines the applicable VAT rate.

#### The general time of supply rule is the earlier of the date on which –

- a) The goods are delivered or made available or the performance of the service is completed;
- b) An invoice for the supply is issued; or
- c) Payment (including part-payment) for the supply is made.

This note applies to most transactions that fall within the general time of supply rule. The note does not deal with special time of supply rules which apply on some transactions like; supplies made under rental agreements, hire purchase or finance lease, auctions, own or exempt use.

The FAQs are meant purely to assist taxable persons and the public at large to obtain clarity and to ensure consistency on certain practical and technical aspects of implementing the change to the VAT rate. The FAQs are therefore not intended to be used as a legal reference.

### DEFINITIONS

**Effective date:** the effective date as announced by the Minister in the Gazette. For the purposes of the FAQs, the effective date is **01 August 2018**.

**Taxable person:** As defined in the VAT Act 2011; a taxable person is (1) a person registered under Section 6 is a taxable person from the time the registration takes effect, and (2) a person who is not

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*registered, but who is required to apply to be registered under Section 6, is a taxable person from the first day of the month immediately following the period in which the duty to apply for registration arose.*

### QUESTIONS & ANSWERS

**1. What is the new VAT rate?**

The new rate is 15%

**2. When is the increase effective?**

The effective date is **1 August 2018**.

**3. How does the increase affect me as a Taxable Person/ VAT Registered Business?**

Generally, the change should be fairly neutral if you only make taxable supplies as the increased rate of VAT will be charged to your customer and your additional VAT expenses can generally be claimed as input tax. However, if you also make exempt or other non-taxable supplies, the increased VAT may become a cost to your business if it cannot be claimed as input tax or the VAT charged is specifically denied as input tax.

**4. How does the increase affect me if I am an ordinary consumer or my business is not registered for VAT?**

Businesses and consumers that are not registered for VAT will be charged 15% from the 1 August 2018. The increased rate will be reflected on tax invoices that must be issued by the taxable person to the customer/purchaser.

**5. How will the increase affect me if I am registered for VAT and I am using the invoice basis of accounting?**

You must charge VAT at the rate of 15% instead of 14% on any taxable supplies that you make on or after 1 August 2018 and account for the VAT charged on invoices issued in your VT01 return form. Similarly, you will be able to claim input tax at the new VAT rate on any taxable supplies made to you on or after the effective date, provided that you meet the normal rules for claiming input tax (that is, you have the tax invoices and other required documents etc.).

You must claim input tax at the old VAT rate on supplies that took place before the effective date, subject to certain exceptions. You will therefore need to carefully check the tax invoices that you receive after the effective date before completing and submitting your VAT return form and making the payment.

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### 6. How will the increase affect me if I am registered for VAT on the cash basis accounting?

The same answer mentioned in Question 5 above will apply, but you must remember to check the rate at which VAT was charged based on the original time of supply when making or receiving payments. If the time of supply for a supply you have made or received was before 1 August 2018, then you must continue to declare output tax or claim input tax based on the VAT rate of 14% that applied at the time the original supply was made.

### 7. How do I determine the transaction date?

Transaction date is referred to as the “time of supply” as referred to in Section 14 of the VAT Act, 2011. It is very important to understand the time of supply rules relating to various transactions as the prevailing rate of VAT on that date will apply to the transaction concerned.

### 8. What is the general time of supply which applies to most transactions?

The general time of supply is the date that any payment of the VAT-inclusive price (consideration) for the supply is made, or an invoice is issued in respect of the supply – whichever event occurs first.

#### Example

*A taxable person issues an invoice to a customer for a supply of goods on Day 1, delivers the goods on Day 2, and receives payment on Day 3. The time of supply in this case has been triggered on Day 1, as it was the first of the relevant events to occur. The VAT rate on Day 1 will therefore apply in this case – even if payment was only made later.*

The general time of supply rule applies in the case of supplies that do not have a special time of supply rule.

### 9. What are some examples of supplies that have special time of supply rules?

These are but not limited to:

- i) Ongoing, continuous, progressive, successive and periodic supplies such as rental agreements, cleaning contracts, building contracts, security services and subscription services.
- ii) Instalment credit agreements (ICAs) – this includes instalment sale agreements and financial leases entered into to acquire vehicles and equipment.
- iii) Lay-by agreements

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### 10. How will the increase work for ongoing contracts such as supplies made under rental agreements, construction and cleaning contracts, insurance and subscription services?

Successive, periodic or continuous supplies – The VAT rate is determined based on the earlier of the date when payment is due or is received. Some examples include property, equipment, car rentals and on-going contracts for maintenance, management, insurance, subscription or cleaning services. These supplies are typically invoiced or paid for in advance on a monthly basis. The increased rate will apply to any payment that becomes due or is received on or after the effective date.

Progressive supplies – The VAT rate is determined based on the earliest of the date when payment is due or is received, or any invoice for payment is issued. Examples include construction, manufacture or assembly of goods where the agreement provides for the purchase price to become due and payable according to the progress made. The increased rate will apply if the earliest of any payment that becomes due or is received or any invoice is issued in respect thereof is on or after the effective date.

Refer to Questions 16 and 17 regarding whether or not the stated price in the ongoing contract may be increased as a result of an increase in the VAT rate.

### 11. How will the increase work for instalment sale agreements and financial leases?

Supplies made are not regarded as being supplied successively, periodically, continuously or progressively as discussed in Question 10.

The time of supply for goods supplied is the earlier of the date of delivery of the goods, or when payment of any part of the purchase price is made. The increase in the VAT rate will not affect the contract price or the agreed instalment amounts payable for those goods if the actual time of supply was before 1 August 2018, as the output tax and input tax is accounted for upfront regardless of the vendor's accounting basis for VAT.

Note, however, that ongoing monthly service fees charged by your financier may be subject to the increase in VAT. In that case, your instalments may increase to that extent.

### 12. How will the increase work for lay-by agreements?

If a lay-by agreement is concluded before the effective date and the payment required to reserve the goods was made to the supplier before the effective date, the old VAT rate of 14% will apply even if the goods are delivered on or after the effective date. If such a lay-by agreement is cancelled and any part of the amount paid to the seller is retained, the seller must declare output tax using the old tax fraction of 14/114. This is also true if a lay-by agreement is cancelled before

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the effective date.

If delivery occurs on or after the effective date in circumstances that are not covered above, the supply of goods under the lay-by agreement will be subject to VAT at 15%. If the agreement is cancelled on or after the effective date in circumstances that are not covered above, the seller must declare output tax using the new tax fraction of 15/115.

### 13. How will the rate increase work generally for fixed property transactions?

The rate of VAT for fixed property transactions will be the rate that applies on the date of registration of transfer of the property in a Deeds Registry, or the date that any payment of the purchase price is made to the seller – whichever event occurs first. If a “deposit” is paid and held in trust by the transferring attorney, this payment will not trigger the time of supply as it is not regarded as payment of the purchase price at that point in time.

Normally the sale price of a property is paid to the seller in full by the purchaser's bank (for example, if a bond is granted) or by the purchaser's transferring attorney. However, if the seller allows the purchaser to pay the purchase price off over a period of time, the output tax and input tax of the parties is calculated by multiplying the tax fraction at the original time of supply by the amount of each subsequent payment, as and when those payments are made. In other words, if the time of supply was triggered before the effective date, your agreed payments to the seller over time will not increase because of the increase in the VAT rate on the effective date.

#### **Example**

*A taxable person sells a commercial building and issues a tax invoice to the purchaser on 10 June 2018. If the property will only be registered in the Deeds Registry on or after the effective date and payment will be made by the purchaser's bank or transferring attorneys on the same date, then the time of supply will only be triggered at that later date. In this case, VAT must be charged at 15% as the rate increased on the effective date which would be before the time of supply. It does not matter that an invoice or a tax invoice was issued before the time of supply and before the VAT rate increased. The tax invoice in this case would also have to be corrected as it would have indicated VAT charged at the incorrect rate of 14%.*

**See also Question 15** below for the rate specific rule that provides an exception for the purchase of “residential property” or land on which a dwelling is included as part of the deal.

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### 14. Will I be able to increase the price that I charge under existing ongoing contracts concluded before the increase in the VAT rate?

**Contract prices agreed by the parties** – Generally, the supplier (being a taxable person) may increase the contract price and recover the additional VAT from the customer under an existing contract concluded before the effective date if the supplies will continue after that date. This rule applies even if any other law states otherwise. The supplier will, however, not be able to increase the price or recover the increase from the customer if the parties have specifically agreed in writing in the contract that it may not be increased.

Whether the additional amount is recoverable from the customer or not, the supplier must account for VAT on any supplies made on or after the effective date at the increased VAT rate.

**Prices set under an Act or regulation** – As mentioned above, the supplier may increase the contract price even if any other law states otherwise. However, if the Act or regulation concerned actually sets the price and contains an explicit statement that the amount may not be increased, then the price will stay the same and may not be increased until that other Act or regulation that sets the price is amended accordingly. (See also Question 17.) The supplier will not be able to increase the price or recover the increase from the customer if the parties have specifically agreed in writing in the contract that it may not be increased.

Whether the additional amount is recoverable from the customer or not, the supplier must account for VAT on any supplies made on or after the effective date at the increased VAT rate.

### 15. What is the position when fees or charges are calculated with reference to another amount (the base amount)?

You must first establish if the base amount is expressed as a VAT-inclusive or VAT-exclusive amount.

- **VAT-inclusive base amount** – the calculated fee or charge will automatically include VAT at the increased rate of 15% if the supply took place on or after 1 August 2018. The VAT amount is calculated by multiplying the new tax fraction 15/115 by the final purchase price.
- **VAT-exclusive base amount** – VAT at the increased rate of 15% must be added to the calculated fee or charge to determine the final VAT-inclusive purchase price if the supply took place on or after the effective date.

If the base amount is prescribed in another Act or regulation, then as explained above, it must be established if that base amount is expressed as a VAT-inclusive or VAT-exclusive amount. The

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base amount will also increase as a result of the increase in the VAT rate unless that Act or regulation contains an explicit statement to the contrary. (See also Question 16.)

VAT Taxable persons need to pay attention to how the base amount is calculated, as well as the method upon which the formula is based that is applied to the base amount. This is especially important if you are using a VAT-inclusive base amount or a VAT-inclusive formula to calculate the fee or charges, as the calculated fees in that case are likely to be based on the incorrect assumption that VAT is included at 14%. In order to avoid commercial disputes, taxable persons should be clear in their agreements regarding how the base amount is calculated as well as the methods that are used for calculating the fees or charges based thereon. The formulae used should clearly demonstrate how the new VAT rate of 15% features in those calculations.

### 16. Are there any rate specific rules regarding the application of the increased VAT rate for supplies that span the date of the VAT rate increase?

Yes, although the time of supply rules normally fix the date upon which the liability for VAT in respect of a transaction arises, including the VAT rate, rate specific rules may apply when the VAT rate increases.

The general effect of these rate specific rules is that if a transaction was entered into before 1 August 2018, but delivery of the goods or performance of the services only takes place on or after the effective date, the following rules apply:

- **In the case of goods** – use the VAT rate that applies on the date that the goods are actually delivered or made available for collection; and
- **In the case of services** – use the VAT rate that applies on the date the services are physically performed or actually rendered.

These rules are explained further in **Questions 19 to 21**.

Regardless of any rate specific rule which applies in relation to the increase in VAT rate, taxable persons must still account for VAT on the transactions concerned in the relevant tax periods under the normal time of supply rules (see Questions 7 and 8).

### 17. What happens if I have actually delivered the goods or performed the services before 1 August 2018, but the invoicing or payment only occurs after that date?

The VAT Act provides that you must charge VAT at 14% even if the normal time of supply for those supplies (invoicing or payment) occurs after the increase in the VAT rate. This is explained by way

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of the example below.

### **Example**

*If a firm of auditors (being a vendor) has actually supplied auditing services to a customer before the effective date, but the invoicing and payment only occurs after the effective date, the auditing firm must charge VAT at 14% for those services and not 15%.*

### **18. Can I get an additional input tax adjustment for the trading stock on hand that I bought at the previous VAT rate of 14%?**

No. Input tax is claimed based on the VAT rate that applied when you acquired the goods or services (that is, based on the time of supply of the acquisition). The law does not make provision for any input tax adjustments for trading stock on hand if the VAT rate increases.

### **19. How will the VAT rate increase work for the importation of goods or services?**

**Importation of goods** – the date of importation is the date that Customs clears the goods for home consumption. If the clearance date is on or after 1 August 2018, the new rate of VAT will apply, even if the goods arrived in the country earlier or if the documents in connection with the importation were prepared before the clearance date.

**Imported services** – time of supply for imported services is the earlier of the time that –

- i) An invoice is issued by the supplier or the recipient in respect of the supply; or
- ii) The time any payment is made by the recipient in respect of that supply.
- iii) VAT must therefore be charged on imported services at the applicable rate on the earlier of the above dates.

### **20. Can I increase the price of products in my store to include the new rate of VAT without having to change all the individual price tickets?**

When you issue or receive a quote, order or purchase order, the time of supply is generally not triggered. It will therefore not influence the VAT rate that applies to a transaction.

You may increase the price to take into account the increased VAT rate if you choose. The same applies if you tendered for a contract at the old rate of 14%.

You must therefore be aware that if you tendered for a government or other contract and you choose not to increase your price, you will still have to charge output tax at the new standard rate of



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**21. What are my responsibilities if I do not have enough time to change my business systems to accommodate the increased VAT rate?**

You will have to manually recalculate your system-generated amounts to take into account the difference when you close off the VAT reporting period (tax period), and declare the VAT reflecting the increased VAT rate in the VAT return concerned.

If you have under declared the VAT payable in your VAT return, you must submit an amended return with the inscription "Amendment" in a prominent place.

**22. What happens if I incorrectly charged the old rate of VAT on a supply instead of the increased rate?**

You should try and correct the error by engaging with your customer as soon as possible preferably before you have to submit your VAT return and payment for the tax period concerned. In this regard, you may issue a debit note to correct the VAT charged on the previously issued tax invoice. Alternatively, if you choose not to follow this up with your customer, or you are unable to recover the amount from your customer, you will have to bear the difference as a business cost.

If you are only able to correct the error after submitting your VAT return for the tax period concerned, you may be liable for penalty and interest on the difference between what you have declared and the correct amount. Alternatively, to avoid penalty and interest, you can declare VAT at the rate of 15% on the consideration indicated on the tax invoice and correct the tax invoice for the recipient in the next tax period, or you can issue a debit note for the difference in the next tax period if you have not charged the full consideration (as the case may be).

**23. What happens if the tax invoice from my supplier incorrectly reflects the old rate of VAT instead of the new rate?**

If the tax invoice is not corrected by the supplier before you have to submit your VAT return for that tax period, your input tax will be limited to the VAT indicated on the tax invoice. You may then claim the difference as input tax in a subsequent tax period once the supplier corrects the purchase price and the VAT on the tax invoice issued to you, or the supplier issues you with a debit note for the difference in consideration (as the case may be).

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**24. Will the VAT return form be amended in time so that VAT Taxpayers can correctly submit for the first period after the increase?**

Yes. The return forms have already been amended to factor in the rate increase.

It has been updated to reflect the new VAT rate of 15%. Furthermore, the VAT return and related systems have been updated to process the relevant calculations at the new rate of 15%.

**25. How do I complete my VAT return form if the new VAT rate applies in the middle of my tax period?**

Regardless of your VAT reporting period, you must still charge VAT at the increased rate of 15% from the effective date. The new VAT return form does provide for both the old rate (14%) and new rate of 15%. All 14% related declarations must be made under the relevant "OTHER" field(s) provided in the new return form.

**26. What rate must be charged on the sale of face value vouchers which are sold before the increase in the VAT rate, but exchanged for goods after the rate change?**

The sale of the face value vouchers is disregarded for VAT purposes. There is therefore no VAT implication at the point at which the voucher is sold. When the customer later redeems the voucher on or after the effective date as payment for specific goods or services, the supplier will merely charge VAT at the increased rate of 15%, as that is the VAT rate that applies at the time of supply of the goods.

If the voucher was redeemed before 1 August 2018, the supplier would have charged VAT at the rate of 14%.

**27. What VAT rate applies if vouchers for specified goods or services are sold before the increase in the rate of VAT, but the supplies are only rendered after the rate change?**

Vouchers for specified goods or services are not disregarded for VAT. As the voucher was sold before the effective date, the tax rate of 14% must be applied. If the vouchers were sold on or after the effective date, the tax rate of 15% applies. No VAT is payable on the redemption of the vouchers, as the VAT consequences are triggered on the sale of the voucher.

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### **Example**

*A customer purchases a voucher for a massage treatment at E570 on 10 June 2018. The price includes VAT at the rate of 14%. The client books into the spa for the treatment on 4 August 2018. What rate must be charged?*

*Although the services are actually only rendered on 4 August 2018, VAT must be charged at the rate of 14% as the voucher was sold before the increase in the VAT rate.*

### **28. What VAT rate do I apply when issuing debit and credit notes for any subsequent price adjustments or returned sales?**

When making any subsequent adjustment to the previously agreed price for supplies made before the effective date, the debit or credit notes must be issued using the tax fraction 14/114. You must, however, keep in mind that there are special time of supply rules for certain supplies and other rate specific rules may have applied regarding the VAT rate charged on the original supply.

If VAT was charged at the increased VAT rate of 15% and not 14% because of the application of a rate specific rule, then any debit or credit notes issued in respect of subsequent price adjustments must also be made using the same VAT rate that was charged on the original supply (that is, use the tax fraction 15/115 and not 14/114).

Debit or credit notes relating to price adjustments for supplies made on or the effective date must be made using the new tax fraction 15/115.

### **29. What VAT rate do I apply when I write off any irrecoverable debts?**

Any subsequent write-off of irrecoverable debts must be made using the tax fraction that applied at the time the original supply was made. That is, multiply the old tax fraction 14/114 by the VAT-inclusive amount written off as irrecoverable if the original supply was made before 1 August 2018. The new tax fraction 15/115 must be used if the original supply was made on or after the effective date.

### **Example**

*A photocopier machine is supplied under a one year rental agreement commencing on 1 March 2018, with monthly rentals becoming due at the end of each month. If the lessee took possession*

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*of the machine on 1 March 2018, and no invoice was issued or payment received, then VAT must be charged at 14% for the March 2018 rental. For periods from 1 August 2018 onwards, VAT must be charged at 15%.*

*If the lessee fails to pay any of the rental charges and such amounts are subsequently written off as irrecoverable by the supplier, then the tax fraction 14/114 will be used to calculate the input tax claim for the March 2018 rental. The tax fraction 15/115 is used in respect of any irrecoverable debts written off relating to periods from 1 August 2018 onwards.*

Note that if the irrecoverable debts that were previously written off, are subsequently recovered, output tax must be declared in the tax period in which such debts were recovered. You must use the VAT rate that was applicable when the debt was written off (which would have been the same rate applicable to the original supply).

**NB: This is not a legally binding document but merely a means for VAT accounting guidance. The VAT Act, 2011 is available for reference.**