

Value added tax relative to homeowners' associations and bodies corporate - Updated

By Clint Riddin

We have previously written about why a homeowners' association, whether a non-profit company or by virtue of a constitution, needed to register as a VAT vendor where the annual levies exceeded R1m annually. As a reminder we include the extract from the VAT act which listed those entities relative to housing developments that are exempt from registering as a VAT vendor even though turnover exceeds the threshold; from this it is clear that homeowners' associations were not listed.

The reason for this was set out by SARS and in summary was that owners in individual residences pay their rates, which is an exempt supply, individually to the local authority, but in the schemes listed in the exemptions below, the scheme which represented the co-owners was liable for the rates. The exemption was therefore aimed at the equal treatment of property owners by ensuring that VAT is not levied indirectly on property rates, which was often the largest single cost item to be covered by levies. It followed, in SARS' view, that an inequity would be created if the services of home owners associations were included in the exemption.

Value-Added Tax

12. Exempt supplies

Referenced by:

The supply of any of the following goods or services shall be exempt from the tax imposed under section 7(1)(a):

- f) *the supply of any services to any of its members in the course of the management of-*
 - i) *a body corporate as defined in section 1 of the Sectional Titles Act, 1986 (Act No. 95 of 1986); or*
 - ii) *a share block company; or*
 - iii) *any housing development scheme as defined in the Housing Development Schemes for Retired Persons Act, 1988 (Act No. 65 of 1988),*

where the cost of supplying such services is met out of contributions levied by such body corporate or share block company or under such housing development scheme, as the case may be: Provided that this paragraph shall not apply or shall apply to a limited extent where such body corporate or share block company applies in writing to the Commissioner, and the Commissioner, having regard to the circumstances of the case, directs that the provisions of this paragraph shall not apply to that body corporate or share block company or that the provisions of this paragraph shall apply only to a limited extent specified by him: Provided further that this paragraph shall not apply to the services supplied by any body corporate or share block company which manages a property time-sharing scheme as defined in section 1 of the Property Time-sharing Control Act, 1983 (Act No. 75 of 1983);

A few years ago the various local authorities started charging rates to the individual owners and so the rates part of a scheme's budget and therefore levy was removed. It was then feared that SARS would remove the exemption in section 12 of the VAT Act for a body corporate, as this was now more aligned to the homeowners' association in terms of levies and rates structure.

Thankfully it seems that SARS has changed its views on this matter and has rather included a homeowners' association in the exemptions under section 12 of the VAT Act, Act 89 of 1989. The following is the proposed wording that appeared in the Taxation Laws Amendment Act, 2013 (Act 31 of 2013)

Amendment of section 12 of Act 89 of 1991, as amended by section 18 of Act 136 of 1992, section 14 of Act 20 of 1994, section 22 of Act 37 of 1996, section 69 of Act 19 of 2001 section 154 of Act 60 of 2001, section 117 of Act 74 of 2002, section 99 of Act 32 of 2004, section 45 of Act 9 of 2006, section 82 of Act 20 of 2006, section 109 of Act 60 of 2008 and section 147 of Act 22 of 2012

(c) by the addition to paragraph (f) of the following subparagraph after subparagraph (iii):

“(iv) any association of persons (other than a company registered or deemed to be registered under the Companies Act, 2008 (Act No. 71 of 2008), any co-operative, close corporation or trust, but including a non-profit company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008)) where the Commissioner is satisfied that, subject to such conditions as he or she may deem necessary, such association of persons—

(A) has been formed solely for purposes of managing the collective interests of residential property use or ownership of all its members, which includes expenditure applicable to the common immovable property of such members and the collection of levies for which such members are liable; and

(B) is not permitted to distribute any of its funds to any person other than a similar association of persons;”; and

(d) by the substitution in paragraph (f) for the words following subparagraph (iv) of the following words:

*“where the cost of supplying such services is met out of contributions levied by such body corporate, **[or]** share block company or under such housing development scheme or association, as the case may be:*

*Provided that this paragraph shall not apply or shall apply to a limited extent where such body corporate, **[or]** share block company, scheme or association applies in writing to the Commissioner, and the Commissioner, having regard to the circumstances of the case, directs with effect from a future date that the provisions of this paragraph shall not apply to that body corporate, **[or]** share block company, scheme or association or that the provisions of this paragraph shall apply only to a limited extent specified by him: Provided further that this paragraph shall not apply to the services supplied by any body corporate, **[or]** share block company, scheme or association which manages a property time-sharing scheme as defined in section 1 of the Property Time-sharing Control Act, 1983 (Act No. 75 of 1983);”.*

(2) Subsection (1) comes into operation on 1 April 2014 and applies in respect of services supplied on or after that date.

The changes come into effect as from 1 April 2014. As with a body corporate it must be noted that homeowners' associations can also voluntarily register as a vendor; this would be advantageous to homeowners' associations where the scheme is commercial of nature and where owners could claim input VAT, as they would probably also be VAT vendors.

This also means that homeowners' associations which are currently registered may elect to continue as before if it is felt that there is a benefit to them. Otherwise it would make sense to de-register as a VAT vendor, but remember that there will be a recoupment of any capital input VAT claimed and this would have to be paid over to SARS before the final de-registration takes place.

End