April 2022

Leasing of Aircraft Engines

With effect from 1 April 2021, the definition of "enterprise" in section 1(1) of the VAT Act was amended to include a proviso which states that where a lessor is neither a resident of South Africa (SA), nor a registered vendor and that lessor supplies the goods (being ships, aircraft and rolling stock), under a cross-border rental then the lessor does not conduct an enterprise in SA provided that:

- The supply is made to a recipient, i.e. lessee, that is a resident of SA;
- The goods being supplied is for use by the lessee wholly or partly in SA; and
- The lessee and lessor agreed in writing that the lessee shall enter the goods for home consumption, pay the VAT on importation and that the lessee will not be reimbursed by the lessor for any VAT suffered.

Historically, prior to the enactment of the above section, the Commissioner for the South African Revenue (the Commissioner) issued various rulings in terms of section 72 of the VAT Act in terms of which the South African Revenue Service (SARS) ruled that foreign lessors of aircraft and aircraft engines were not required to register for VAT purposes, provided certain requirements were met. These rulings were withdrawn with effect from 31 December 2021.

Following the enactment of the above section, SARS' view with regard to the leasing of aircraft engines separate from the aircraft is as follows:

- Since the term "aircraft" is not defined in the VAT Act, it must be given its ordinary, grammatical meaning;
- Having regard to the dictionary definition, the term "aircraft" does not include only the aircraft engines and cannot be interpreted widely to include engines; and
- Consequently, where only an engine is leased separate from the aircraft, the exception to the definition of 'enterprise' does not find application.

It follows that a non-resident lessor who leases only aircraft engines to be used in South Africa has an

enterprise for VAT purposes and is liable to register for VAT where the value of the lease payments exceeds R1 000 000 in any 12-month period.

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Regards
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