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VAT treatment of tax compliance services provided to employees.

Tax compliance services provided to an employee at the cost of the employer, will be subject to VAT in the hands of the employer if supplied to the employee in the course of its enterprise.

Why this matters?

Following the Tax Alert on the Income Tax treatment of tax compliance services provided to an employee at the cost of the employer, one also have to consider whether this will have a VAT implication. Foreign companies often second employees to associated companies in South Africa, who are liable for the cost of employment of such employees who are, for the duration of the secondment employees of the local associated company. In many instances such local employers contract with local and foreign tax practitioners to prepare the tax returns of their expatriate employees at no, or at a reduced cost to the employee. In the SCA discussed in the previous Tax Alert, the court held that such tax compliance services constitute a free or cheap service provided by the employer for the benefit of the employee and is therefore a fringe benefit which is subject to tax, as envisaged in the Seventh Schedule to the Income Tax Act. The SCA did not consider the VAT implications of the South African employer.

Section 18(3) of the VAT Act effectively deems a Seventh Schedule fringe benefit to be a taxable supply made by the vendor (employer) to the employee, unless such fringe benefit is an exempt supply, zero rated supply or a supply of entertainment, to the extent to which such employer grants the fringe benefit in the course of making taxable supplies. Section 9(7) of the VAT Act deems the taxable supply of the fringe benefit to be made at the end of the month in respect of which the fringe benefit is granted and section 10(13) of the VAT Act deems the consideration (i.e. the VAT inclusive amount) for such supply to be the cash equivalent of the fringe benefit, as determined in the Seventh Schedule.

Tax compliance services are not listed as an exempt supply in terms of section 12 and do not constitute "entertainment" as defined, with the result that the fringe benefit is a taxable supply, to the extent to

which it is granted by the vendor in the course of making taxable supplies and will be subject to VAT. However, to the extent to which the vendor deploys the services of the employee in the course of making exempt supplies, as envisaged in section 12 (e.g. the issuing of long-term insurance policies), the fringe benefit will not be subject to VAT. Section 11(2)(k) of the VAT Act provides that the taxable supply by a vendor of any service which is physically rendered outside the Republic, is subject to zero rate VAT. This means that to the extent to which the tax compliance services are rendered outside of the Republic (i.e. the preparation outside the Republic of the foreign tax returns of the employee), the fringe benefit will not be subject to VAT.

If you have any queries, require assistance or need more information, please contact us:



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