



REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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## STAATSKOERANT

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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 787.

7 May 1993

No. 787.

7 Mei 1993

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geëg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 61 of 1993: Value-Added Tax Amendment Act, 1993.

No. 61 van 1993: Wysigingswet op Belasting op Toegevoegde Waarde, 1993.

**GENERAL EXPLANATORY NOTE:**

**[ ]** Words in bold type in square brackets indicate omissions from existing enactments.

**\_\_\_\_\_** Words underlined with a solid line indicate insertions in existing enactments.

# ACT

To amend the Value-Added Tax Act, 1991, so as to make further provision in respect of the rates of interest payable by or to persons, the recovery of amounts not properly refundable, and the application of the rate of tax when that rate is increased or reduced; and to provide for matters connected therewith.

*(English text signed by the State President.)  
(Assented to 29 April 1993.)*

**B**E IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, Government Notice 2695 of 8 November 1991 and section 12 of Act 136 of 1992**

1. Section 1 of the Value-Added Tax Act, 1991 (hereinafter referred to as the principal Act), is hereby amended by the insertion after the definition of "precious metals" of the following definition:

"'prescribed rate', in relation to any interest payable in terms of this Act, means—

(a) in the case of interest payable in terms of the provisions of section 39(1)(a)(ii), (2)(b), (3)(b), (4)(b), (5)(b) and (6)(b), a rate of 1,2 per cent for each month or part of a month contemplated in the said provisions; or

(b) in the case of interest payable in terms of the provisions of section 36 or 45(1), a rate of 16 per cent per annum,

or, in either case, such other rate as the Minister may from time to time fix by notice in the *Gazette*;"

**Substitution of section 36 of Act 89 of 1991**

2. The following section is hereby substituted for section 36 of the principal Act:

**"Payment of tax pending appeal**

**36.** The obligation to pay and the right to receive and recover any tax chargeable under this Act shall not, unless the Commissioner so directs, be suspended by any appeal or pending the decision of a court of law, but if any assessment is altered on appeal or in conformity with any such decision a due adjustment shall be made, amounts paid in excess being refunded with interest at [such rate as may be fixed for the

purposes of this section by the Minister from time to time by notice in the *Gazette*] the prescribed rate (but subject to the provisions of section 45A) and calculated from the date proved to the satisfaction of the Commissioner to be the date on which such excess was received and amounts short-paid being recoverable with penalty and interest calculated as provided in section 39(1).” 5

**Amendment of section 39 of Act 89 of 1991, as amended by section 37 of Act 136 of 1991, Government Notice 2695 of 8 November 1991 and section 30 of Act 136 of 1992**

3. Section 39 of the principal Act is hereby amended— 10
- (a) by the substitution in subsection (1) for subparagraph (ii) of paragraph (a) of the following subparagraph: 10
- “(ii) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at [a rate fixed by the Minister by notice in the *Gazette*] the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day.”; 15
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 20
- “(b) Where any amount of tax has in relation to any tax period of any vendor been refunded to the vendor in terms of the provisions of section 44(1), read with section 16(5), or has in relation to that period been set off against unpaid tax in terms of the provisions of section 44(6), and such amount was in whole or in part not properly refundable to the vendor under section 16(5), so much of such amount as was not properly so refundable shall for the purposes of paragraph [(a)] (a)(i) be deemed to be an amount of tax required to be paid by the vendor within the said period and for the purposes of paragraph (a)(ii), an amount of tax required to be paid by the vendor during the period in which the refund was made.”; 25
- (c) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 30
- “(b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at [a rate fixed by the Minister by notice in the *Gazette*] the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day.”; 35
- (d) by the substitution in subsection (3) for paragraph (b) of the following paragraph: 40
- “(b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at [a rate fixed by the Minister by notice in the *Gazette*] the prescribed rate (but subject to the provisions of section 45A) for each month or 50

- part of a month in the period reckoned from the said first day.”;
- (e) by the substitution in subsection (4) for paragraph (b) of the following paragraph:
- “(b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at **[a rate fixed by the Minister by notice in the *Gazette*] the prescribed rate (but subject to the provisions of section 45A)** for each month or part of a month in the period reckoned from the said first day.”;
- (f) by the substitution in subsection (5) for paragraph (b) of the following paragraph:
- “(b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at **[a rate fixed by the Minister by notice in the *Gazette*] the prescribed rate (but subject to the provisions of section 45A)** for each month or part of a month in the period reckoned from the said first day.”; and
- (g) by the substitution in subsection (6) for paragraph (b) of the following paragraph:
- “(b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at **[a rate fixed by the Minister by notice in the *Gazette*] the prescribed rate (but subject to the provisions of section 45A)** for each month or part of a month in the period reckoned from the said first day.”.

**Amendment of section 45 of Act 89 of 1991, as amended by section 33 of Act 136 of 1992**

4. Section 45 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding the proviso of the following words:
- “Where the Commissioner does not within the period of 21 business days after the date on which the vendor’s return in respect of a tax period is received by the Commissioner refund any amount refundable in terms of section 44(1), interest shall be paid on such amount at **[such rate as may be fixed for the purposes of this subsection by the Minister from time to time by notice in the *Gazette*] the prescribed rate (but subject to the provisions of section 45A)** and calculated for the period commencing at the end of the first-mentioned period to the date of payment of the amount so refundable.”.

**Insertion of section 45A in Act 89 of 1991**

5. The following section is hereby inserted in the principal Act after section 45:

**“Calculation of interest payable under this Act**

**45A. Where—**

- (a) any interest is payable under the provisions of section 36, 39 or 45;
- (b) the rate at which such interest is payable has with effect from any date been altered; and

- (c) such interest is payable in respect of any period or any number of months or any part of a month which commenced before the said date,  
the interest to be determined in respect of that portion of such period which ended immediately before the said date or in respect of any such months or part of a month which commenced before the said date shall be calculated as if the said rate had not been so altered." 5

**Insertion of section 67A in Act 89 of 1991**

6. The following section is hereby inserted in the principal Act after section 67:

**"Application of increased or reduced tax rate 10**

**67A.(1) Subject to the provisions of subsection (3), where—**

- (a) goods are provided before the date on which an increase or decrease in the rate of tax leviable under section 7(1)(a) becomes effective; or  
(b) goods are provided in respect of a supply contemplated in section 9(3)(a) or (b) during a period beginning before and ending before, on or after the said date; or  
(c) services are performed during a period beginning before and ending before, on or after the said date, 15

and the supply of such goods or services, as the case may be, is in terms of section 9 deemed to be made on or after the said date, then— 20

- (i) the tax payable in respect of the supply of the goods referred to in paragraph (a) or the supply of the goods referred to in paragraph (b) which are provided during a period referred to in that paragraph which ends before the said date or the supply of services referred to in paragraph (c) which are performed during a period referred to in that paragraph which ends before the said date, shall be determined at the rate applicable on the day before the said date; and 25

- (ii) where the period referred to in paragraph (b) or the period referred to in paragraph (c) ends on or after the said date, the value of the supply in respect of the period in question shall on the basis of a fair and reasonable apportionment, be deemed to consist of a part (hereinafter called the first part) relating to the provision of the goods or the performance of the services, as the case may be, before the said date and a part (hereinafter referred to as the second part) relating to the provision of the goods or the performance of the services, as the case may be, on or after the said date, and the tax payable in respect of each part shall be separately determined, the tax in respect of the first part being determined at the rate applicable on the day before the said date and the tax in respect of the second part at the rate applicable on the said date: 30 35 40

Provided that this subsection shall not apply in respect of any sale of fixed property. 45

- (2) Subject to the provisions of subsection (3), where goods or services would in terms of section 9 be deemed to be supplied at a time within the period commencing on the date of the announcement of an increase in the rate of tax leviable in terms of section 7(1)(a) and ending on the day before the date on which the increase in the rate of tax becomes effective, that supply shall, to the extent to which it consists of the provision of goods or the performance of services on or after the date on which the increase of the rate becomes effective, be deemed not to take place at the said time, but on the date on which the increase in the rate becomes effective: Provided that this subsection shall not apply where the supply takes place— 50 55

- (i) in consequence of any payments customarily made or becoming due or invoices customarily issued, when made, becoming due or issued at regular intervals for the provision of goods or the performance of services still to be provided or performed; or
- (ii) under any written agreement referred to in subsection (4). 5
- (3) For the purposes of subsections (1) and (2) goods shall be deemed to be provided by the supplier thereof when such goods are delivered to the recipient and goods supplied under a rental agreement shall be deemed to be provided to the recipient when he takes possession or occupation thereof: Provided that where goods consist of fixed property supplied by way of a sale and transfer thereof is effected by registration in a deeds registry, that property shall for the purposes of this subsection be deemed to be delivered to the recipient when such registration is effected. 10
- (4) Subject to the provisions of section 78(9), where, before the date on which an increase in the rate of tax leviable in terms of section 7(1)(a) becomes effective, a written agreement is concluded for— 15
- (a) the sale of fixed property consisting of any dwelling together with land on which it is erected, or of any real right conferring a right of occupation of a dwelling or of any unit as defined in section 1 of the Sectional Titles Act, 1986 (Act No. 95 of 1986), such unit being a dwelling, or of any share in a share block company which confers a right to or an interest in the use of a dwelling; or 20
- (b) the sale of fixed property consisting of land, or of any real right conferring a right of occupation of land for the sole or principal purpose of the erection by or for the purchaser of a dwelling or dwellings on the land, as confirmed by the purchaser in writing; or 25
- (c) the construction by any vendor carrying on a construction enterprise of any new dwelling, 30
- and—
- (i) the price in respect of the sale or construction in question was determined and stated in the said agreement, as in force before the said date, and that agreement was signed by the parties thereto before the said date; and 35
- (ii) the supply of such fixed property or services under the said agreement is in terms of section 9 deemed to take place on or after the said date, 40
- the rate at which tax is in terms of the said section 7(1)(a) leviable in respect of that supply, shall be the rate at which tax would have been levied had the supply taken place on the date on which such agreement was concluded.”

#### Withdrawal of Government Notice

7. Government Notice No. 2675 of 4 November 1991 is hereby withdrawn.

#### Commencement

- 8.(a)(i) Sections 1, 2, 3, 4, 5 and 7 of this Act shall come into operation on the first day of the month following the month in which this Act is promulgated.
- (ii) For the purposes of this paragraph “month” means any of the twelve portions into which the calendar year 1993 is divided.
- (b) Section 6 of this Act shall be deemed to have come into operation on 17 March 1993. 50

#### Short title

9. This Act shall be called the Value-Added Tax Amendment Act, 1993.