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Association Incorporated under Section 21 of Companies Act

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**TO: All ITC-SA Members**

**National Communiqué No 020**  
**Not Charging VAT on Labour:**

Dear ITC-SA Membership,

In recent weeks, the ITC-SA was approached regarding a practice that is commonly found in the construction industry and where contractors and/or sub-contractors avoid charging VAT on labour to obtain the edge on competition in pricing for work.

The question that was passed onto the ITC-SA was, whether this was a legal practice, and whether the Receiver of Revenue would condone this practice. The ITC-SA did some research, and it can be confirmed that this practice would not be condoned by the Receiver of Revenue, and that vendors reported or found to be transgressing the Value Added Tax Act (**Act No. 89 of 1991-as amended**) will be prosecuted according to the provisions included in the same Act.

This communiqué is thus for information, and also to request the ITC-SA membership to abstain from practices employed in the construction industry by others, but which are not confirmed as exempt supplies in terms of Section 12 of the Vat Act (*Please see attachment to this communiqué*).

For more detail on this and for answers to other VAT related questions, please peruse the VAT Act as available on the internet.

*Fred Wagenaar*

Executive Officer (ITC-SA)

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# VAT ruling

## Question:

The vendor is involved in the construction industry and is involved in building homes and home improvements to home owners who are generally not vat vendors. If our client charges vat it means that the homeowner will bear the cost and the vat will never be recoverable. Our client is struggling to secure contracts as much of the competitors are not vat vendors and therefore they secure the contract more easily. Our clients estimated turnover is more than 1 million rand and therefore has to register for VAT.

A typical contract will include a material cost and a labour cost. Our client is exploring the possibility of issuing a quote based on a material to be used priced and a labour component. The materials part will attract vat while the labour component will not.

## Questions:

1. Will it be possible to issue an invoice where the labour component is not subject to vat?
2. Will it be possible to act as agent on behalf of the employees and the homeowner pays separately for the labour. Our client does not benefit from this in anyway unlike a labour broker.
3. Is it possible to suggest a workable solution?

The above question was posed to the Reciever of Revenue in regards to the application of the VAT Act, and relates specifically where contractors ommit to charge VAT on Labour.

The response from the Reciever may be found below:

## ANSWER:

The current VAT thresshold is MR 1.0 (one million rand), and all vendors registered for VAT shall be bound by the following principal:-

- As a VAT vendor, ALL supplies are taxable, apart from certain exempt supplies as listed in Section 12 of the VAT Act (refer extract below).
- It would be fraudulent to invoice an issue, charging for Labour seperately and with no VAT on the Labour component.

**EXTRACT FROM THE VAT ACT:**

**Value Added Tax Act (Act No. 89 of 1991) as amended:**

**12. Exempt supplies.**—The supply of any of the following goods or services shall be exempt from the tax imposed under section 7 (1) (a):

(a)The supply of any financial services, but excluding the supply of financial services which, but for this paragraph, would be charged with tax at the rate of zero per cent under section 11;

[Para. (a) substituted by s. 18 (a) of Act No. 136 of 1992, by s. 14 (a) of Act No. 20 of 1994 and by s. 22 (1) of Act No. 37 of 1996.]

(b)the supply by any association not for gain of any donated goods or services or any other goods made or manufactured by such association if at least 80 per cent of the value of the materials used in making or manufacturing such other goods consists of donated goods;

(c)the supply of—

(i)a dwelling under an agreement for the letting and hiring thereof, and any “right of occupation” as defined in section 1 of the Housing Development Schemes for Retired Persons Act, 1988 (Act No. 65 of 1988);

[Sub-para. (i) substituted by s. 99 (a) of Act No. 32 of 2004.]

(ii)lodging or board and lodging—

(aa)by the employer of the recipient (including an employer as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act), where the recipient is entitled to occupy the accommodation as a benefit of his or her office or employment and his or her right thereto is limited to the period of his or her employment or the term of his or her office or a period agreed upon by the supplier and the recipient;

(bb)by the employer of the recipient, where the employer operates a hostel or boarding establishment mainly for the benefit of the employees otherwise than for the purpose of making profit; or

(cc). . . . .

[Para. (c) amended by s. 69 (1) of Act No. 19 of 2001 and by s. 154 (1) (a) of Act No. 60 of 2001 and substituted by s. 117 (a) of Act No. 74 of 2002. Item (cc) deleted by s. 45 (1) (a) of Act No. 9 of 2006 deemed to have come into operation on 1 July, 2006.]

(d)the supply of leasehold land by way of letting (not being a grant or sale of the lease of that land) to the extent that that land is used or is to be used for the principal purpose of accommodation in a dwelling erected or to be erected on that land;

(e)the supply of land (together with any improvements to such land existing on the date on which the supplier became contractually obliged to supply such land and such existing improvements to the recipient) where such land is situated outside the Republic and such supply is made by way of sale or by way of letting;

( 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

[Sub-para. (ii) amended by s. 18 (b) of Act No. 136 of 1992.]

(iii)any housing development scheme as defined in the Housing Development Schemes for Retired Persons Act, 1988 (Act No. 65 of 1988),

[Sub-para. (iii) substituted by s. 18 (c) of Act No. 136 of 1992.]

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 anybody 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);

[Para. ( f ) amended by s. 28 of Act No. 97 of 1993.]

(g)the supply by any person in the course of a transport business of any service comprising the transport by that person in a vehicle (other than a game viewing vehicle contemplated in paragraph (e) of the definition of "motor car" in section 1) operated by him of fare-paying passengers and their personal effects by road or railway (excluding a funicular railway), not being a supply of any such service which, but for this paragraph, would be charged with tax at the rate of zero per cent under section 11 (2) (a);

[Para. (g) substituted by s. 28 of Act No. 136 of 1991, by s. 29 of Act No. 27 of 1997 and by s. 99 (b) of Act No. 32 of 2004.]

(h)

(i)the supply of educational services—

(aa)provided by the State or a school registered under the South African Schools Act, 1996 (Act No. 84 of 1996), or a further education and training institution established by the State or such institution registered under the Further Education and Training Act, 1998 ([Act No. 98 of 1998](#));

(bb)by an institution that provides higher education on a full time, part-time or distance basis and which is established or deemed to be established as a public higher education institution under the Higher Education Act, 1997 (Act No. 101 of 1997), or is declared as a public higher education institution under that Act, or is registered or conditionally registered as a private higher education institution under that Act; or

(cc)by any public benefit organisation as contemplated in paragraph (a) of the definition of "public benefit organisation" contained in section 30 (1) of the Income Tax Act that has been approved by the Commissioner in terms of section 30 (3) of that Act and which has been formed for—

(A)adult basic education and training including literacy and numeracy education, registered under the Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000), vocational training or technical education;

[Sub-item (A) substituted by s. 82 (b) of Act No. 20 of 2006.]

(B)education and training of religious or social workers;

[Sub-item (B) substituted by s. 82 (b) of Act No. 20 of 2006.]

(C)training or education of persons with a permanent physical or mental impairment;

(D). . . . .

[Sub-item (D) deleted by s. 99 (c) of Act No. 32 of 2004.]

(E)provision of bridging courses to enable indigent persons to enter a higher education institution as envisaged in subparagraph (bb);

[Item (cc) amended by s. 45 (1) (b) of Act No. 9 of 2006 and by s. 82 (a) of Act No. 20 of 2006. Sub-item (E) substituted by s. 82 (c) of Act No. 20 of 2006.]

(ii)the supply by a school, university, technikon or college solely or mainly for the benefit of its learners or students of goods or services (including domestic goods and services) necessary for and subordinate and incidental to the supply of services referred to in subparagraph (i) of this paragraph, if such goods or services are supplied for a consideration in the form of school fees, tuition fees or payment for board and lodging; or

[Sub-para. (ii) substituted by s. 117 (b) of Act No. 74 of 2002 and amended by s. 82 (d) of Act No. 20 of 2006.]

(iii)the supply of services to learners or students or intended learners or students by the Joint Matriculation Board referred to in [section 15](#) of the Universities Act, 1955 ([Act No. 61 of 1955](#)):

[Sub-para. (iii) added by s. 99 (d) of Act No. 32 of 2004.]

Provided that vocational or technical training provided by an employer to his employees and employees of an employer who is a connected person in relation to that employer does not constitute the supply of an educational service for the purposes of this paragraph;

[Para. (h) amended by s. 18 (d) of Act No. 136 of 1992 and by s. 14 (b) of Act No. 20 of 1994 and substituted by s. 154 (1) (b) of Act No. 60 of 2001 with effect from 1 March, 2002.]

(i)the supply of any goods or services by an employee organization to any of its members to the extent that the consideration for such supply consists of membership contributions;

[Para. (i) added by s. 18 (e) of Act No. 136 of 1992.]

( j )the service of caring for children by a creché or an after-school care centre.

[Para. ( j ) added by s. 154 (1) (c) of Act No. 60 of 2001 with effect from 1 March, 2002.]