

Tax & Legal - News Alert



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Aircraft engine leases | Proposed VAT treatment of cross-border leases

The Taxation Laws Amendment Act, no 23 of 2020 amended the provisos to the definition of "enterprise" in section 1(1) of the Value-Added Tax Act, no 89 of 1991 (the VAT Act) by adding paragraph (xiii) to the provisos, effective 1 April 2021.

Paragraph (xiii) to the proviso states that where a lessor is neither a resident of SA, nor a registered vendor and that lessor supplies, *inter alia*, foreign-owned aircraft for use in South Africa under a cross-border rental/lease then the lessor is excluded from the requirement to register for VAT 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.

On 29 July 2022 National Treasury published the draft Taxation Laws Amendment Bill (the Bill). The Bill proposes an amendment to proviso (xiii) to, *inter alia*, include aircraft engine leasing. Should this proposed amendment be promulgated non-resident aircraft engine lessors which are also non-registered vendors will no longer

be liable for VAT registration from a future date (currently proposed to be 1 January 2023). However, until promulgation such lessors are still liable to register for VAT, but will likely be able to deregister once the amendment is effected.

An issue that has not been addressed in the Bill is the liability in terms of section 8(2) of the VAT Act. This section provides that where a person ceases to be a vendor (i.e. its aircraft engine leasing activities ceases or by virtue of the above noted amendment being promulgated) and it has assets (i.e. aircraft engines) that formed part of the enterprise immediately before it ceased to be a vendor, then those assets shall be deemed to have been supplied by the vendor immediately before it ceased to be a vendor. In other words, aircraft engine lessors will have to account for standard rate VAT on the value of the aircraft engines that were the subject matter of any lease in South Africa. This will apply to aircraft engine lessors that are currently VAT registered or should have been VAT registered.

KPMG has submitted comments regarding this shortcoming to National Treasury for consideration prior to finalization and promulgation of the Bill. We will provide updates in this regard once same is received from National Treasury.

For additional information or assistance, please contact us.



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