SSIRC 2024-055

ENHANCING THE CERTAINTY AND CONSISTENCY OF THE VAT TREATMENT OF SUPPLIES MADE FOR NO CONSIDERATION

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Abstract

Value-Added Tax (VAT) is a key revenue stream and plays a pivotal role in the South African fiscus. Although consideration is crucial to determine the VAT treatment of any supply, it is common practice for vendors to also make supplies for no consideration. Despite the South African Revenue Service issuing Interpretation Note 70 (already in its second issue) to provide guidance to vendors regarding the VAT treatment of supplies made for no consideration, uncertainty regarding the practical application of the South African VAT legal framework to supplies made for no consideration continues to prevail. This paper reports on a study that sought to identify criteria required in support of a clearer, more consistent and regulated VAT treatment of three types of supplies made for no consideration, namely (i) dividend distributions, (ii) corporate social responsibility expenditure and (iii) donations to welfare organisations. A qualitative research approach was adopted, whereby a literature review and comparative research were employed to analyse the South African VAT treatment of the three types of supplies for no consideration in comparison with the United Kingdom and Australia. Two VAT aspects were identified to correctly determine the VAT treatment of supplies made for no consideration, namely whether the supplying vendor obtains any benefit or advantage (i.e., any consideration) in return for the supply and whether the supply is made in the course or furtherance of any enterprise. The analysis highlighted a lack of existing criteria to assist with distinguishing between a supply made for consideration and a supply made for no consideration, and how to classify each supply as a taxable supply or a change in use supply for VAT purposes. Criteria deduced from the United Kingdom and Australia are recommended for implementation by the South African tax regulator that might assist in correctly determining the South African VAT treatment of supplies made for no consideration in a clearer, more consistent and regulated manner.

Keywords: Consideration, corporate social responsibility (CSR) expenditure, dividend distribution, donation, enterprise, supply, value-added tax

INTRODUCTION AND BACKGROUND

Value-Added Tax (VAT) is a key revenue stream constituting the second-largest contributor to the South African fiscus (National Treasury & South African Revenue Service [SARS], 2023). The South African tax regulator has implemented various statutory instruments governing the collection of VAT as anti-avoidance measures designed to counter VAT revenue leakages from the tax base. For a supply to be subject to VAT in terms of the South African VAT legal framework, section 7(1)(*a*) of the Value-Added Tax Act (No. 89 of 1991) (hereafter the VAT Act) determines that it needs to constitute a supply made of goods or services by a vendor in the course or furtherance of any enterprise carried on by such a vendor (South African Government, 1991). For a supply of goods or services to be regarded as an activity that will form part of a vendor's enterprise, it is a legislative requirement (under the definition of an enterprise in terms of section 1(1) of the VAT Act) that such a supply, subject to certain exceptions, needs to be made for a consideration. The consideration for a taxable supply represents the value being placed on such a supply, which will include the output tax charged on the value at a taxable supply rate of either 15% or 0%. Consideration is not limited to cash receipts alone and could also be in non-monetary form (SARS, 2021). The term consideration is formally defined in section 1(1) of the VAT Act (South African Government, 1991) as follows:

> *… in relation to the supply of goods or services to any person, includes any payment made or to be made (including any deposit on any returnable container and tax), whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods or services, whether by that person or by any other person, but does not include any payment made by any person as a donation to any association not for gain …*

Hence, the concept of the consideration of a taxable supply plays a pivotal role within a VAT context, as this aspect is one of the fundamental principles to be considered to correctly determine whether a supply will be regarded as forming part of a vendor's enterprise or not. Proviso (v) under paragraph (*b*) of the definition of an enterprise in section 1(1) of the VAT Act specifically excludes from the carrying on of any enterprise any activity to the extent that it involves the making of an exempt supply (South African Government, 1991). Therefore, only a taxable supply could be classified as forming part of a vendor's enterprise as defined. Such taxable supply must also be supplied at a consideration before it could trigger the imposition of VAT (i.e., output tax to be levied or charged) at either the standard rate (of 15%) or the zero rate (at 0%). In addition, such taxable supply must also adhere to the requirement of taking place in the course or furtherance (South African Government, 1991) of such vendor's enterprise in terms of which goods or services are supplied, whether for profit or not.

Some supplies made by vendors are, however, made for no consideration. The correct VAT treatment of supplies made for no consideration is problematic, because no clear legislative guidelines (i.e., criteria) are provided in terms of the VAT Act to correctly establish when a supply for no consideration will be regarded as the making of a taxable supply, as opposed to being treated as a change in use supply. A supply as in the latter case is where goods and/or services are initially acquired by a vendor with the intention of making a taxable supply, but the vender then subsequently changes such intention to apply such goods and/or services in the making of a non-taxable (or exempt) supply. A change in use supply will necessitate an adjustment to be made for VAT purposes in the form of output tax. To correctly determine the value of output tax to be accounted for when a supply for no consideration takes place, it is pivotal that specific criteria need to be furnished to taxpayers (i.e., VAT vendors). The application of such criteria will ensure that a supply for no consideration is correctly classified as either constituting the making of a taxable supply (i.e., solely regarded to be in the course or furtherance of the vendor's enterprise) or a change in use supply where the initial intention of making a taxable supply changes to the making of a non-taxable supply.

To provide guidance to vendors regarding the VAT treatment of supplies made for no consideration, SARS has issued Interpretation Note (IN) 70. However, although this SARS guideline document is already in its second issue, the guidelines provided by IN 70 still result in some uncertainties when specific VAT aspects (i.e., VAT concepts and their related provisions as provided in terms of the VAT Act) are considered for application to supplies made for no consideration in the attempt to correctly determine the VAT treatment of such supplies. This calls for criteria that could be applied in the process of considering various VAT aspects to correctly determine the VAT treatment of supplies made for no consideration in a clearer and more consistent manner.

PURPOSE AND CONTRIBUTION

This research sought to identify criteria required in support of a clearer, more consistent and regulated VAT treatment of three types of supplies made for no consideration, namely (i) dividend distributions, (ii) corporate social responsibility (CSR) expenditure and (iii) donations to welfare organisations. The prevalence of these three types of supplies at no consideration in practice warranted this study's focus on them. To achieve this, this paper is structured as follows: First, the methodology selected for the analysis is described and motivated, followed by an analysis of the VAT legal framework and its aspects required to be applied to correctly determine the VAT treatment of the supplies made for no consideration. These aspects are then further explored and unpacked, based on a high-level comparison, with that of the criteria regulating the VAT/Goods and Services Tax (GST) treatment of supplies made for no consideration in the United Kingdom (UK) and Australia (see section 5 for the motivation for the selection of these countries). The paper concludes by highlighting the main findings and making recommendations that could be considered by the South African tax regulator to be introduced that might assist South African VAT vendors to correctly determine the VAT treatment of supplies made for no consideration in a clearer, more consistent and regulated manner.

METHODOLOGY

The research conducted for this paper was positioned within the interpretivism research paradigm, as a critical analysis of criteria to be applied in determining the VAT treatment of supplies made for no consideration is associated with subjective interpretation based on inductive reasoning (see McKerchar, 2008). Henning et al. (2004) suggest that research being interpretivistic in nature requires various research methods to create multiple perspectives of interpreting the research problem at hand. Consequently, the study followed a qualitative research approach by employing a combination of a literature review and comparative analysis as research methods to critically analyse the VAT aspects to consider and to recommend the criteria required for a clearer, more consistent and regulated manner of determining the VAT treatment of supplies made for no consideration.

A qualitative research approach enables the identification, dismantling and segmentation of information for meaningful findings to be made and for inferences to be drawn (Wahyuni, 2012;

Neuman, 2014)). The review of the aspects to consider in the VAT legal framework to determine the VAT treatment of supplies made for no consideration provided insight into the aspects known and the criteria needed to apply these aspects with more certainty and consistency. In addition, a comparative analysis enabled the researchers to compare VAT/GST criteria provided by other tax jurisdictions (i.e., the UK and Australia) to inform criteria to be useful for introduction in the South African VAT context.

LITERATURE REVIEW

Conceptual Framework: Supplies Made for No Consideration

For any enterprise to be successful, or at least sustainable, it needs to engage in a wide range of activities and/or transactions to further its cause. These could include achieving its profit-making intent, satisfying shareholders' return on investment expectations, fulfilling its growth and expansion potential, and operating in a sustainable and socially responsible manner, hence benefiting not only itself and its shareholders, but also its community and society at large. These types of activities require supplies to be made for no consideration and are conceptualised in Table 1 below.

Table 1*: Conceptualising supplies made for no consideration*

Type of supply	Dividend distributions	CSR expenditure incurred	Donations to welfare organisations
Description	The term dividend is not defined in the VAT Act (Viviers, 2015). Distribution (in cash or *in specie*) by a company for the benefit of a person holding shares in that company (South African Government, 1962). Distribute means the direct or indirect transfer of a company's property or money in the form of a dividend (South African Government, 2008).	Businesses' assumed obligations to the communities they operate in and the wider society (Kabir et al., 2015). King IV describes CSR as an entity's awareness and response to social issues, while maintaining its priorities on ethical standards (Institute of Directors South Africa [IoDSA], 2016).	Defined in section 1(1) of the VAT Act (South African Government, 1991) as a supply made to an association not for gain (i.e., a welfare organisation). Could be made in the form of an asset (or goods) transferred, the provision of a service or anything that has a value (SARS, 2021) and must be based on an act of kindness, without any legal obligation to do so, and must be made without the expectation to receive anything in return (i.e., gratuitously) (SARS, 2021).
Reason for supply	To address and satisfy shareholders' return-on-investment needs and expectations (Li, 2019). To incentivise existing or new shareholders to take up	In South Africa, the CSR framework is a combination of self-regulation through voluntary codes of conduct, standard corporate governance practices (such	An entity's awareness of conforming with corporate citizenship by upholding a culture of good corporate governance practices and

Type of supply	Dividend distributions	CSR expenditure incurred	Donations to welfare organisations
	further shares as part of a strategy to raise additional capital for funding the company's operations and/or expansion needs (Baker & Weigand, 2015).	as the King IV Report) and compulsory regulations and legislation (such as Regulation 43(5)(*a*)(ii) (bb) to the Companies Act (No. 71 of 2008), the Johannesburg Stock Exchange (JSE) listing requirements and provisions of the Broad-Based Black Economic Empowerment [B-BBEE] Act [No. 53 of 2003]).	fulfilling its philanthropic responsibilities (Ouma, 2020). Entities participate in corporate philanthropy purely for altruistic reasons and reputational gains (Houqe et al., 2019) and to boost their corporate performance and financial returns (Esteban-Sanchez et al., 2017).

The South African VAT Legal Framework: Provisions Regulating Supplies Made for No Consideration

Before output tax could be levied, a supply must be made for a consideration. Although the definition of the term consideration as defined in section 1(1) of the VAT Act (South African Government, 1991) was already highlighted and discussed earlier in this paper, it is again elucidated that it contemplates the making of payments (whether in money or otherwise), the performance of certain acts (whether voluntary or not) and any forbearance in relation to the supply of goods or services. IN 70 (Issue 2) (SARS, 2021) provides that for a supply to be a supply made for no consideration, the supply should be made purely gratuitously.

In *Welch's Estate v CSARS*, 66 SATC 303 it was determined that a gratuitous act would be motivated by disinterested benevolence or pure liberality with no favour or advantage granted in return for the gratuitous act. Hence, for a supply to be gratuitous, there must be no expectation to receive or obtain any benefit in return for making such a supply. However, even though it may appear as if a supply is made for no consideration, some benefits or advantages could possibly arise from making such a supply, whether it is obtained immediately, subsequently or over time. This raises the question whether such benefits or advantages (whether intentional or unintentional, i.e., incidental in nature) could be regarded as consideration received (or to be received) in return for making such a supply. The answer to the latter will have an impact on the VAT treatment of such a supply.

Where a supply is truly made for no consideration, no item is supposed to be received by the vendor in return for making such a supply. However, such a supply could still constitute a taxable supply or a change in use supply for VAT purposes. In both these instances, a deemed value is required to be placed on such a supply made for no consideration. Where a supply at no consideration is considered a taxable supply for VAT purposes, the value to be placed on such a supply for VAT purposes will be deemed to be nil in terms of section 10(23) of the VAT Act (South African Government, 1991).

Cognisance should however be taken of the fact that even though the value of the supply is deemed to be nil, this will not nullify the fact that the supply still constitutes a taxable supply for VAT purposes.

This principle was established in the *KCM v Commissioner South African Revenue Services* [2009] ZATC case, where the judgement confirmed that the prescripts of section 10(23) do not necessarily make a supply at no consideration a non-taxable supply, but only deem the value of such a supply made for no consideration to be nil. Therefore, where the value of a taxable supply made at no consideration is deemed to be nil, it does not mean that no output needs to be accounted for, as output tax must still be levied; however, the amount of the output tax will be nil.

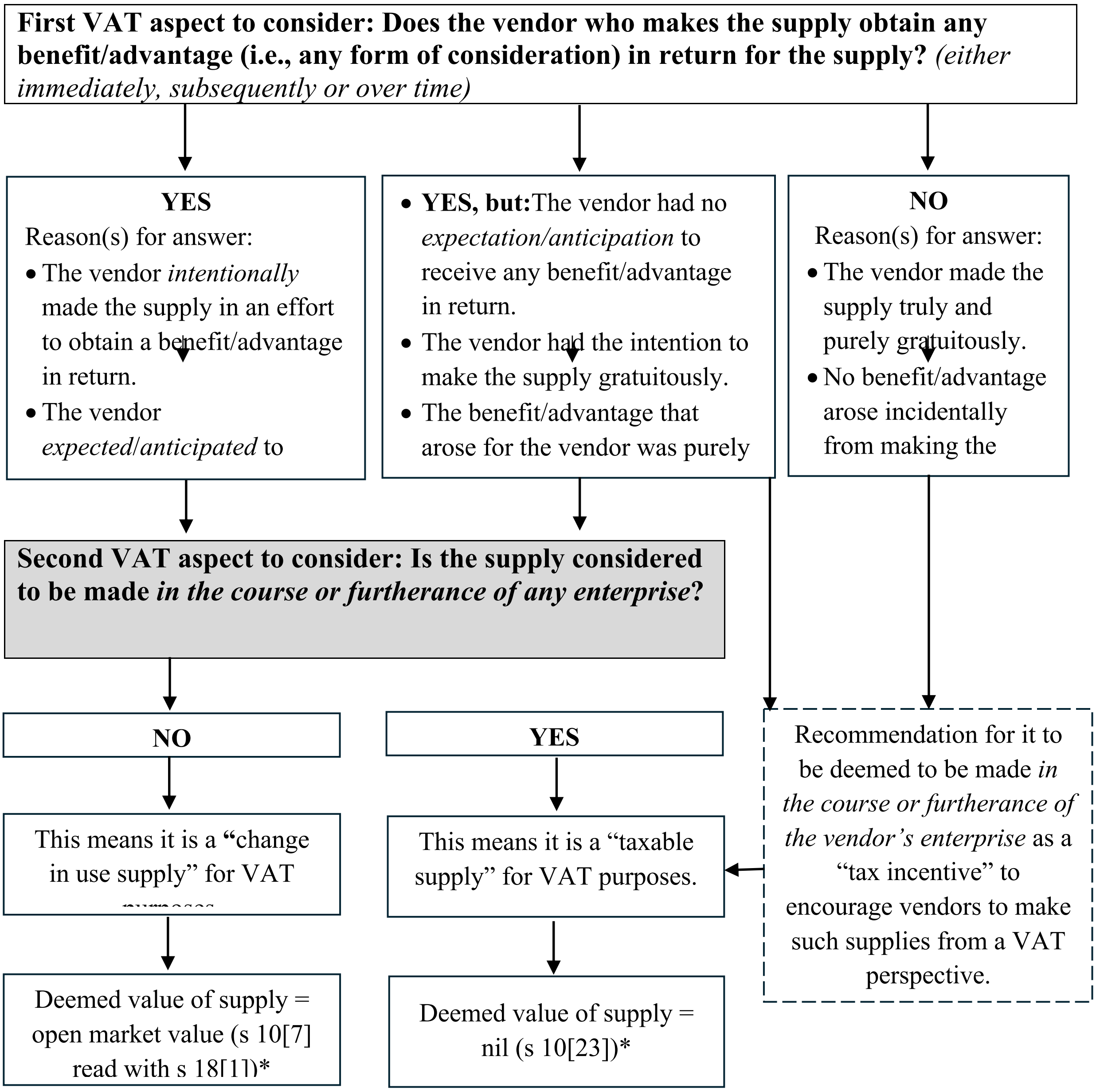

Figure 1: ***VAT aspects to consider in determining the VAT treatment of supplies made for no consideration***

** The sections referred to are sections as contained in the VAT Act (South African Government, 1991)*
Source: Researchers' compilation deduced from the analysis of the VAT legal framework performed

In comparison, where a supply at no consideration is deemed to be classified as a change in use supply for VAT purposes, the provisions of section 18(1) of the VAT are triggered. This means that an item (either goods or services) was initially acquired by such a vendor for the purposes of making taxable supplies. However, due to a subsequent change in intention, an output tax adjustment is required to be made where such an item is being supplied by the vendor in return for no consideration. In this instance, the deemed value to be placed on a change in use supply will be determined in terms of section 10(7) of the VAT Act (South African Government, 1991), which deems the value of such a supply to be a consideration in money equal to the open market value of such supply. The open market value of a supply is described in terms of section 3(b) of the VAT Act (South African Government, 1991) to include tax charged under section 7(1)(a) on that supply. Figure 1 summarises the two main VAT aspects to consider in correctly determining the VAT effect of supplies made for no consideration.

However, when these two VAT aspects as identified in Figure 1 are applied to (i) dividend distributions, (ii) CSR expenditure and (iii) donations to welfare organisations (i.e., the three types of supplies made for no consideration under scrutiny in this study), the answers as to whether or not the vendor who makes such a supply will obtain any benefit or advantage (meaning any consideration) in return for such a supply and whether such a supply could be considered as a supply made in the course or furtherance of an enterprise (meaning a taxable supply or a change in use supply) become problematic. Therefore, additional criteria are required to assist vendors in applying these VAT aspects with more certainty, which will ensure better consistency in the VAT effect outcome derived when applied by different VAT vendors.

Certainty is one of Smith's (1784) famously introduced four maxims of any tax system. In South Africa, the Davis Tax Committee adopted Smith's principle of certainty, which means that taxes should not be arbitrary and that the tax every individual pay ought to be certain. The Organisation for Economic Co-operation and Development (OECD) (1998) defines certainty as tax rules being clear and straightforward that will ensure consistency in the final tax outcome when independently applied by different taxpayers.

Applying the Identified VAT Aspects to Supplies Made For No Consideration

In making the case for uncertainty and inconsistency arising from the application of the two identified VAT aspects, these two aspects are applied next to each of the three types of supplies made for no consideration that were under scrutiny in this study.

Dividend Distributions

Dividends can be distributed either in cash or *in specie* (see Table 1). The term cash forms part of the term money, which is defined in section 1(1) of the VAT Act (South African Government, 1991). However, money is specifically excluded from the scope of the term goods in terms of paragraph (a) of its definition, while money is also specifically excluded from the term services as defined in section 1(1) of the VAT Act. As section 7(1)(*a*) of the VAT Act requires a vendor to either supply goods or services as a prerequisite for output tax to be levied and paid, it is evident that a distribution by a vendor of a dividend in cash will not be subject to VAT. This stance is also confirmed by Viviers (2015) as well as Haupt and Nel (2017).

To correctly determine the VAT treatment of a dividend *in specie* distribution, it needs to be established whether such a supply is truly made gratuitously (i.e., for no consideration) and whether such a supply could be considered made in the course or furtherance of the vendor's enterprise to be classified as a taxable supply for VAT purposes.

A vendor's true intention behind a dividend *in specie* distribution will unlock the answer to the correct VAT treatment of such distribution. If the intention is to encourage and incentivise shareholders to take up further shares in the vendor for the vendor to raise additional funds, section 10(23) may apply, resulting in output tax of nil due to a deemed value of supply of nil. However, if it is established that the true intention is a gratuitous distribution without the expectation to receive any form of benefit or advantage in return, it will constitute a change in use supply, triggering output tax to be determined based on the open market value of the item(s) distributed in terms of section 10(7) read with section 18(1) of the VAT Act (South African Government, 1991).

Cognisance should however be taken of the fact that opposing views prevail in the literature. The one view is that dividend *in specie* distributions are regarded as taxable supplies, as they encourage existing shareholders to take up further shares in the distributing vendor because shareholders earn returns on their investment (Viviers, 2015). Another view is that no further share investments to be taken up in the distributing vendor are guaranteed by dividend *in specie* distributions, meaning it could not be considered as a supply made in the furtherance of an enterprise (Haupt & Nel, 2017). Hence, it is evident that uncertainty and inconsistency regarding the VAT treatment of dividend *in specie* distributions prevail, making the VAT treatment of this type of supply made for no consideration uncertain.

Corporate Social Responsibility Expenditure

In terms of Regulation 43(5)(a)(ii)(*bb*) of the Companies Act (No. 71 of 2008) (South African Government, 2008), corporate entities are required to contribute to community development. Unlike most countries, South Africa also has B-BBEE as binding CSR legislation, which is mandatory for all South African resident companies (Arya & Bassi, 2011). Section 11 of the B-BBEE Act (No. 53 of 2003) requires all South African companies to include all stakeholders in their internal and external operations to assist in the eradication of social and economic inequalities (South African Government, 2003). CSR expenditure increases an entity's B-BBEE scorecard rating, which is crucial for businesses to survive and remain competitive (Mans-Kemp et al., 2016). JSE-listed companies are required to report on compliance with the provisions of the B-BBEE Act in their audited statutory accounts and to comply with JSE reporting requirements, which include CSR reporting for initial exchange listing and continued listing (JSE, 2003). Entities put CSR initiatives in place to develop and maintain a good corporate and socially responsible brand reputation and to build consumer trust, which in turn enables brand preference and an increase in customers' purchase intentions (Randle et al., 2019). Research has shown that customers tend to react or respond to companies with CSR policies and company values with which they can identify (Baskentli et al., 2019).

Therefore, although it may seem as if the decision of a vendor to incur CSR expenditure appears to be a supply made for no consideration, this will not necessarily always be the case. For example, a vendor may intentionally incur CSR expenditure only to improve its B-BBEE scorecard rating to gain a competitive advantage and to make it a more attractive and favourable business partner with which to engage and conduct business. Compulsory reporting requirements, such as the JSE listing requirements, could improve or enhance a vendor's corporate governmental image and status in terms of how it is perceived as a corporate socially responsible citizen in the public domain. Ruf et al. (2001) report a positive relationship between CSR and financial performance.

Therefore, because it may appear as if CSR expenditure is incurred for no consideration (no expectation or anticipation to obtain any benefit and/or advantage in return), it is, however, evident that either intentional or unintentional (i.e., incidental) benefits and/or advantages may be gained. Therefore, criteria are needed to be applied to assist in clearly distinguishing between CSR expenditure incurred for consideration and for no consideration and to correctly classify the supply of incurring CSR expenditure as either a taxable supply or a change in use supply for VAT purposes.

Donations to Welfare Organisations

Although donations to welfare organisations could be made with a pure gratuitous intent without expecting or anticipating any benefit to be obtained in return for such donation, instances could arise where the donating vendor could obtain an unintentional and incidental benefit or advantage from such donation. Listed companies are, for example, required by King IV (IoDSA, 2016) and the JSE requirements to disclose their donations made to welfare organisations and/or public benefit organisations in their integrated reports. Such disclosures made (with the only intent to maintain a culture of good corporate governance practices) might however include an indirect benefit or advantage (i.e., consideration) for such vendors in terms of which they are viewed by readers of their integrated reports to be good and responsible corporate citizens (akin to that of obtaining a marketing benefit from a donation made and publicly advertised). In addition, where donations are made by vendors in the form of volunteering to render services to a welfare organisation, instances occur where vendors are given recognition for their services on such organisations' websites (Ouma, 2020).

Therefore, in trying to justify why entities make donations to welfare organisations, it becomes difficult to determine with absolute clarity and certainty whether such donations truly constitute supplies made for no consideration or not. This is because, although a donation may appear to be made gratuitously (meaning for no consideration), it seems that in some instances, a donation might include hidden benefits and/or advantages for the donor, which might be either intentional or unintentional (i.e., incidental) and which may not necessarily be obtained immediately upon making such donations, but which could also be received subsequently or over a period of time.

This calls for criteria that need to be considered to correctly determine whether a donation to a welfare organisation truly represents a supply made for no consideration or not, and whether such a supply will constitute a taxable supply (i.e., a supply in the course or furtherance of an enterprise) or a change in use supply (i.e., changing from the intention of making taxable supplies to that of making non-taxable supplies) for VAT purposes. This will have an impact on the amount to be applied as the deemed value of supply when accounting for output tax to be levied on such a supply made for VAT purposes.

Criteria Required to Enhance Certainty and Consistency

Deduced from the two main aspects highlighted in Figure 1 that are required to be applied in correctly determining the VAT treatment of supplies made for no consideration, the application of these two aspects remains problematic. IN 70 (Issue 2) (SARS, 2021;9) suggests that to classify a supply at no consideration to constitute a taxable supply, an activity-based test must be performed to determine what type of activities (i.e., supplies of goods or services at a consideration) are associated with a vendor's normal business operations in a commercial context. Hence, it needs to be established what the vendor's true intention behind such activities is in terms of how it will assist in growing the vendor's business, making a profit or ensuring that the business is sustainable (SARS, 2021). Where it could be established, based on the application of the activity-based test, that an integral connection does exist between a supply made for no consideration and the activities involving the supply of goods or services in return for some form of consideration (i.e., any benefit or advantage obtained from such a supply), such supply would be classified as a taxable supply. However, apart from the latter, neither IN 70 (Issue 2) nor the VAT Act currently provides any further clear criteria to assist in establishing this integral connection with certainty and consistency.

As a result, the following criteria are recommended that could assist in enhancing the certainty and consistency of the VAT treatment outcome when applied by different VAT vendors:

- For the first VAT aspect (see Figure 1), criteria are required to assist in distinguishing between a supply made for consideration and a supply made for no consideration.
- For the second VAT aspect (see Figure 1), criteria are required to assist with the classification of a supply (or portions thereof) made as either a taxable supply (i.e., a supply in the course or furtherance of an enterprise) or a change in use supply (i.e., where an initial taxable supply intent changes to a non-taxable supply).

COMPARATIVE ANALYSIS WITH THE UNITED KINGDOM AND AUSTRALIA

To further refine the recommended criteria (discussed in section 4.3), a high-level review of the criteria available in the UK and Australia to determine the VAT/GST treatment of supplies made for no consideration in these two foreign jurisdictions is presented next.

Because IN 70 issued by SARS references both the UK and Australia as examples of countries that have legislative provisions for supplies made for no consideration (SARS, 2021:6), these two countries were selected for review. In addition, South African tax legislation is comparable to jurisdictions such as the UK and Australia, as the first income tax legislation enacted in South Africa was based on English income tax legislation (Croome, 2013). Brink and Viviers (2012) also highlight that the tax system of South Africa has various similarities with that of Australia, as both these countries' tax legislations were based on the New South Wales Act of 1895.

Main Findings from a Review of the VAT System in the United Kingdom

In the context of the UK's VAT legal framework, it was noted that much more detailed and comprehensive criteria are provided in terms of VAT Notice 701/1 (Her Majesty's Revenue and Customs, 2014), which requires vendors to perform a business test to determine whether CSR expenditure and donations made to welfare organisations could be considered as taxable supplies or not when compared to the criteria provided by the SARS guideline document in terms of IN 70 (Issue 2) (SARS, 2021) to be applied when applying the proposed activity-based test.

Main Findings From the Review of the Goods and Services Tax System in Australia

In the Australian GST context, it was found that a so-called nexus test is required to be performed in terms of Goods and Services Tax Ruling 2012/2 (Australian Taxation Office [ATO], 2012) to determine whether a sufficient nexus exists, based on an objective assessment and regard, and whether a supply adds to the true nature of the business of the person making the supply. The criteria of this test were found to be very similar to that of the activity-based test suggested by SARS's (2021) IN 70 guideline document. Both these tests require judgement to be applied and are therefore considered as criteria that are too subjective in nature to assist in correctly determining the VAT treatment of supplies made for no consideration in a clear, more consistent and regulated manner. However, it was also found that in terms of Goods and Services Tax Ruling 2005/13 (ATO, 2005), more detailed criteria are provided to serve as guidance in terms of what may (and may not) constitute a material benefit when non-gratuitous donations are made.

Criteria Recommended Based on Comparison to the United Kingdom and Australia

Based on comparative analysis, it is recommended that the more detailed and comprehensive criteria applied in the UK VAT context to determine whether or not a supply is made in the course or furtherance of a business carried on, supplemented by the lists of examples to clarify when a benefit or advantage will be considered material or immaterial, should be considered by the South African tax regulator for implementation in the South African VAT context.

CONCLUSION AND RECOMMENDATIONS

The main aim of this study was to identify criteria required in support of a clearer, more consistent and regulated VAT treatment of supplies made for no consideration. Deduced from the critical analysis conducted in this study, the following criteria are recommended to be considered by the South African tax regulator that might enhance the certainty and consistency of the VAT treatment of the following supplies for no consideration:

Dividend *In* Specie Distributions

Criteria in the form of the vendor's intention test are recommended to be developed and implemented, as such a test will assist in determining a vendor's true intention behind its decision to distribute dividends *in specie*. This will assist in a clearer distinction between a vendor's dividend *in specie* distributions made as a taxable supply as opposed to a change in use supply for VAT purposes.

Corporate Social Responsibility Expenditure Incurred

It is recommended that legislative criteria be introduced into the VAT Act to clarify that in the event that a vendor reports on and/or discloses any information in respect of its CSR expenditure, whether voluntary or compulsory, any intentional or unintentional (i.e., incidental) benefits or advantages obtained from such reporting and disclosures over which the vendor has no control should be deemed to be made for no consideration. This will ensure that such supplies will be deemed to be taking place at a value of nil in terms of section 10(23) of the VAT Act (South African Government, 1991), resulting in output of nil to be levied by such vendors.

Where CSR expenditure improves or enhances a vendor's B-BBEE scorecard rating, it is recommended that criteria be introduced to assist in apportioning CSR expenditure between the extent that it relates to, and does not relate to, benefits and advantages obtained by the vendor based on the level of its B-BBEE scorecard rating.

For general CSR expenditure incurred, or where the supply of goods or services made for no consideration is in support of CSR activities, it is recommended that criteria be introduced to remove (as far as possible) any subjectivity and judgement required to be applied in performing the activity-based test as proposed by IN 70 (SARS, 2021:9). Such criteria must assist to establish whether CSR expenditure incurred, or the supply of goods or services for no consideration in support of CSR activities, could be associated with the nature of the vendor's enterprise in terms of how such an expense or supply supports or assists the vendor's business to grow, to realise profits or to ensure business sustainability.

Donations to Welfare Organisations

For CSR donations made in the form of services rendered to a welfare organisation, it is recommended that legislative criteria be introduced into the VAT Act to clarify that such a supply must fall outside the scope of the South African VAT Act and must consequently have no VAT consequences. A suggestion would be that such clarification could be made by adding another provision to the list of specific exclusions from an enterprise as defined in section 1(1) of the VAT Act.

In turn, for non-gratuitous CSR donations made in a form other than in cash or services, it is recommended that criteria be introduced to remove any subjectivity and judgement required (as far as possible) to be applied in performing the activity-based test as proposed by IN 70 (SARS, 2021:9) to establish whether such a donation could be associated with the nature of the vendor's enterprise in terms of how it supports or assists the vendor's business to grow, to realise profits or to ensure business sustainability.

LIMITATIONS AND SUGGESTIONS FOR FURTHER RESEARCH

The focus of the analysis in this study was limited to three types of supplies that could be made for no consideration. Hence, the findings cannot be generalised to all types of supplies that could be made for no consideration. Furthermore, the analysis was inductively based on the interpretations and views of the researchers. Therefore, the conclusions and recommendations produced by this paper should be interpreted while being cognisant of these limitations.

It is suggested that a comparative analysis of the VAT treatment of supplies made for no consideration by countries such as India and Canada could further inform the South African tax regulator on how the South African VAT legal framework could possibly be amended in the quest for further criteria that could be introduced to enhance the certainty and consistency of the VAT treatment of supplies made for no consideration.

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