

# **INTEGRATED CONSULTATIVE FORUM**

***26 FEBRUARY 2015***

***PRESENTER : HANNES SCHEEPERS***

1. SARS focusses on the Tax Compliance of Government Institutions at a National, Provincial and Local Level.
2. SARS Risks that we focus are: Correct Registration, Correct Filing, On time Filing and On time Payment.
3. Enabling taxpayers and the government segment specifically, to comply with their tax obligations to with less effort and at a reduced cost.

- Log-in details for E@syfile and E-filing held by external consultants and people that already left the employ of the municipality. Limited use of SARS technology.
- Registered for VAT on Bi-Monthly basis instead on Monthly basis
- Outstanding returns (PAYE, VAT Returns, Old PAYE Reconciliations and Long outstanding SDL and UIF Returns
- Late submission of returns – VAT and PAYE
- More than one VAT number allocated to a municipality – merge with other municipalities and numbers not deregistered
- Entities have ceased trading and not informed SARS of the changes. Registered particulars not updated
- Filing without payment
- Tax Section not adequately resourced (no training to staff, infrastructure cannot support SARS technology)

1. Specialised focus – GIC
2. Training and Engagements
  - Interactive sessions
  - Training
  - One on one sessions

Type	Total Outstanding Returns	Total Debt Due
National Government (Excluding National Parliament)	5	75 912 010
PFMA Schedule 1 and Constitution	9	2 261 744
PFMA Schedule 2	0	1 104 631 188
PFMA Schedule 3A	282	21 521 316
PFMA Schedule 3B	15	105 655 510
Provincial Government (Excluding Legislatures)	2	80 732 373
Local Sphere: Municipalities	115	330 598 799
Local Sphere: Municipal Entities	218	226 715 795

# Compliance Overview

Type	No	OS IT Returns	OS PAYE Returns	OS VAT Returns	PAYE DEBT	VAT DEBT
Municipalities per Province						
Province A	61	0	25	7	10 716 184	3 486 246
Province B	45	0	12	19	9 779 653	54 026 020
Province C	25	0	2	1	39 417 704	63 672 190
Province D	11	0	0	0	43 184	29 719 471
Province E	29	0	1	4	6 753 294	1 914 237
Province F	23	0	2	7	18 538 379	5 720 059
Province G	24	0	5	11	13 202 405	10 687 758
Province H	30	0	3	12	6 443 499	18 619 047
Province I	30	0	4	0	7 341 898	30 527 570
<b>TOTAL</b>	<b>278</b>	<b>0</b>	<b>54</b>	<b>61</b>	<b>112 226 200</b>	<b>218 372 599</b>

## Value Added Tax process - Who Should Register

1. Any person that carries on an enterprise may register
2. Taxable supplies in excess of R 1 million – mandatory
3. Taxable supplies exceeded R 50 000 but less the R 1 million – can apply for voluntary registration

<b>Payment method</b>	<b>Return due date</b>	<b>Payment due date</b>
SARS Branch	25th	25th
Payments at ABSA, Albaraka Bank Limited, Bank of Athens, FNB, HBZ Bank Ltd, Nedbank and Standard Bank	25th	25th
Electronic Fund Transfer	25th	25th
eFiling or return and payment via either SARS eFiling or Electronic Funds Transfer (Internet Banking)	Last Business Day	Last Business Day

## Value Added Tax process - Refunds

1. Vendor required to calculate their VAT liability – off-setting input tax against output tax
2. Difference is either paid to SARS (Output tax exceeds the input tax) or a VAT refund is paid by SARS to the vendor (input tax exceeds output tax).
3. If vendor is required to a VAT refund, SARS is required to pay that refund within 21 business days of receiving the **correctly completed** VAT return
4. SARS may also withhold a VAT refund where:
  - Vendor has not provided valid banking details
  - Has not submitted all their VAT returns
  - Has not paid other taxes that are administered by SARS

## Disputes of assessments

1. Once assessment is raised, you may request reasons therefore in writing within 30 business days from date of assessment
2. If aggrieved by assessment, you may object to it. Objection must comply with the following:
  - Must be on a Notice of Objection (form NOO or ADR 1)
  - Must specify detailed grounds of objections
  - Must be signed by you
  - Must be delivered to SARS at the address specified on the assessment, within 30 business days after date of assessment
3. If objection does not comply with the requirements, it may be invalid. In terms of Rules, you may submit a revised objection within 20 days of receipt of the notice of invalidity by SARS

# The Regulation of the Tax Practitioners

- In the budget speech 2011 it was mentioned that there are high levels of tax practitioner non compliance
- Professional bodies reacted
- Urgent need to regulate
- Sec 240A written into TAA (2011) to regulate tax practitioners
- The regulation of Tax Practitioners already started in 2012

## Defined in S 240 as:

- Natural Person, that
- Provides advice, or
- Assists in completing a return, and
- Is registered with a Recognised Controlling Body and has during the last 5 years;
  - *not been removed from a related profession by a 'controlling body' for serious misconduct;*
  - *not been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or any of any other offence involving dishonesty, for which the person has been sentenced*
  - *to a period of imprisonment exceeding two years without the option of a fine or to a*
  - *fine exceeding the amount prescribed in the Adjustment of Fines Act, 1991*

Statutory Bodies automatically recognised in terms of Section 240A of TAA:

IRBA

Law Societies

Bar Councils

Controlling Bodies formally recognised:

SAICA

SAPA

SAIT

CCSA

IACSA

CIMA

ACCA

AATSA

Who should register

1. If you are assisting others for a fee to complete their tax returns - you should register
2. If you are providing advice for a fee - you should register
3. If you are representing taxpayers before SARS for a fee – you should register

Governance Process

The Governance process is in the Development phase

# Value Added Tax - Main Objective

- **Understand application of VAT law including amendments w.e.f. 1 July 2006:**
  - ❑ Background
    - ❑ Definitions
    - ❑ Agent & principal
    - ❑ Output tax - treatment of different types of supplies – focus on grants (deemed supplies)
    - ❑ Input tax - apportionment & adjustments
    - ❑ Some special cases & practical issues (time permitting)
      - Past liabilities and limitation of refunds – s40B
      - Municipal entities
      - Regulation 270 – transitional issues

Minister announced that:

❑ Municipal property rates to be zero rated w.e.f. 1 July 2006 -  
intended effect:

- ❖ Align VAT treatment of supplies with normal businesses
- ❖ Increased % taxable supplies & hence input tax
- ❖ Simplify administration

- Cat A, B and C municipalities are all regarded as 'municipalities' for VAT purposes
- Implication? (Can use cash basis of accounting and make and receive grants.)
- **Excludes** -
  - ✓ Public Finance Management Act (PFMA) entities - e.g. water boards
  - ✓ Municipal entities
  - ✓ Certain entities previously qualifying as local authorities
  - ✓ E.g. Tribal authorities and water boards are not municipalities (effective 1 July 2006)

- **All** of the following must be met:
  - ❖ An **enterprise or activity** is carried on **continuously or regularly** by a **person in the Republic** or partly in the Republic.
  - ❖ In the course of the enterprise or activity, **goods or services** must be **supplied** to another **person**.
  - ❖ There must be a **consideration** payable for the goods or services supplied.
- **Includes** - non- profitable (taxable) activities
- **Excludes** - exempt, 'out-of-scope' and non-supplies

- **Supply**
  - broadly defined to include performance i.t.o. sale, rental agreement, ICA, or barter
  - **Includes** voluntarily supplies and supplies taking place by operation of law (e.g. donation, forced sales, expropriation etc).
  - **Includes** “deemed supplies” – e.g.
    - grants from public authorities or other municipalities for making taxable supplies
    - indemnity payment under a contract of insurance

- **Taxable supply**
  - supplies of goods or services made by a vendor in the course or furtherance of an “*enterprise*”
  - Section 7(1)(a) – 14%
  - Section 11- VAT levied at the zero rate (0%)
  - Deemed supplies – s8 (0% or 14%)
  - VAT incurred may be claimed as input tax if directly attributable to making taxable supplies
  - Examples – pg 62 - Annexure A

- **Exempt supply**
  - supplies of goods or services **not** made in the course or furtherance of an “*enterprise*” - s7(1)(a) does not apply
  - Section 12 – list of exempt supplies
  - VAT incurred may not be claimed as input tax if directly attributable to making exempt supplies
  - If VAT incurred for taxable and exempt (“mixed supplies”) – input tax to be apportioned

- Municipal Property rates – 0%
- Agency & service charges – 14%
- Grants for taxable use – 0%
- Grants for exempt supplies / non-taxable purposes – out of scope
- Rental of facilities and equipment – 14%
- Passenger transport – exempt
- Financial services (loans, interest, etc) – exempt
- Rental of dwellings & employee housing – exempt
- Statutory fines (e.g. speeding/parking)– non-supply

- **s229 of Constitution**
  - ✓ a municipality **may** impose **property rates**
  - ✓ a municipality **may** impose **various other charges** (e.g. for services rendered).
- **“Municipal rate”**
  - ✓ Amount levied in terms of s2 of Municipal Property Rates Act (MPRA) on owners of rateable property
  - ✓ **Includes** uniform fixed amount property valuation methodology and property rate based on that value
  - ✓ **Excludes**
    - ✓ a **single charge (flat rate)** for all services
    - ✓ **various other charges** for services

- **Characteristics and treatment of rates charge**

- ✓ Rates charge is in addition to service charges

- ✓ Quantum - determined per rates policy of municipality

- ✓ “Flat rate” vs “uniform rate”

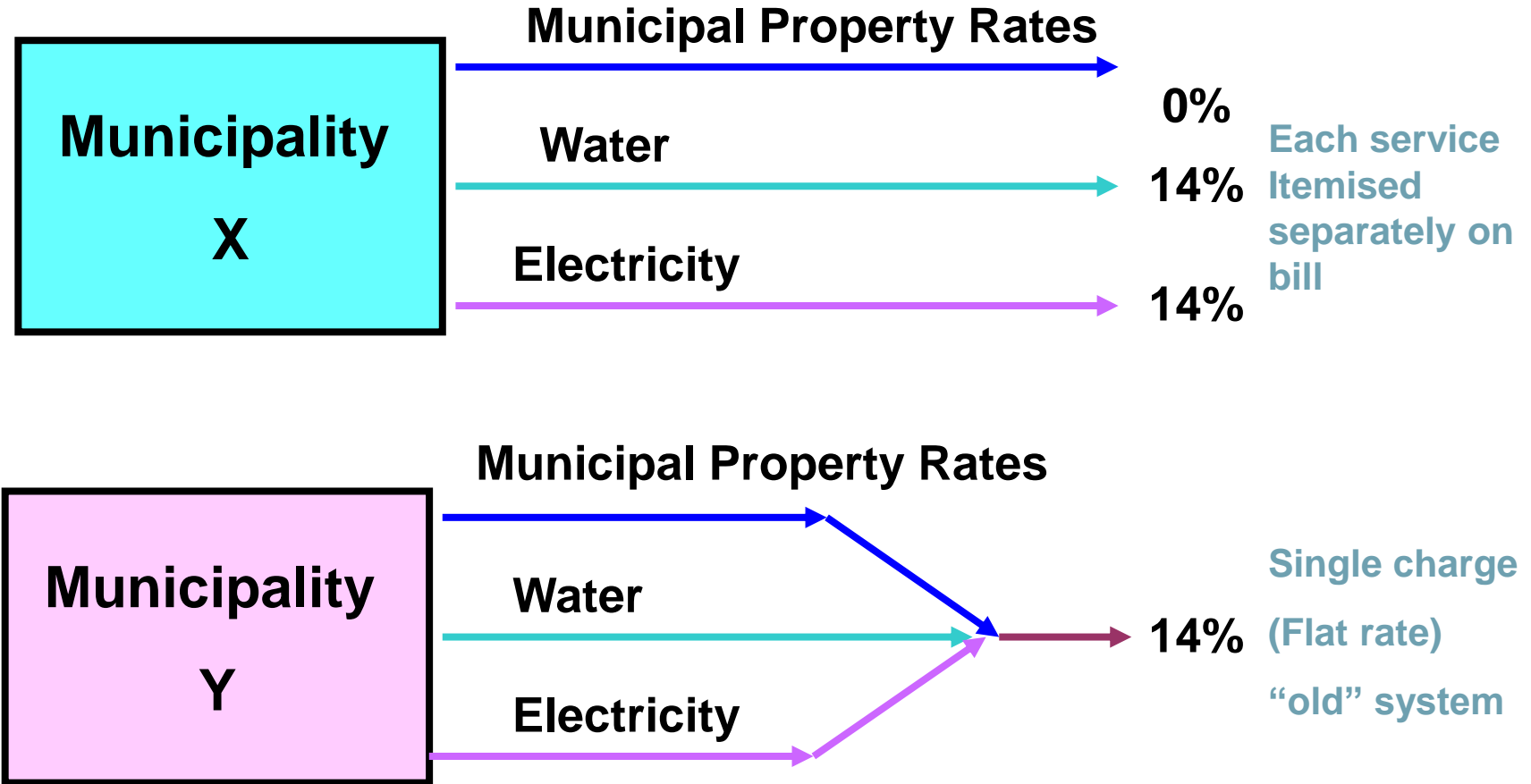
- s11(2) of the MPRA - uniform fixed amount where market value is below certain value

- facilitate administration of the property valuation and rating system for low value properties

- different to "old" system where "flat rate" which was a provision for rates and municipal service charges

- ✓ s11(2)(w) – municipal property rates (including uniform charge) = 0% VAT

- ✓ s7(1)(a) and s8(15) – 14% VAT where “flat rate” charged – no forced split in consideration



## Municipality acts as Principal:

- **Income legally accrues to municipality**
  - ✓ Rental of equipment = 14%
  - ✓ Water, electricity, other services charges = 14%
  - ✓ Own grants for taxable supplies = 0%
  - ✓ Employee housing /rental of dwellings = Exempt
  - ✓ Passenger transport = Exempt
  - ✓ Traffic fine = Out of scope
  - ✓ Fee for acting as agent = 14%
- **Input tax claimed only in respect of taxable supplies**

## Municipality acts as Agent:

- **Income does not accrue to municipality**
  - ✓ Vehicle licenses
  - ✓ Project management/payment agent.
  - ✓ Collection fee / commission = VAT @ 14%
  - ✓ Hospital/clinics/medical ? (See next slide)
- **Input tax claimed only insofar it relates to the earning of the collection fee/commission**
- **Value of taxable supplies – does not include principal's income collected.**

- **Examples in Guide**

- ✓ Municipality acts as principal – PHC supplies being an assigned function
- ✓ Municipality acts as agent and principal for different supplies- manages PHC supplies (not being an assigned function) and supplies a building
- ✓ Sub-contracting/outsourcing – refuse removal
- ✓ Municipality acts as agent for provincial government - Vehicle licensing

- **Legal position** - Provincial Government - legal duty to supply medical services. Municipality is therefore legal agent of Province in carrying out this duty
- **Practical position** – some municipalities regard themselves as principal (particularly in Metro's)
- **Present VAT treatment** follows legal position:
  - ❖ Income not that of municipality
  - ❖ Municipality may not claim input tax if expenses incurred on behalf Provincial Government.
  - ❖ Fee charged by municipality to Provincial Government subject to 14% VAT

## Definition of Grant:

□ appropriation, grant in aid, subsidy or contribution transferred, granted or paid by a public authority, municipality or constitutional institution.

- **Excludes:**

- payment for the actual supply of goods or services (i.e. “procurement”).
- Housing Subsidy Scheme payments (i.e. supplies i.r.o. low cost housing schemes – s8(23))

- **s11(2)(t) – zero rated (0%) – general rule**
- **s11(2)(s) - zero rated (0%) – housing subsidy supplies**
- **Otherwise, s7(1)(a) – standard rated (14%)- if goods or services supplied (i.e. not a “grant”)**
- **Refer to pg 25 for a list of different types of grants**

- Deduct “*input tax*” on goods/services purchased or imported if:
  - ✓ Incurred wholly for taxable purposes
  - ✓ Incurred partly for taxable purposes (apportionment)
  - ✓ Recipient in possession of tax invoices or other relevant documentation
  - ✓ Limited to 5 years
  - ✓ Second-hand goods (e.g. fixed property)

- VAT incurred on goods or services acquired for making:

⇒ **exempt supplies**

⇒ **other non-taxable activities**

⇒ **principal's expenses (when acting as agent)**

is **NOT** input tax

## S17 - specifically **denies** “*input tax*” on:

- **Entertainment** –subject to certain **exceptions**:
  - supplied for a charge which covers the direct and indirect costs
  - providing sporting or recreational facilities or public amenities to the general public (however, there is an exception for municipalities)
- **Motor cars**
- **Certain adjustments** regarding change in use of goods or services (discussed later – time permitting)

- **Direct attribution** – examines:
  - ❑ manner in which expenses are incurred; and
  - ❑ **actual application** of goods or services in the business.
- **Purpose Test** – can input tax be deducted:
  - ❑ **Wholly** for taxable supplies – deduct **full input tax**.
  - ❑ **Wholly** for exempt/non-taxable supplies – **no input tax**.
  - ❑ **Partly** for taxable supplies – deduct **input tax to extent of intended use for taxable supplies** i.t.o. s17(1).

- **Apportionment:**

- Required when goods or services are acquired for **mixed use purposes**

- ***De minimis* rule:**

- Apportionment formula yields an **apportionment ratio of 95% or more**

- Full VAT amount** incurred on **mixed use expenses** deductible

- **Direct attribution:** taxable supplies

Municipality buys a truck for removal of garbage from properties within its demarcated area

- Activity: Refuse removal – **taxable**
- Truck acquired **wholly for making taxable supplies**
- VAT incurred **is input tax**

- **Direct attribution** exempt supplies

Municipality runs a fleet of buses used to provide public passenger transport – imports a new bus

- Activity: Transport fare-paying passengers – **exempt**
- Bus acquired **wholly for making exempt supplies**
- VAT paid on import **is not input tax**

- **Direct attribution vs apportionment**

Municipality rents a double-storey building under a single lease agreement which houses public passenger transport and municipal rates divisions. The divisions utilise the same software and receive a single monthly telephone account.

- ❑ Activity: Public passenger transport division – **wholly exempt**
- ❑ Activity: Municipal rates division – **wholly taxable**
- ❑ **Cannot directly attribute** costs therefore **mixed use expenses**
- ❑ **Apportion input tax** – VAT incurred on mixed use expenses

## Income from activities

- **Water & electricity**  
**R5 500 000 (14%)**
- **Rates**  
**R6 500 000 (0%)**
- **Other**  
**R1 700 000 (14%)**
- **Bus service**  
**R500 000 (Exempt)**
- **Interest**  
**R10 000 (Exempt)**

## Grant income

### Grants for taxable supplies

- For free water & electricity  
**R2 000 000 (0%)**
- For general supplies in the public interest  
**R4 000 000 (0%)**

### Grants for exempt supplies

- For public transport (bus service)  
**R400 000 (out of scope)**

- $a = R5\,500\,000 + R6\,500\,000 + R2\,000\,000 + R4\,000\,000 + R1\,700\,000$

**= R19 700 000**

- $b = R500\,000 + R10\,000$

**= R510 000**

- **$c = R400\,000$**

- Formula:  $y = \frac{a}{(a + b + c)} \times \frac{100}{1}$

- Therefore  $y = \frac{R19\,700\,000}{R20\,610\,000} \times \frac{100}{1}$

- Therefore  $y = 95.58\%$

- **Important Note:**

$y > 95\%$  (*de minimis* rule) = ABC Municipality may **deduct input tax in full** on all supplies acquired for **mixed use purposes** (partly for taxable supplies and partly for exempt or other non-taxable purposes).

# SARS Audit: STRENGTHENING TAX COMPLIANCE

**LOCAL AUTHORITIES**

COMMON AUDIT FINDINGS



- Information requested is not supplied and all inputs are disallowed.
- Output not declared on the disposal of assets.
- Payment Basis – No adjustment made to inputs when cheque cancelled or becomes stale. Inputs sometimes duplicated in these cases.
- Inputs claimed on car hire, fuel and airport taxes.
- Duplication of inputs where there is no integrated accounting system.
- No supporting documentation for inputs claimed or tax invoices do not meet all the requirements s20(4).
- No apportionment of inputs when expenses incurred for both taxable and exempt supplies.
- Incorrect coding of accounts resulting in output not being declared or input being claimed incorrectly.
- Prepaid Electricity
- Incorrect accounting of credit notes issued
- Treatment of grants incorrect
- Input tax claimed on interest paid

**END**