

SOUTH AFRICAN REVENUE SERVICE

INTERPRETATION NOTE NO. 41 (ISSUE 2)

DATE: 31 March 2008

ACT: VALUE-ADDED TAX ACT, NO. 89 OF 1991 (the VAT Act)

SECTION: SECTIONS 1, 8(13), 8(13A), 9(3)(e), 16(3)(a), 16(3)(d), 16(3)(e), 17(2)(a),
17(2)(c) and 72

SUBJECT: APPLICATION OF VAT TO THE GAMBLING INDUSTRY

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1. Purpose

The purpose of this Interpretation Note is to provide clarity on the value-added tax (VAT) implications of specific transactions undertaken in the gambling industry. This interpretation note, unless otherwise specifically stated, does not constitute a binding general ruling as envisaged in section 76P of the Income Tax Act, 1962 as made applicable to the VAT Act by section 41A of the VAT Act.

2. Background

The South African VAT system is a destination based tax that imposes tax on the supply and importation of goods or services where they are consumed, regardless of where the goods are produced or services are rendered. Exports which are not consumed in the country are therefore free of tax, and imports which are consumed in the country are taxed when imported.

Accordingly, all supplies of goods or services consumed in the Republic, regardless of to whom they are supplied, are taxable at the standard rate for VAT purposes. Where consumption of the goods or services supplied will occur outside the Republic, provision is made for such supplies to be zero-rated.

In applying these principles to the gambling industry, the interpretations relating to the VAT implications of the supplies within this industry are set out in detail under Application of the Law.

3. The law

Refer to Annexure A.

4. Application of the law

4.1 Horse-Racing Industry

4.1.1 Racing operators

The principal activities of racing operators in South Africa are to -

- operate racecourses and training centres in South Africa for the benefit of the thoroughbred racing industry; and
- operate wagering outlets to facilitate betting on horseracing and other sport activities.

In this regard, the racing operators conduct activities that fall within the ambit of "enterprise" as defined in section 1 of the VAT Act. Accordingly, racing operators are required to register as vendors for VAT purposes. The supply of goods or services by racing operators, being vendors, in the course or furtherance of their enterprises are subject to VAT at the standard rate of 14%.

4.1.2 Betting transactions

In terms of section 8(13) of the VAT Act, where a person bets an amount on the outcome of a race or on any other event or occurrence, the person with whom the bet is placed is deemed to supply a service to the person placing the bet. Accordingly, the racing operator receiving such a bet is required to

account for output tax on the amount received (i.e. applying the tax fraction to the amount received in respect of the bet).

In the event that the bet in terms of section 8(13) of the VAT Act is successful, the racing operator is, in terms of section 16(3)(d) of the VAT Act, entitled to deduct an amount equal to the tax fraction of any amount paid by the racing operator as a prize or winning to the recipient of such services.

In addition, racing operators in the various provinces are, in terms of a provincial statute, liable for the payment of betting taxes on all betting transactions to the Provincial Revenue Fund (PRF). The racing operator makes the payment to the PRF as principal. The racing operator is entitled to a deduction equal to the tax fraction on such payment in terms of section 16(3)(e) of the VAT Act. This section entitles a racing operator to deduct an amount equal to the tax fraction of any amount of tax on totalizator transactions or tax on betting levied and paid for the benefit of any PRF.

The deduction under section 16(3)(e) of the VAT Act is not a deduction made in terms of the definition of "*input tax*" as contained in section 1, but rather, is a specific deduction which compensates for the effect of "tax on tax" in relation to the deemed supplies envisaged in section 8(13) of the VAT Act and the manner in which gambling tax is calculated and levied.

4.1.3 Racehorse owners

The racehorse owner(s) makes available the "services" of its racehorse to the racing operator. If this service is rendered on a continuous or regular basis, the racehorse owner(s) will be conducting an enterprise for VAT purposes. Accordingly, if the value of the taxable supplies made by the racehorse owner(s) exceeds R300 000 per annum, the racehorse owner(s) will be required to register for VAT. Alternatively, if the racehorse owner(s) made taxable supplies that have exceeded R20 000 but not R300 000 in the past 12 months, the racehorse owner(s) may voluntarily register as a vendor for VAT purposes.

The racehorse owner(s), being a vendor for VAT purposes, will receive consideration from the racing operator in respect of the services of its racehorses. However, the consideration payable by the racing operator is dependant on the success of the racehorse participating in the event staged by the racing operator.

Accordingly, the racehorse owner(s), being a vendor, is liable to account for VAT at the standard rate of 14% on the consideration received for the service rendered to the racing operator if its horse is successful. **However, the exception to this rule is set out in a ruling issued by the South African Revenue Service in terms of section 72 of the VAT Act, to zero rate the supply of services between the racehorse owner(s) and racing operator in respect of consideration paid by the racing operator to the owner(s) of the racehorse.**

However, with the insertion of section 11(2)(x) of the VAT Act, these services are zero-rated for VAT purposes, to the extent of any consideration paid by the racing operator to the racehorse owner as a result of the successful participation of that horse in that event. The effective date for the provisions of section 11(2)(x) is 8 January 2008. Accordingly, the aforementioned ruling issued in terms of section 72 of the VAT Act is hereby withdrawn with effect from 8 January 2008.

The racehorse owner(s), or the racing administrator (where applicable), will therefore be liable for the declaration of the zero-rated supply on the VAT 201 return and the racing operator will not be entitled to claim any input tax in respect of these supplies as VAT is charged at the zero rate.

It is important to note that the provisions of section 11(2)(x) of the VAT Act do not apply to payments received by jockeys, managers and trainers from the racing operator.

4.1.4 The manager and/or trainer

The manager and/or trainer of the racehorses renders a service to the racehorse owner in that the manager is liable for the stabling, training and well-being of the racehorses. These services may vary according to the agreement between both parties. If this service is rendered on a continuous or regular basis, the manager and/or trainer will be conducting an enterprise for VAT purposes.

Accordingly, if the value of the taxable supplies made by the manager and/or trainer exceeds R300 000 per annum, the manager and/or trainer will be required to register for VAT. Alternatively, if the manager and/or trainer made taxable supplies that have exceeded R20 000 but not R300 000 in the past 12 months, the manager and/or trainer may voluntarily register as a vendor for VAT purposes.

In this regard, the manager and/or trainer, being a vendor, is liable to levy VAT at the standard rate of 14% on the service rendered to the racehorse owner. The manager and/or trainer must account for output tax, while the racehorse owner, being a vendor, will be entitled to an input tax deduction in respect of the consideration paid to the VAT registered manager and/or trainer.

4.1.5 Racing administrators

In terms of a general written ruling issued by the Commissioner for Inland Revenue on 22 January 1992, the person responsible for accounting for the VAT affairs of different horse partnerships (i.e. the racing administrator) may in terms of section 72 of the VAT Act apply for one registration as representative taxpayer for all partnerships for which the racing administrator is performing the accounting function and submit a single VAT return per tax period in respect of all these partnerships.

In terms of the aforementioned ruling, the racing administrator appointed as representative taxpayer must account for the **input tax and output tax for all the partnerships** and remit the net amount to SARS. The amounts paid by the partnerships to the partners and received by the partnerships from the partners which constitute the profit or loss of the partnerships will not be in respect of taxable supplies, nor will it be regarded as consideration.

This arrangement for racing administrators as set out in the aforementioned ruling will continue, subject to the racing administrator making application to the Commissioner and confirming its compliance with the criteria as listed below. On condition that the Commissioner is satisfied, an arrangement may be made in terms of section 72 of the VAT Act to allow the racing administrator to register for VAT and submit VAT returns for and on behalf of the individuals, partnerships and syndicates.

In order to qualify as a racing administrator, the applicant in its application to SARS must satisfy the Commissioner that it will comply with the following criteria:

- the racing administrator operating and managing this arrangement for the benefit of individuals, partnerships and syndicates consenting to participate in this arrangement will be regarded as a separate enterprise carried on by the racing administrator from the individuals, partnerships and syndicates;
- the racing administrator enters into an agreement with the individual, partnerships and syndicates obtaining consent to represent such individual, partnership or syndicate for VAT purposes;
- In addition, such agreement must satisfy the requirements of the following sections of the Act:
 - Section 1: Enterprise
 - Section 7: Imposition of value-added tax
 - Section 8: Deemed supplies
 - Section 20: Tax Invoices
 - Section 23: Registration requirements
 - Section 25: Vendor to notify change of status
 - Section 37: Burden of proof
 - Section 46: Persons acting in a representative capacity
 - Section 48: Liability of representative vendors
- the racing administrator must obtain and retain a declaration by the individual, partnership or syndicate that such individual, partnership or syndicate is not registered or will not register with any other administrator for the duration of the agreement;
- the racing administrator will remain responsible for performing the duties imposed on the racing administrator by the VAT Act until such time as the racing administrator notifies the Commissioner in writing that the racing administrator no longer acts as representative for the individual, partnership or syndicate, or until the Commissioner has been notified of the name and address of another person who shall act as representative for such person;
- the racing administrator will maintain and retain a consolidated account reconciling to the VAT201 return submitted as well as maintain separate books of accounts for each individual, partnership or syndicate that the racing administrator represents;
- the racing administrator must be in possession of a valid tax invoice (such tax invoice must be issued in the name of the individual, partnership or syndicate and not in the name of the racing administrator as the provisions of section 54 of the VAT Act will not be applicable) before deducting input tax on any expense incurred by the individual, partnership or syndicate;

- the racing administrator shall retain all records (including tax invoices) relevant to such individual, partnership or syndicates, and undertakes to comply with section 55 of the VAT Act;
- the racing administrator shall be personally liable for any tax, additional tax, penalty and interest chargeable under the VAT Act on the individual, partnership or syndicate that racing administrator represents;
- on termination of the agreement between the racing administrator and the individual/partnerships/syndicates, the racing operator will be deemed to make a supply as contemplated in section 8(2) of the VAT Act to the individual/partnerships/syndicates;

Failure on the part of the racing administrator to comply with these provisions, and the provisions of the VAT Act, will result in the racing administrator being excluded from this dispensation. Furthermore, SARS reserves the right to withdraw this dispensation, should it be found that such dispensation is being misused or causing verification problems for SARS.

4.1.6 Bookmakers

In terms of section 8(13) of the VAT Act, where a person bets an amount on the outcome of a race or on any other event or occurrence, the person with whom the bet is placed will be deemed to supply a service to the person placing the bet. Accordingly, the bookmaker receiving such bet is required to account for output tax on the amount received (i.e. applying the tax fraction to the amount received for such bet).

In the event that the bet placed in terms of section 8(13) of the VAT Act is successful, the bookmaker is entitled to input tax on an amount equal to the tax fraction of any amount paid by the bookmaker as a prize or winning to the recipient of such services in terms of section 16(3)(d) of the VAT Act.

Example: X places a bet of R10 with Bookmaker A. In the event of the bet being successful, X will receive R100 as a winning from Bookmaker A. In this regard, X's bet was successful, and he received a total payment of R104 (i.e. the R10 placed as a bet plus the R100 as a winning less the deduction of the provincial tax of R6 payable by X) from Bookmaker A.

The VAT implications for the bookmaker for the aforementioned example are as follows:

Description of transaction	Section of the VAT Act	Tax payable(+) / deductible (-)
X places a bet of R10	8(13)	+R 1.23
Bookmaker A pays X R110	16(3)(d)	-R 13.51
Total VAT payable/refundable (-)		-R 12.28

Note: The deduction in terms of section 16(3)(e) of the VAT Act is not applicable, as the provincial tax is paid by X.

On the assumption that the VAT 201 return has been submitted and the aforementioned example was the only transaction for that tax period, the following net cash flow of the bookmaker (for this specific transaction) will confirm the VAT liability of the bookmaker:

Bet received	+R 10.00
Output tax payable in terms of section 8(13) – R10 X 14/114	-R 1.23
Amount paid to punter	-R 104.00
Amount paid to Provincial Revenue Fund	-R 6.00
Input tax in terms of section 16(3)(d) – R110 X 14/114	R 13.51
Total amount paid/ cost to bookmaker A	-R 87.72

4.1.7 Payment of betting taxes by bookmakers

The bookmaker is, in terms of a statute of provincial law, liable to deduct a provincial tax (i.e. 6%) on a winning bet which is then paid to the Provincial Revenue Fund ("PRF"). This payment is made by the bookmaker for and on behalf of the punter. It therefore follows, that in the aforementioned example, the tax fraction applied to the payment of the R6 betting tax by the bookmaker to the PRF is not deductible as input tax in the hands of the bookmaker, as the betting tax is borne by the punter and not the bookmaker.

This can be illustrated as follows: Method 1

Description of transaction	Section of the VAT Act	Tax payable(+) /deductible(-)
X places a bet of R10	8(13)	+R 1.23
Bookmaker A pays X R110	16(3)(d)	-R 13.51
Total VAT payable/refundable (-)		-R 12.28

However, it has been detected that bookmakers treat the payment of betting taxes to the PRF as if it is made by the bookmaker in its capacity as principal. In terms of this understanding, the bookmakers claimed input tax on such payment in terms of section 16(3)(e) of the VAT Act. This section entitles a person to deduct input tax on an amount equal to the tax fraction of any amount of tax on totalizator transactions or tax on betting levied and paid for the benefit of any PRF.

This can be illustrated as follows: Method 2

Description of transaction	Section of the VAT Act	Tax payable(+) / deductible (-)
X places a bet of R10	8(13)	+R 1.23
Bookmaker A pays X R104	16(3)(d)	-R 12.77
Bookmaker A pays PRF R6 in respect of the tax imposed in terms of the Ordinance	16(3)(e)	-R 0.74
Total VAT payable/refundable (-)		-R 12.28

On the basis that the transactions were treated as set out in Method 2 (i.e. tax neutrality is achieved in that the bookmaker either deducts input tax on the full amount in terms of section 16(3)(d) or claims a portion of input tax in terms of section 16(3)(d) and a portion in terms of section 16(3)(e) of the VAT Act), SARS will not disallow the incorrect deduction of input tax claimed in terms of section 16(3)(e) of the VAT Act.

This arrangement is conditional upon the vendor only deducting input tax limited to the total amount paid out by the bookmaker (i.e. the physical amount paid to the punter plus amount paid to PRF).

The arrangement as set out in paragraph 4.1.7 is made in terms of section 72 of the VAT Act, and constitutes a binding general ruling issued in accordance with section 76P of the Income Tax Act, 1962 as made applicable to the VAT Act by section 41A of the VAT Act. This binding general ruling will remain in force until 31 March 2008. **All input tax claims made on or after 1 April 2008, must be calculated as set out in Method 1.**

4.1.8 Bookmaker to Bookmaker Transactions

In some instances, the bookmaker is of the view that the bets they have received are too much of a risk for the bookmaker to bear (i.e. good possibility of the bets being successful). In order to minimise the risk and exposure of large payouts to punters, the bookmaker will pass on either the whole bet or part of it to another bookmaker.

This is common practice in the betting industry and is referred to as *take back bets*.

When a bookmaker (1st Bookmaker) places a *take back bet* with another bookmaker (2nd Bookmaker) and both bookmakers are registered vendors for VAT purposes, the 1st Bookmaker is entitled to deduct input tax on the amount placed with the 2nd Bookmaker in terms of section 16(3)(a) of the VAT Act. This implies that the 2nd Bookmaker must issue a tax invoice to the 1st Bookmaker.

The 2nd Bookmaker is in terms of section 8(13) of the VAT Act liable to account for output tax on the amount received from the 1st Bookmaker.

In the event that this *take back bet* is successful, the 2nd Bookmaker is entitled to deduct an amount equal to the tax fraction of any amount paid as a prize or winning to the 1st Bookmaker being the recipient of such services.

The 1st Bookmaker is, in terms of section 8(13A) of the VAT Act, deemed to supply services to the 2nd Bookmaker. Therefore, the 1st Bookmaker is liable to account for output tax on the amount received from the 2nd Bookmaker.

Example: 1st Bookmaker places a *take back bet* of R100 with 2nd Bookmaker. In the event of the bet being successful, 1st Bookmaker will receive R1 000 as a winning from 2nd Bookmaker. In this regard, 1st Bookmaker's bet was successful, and received a total payment of R1 100 from 2nd Bookmaker (i.e. R100 bet placed plus R1 000 winnings). The VAT implications for the aforementioned vendors in the example are as follows:

1st Bookmaker

Description of transaction	Section of the VAT Act	Tax payable/ deductible (-)
1 st Bookmaker places a bet of R100	16(3)(a)	-R 12.28
2 nd Bookmaker pays R1 100	8(13A)	+R 135.09
Total VAT payable/refundable (-)		R 122.81

On the assumption that the VAT 201 return has been submitted and the aforementioned example was the only transaction for that tax period, the following net cash flow of the 1st bookmaker (for this specific transaction) will confirm the VAT liability of that bookmaker:

Bet placed	-R 100.00
Input tax on bet placed in terms of section 16(3)(a)	+R 12.28
Amount received from 2 nd Bookmaker	+R1 100.00
Output tax payable in terms of section 8(13A)	-R 135.09
Total amount receivable	R 877.19

<u>2nd Bookmaker</u>		
Description of transaction	Section of the VAT Act	Tax payable/ deductible (-)
1 st Bookmaker places a bet of R100	8(13)	+R 12.28
Amount paid to 1 st Bookmaker of R1 100	16(3)(d)	-R 135.09
Total VAT payable/refundable (-)		-R 122.81
<p>On the assumption that the VAT 201 return has been submitted and the aforementioned example was the only transaction for that tax period, the following net cash flow of the 2nd bookmaker (for this specific transaction) will confirm the VAT liability of that bookmaker:</p>		
Bet received		+R 100.00
Output tax payable in terms of section 8(13)		-R 12.28
Amount paid to punter (1 st Bookmaker)		-R1 100.00
Input tax deductible in terms of section 16(3)(d)		+R 135.09
Total amount paid/ cost to bookmaker		-R 877.19

4.1.9 The Provincial Revenue Fund (PRF)

Prior to the promulgation of the Revenue Laws Amendment Act No. 16 of 2004, which deleted section 2(1)(l) of the VAT Act, the activities of any fund, established under a Provincial Ordinance for the purpose of promoting horse racing in any province and controlled by the Administrator of such province was deemed to be a financial service. In this regard, such activities were exempt from VAT in terms of section 12(a) of the VAT Act.

Accordingly, the taxes imposed in terms of the Provincial Ordinances, which in terms of those Ordinances, accrues for the benefit of the PRF, therefore fell within the ambit of section 2(1)(l) of the VAT Act. The taxes imposed in terms of the Ordinance at a rate of 6% are exempt from VAT in terms of section 12(a) of the VAT Act.

The PRF which forms part of the provincial Department of Finance falls within the ambit of a “public authority” as defined for VAT purposes. As the provincial Department of Finance does not fall within the ambit of “enterprise” as defined in section 1 of the VAT Act, the provincial Department of Finance is not required to register as a vendor for VAT purposes. Accordingly, the taxes imposed in terms of the Provincial Ordinances, which in terms of those Ordinances, accrues for the benefit of the Provincial Revenue will not have any VAT consequences in the hands of the PRF.

4.2 Casinos

4.2.1 Calculation of VAT

In terms of section 16(4) read with section 28(1)(a) of the VAT Act, a vendor must determine the output tax charged in respect of all supplies made during the tax period. This calculation of the output tax attributable to the tax period is to be done by reference to the accounting basis which has been used during that period. The casino industry, in respect of supplies of betting transactions, is required in terms of section 9(3)(e) of the VAT Act to account for output tax when payment is received for such supply. All other supplies by the casino will follow the normal time of supply rules (i.e. the earlier of invoice or payment). Accordingly, the casino must account for output tax in respect of all supplies (excluding the supply of gambling) made during the tax period. In addition, output tax must be accounted for on the supply of betting transactions to the extent of payment received.

However, in the casino industry, the nature of betting transactions, especially so with the table game of chance (e.g. Roulette, Poker), makes it difficult to separate bets placed by customers and winnings paid to punters. It therefore follows that casinos experience practical difficulties reflecting output tax in terms of section 8(13) of the VAT Act, separately from input tax claimed in terms of section 16(3)(d) of the VAT Act.

Accordingly, an arrangement is made in terms of section 72 of the VAT Act to permit casinos to account for VAT by applying the tax fraction of the net betting transactions (i.e. on the amount remaining after winnings have been deducted which is known as the “net drop method”). This could result in either the casino showing a net liability payable to SARS or a refund due to the vendor.

In addition, the casino will –

- not be entitled to any deductions in terms of section 16(3)(d) of the VAT Act, on any amount paid during the tax period by the casino as a prize or winnings to the recipient of services contemplated in section 8(13) of the VAT Act, where such amount has been included in calculating the “net drop method”; and
- be required to maintain adequate records to enable SARS to verify the validity and accuracy of the tax liability calculated under this method.

The arrangement as set out in paragraph 4.2.1 above is made in terms of section 72 of the VAT Act and constitutes a binding general ruling issued in accordance with section 76P of the Income Tax Act, 1962 as made applicable to the VAT Act by section 41A of the VAT Act.

4.2.2 Input tax

Apart from the input tax deductible in terms of section 16(3)(a) of the VAT Act, section 16(3)(d) of the VAT Act makes provision for a service provider (e.g. casinos) making a supply contemplated in section 8(13) of the VAT Act to deduct an amount equal to the tax fraction of any amount paid by the service provider as a prize or winning to the person that placed the bet with such service provider.

Section 16(3)(a) of the VAT Act was amended by section 107(1)(b) of the Revenue Laws Amendment Act No. 31 of 2005 to specifically exclude the deduction of input tax under this subsection on goods or services acquired by a vendor for the purposes of awarding such goods or services as a prize or winnings. The acquisition of these goods or services can therefore only qualify for a deduction under section 16(3)(d) of the VAT Act. These deductions are set out in detail below.

In addition, casinos are, in terms of a provincial statute, liable for the payment of betting taxes to the PRF, on all betting transactions received. In this regard, the casino makes the payment to the PRF as principal. The casino is entitled to a deduction equal to the tax fraction on such payment in terms of section 16(3)(e) of the VAT Act. This section entitles a person to deduct an amount equal to the tax fraction of any amount of tax on totalizator transactions or tax on betting levied and paid for the benefit of any PRF (refer to paragraph 4.1.2.).

4.2.3 Entertainment

4.2.3.1 General

The general principle contained in section 17(2)(a) of the VAT Act is that VAT incurred on goods or services acquired for the purposes of entertainment may not be deducted as input tax, even though it is acquired by a vendor wholly or partly for the purposes of making taxable supplies. However, to the extent that the goods or services are acquired for the purposes of making a taxable supply of entertainment, the vendor may be entitled to input tax subject to the provisions of section 17(2)(a) of the VAT Act.

The term "entertainment" as defined in section 1 of the VAT Act means the provision of any food, beverages, accommodation, entertainment, amusement, recreation or hospitality of any kind by a vendor whether directly or indirectly to anyone in connection with an enterprise carried on by him. This therefore implies that the entertainment must be supplied in connection with the vendor's enterprise and can be supplied either by the vendor or by another party on behalf of the vendor.

It follows, that the main activity of a casino falls within the ambit of "entertainment" as defined in section 1 of the VAT Act. This is due to the fact that it supplies entertainment in the form of gambling services in the ordinary course of an entertainment enterprise and such entertainment is provided for a charge that covers all direct and indirect costs of the entertainment provided.

Accordingly, the casino is entitled to input tax on all goods or services acquired for the purposes of supplying the gambling service which

includes the acquisition of slot machines, tables for card games such as blackjack and poker, roulette wheels, rental of the floor space, maintenance of the building, etc.

4.2.3.2 Prizes

Where entertainment is awarded as a prize as a result of a bet being placed and such placing of the bet being a supply in terms of section 8(13) of the VAT Act, the casino will be entitled to input tax in terms of section 16(3)(d) of the VAT Act on the acquisition of such entertainment. However, in these instances, input tax will be limited to the VAT incurred on the initial acquisition of such entertainment. In addition, this deduction can only be made in the tax period in which such entertainment is awarded as a prize. In order for a vendor to make a deduction on the acquisition of such entertainment, there must be a direct link to a supply that originated under section 8(13) of the VAT Act. The deduction of input tax in this circumstance must be substantiated by a tax invoice.

It is common practice for casinos to hold competitions where there is no entry fee payable to participate in such competition. The qualifying criteria to participate in these competitions are limited to gambling events (i.e. a person gambling wins the jackpot/perfect hand and is accordingly awarded free entry into such competition). In this regard, it is submitted that there is a ¹*causal link* in such cases to the original supply (i.e. being a supply in terms of section 8(13) of the VAT Act).

Therefore, when a casino awards a promotional prize, being a supply of entertainment, to participants in such competition, the acquisition of such promotional prizes would qualify for a deduction under section 16(3)(d) of the VAT Act.

It follows that where a prize, being entertainment, is awarded and there is no direct link or *causal link* to a supply contemplated in section 8(13) of the VAT Act, the normal rules relating to entertainment must be followed in order to determine the deductibility of input tax on such acquisitions. This topic is discussed in detail below.

Example: Joe Soap's Casino makes only taxable supplies and is a registered vendor for VAT purposes. Its activities include the supply of betting transactions, accommodation, meals and beverages. On 23 January 2006, a client, Lucky, of Joe Soap's Casino won the jackpot and was awarded free accommodation for a weekend at a hotel of Lucky's choice. Lucky elected to spend this free weekend at the Leisure Hotel, a hotel that is not owned by Joe Soap's Casino. Joe Soap's Casino incurred the cost of such accommodation and received a tax invoice from the Leisure Hotel.

Joe Soap's Casino is entitled to deduct input tax, in terms of section 16(3)(d) of the VAT Act, on the tax invoice received from the Leisure Hotel as the prize is directly linked to the supply contemplated in section 8(13) of the VAT Act by Joe Soap's Casino.

¹ For the purposes of this Note, the phrase "*causal link*" means a direct relationship between the bet being placed and taxed in terms of section 8(13) and 7(1)(a) of the VAT Act, and the entitlement afforded to the punter to participate in another competition held by the same casino.

Example: Joe Soap's Casino makes only taxable supplies and is a registered vendor for VAT purposes. Its activities include the supply of betting transactions, accommodation, and meals and beverages. A client, Lucky, of Joe Soap's Casino won the lucky draw hosted by the casino and was awarded free accommodation for a weekend at a hotel of Lucky's choice. Lucky did not pay any entrance fee to participate in this lucky draw and was entered into the lucky draw as a consequence of him previously winning the jackpot. Lucky elected to spend this free weekend at the Leisure Hotel, a hotel that is not owned by Joe Soap's Casino. Joe Soap's Casino incurred the cost of such accommodation and received a tax invoice from the Leisure Hotel.

Joe Soap's Casino is entitled to deduct input tax, in terms of section 16(3)(d) of the VAT Act, on the tax invoice received from the Leisure Hotel as there is a *causal link* to the supply contemplated in section 8(13) of the VAT Act by Joe Soap's Casino.

4.2.3.3 In house entertainment

Casinos operating its own hotels, restaurants, bars or other food and beverage outlets on the premises (i.e. all activities are registered under one VAT registration number) are entitled to input tax on goods or services acquired for the purpose of use, consumption or supply in the course of making a taxable supply of such accommodation, food and beverages. This is conditional on the restaurant charging a specific consideration for such supply and the consideration charged covers all direct and indirect costs or is equal to the open market value of the supply. The exception to this rule is where the casino makes a supply for no consideration in terms of a *bona fide* promotion. Importantly, the supply of the promotional entertainment of goods or services must be to clients or customers of the casino and the goods or services must in all respects be similar to the entertainment continually or regularly supplied to clients and customers of the casino for a consideration.

In this instance, the casino supplying accommodation, food or beverages to its clients or customers free of charge will be entitled to deduct input tax on the acquisition of such accommodation, food or beverages provided to punters (being clients or customers of the casino) free of charge, as it normally supplies accommodation, food or beverages for a consideration. Such entertainment is viewed as being provided as a *bona fide* promotion by the casino and the goods or services is in all respects similar to the entertainment continually or regularly supplied to clients and customers of the casino for a consideration.

In addition, where such casino awards a prize, being entertainment, and there is no direct link or *causal link* to a supply contemplated in section 8(13) of the VAT Act, the casino will be entitled to deduct input tax, in terms of section 16(3)(a) read with section 17(2)(a) of the VAT Act, on such acquisitions as such entertainment is provided as a *bona fide* promotion by the casino.

Example: Lady Luck Casino makes only taxable supplies and is a registered vendor for VAT purposes. Its activities include the supply of betting transactions, accommodation, meals and beverages for a consideration. A client, Betright, of Lady Luck Casino was the 1 000th patron to enter the casino and was awarded a free meal for two at the Lady Luck Casino's restaurant.

Lady Luck Casino is entitled to deduct input tax on the free meal supplied to Betright.

Example: Lady Luck Casino makes only taxable supplies and is a registered vendor for VAT purposes. Its activities include the supply of betting transactions, accommodation, meals and beverages for a consideration. A client, Betright, of Lady Luck Casino won the lucky draw hosted by the casino and was awarded free accommodation for a weekend at a hotel of Betright's choice. Betright did not pay any entrance fee to participate in this lucky draw and was entered into the lucky draw as a consequence of him previously spending a night at the Lady Luck Casino's hotel. Betright elected to spend this free weekend at the Seventh Heaven Hotel, a hotel that is not owned by Lady Luck Casino. In this regard, Lady Luck Casino incurred the cost of such accommodation and received a tax invoice from the Seventh Heaven Hotel.

Lady Luck Casino is entitled to deduct input tax on the tax invoice received from the Seventh Heaven Hotel.

4.2.3.4 Outsourced entertainment

Where casinos rent space on its premises to third parties to operate the hotel, bars, restaurants or fast food outlets, and the casino does not operate any hotel, food and beverage outlets on the premises as an enterprise activity for its own account, the casino will not be allowed an input tax deduction on the accommodation, food or beverages provided to punters free of charge, as it does not normally supply accommodation, food or beverages for a consideration to its clients. In these circumstances, the aforementioned entities would all be registered separately from the casino for VAT purposes.

It therefore follows that this casino which does not supply entertainment that is similar in all respects for a consideration to its clients or customers in awarding a prize, being entertainment, and where there is no direct link or *causal link* to a supply contemplated in section 8(13) of the VAT Act, the casino will not be entitled to deduct input tax on acquisition of such prizes.

Example: Lady Luck Casino makes only taxable supplies and is a registered vendor for VAT purposes. Its only activity is the supply of betting transactions. A client, Betright, of Lady Luck Casino was the 1 000th patron to enter the casino and was awarded a free meal for two at the Meaty Restaurant (i.e. a restaurant not owned by Lady Luck Casino). In this regard, Lady Luck Casino incurred the cost of such meal and received a tax invoice from the Meaty Restaurant.

Lady Luck Casino is **not** entitled to deduct input tax on the meal supplied to Betright by Meaty Restaurant.

Example: Lady Luck Casino makes only taxable supplies and is a registered vendor for VAT purposes. Its only activity is the supply of betting transactions. A client, Betright, of Lady Luck Casino was awarded free accommodation for a weekend at a hotel of Betright's choice. This was awarded to Betright to reward him for his loyalty to the casino. Betright elected to spend this free weekend at the Leisure Hotel, a hotel that is not owned by Lady Luck Casino. In this regard, Lady Luck Casino incurred the cost of such accommodation and received a tax invoice from the Leisure Hotel.

Lady Luck Casino is **not** entitled to deduct input tax on the tax invoice received from the Leisure Hotel.

Example: Lady Luck Casino makes only taxable supplies and is a registered vendor for VAT purposes. Its only activity is the supply of betting transactions. A client, Betright, of Lady Luck Casino won the lucky draw hosted by the casino and was awarded free accommodation for a weekend at a hotel of Betright's choice. Betright did not pay any entrance fee to participate in this lucky draw and was entered into the lucky draw as a consequence of him betting on the Jackpot Mania machine. Betright elected to spend this free weekend at the Leisure Hotel, a hotel that is not owned by Lady Luck Casino. In this regard, Lady Luck Casino incurred the cost of such accommodation and received a tax invoice from the Leisure Hotel.

Lady Luck Casino is entitled to deduct input tax on the tax invoice received from the Leisure Hotel as there is a causal link to the section 8(13) supply by Lady Luck Casino. This deduction can be made in the tax period that Lady Luck Casino pays the Leisure Hotel.

4.2.4 Loyalty Points

Punters who are regarded as loyal and frequent customers are rewarded in the form of "loyalty points". After a certain amount of money has been placed as bets, the punter earns a certain number of loyalty points, which are often processed by way of an electronic card system. The loyalty points generally have a monetary value (e.g. 100 loyalty points is worth R10). These loyalty points can be redeemed using a variety of methods including:

- Placing of further bets;
- Purchase of meals at the casino's own restaurant, or at the restaurant of a third party; or
- Redeemed for cash.

The majority of the loyalty points are redeemed by way of placing further bets. At the time when the loyalty points are awarded to the punter, they are regarded as an expense and a liability in the accounting records of the casino.

For VAT purposes, the loyalty points awarded on a bet placed, are viewed as loyalty points awarded as a prize on the outcome of a supply contemplated in section 8(13) of the VAT Act. The mere allocation of loyalty points in this industry will not have any VAT consequences until such time that the points are paid (i.e. redeemed for cash or for goods or services) by the casino. The

casino is only entitled to input tax in terms of section 16(3)(d) of the VAT Act when the loyalty points are redeemed for cash or for goods or services.

When loyalty points are awarded for a bet placed, and the points are redeemed for money (i.e. either in cash or gambling tokens issued by a casino), the money or gambling tokens is regarded as a prize awarded. The casino is accordingly entitled to deduct an amount equal to the tax fraction on the money or on the value of the gambling tokens paid in terms of section 16(3)(d) of the VAT Act.

It follows, that where the loyalty points are redeemed for cash, the casino will be entitled to input tax on the redemption of the loyalty points. In instances, where such cash is subsequently placed as a bet by the customer, the casino is required to account for output tax on such amount in terms of section 8(13) of the VAT Act.

Where the loyalty points are redeemed by the customer for goods or services acquired from a service provider, the casino will only be entitled to deduct input tax on receipt of a tax invoice from the service provider of such goods and/or services. This is due to the fact that the casino can only determine the deduction applicable in terms of section 16(3)(d) of the VAT Act on receipt of the tax invoice (i.e. the deduction is limited to the input tax incurred on the original acquisition).

Example: Lucky is a member of the Lady Luck Casino's loyalty points program in which he has accrued 11 400 points. All loyalty points have been accrued on the outcome of Lucky betting an amount on the blackjack table. On 25 December 2005, Lucky decides to redeem all his loyalty points for a consideration in money which amounts to R114.

Lady Luck Casino is entitled to a deduction of R14 ($R114 \times 14/114$) in terms of section 16(3)(d) of the VAT Act in the tax period covering 25 December 2005.

Example: On 25 December 2005, Lucky after receiving the consideration in money for the redemption of his points, bets this entire amount on the blackjack table and was unsuccessful in his bet.

Lady Luck Casino is required to account for output tax on the bet placed by Lucky in terms of section 8(13) of the VAT Act in the tax period covering 25 December 2005.

Example: Lucky is a member of the Lady Luck Casino's loyalty points program in which he has accrued 22 800 points. All loyalty points have been accrued on the outcome of Lucky betting an amount on the blackjack table. On 25 December 2005, Lucky decides to redeem 11 400 of his loyalty points for a consideration in money which amounts to R114.

Lady Luck Casino is entitled to a deduction of R14 ($R114 \times 14/114$) in terms of section 16(3)(d) of the VAT Act in the tax period covering 25 December 2005.

Example: Lucky is a member of the Lady Luck Casino's loyalty points program in which he has accrued 11 400 points. All loyalty points have been accrued on the outcome of Lucky betting an amount on the blackjack table. On 25 December 2005, Lucky decides to redeem all his loyalty points for a meal at the Meaty Restaurant (i.e. a restaurant not owned by Lady Luck Casino and separately registered as a vendor for VAT). The meal supplied by Meaty Restaurant was offset against the entire amount of loyalty points accrued to Lucky and the value of the consideration in money was R114. Lady Luck Casino received a tax invoice from Meaty Restaurant and paid the amount of R114 on 25 January 2006 to Meaty Restaurant.

Lady Luck Casino is entitled to a deduction of R14 ($R114 \times 14/114$) in terms of section 16(3)(d) of the VAT Act.

4.2.5 Motor Cars

4.2.5.1 Prior to 1 February 2006

In order for a vendor to deduct input tax on the acquisition of a motor car, the vendor must in terms of section 17(2)(c)(i) of the VAT Act acquire the motor car exclusively for the purpose of making a taxable supply of such motor car in the ordinary course of an enterprise which continuously or regularly supplies motor cars. In addition, such supply must be made by way of a sale or under an instalment credit agreement or by way of a rental agreement at an economic rental consideration.

Some operators in the casino industry regularly and continuously acquire and award motor cars as prizes to punters in return for a bet placed. The vehicles that are awarded as prizes are acquired for no purpose other than to award the vehicle as prizes.

Accordingly, the view is held that in these instances, casinos acquire the motor cars exclusively for the purpose of making a taxable supply of such motor cars in the ordinary course of the enterprise which continuously or regularly supplies motor cars.

Therefore, the proviso to section 17(2)(c) of the VAT Act is applicable to casinos in this instance. Input tax on the acquisition of the motor cars is permissible in terms of section 16(3) of the VAT Act.

This view is based upon the following factors: -

- although the supply of motor cars is not the core business of casinos, the supply of the motor car as a competition prize is an activity which is carried on continuously or regularly by casinos and is generally in the ordinary course or furtherance of its “enterprise” of supplying various taxable services for a consideration;
- the definition of “supply” is sufficiently wide to include the award of a motor car as a prize to a winning contestant;
- the definition of “sale” includes “...*any transaction or act whereby or in consequence of which ownership of goods passes or is to pass from one person to another*”. Since the winning punter will take ownership of the motor car, the supply thereof in the context of a competition is not excluded from being a “sale” as defined; and
- a claim for input tax on the acquisition of the motor car acquired for the purposes of being supplied as a prize is not excluded in terms of section 17(2)(c) of the VAT Act as the motor car is “...*acquired by the vendor exclusively for the purpose of making a taxable supply of such motor car in the ordinary course of an enterprise which continuously or regularly supplies motor cars...*” as contemplated in the first proviso to section 17(2)(c) of the VAT Act.

4.2.5.2 After 1 February 2006

An amendment to section 17(2)(c) of the VAT Act, which came into effect on 1 February 2006, results in a vendor being entitled to deduct input tax on the acquisition of a motor car that is acquired for the purpose of awarding the motor car as a prize. This prize must be awarded as a result of a bet being placed and such bet being a deemed supply in terms of section 8(13) of the VAT Act. The input tax deduction in this regard will be limited to the VAT incurred on the initial acquisition of the motor car and can only be deducted in the tax period in which the motor car is awarded as a prize. This prohibits vendors acquiring the motor car at a lower price and then awarding such motor car at a higher price.

Example: Joe Soap's Casino, on 1 February 2006, acquires a motor car in an arm's length transaction at 10% below the market value (i.e. R205 200 including VAT) for the purposes of awarding it as a prize to a successful punter playing on its "Car Mania" slot machines. The motor car is awarded as a prize on 15 June 2006 on the outcome of a betting transaction when the market value is R228 000.

Joe Soap's Casino is entitled to input tax on the amount paid for the motor car (i.e. $R205\,200 \times 14/114$) in the tax period covering 15 June 2006.

Example: Joe Soap's Casino, on 1 February 2006, acquires 10 motor cars in an arm's length transaction at 10% below the market value (i.e. R205 200 each including VAT) for the purposes of awarding it as prizes to successful punters playing on its "Car Mania" slot machines. The 10 motor cars are awarded as prizes on the following dates when the market value is R228 000:

Car 1	21 February 2006	Car 2	23 February 2006
Car 3	10 March 2006	Car 4	25 March 2006
Car 5	1 April 2006	Car 6	3 April 2006
Car 7	27 April 2006	Car 8	1 May 2006
Car 9	31 May 2006	Car 10	7 June 2006

Joe Soap's Casino is entitled to input tax of R25 200 (i.e. $R205\,200 \times 14/114$) on each car which is limited to the amount paid for the motor cars in the following tax periods:

Car 1	February 2006	Car 2	February 2006
Car 3	March 2006	Car 4	March 2006
Car 5	April 2006	Car 6	April 2006
Car 7	April 2006	Car 8	May 2006
Car 9	May 2006	Car 10	June 2006

4.2.6 Wide Area Progressive Jackpots (“WAPJ”)

In terms of the WAPJ system, various casinos in the same group of companies will each allocate a fixed percentage of their gross gaming revenue (GGR) earned from certain slot machines on its premises towards a provision for the WAPJ. Gaming legislation compels the casinos participating in the WAPJ to appoint either one casino or an outside party as the WAPJ administrator.

The WAPJ administrator collects the provisions of gross gaming revenue from each casino and deposits the money in a separate trust account. A punter can win the WAPJ by playing on the designated slot machines on the premises of any of the casinos participating in the WAPJ. The respective casinos will be interconnected electronically. When the WAPJ is won as a prize or winning, it will be paid out to the punter by the participating casino where the WAPJ is won. The WAPJ administrator will reimburse the casino making the payout from the pool of money allocated to the WAPJ.

For VAT purposes, the activities of the WAPJ administrator do not fall within the ambit of “enterprise” as defined in section 1 of the VAT Act. Accordingly, the WAPJ administrator cannot register as a “vendor” for VAT purposes. The contributions paid by casinos (i.e. which will ultimately be paid as a prize) to the WAPJ administrator will not have any VAT implications until such time the WAPJ is paid out as a prize. Only once the WAPJ is paid out as a prize, will the casino be entitled to deduct input tax in terms of section 16(3)(d) of the VAT Act limited to the amount contributed to the WAPJ in the tax period when the WAPJ is won as a prize.

Example: Casino 1, Casino 2 and Casino 3 are individual legal entities separately registered as vendors for VAT purposes. The three casinos enter into an agreement to operate a WAPJ. In terms of this agreement, the three entities are required to contribute a percentage of their revenue to the WAPJ pool. For the duration of this agreement, the contributions by each casino to the WAPJ pool are as follows:

Casino 1	R57 000
Casino 2	R45 600
Casino 3	R91 200

On 1 December 2005, the wide area progressive jackpot was won at Casino 3 and an amount of R193 800 was paid out to the successful punter.

There will be no VAT implications for the three casinos concerned on their contributions to the WAPJ pool until such time the WAPJ is won. When the WAPJ is won, each casino will be entitled to deduct input tax in terms of section 16(3)(d) of the VAT Act on their contributions to the WAPJ at the end of the tax period covering the date of 1 December 2005, as follows:

Casino 1	R 7 000	(R57 000 X 14/114)
Casino 2	R 5 600	(R45 600 X 14/114)
Casino 3	R11 200	(R91 200 X 14/114)

Casino 3 will not be entitled to deduct input tax on the full amount of the WAPJ paid (i.e. R193 800) to the successful punter.

5. General

In certain instances, it has been detected that, for the period ending 31 March 2005, intermediaries (i.e. parties acting on behalf of the PRF) collecting the taxes imposed by the Provincial Ordinances are levying VAT on such amounts recovered from bookmakers. Refer to paragraph 4.1.9.

These intermediaries, albeit that they are vendors, are not making a taxable supply of goods or services to the bookmakers and therefore must not levy VAT on any amount recovered in terms of the Provincial Ordinance (i.e. the intermediaries act in a capacity as agent for the PRF in collecting these taxes).

The VAT Act makes provision for vendors making these payments to the PRF to deduct an amount equal to the tax fraction on such payment in terms of section 16(3)(e) of the VAT Act. The deduction under section 16(3)(e) of the VAT Act is not a deduction made in terms of the definition of "*input tax*" as contained in section 1 of the VAT Act, but rather, is a specific deduction which compensates for the effect of "tax on tax" in relation to the deemed supplies envisaged in section 8(13) of the VAT Act and the manner in which gambling tax is calculated and levied.

However, as the VAT was incorrectly charged on the collection of taxes imposed by the Provincial Ordinances and on the condition that the vendor has paid such VAT, the vendor is entitled to deduct such amount of VAT as input tax in terms of section 16(3)(a) of the VAT Act. This deduction of input tax must be supported by the document issued by or required to be submitted to the intermediaries (i.e. parties acting on behalf of the PRF).

Please note that this arrangement shall only apply to taxes collected by intermediaries prior to 31 March 2005 and where such intermediaries levied VAT on the amount of tax collected.

The arrangement as set out in paragraph 5 above constitutes a binding general ruling issued in accordance with section 76P of the Income Tax Act, 1962 as made applicable to the VAT Act by section 41A of the VAT Act.

THE VAT ACT

Section 1 - Definitions

“consideration”, 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: Provided that a deposit (other than a deposit on a returnable container), whether refundable or not, given in respect of a supply of goods or services shall not be considered as payment made for the supply unless and until the supplier applies the deposit as consideration for the supply or such deposit is forfeited;

“consideration in money” includes consideration expressed as an amount of money;

“enterprise” means—

- (a) in the case of any vendor other than a local authority, any enterprise or activity which is carried on continuously or regularly by any person in the Republic or partly in the Republic and in the course or furtherance of which goods or services are supplied to any other person for a consideration, whether or not for profit, including any enterprise or activity carried on in the form of a commercial, financial, industrial, mining, farming, fishing or professional concern or any other concern of a continuing nature or in the form of an association or club;

“input tax”, in relation to a vendor, means—

- (a) tax charged under section 7 and payable in terms of that section by—

- (i) a supplier on the supply of goods or services made by that supplier to the vendor; or
- (ii) the vendor on the importation of goods by him; or
- (iii) the vendor under the provisions of section 7(3);

...

where the goods or services concerned are acquired by the vendor wholly for the purpose of consumption, use or supply in the course of making taxable supplies or, where the goods or services are acquired by the vendor partly for such purpose, to the extent (as determined in accordance with the provisions of section 17) that the goods or services concerned are acquired by the vendor for such purpose;

“services” means anything done or to be done, including the granting, assignment, cession or surrender of any right or the making available of any facility or advantage, but excluding a supply of goods, money or any stamp, form or card contemplated in paragraph (c) of the definition of “goods”;

Section 8(13) and (13A) of the VAT Act - Certain supplies of goods or services deemed to be made or not made

- (13) For the purposes of this Act, where any person bets an amount on the outcome of a race or on any other event or occurrence, the person with whom the bet is placed shall be deemed to supply a service to such first-mentioned person.
- (13A) For the purposes of this Act, except section 16(3), where any vendor who makes taxable supplies of services contemplated in subsection (13) of this section, receives any amount paid by any other vendor as a prize or winnings in consequence of a supply of such services made by the last-mentioned vendor to the first-mentioned vendor, the first-mentioned vendor shall be deemed to supply a service to the last-mentioned vendor.

Section 9(3)(e) – Time of supply

- (3) Notwithstanding anything in subsection (1) or (2) of this section—
-
- (e) where any supply of a service is deemed to be made as contemplated in section 8 (13), the service shall be deemed to be supplied to the extent that payment of any amount of the bet is made, and each such supply shall be deemed to take place whenever any payment in respect of such supply is received by the supplier;

Section 16(3) of the VAT Act – Calculation of tax payable (Prior 1 February 2006)

- (3) Subject to the provisions of subsection (2) of this section and the provisions of sections 15 and 17, the amount of tax payable in respect of a tax period shall be calculated by deducting from the sum of the amounts of output tax of the vendor which are attributable to that period, as determined under subsection (4), and the amounts (if any) received by the vendor during that period by way of refunds of tax charged under section 7(1)(b) and (c) and 7(3)(a), the following amounts, namely—
- ...
- (d) an amount equal to the tax fraction of any amount paid by the supplier of the services contemplated in section 8(13) as a prize or winnings to the recipient of such services;
- (dA) ...
- (e) an amount equal to the tax fraction of any amount of tax on totalizator transactions or tax on betting levied and paid for the benefit of any Provincial Revenue Fund by the supplier of the services contemplated in section 8(13);

Section 16(3) of the VAT Act – Calculation of tax payable (Post 1 February 2006)

(3) Subject to the provisions of subsection (2) of this section and the provisions of sections 15 and 17, the amount of tax payable in respect of a tax period shall be calculated by deducting from the sum of the amounts of output tax of the vendor which are attributable to that period, as determined under subsection (4), and the amounts (if any) received by the vendor during that period by way of refunds of tax charged under section 7(1)(b) and (c) and 7(3)(a), the following amounts, namely—

(a) ...

Provided that this paragraph does not apply where a vendor acquires goods or services that are to be awarded as a prize or winnings and in respect of which that vendor qualifies or will qualify for a deduction in terms of paragraph (d);

(b) ...

Provided that this paragraph does not apply where a vendor acquires goods or services that are to be awarded as a prize or winnings and in respect of which that vendor qualifies or will qualify for a deduction in terms of paragraph (d);

...

(d) an amount equal to the tax fraction of any amount paid during the tax period by the supplier of the services contemplated in section 8(13) as a prize or winnings to the recipient of such services: Provided that where the prize awarded constitutes either goods or services, input tax must be limited to the tax incurred on the initial cost of acquiring those goods or services;

**Section 17(2) - Permissible deductions in respect of input tax
(Prior 1 February 2006)**

- (2) Notwithstanding anything in this Act to the contrary, a vendor shall not be entitled to deduct from the sum of the amounts of output tax and refunds contemplated in section 16 (3), any amount of input tax—
- (a) in respect of goods or services acquired by such vendor to the extent that such goods or services are acquired for the purposes of entertainment: Provided that this paragraph shall not apply where—
 - (i) such goods or services are acquired by the vendor for making taxable supplies of entertainment in the ordinary course of an enterprise which—
 - (aa) continuously or regularly supplies entertainment to clients or customers (other than in the circumstances contemplated in subparagraph (bb)) for a consideration to the extent that such taxable supplies of entertainment are made for a charge which—
 - (A) covers all direct and indirect costs of such entertainment; or
 - (B) is equal to the open market value of such supply of entertainment,unless—
 - (i) such costs or open market value is for bona fide promotion purposes not charged by the vendor in respect of the supply to recipients who are clients or customers in the ordinary course of the enterprise, of entertainment which is in all respects similar to the entertainment continuously or regularly supplied to clients or customers for consideration; or
 - (ii) the goods or services were acquired by the vendor for purposes of making taxable supplies to such clients or customers of entertainment which consists of the provision of any food and a supply of any portion of such food is subsequently made to any employee of the vendor or to any welfare organization as all such food was not consumed in the course of making such taxable supplies;
 - (bb) supplies entertainment to any employee or office holder of the vendor or any connected person in relation to the vendor, to the extent that such taxable supplies of entertainment are made for a charge which covers all direct and indirect costs of such entertainment;
- ...
- (c) in respect of any motor car supplied to or imported by the vendor: Provided that this paragraph shall not apply where such motor car is acquired by the vendor exclusively for the purpose of making a taxable supply of such motor car in the ordinary course of an enterprise which continuously or regularly supplies motor cars, whether such supply is made by way of sale or under an instalment credit agreement or by way of rental agreement at an economic rental consideration: Provided further that for the purposes of this paragraph a motor car acquired by such vendor for demonstration purposes or for temporary use prior to a taxable supply by such vendor shall be deemed to be acquired exclusively for the purpose of making a taxable supply;

**Section 17(2) - Permissible deductions in respect of input tax
(Post 1 February 2006)**

- (2) Notwithstanding anything in this Act to the contrary, a vendor shall not be entitled to deduct from the sum of the amounts of output tax and refunds contemplated in section 16(3), any amount of input tax—
- (a) in respect of goods or services acquired by such vendor to the extent that such goods or services are acquired for the purposes of entertainment: Provided that this paragraph shall not apply where—

...

(ix) that entertainment is acquired by the vendor for the purpose of awarding that entertainment as a prize contemplated in section 16(3)(d) in consequence of a supply contemplated in section 8(13).
 - (c) in respect of any motor car supplied to or imported by the vendor: Provided that –
 - (i) this paragraph shall not apply where such motor car is acquired by the vendor exclusively for the purpose of making a taxable supply of such motor car in the ordinary course of an enterprise which continuously or regularly supplies motor cars, whether such supply is made by way of sale or under an instalment credit agreement or by way of rental agreement at an economic rental consideration;
 - (ii) for the purposes of this paragraph a motor car acquired by such vendor for demonstration purposes or for temporary use prior to a taxable supply by such vendor shall be deemed to be acquired exclusively for the purpose of making a taxable supply;
 - (iii) this paragraph shall not apply where –
 - (aa) that motor car is acquired by the vendor for the purposes of awarding that motor car as a prize contemplated in section 16(3)(d) in consequence of a supply contemplated in section 8(13);

Section 72 - Arrangements and directions to overcome difficulties, anomalies or incongruities

If in any case the Commissioner is satisfied that in consequence of the manner in which any vendor or class of vendors conducts his or their business, trade or occupation, difficulties, anomalies or incongruities have arisen or may arise in regard to the application of any of the provisions of this Act, the Commissioner may make an arrangement or give a direction as to—

- (a) the manner in which such provisions shall be applied; or
- (b) the calculation or payment of tax or the application of any rate of zero per cent or any exemption from tax provided in this Act,

in the case of such vendor or class of vendors or any person transacting with such vendor or class of vendors as appears to overcome such difficulties, anomalies or incongruities: Provided that such direction or arrangement shall not have the effect of substantially reducing or increasing the ultimate liability for tax levied under this Act.