

BE WARY OF VAT ON DONATIONS: By Jonathan Hore

Well, let me take this opportunity to say my kudos to all the companies which have excellent Corporate Social Responsibility (CSR) policies. They fully understand what it means to plough back into the community in which they operate. I must also acknowledge every company or business which at times gives away goods to help the underprivileged as they comprehend that charity begins at home. Enough with my kudos; I now want to give you a bit of insight into some of the common errors that VAT-registrants make when it comes to CSR programmes. Let me make it clear that the issues I will discuss in this article do not affect anyone who is not registered for VAT with BURS. In this article, words importing the masculine shall be deemed to include the feminine.

THE CONCEPT OF VAT CLAIMS

Any VAT-registrant is allowed to claim VAT incurred on the purchase of both capital assets and consumables used in their business. VAT claims are made as long as the respective purchases are for the advancement of the VAT-registrant's taxable activity. I know there is a lot of jargon in the above sentence and I will try to simplify things below. When I say a business is using a purchase in the advancement of its taxable activity, I mean that the purchase or expense feeds in the production of goods or provision of services on which VAT is later charged. For example, if a tax consultancy firm hires a hall and incurs VAT in order to hold a tax seminar where it charges VAT on the attendance fees, then the VAT on the hire of the hall is for the advancement of the firm's taxable activity. But if the same firm incurs VAT on the hire of a hall for say, SOS Village to hold its AGM, then the VAT does not advance the taxable activity or business for which the firm was registered for VAT. That firm was registered for VAT in order to offer services which will, one way of the other, result in it charging VAT. It is not necessary that VAT should be charged on every transaction done by the firm but there should be a direct link between the expense on which VAT was incurred and the provision of the tax services.

HOW CORPORATES FALL

Corporates usually can't differentiate between instances which advance their taxable activities and ones which don't. That is the common tax error which makes them vulnerable to tax exposures. Below are the most common ways in which tax exposures arise from CSR initiatives:

- **Donations of purchases:** Most corporates buy goods which are earmarked for donation to the underprivileged such as food, clothes and furniture. Some even go to the extent of purchasing land or buildings, which are then donated. The common error in such arrangements is that the VAT on such purchases is claimed as if it was advancing the business of the VAT-registrants. However, there is no way that a donation will advance one's taxable activity. VAT claims on such donations are therefore not business-driven and should not be made.
- **Donations of goods on hand:** Some organisations donate goods which they would have used in their business for some time and on which they would have claimed VAT on acquisition. The error that occurs in such cases is that the donations which are made are not followed with a VAT adjustment, as required by the VAT Act. What this means is that if a shop claimed VAT on purchases of stock and later gives it away as grocery hampers, the VAT previously claimed should be paid to BURS. That is what is commonly referred to as 'change of use' in VAT lingo. The business initially acquired the goods to advance a taxable activity and by donating them, it would have changed the use from 'taxable' to 'non-taxable' hence VAT claimed must be paid back.

- **Food for employees:** The same principle described above also applies to hotels, mines, lodges and any other VAT-registrant who gives employees free food. The VAT incurred on the purchase of such food is meant to be recovered through selling the food to customers but the use changes when the business decides to feed its employees for free. The VAT Act requires that VAT be paid by such business on the lesser of the cost of such goods or their market value, again on the basis that there would have been a 'change of use.' In practice, the VAT-inclusive cost is usually the one that is applied for purposes of determining the VAT payable. Essentially, the business gives back to BURS the VAT on the amount of goods that would not have been sold to customers.

CONCLUSION

Here is the conclusion of the matter; corporates who engage in CSR programmes do not advance their taxable activities by making donations so VAT should naturally not be claimed on goods meant for CSR. Goods on which VAT would have been claimed which are then converted to 'non-taxable' usage should have a VAT adjustment accompanying the conversion of usage. Lastly, such corporates do not need to make such post-purchase adjustments if they were barred from claiming the VAT on acquisition. For example, if a tax firm purchased a passenger vehicle on which VAT is not claimable, there is no reason for paying VAT to BURS when the firm donates that vehicle at a later stage.

Well folks, I hope that was insightful. As Yours Truly says goodbye, remember to pay to Caesar what belongs to him. If you want to join our Tax Whatsapp group, send me a text on the cell number below.