

Part 1: VAT RISKS	Marks	CANDIDATE SCORE
<p><b>Pool Car</b></p> <ul style="list-style-type: none"> <li>• CAS <b>incorrectly claimed input tax</b> in the purchase of the pool car.</li> <li>• The pool car was <b>recorded at the VAT exclusive amount</b>.</li> <li>• A Toyota Corolla is a <b>“motor car” as defined</b> in terms of <b>section 1</b> of the <b>VAT Act</b>.</li> <li>• The <b>input tax</b> on the purchase of a “motor car” is <b>denied</b> in terms of <b>section 17(2)(c) of the VAT Act</b>.</li> <li>• Although it will not have a negative VAT implication, candidates may also (for additional marks) indicate to Ms Gumede that the pool motor car will not result in a fringe benefit (right of use of company car) for the employees in terms of par 7(10) of the 7<sup>th</sup> Schedule, and</li> <li>• consequently, will not result in a deemed output tax on the fringe benefit in terms of section 18(3) of the VAT Act.</li> </ul>	<p>1</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p>	
<p><b>Gym Membership Fees</b></p> <ul style="list-style-type: none"> <li>• CAS <b>did not account for output tax</b> on the gym membership fees.</li> <li>• In terms of <b>section 18(3)</b> of the VAT Act, where an <b>employer has granted a fringe benefit to an employee, VAT is payable on the “cash equivalent”</b> (with the exception of the right of a use of a motor vehicle) as calculated in terms of the 7<sup>th</sup> Schedule of the Income Tax Act.</li> <li>• In terms of <b>paragraph, 2(e) of the 7<sup>th</sup> Schedule</b> the payment of the <b>gym membership fees constitutes a fringe benefit (free or cheap services) / the employees receive a service paid for by the employer</b>.</li> <li>• In terms of <b>paragraph 10(1)(b)</b> of the 7<sup>th</sup> Schedule to the Income Tax Act, the <b>“cash equivalent” is equal to the cost incurred by the employer less any consideration paid by the employee</b>.</li> <li>• The employees pay no consideration; <b>therefore, output tax must be accounted for on the cost incurred by the employer</b>.</li> </ul> <p><i>(By stating that “CAS did not account for output tax”, it is inferred that output tax must be accounted for, therefore no separate mark awarded for the last bullet. It is suggested that this mark may be awarded for either the first or last bullet)</i></p>	<p>1</p> <p>1</p> <p>1</p> <p>1</p>	
<p><b>Insurance Proceeds</b></p> <ul style="list-style-type: none"> <li>• CAS <b>erroneously did not account for output tax</b> on the insurance pay-out.</li> <li>• In terms section 8(8) of the VAT Act where a <b>vendor receives an insurance pay-out</b> in terms of a <b>short-term insurance policy</b>, the <b>amount is to the extent that it relates to a loss incurred in the course of carrying on an enterprise, deemed consideration received for a supply of services</b>.</li> </ul> <p><i>(mark awarded for identifying that the short-term insurance pay-out is a deemed supply)</i></p> <ul style="list-style-type: none"> <li>• It is submitted that the laptop was used <b>“in the course of carrying on an enterprise”</b> as the <b>training</b> is “an activity carried on continuously or regularly in South Africa by any person in the course</li> </ul>	<p>1</p> <p>1</p>	

<p>or furtherance of which goods or services are supplied for a consideration” in terms of section 1 of the VAT Act.  <i>(mark awarded for identifying that the training is “in the course of carrying on an enterprise”)</i></p> <ul style="list-style-type: none"> <li>Therefore, <b>output tax must be accounted for on the insurance pay-out</b> received.</li> </ul> <p><i>(By stating that “CAS erroneously did not account for output tax”, it is inferred that output tax must be accounted for, therefore no separate mark awarded. It is suggested that this mark may be awarded for either the first or last bullet)</i></p>	<b>1</b>	
<b>MAXIMUM</b>	<b>7</b>	
<b>AVAILABLE</b>	<b>13</b>	

<b>Part 2: OBJECTION TO DISSALLOWANCE OF INPUT TAX CREDIT</b>	<b>Marks</b>	
<p><i>Appropriate Letter format (mark indicated as format mark below).</i></p> <p>We refer to your letter regarding the disallowing of the input tax on the property.</p> <p>Our objection is set out as follows:</p>		
<p><b>Background</b></p> <ul style="list-style-type: none"> <li>CAS <b>purchased a used residential property in Morningside, Sandton from an unconnected party</b> for R3 500 000 (open market value of R3 400 000 at date of purchase.</li> <li>In terms of <b>section s16(3)(a)(ii)(bb)</b> of the VAT Act CAS <b>claimed the notional input tax credit.</b></li> <li>CAS was <b>selected for a VAT audit</b> and <b>provided the relevant material in terms of section 16(2)(a) and section 20(8)</b> of the VAT Act to support the deduction of the input tax credit on the acquisition of second hand goods; however, the input tax credit was disallowed.</li> <li>We respectfully submit that there are <b>no grounds for denying the input tax credit</b>, as the <b>requirements in terms of sections 16(2)(a) and 20(8) of the VAT Act are satisfied.</b></li> <li>Furthermore, we submit that in terms of <b>section 16(3)(a)(ii)(bb) of the VAT Act</b>, that an <b>input tax credit on the purchase of second-hand property is allowable.</b></li> </ul>	<p><b>1</b></p> <p><b>1</b></p> <p><b>1</b></p> <p><b>1</b></p>	
<ul style="list-style-type: none"> <li>In terms of section 1 of the VAT Act, a “taxable supply means any supply of goods or services which is chargeable with tax under the provisions of section 7 (1)(a), including tax chargeable at the rate of zero per cent under section 11”.</li> <li>In terms of section 7(1)(a) of the VAT Act, CAS provides a service (accounting, finance and corporate governance training) in the furtherance of their enterprise (training services are continuously/regularly provided for consideration).</li> <li>Therefore, <b>CAS (Pty) Ltd provides conferences and seminars that are taxable supplies</b></li> </ul>	<p><b>1</b></p> <p><b>1</b></p> <p><b>1</b></p>	
<ul style="list-style-type: none"> <li>The property even though residential, <b>was purchased to be used to make taxable supplies. The intention of the vendor in</b></li> </ul>	<b>1</b>	

respect of the acquisition of the fixed property is to utilise it in the making of taxable supplies.		
• No VAT was actually paid by CAS (Pty) Ltd since Arthur Blumenthal, the seller, is not a registered VAT vendor.	1	
• However, the commercial building constitutes second hand goods in terms of s1 of the VAT Act (it is owned and used by Arthur Blumenthal, the seller).	1	
• The buyer (CAS (Pty) Ltd), the seller (Arthur Blumenthal) and the goods are located in South Africa in terms of s1, subsection (b), of the definition of input tax of the VAT Act (the commercial building is situated in Morningside - Sandton, the buyer and seller are South African residents).	1 1	
• As CAS (Pty) Ltd is a registered vendor and purchases second hand property from a non-vendor (Arthur Blumenthal) to be used for taxable supplies, a deemed/notional input tax may be claimed for the property in terms of s16(3)(a)(ii)(bb) of the VAT Act.	1 1	
• The deemed/notional input tax is calculated as per s1, subsection (b), of the definition of input tax of the VAT Act as follows: <ul style="list-style-type: none"> <li>○ Tax fraction x <u>Lesser of purchase price (R3 500 000) and open market value (R3 400 000)</u> <u>14/114</u> x R3 400 000 = R417 544</li> </ul>	1 1	
• CAS (Pty) Ltd is a company and will therefore be registered on an invoice basis, thus the full notional input tax may be claimed on the date of registration and the notional input tax is claimable to the extent that payment is made. This is in terms of s16(3)(a)(ii)(bb) of the VAT Act.	1 1 1	
• As the date of registration is 10 October 2016 and the full payment is also made on 10 October 2016, therefore the full notional input tax of R417 544 may be claimed in the VAT period ending 31 October 2016.	1 1	
• Request for remittance of penalty in terms of section 217(3) of the Tax Administration Act No. 28 of 2011 (TAA)	1	
• We hereby request remittance of the 10% late payment penalty imposed by SARS	1	
• The penalty resulted from the disallowance of the notional input tax credit in respect of which CAS is objecting.	1	
• Request for suspension of payment in terms of section 164(2) of TAA	1 1	
• We respectfully request that SARS suspend the payment of the VAT assessed until the finalisation of the objection.	1	
• The amount due of R417 544 will result in irreparable hardship to the taxpayer which is not justified as the input tax credit should be allowed by SARS in terms of s16(3)(a)(ii)(bb) of the VAT Act	1	

LETTER FORMAT	1	
COMMUNICATION SKILLS – LAYOUT, PROFESSIONAL LANGUAGE AND COHERENCE OF ARGUMENTS	1	
MAXIMUM	22	
AVAILABLE	29	

Part 3: VAT OPINION	Marks	
To The Managing Director of CAS (Pty) Ltd From Accountant Subject Opinion on VAT related matter Date November 2017  We refer to your query regarding the VAT consequences of the contract entered into by CAS (Pty) Ltd with Legal Experts Inc. The VAT consequences are as follows:		
<b><u>VAT Consequences:</u></b>  <b>In terms of s7(1)(a) of the VAT Act, CAS (Pty) Ltd would have to levy output tax on the supply of marketing and branding services made by them to Legal Experts Inc.</b>	1 1	
This is a <b>barter transaction</b> as services were supplied for a consideration that is not in money. <b>CAS (Pty) Ltd supplied the marketing and branding services in exchange for legal services from Legal Experts Inc. The legal services to be rendered by Legal Experts Inc. to CAS constitute ‘consideration’ in CAS’s hands for VAT purposes.</b>	1 1	
<b>In terms of s10(2) of the VAT Act, the value of the transaction for CAS (Pty) Ltd would be the consideration for the services as determined in terms of s10(3) of the VAT Act less so much of such amount that represents tax. As the consideration is not in money, the open market value of the consideration for services received from Legal Experts (s10(3)(b)) less so much of such amount that represents the tax, will be the value of the supply (s10(2)).</b>	1 1 1	
Therefore the value of the supply is <b>R342 000 x 100/114 = R300 000 and the output tax is R342 000 x 14/114 = R42 000.</b>	1	
<b>The time of the supply is the earlier of invoice or payment in terms of s9(1) of the VAT Act. An ‘invoice’ is defined in section 1 of the VAT Act as ‘a document notifying an obligation to make payment’. This definition is wide enough to embrace any document notifying the obligation to make payment, even though it may not be called an invoice. For example, in certain circumstances (like in CAS’s instance) a contract may constitute an invoice as defined.</b>	1	
The contract will be signed on 4 December 2017, therefore CAS (Pty) Ltd would have to account for output tax of R42 000 <b>during the two-month VAT period ending 31 December 2017.</b>	1	
<b><u>Documentary requirements</u></b>  <b>In terms of s16(2)(f) of the VAT Act, CAS (Pty) Ltd would need to be in possession of documentary proof, as prescribed by the</b>	1,1	

<p><b>Commissioner, in order for CAS (Pty) Ltd to claim an input tax deduction.</b></p> <p>In terms of <b>s16(2)(a)</b> of the VAT Act, a tax invoice in relation to supply should be supplied by Legal Experts Inc.</p> <p><b>Section 20 of the VAT Act states that unless otherwise provided, a supplier being a register vendor, making a taxable supply to a recipient, must within 21 days of the date of the supply issue a tax invoice.</b></p>	<p>1</p> <p>1</p>	
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<p><i>Does the exception in section 20 of the VAT Act negate the requirement for a tax invoice?</i></p> <p><b>In terms of s20(7) of the VAT Act, where the Commissioner is satisfied of the existence or availability of sufficient documentary records <u>and</u> that it would be impractical to require a full tax invoice to be issued, the Commissioner may direct that no tax invoice is required to be issued.</b></p> <ul style="list-style-type: none"> <li>• In this case <b>Legal Experts Inc. are of the opinion that the contract is sufficient and no tax invoice will be issued,</b></li> <li>• Contrary to this view, it is submitted, that it <b>would not have been impractical in the present case for Legal Experts Inc. to have issued a full tax invoice.</b> Legal Experts and CAS (Pty) Ltd are both SA residents and <b>the scenario does not stipulate any reason why it would be impractical for Legal Experts to issue a full tax invoice.</b></li> <li>• Therefore CAS (Pty) Ltd cannot rely on the provisions of <b>s20(7) of the VAT Act to claim an input tax credit.</b></li> </ul>	<p>1,1</p> <p>1</p> <p>1</p> <p>1</p> <p>1</p>	
<p><b>CAS (Pty) Ltd must request Legal Experts Inc. to issue a tax invoice in terms of section 20(1) of the VAT Act, containing the particulars as stipulated in terms of section 20(4) of the VAT Act:</b></p> <ul style="list-style-type: none"> <li>• the words “tax invoice”, “VAT invoice”, or “invoice”;</li> <li>• the name, address and VAT registration number of the supplier (Legal Experts Inc.) and the recipient (CAS (Pty) Ltd);</li> <li>• the invoice number and date upon which the invoice is issued;</li> <li>• full and proper description of the services rendered (legal services for conferences and seminars);</li> <li>• the quantity of the services supplied; and</li> <li>• the consideration (open market value) and either the amount of tax charged or the rate at which tax was charged.</li> </ul>	<p>1</p> <p><b>MAX 3 ½ per required</b></p>	
<p>Should CAS (Pty) Ltd <b>fail to obtain a full tax invoice</b> as stipulated in terms of <b>section 20(4) of the VAT Act, no input tax credit may be claimed.</b></p>	<p>1</p>	
<p><b>SARS is granted discretionary powers to prescribe (section 16(2)(f) or accept (section 16(2)(g) of the VAT Act) different documentary proof that a vendor must be in possession of before making any input tax deduction.</b></p> <p><b>Therefore, SARS may accept the contract between CAS and Legal Experts as being sufficient documentary proof for the input tax claim.</b></p>	<p>1</p> <p>1</p> <p>1</p>	
<p><b>However, since 1 April 2016 the conditions under which SARS will accept different documentary proof (other than a tax invoice) have been refined, in that a vendor must request a VAT ruling in terms</b></p>	<p>1</p>	

of section 41B of the VAT Act or TAA no later than 2 months prior to the expire of the 5-year period referred to in section 16(3) to confirm that different documentary proof will be accepted by SARS. Therefore, CAS should consider applying for a VAT ruling to confirm that the contract between CAS and Legal Experts will be sufficient to SARS as documentary proof.	1	
<b>FORMAT</b>	1	
<b>COMMUNICATION SKILLS – LAYOUT, PROFESSIONAL LANGUAGE AND COHERENCE OF ARGUMENTS</b>	1	
<b>MAXIMUM</b>	21	
<b>AVAILABLE</b>	32	