INTERACTION BETWEEN THE NATIONAL CREDIT ACT AND THE VALUE-ADDED TAX ACT WHERE GOODS ARE SURRENDERED OR REPOSSESSED

OPSOMMING

Wisselwerking tussen die *National Credit Act* en die Wet op Belasting op Toegevoegde Waarde wanneer goedere oorgeneem of in herbesit geneem word

Alhoewel die feit dat kredietverlening by wyse van 'n paaiementsooreenkoms breedvoerig deur die *National Credit Act* gereguleer word algemeen bekend is, is die wisselwerking tussen die *National Credit Act* en ander wetgewing ten aansien van paaiementsooreenkomste nie alom bekend nie. Die aantekening oorweeg spesifiek die *sui generis* toepassing van die Wet op Belasting op Toegevoegde waarde wanneer goedere wat kragtens 'n paaiements(krediet)ooreenkoms gefinansier is, vrywillig teruggegee of in herbesit geneem word. Aangesien laasgenoemde wet spesifieke bepalings ten op sigte van berekening van BTW in geval van vrywillige teruggawe of herinbesitneming bevat, beklemtoon die bydrae die belang daarvan om wetgewing nie in isolasie te beskou nie.

1 Introduction

As South Africa is presently facing a possible recession, "cash strapped" consumers may need to purchase more movable goods by way of instalment agreements as opposed to paying in cash. If a consumer is not able to pay in accordance with the instalment agreement, the credit provider may cancel the contract and repossess the goods or the consumer may surrender the goods. As repossession and surrender point towards a consumer's inability to comply with a financial obligation, it is essential to consider the broader financial implications of repossessing, via court order or by means of voluntary surrender, movable goods that are subject to an instalment agreement. It is well-known that the granting of credit in terms of an instalment agreement is comprehensively regulated by means of the National Credit Act 34 of 2005 ("NCA"). However, it is also important to consider the interaction of the NCA with other pieces of legislation when it comes to these transactions and their consequences.

The contribution focuses specifically on provisions contained in the NCA and the Value-Added Tax ("VAT") Act 89 of 1991. A brief background, for purposes of contextualisation, is provided on the process that the NCA prescribes for the surrender or repossession of goods, whether through a court procedure or voluntarily. The note explains the *sui generis* application of the VAT Act in the context of credit agreements that are repayable in instalments and points out some noteworthy aspects in this regard.

2 The NCA

The provisions of the NCA apply generally to credit agreements concluded at arm's length either in South Africa or that have an effect in South Africa (s 4(1)). One of the types of credit agreements to which the NCA applies is an instalment agreement (s 8(1)(b) read with s 8(4)(c)), which is the focus of this contribution.

2 1 *Instalment agreement*

The NCA defines an "instalment agreement" as

> "a sale of movable property in terms of which –
> (a) all or part of the price is deferred and is to be paid by periodic payments;
> (b) possession and use of the property is transferred to the consumer;
> (c) ownership of the property either –
> (i) passes to the consumer only when the agreement is fully complied with; or
> (ii) passes to the consumer immediately subject to a right of the credit provider to re-possess the property if the consumer fails to satisfy all of the consumer's financial obligations under the agreement; and
> (d) interest, fees or other charges are payable to the credit provider in respect of the agreement, or the amount that has been deferred".

It is trite that most instalment agreements include a reservation of ownership clause that operates in favour of the credit provider. Also, for an agreement to constitute an instalment agreement there must be a deferral of payment. This deferred amount, comprising of the actual credit granted and certain limited fees or charges provided for in section 102 of the NCA, signifies the "principal debt" due under the agreement (s 101(a) read with the definition of "principal debt" in s 1). Section 102 allows the principal debt to include an initiation fee, delivery charges, taxes and the cost of an extended warranty. Importantly, the principal debt does not include interest that accrues in relation to the credit granted.

2 2 *Surrender or repossession of goods*

Section 131 of the NCA entitles a credit provider to repossess goods by way of an attachment order when a consumer defaults on an instalment agreement. However, the consumer may also voluntarily return goods in accordance with section 127 of the Act. Once the goods are surrendered to or repossessed by the credit provider, the latter must comply with certain procedures stipulated in the NCA. The credit provider must appoint a valuator to attend to the valuation of the goods and thereafter must notify the consumer within ten business days what the estimated value of the goods are (s 131 read with s 127(2)). The goods must then be sold as soon as possible at the best price reasonably obtainable. Thereafter, the consumer's account must be credited with the proceeds of the sale after expenses in relation to the sale have been deducted (s 127(2)–(5) of the NCA read with *ABSA Bank Ltd v De Villiers* [2008] JOL 22874 (C) 22; see, in general, Van Heerden "The importance of section 127 of the National Credit Act 34 of 2005" 2018 *THRHR* 239).

If the proceeds of the sale are insufficient to satisfy the financial obligation under the agreement, that is to say, the unpaid balance of the principal debt and unpaid interest or other fees and charges, immediately prior to the sale, the credit provider may demand payment of the outstanding amount from the consumer (s 127(7) read with the definition of "settlement value" in ss 1 and 125(2) of the NCA). Interest will continue to accrue at the rate that applied to the credit agreement from the date of demand until the outstanding amount is paid (s 125(9)).

3 The VAT Act

The VAT Act provides that VAT must be levied and paid to the South African Revenue Service ("SARS") when a vendor supplies goods or services in the

course or furtherance of an enterprise in South Africa (s 7(1)(a)); when a person imports goods into South Africa (s 7(1)(b)); or when imported services are supplied to any person in South Africa (s 7(1)(a)). The contribution focuses on VAT levied in terms of section 7(1)(a) for the domestic supply of goods and services.

The VAT system uses a subtractive or credit input method as it allows the vendor to set-off the tax incurred to make taxable supplies (input tax) from the VAT collected on taxable supplies made by the vendor (output tax) (SARS *VAT 404 guide for vendors* (19 October 2018) 2). To illustrate this method, consider a VAT vendor, as provided for in section 23 of the VAT Act, who buys a computer for a consideration of R9 200, comprising of a value of R8 000 and VAT of R1 200, and then sells it to a consumer for a consideration of R11 500, comprising of a value of R10 000 and VAT of R1 500. As the VAT vendor paid R1 200 tax in order to make the taxable supply to the consumer, the R1 200 would signify the input tax (s 17(1) of the VAT Act read with the definition of "input tax" in s 1 of the VAT Act). In turn, the VAT vendor would be liable for an output tax of R1 500 on the supply made to the consumer. Setting-off the input and output tax, the VAT vendor would have a VAT liability of R300. From the consumer's perspective, she would have paid the VAT component on the supply to her, R1 500, and if she is registered as a VAT vendor and uses the computer to make taxable supplies, she would be able to claim the R1 500 as input tax.

However, it should be noted that a VAT vendor would not always be able to claim input tax when an object is used to make taxable supplies as section 17(2) provides that in certain instances input tax is denied. An example of this is a motor car (s 17(2)(c)), which is defined as a motor vehicle "normally used on public roads, which has three or more wheels and is constructed or converted wholly or mainly for the carriage of passengers" (s 1 of the VAT Act). Nonetheless, a VAT vendor would be able to claim input tax when the vehicle itself falls under the exceptions contained in the definition of motor car, as defined in section 1 (see *ITC* 1596 57 SATC 341; *BTW-saak* nr 64/99 (2000 (12) JTLR 367 (TvlSpCrt); Van Zyl "VAT on motor vehicles: Cruel intentions?" 2008 *SA Merc LJ* 391–401 in this regard) or when the exclusive purpose of acquiring the motor car was to make a taxable supply of that motor car (s 17(3)(c)(i)). Consequently, a motor car dealer who purchased the motor car as trading stock would be able to claim input tax. In turn, where the motor car is used as a delivery vehicle, no input VAT can be claimed.

At the end of each tax period, the vendor accounts by way of a VAT 21 return for the difference between the relevant input tax and output tax (s 16(3)). Accordingly, when determining the VAT liability towards the SARS, the time of supply and the value of supply are paramount.

The VAT Act contains specific provisions that apply to "instalment credit agreements" that require credit providers who are VAT vendors to treat certain VAT calculations pertaining to these credit agreements in a particular manner.

3 1 Instalment credit agreement

Section 1 of the VAT Act defines an "instalment credit agreement" in relation to a sale as

> "any agreement entered into on or after the commencement date whereby any goods consisting of corporeal movable goods or of any machinery or plant, whether movable or immovable –
>
> (a) are supplied under a sale under which –
>
> (i) the goods are sold by the seller to the purchaser against payment by the purchaser to the seller of a stated or determinable sum of money at a stated or determinable future date or in whole or in part in instalments over a period in the future; and
>
> (ii) such sum of money includes finance charges stipulated in the agreement of sale; and
>
> (iii) the aggregate of the amounts payable by the purchaser to the seller under such agreement exceeds the cash value of the supply; and
>
> (aa) the purchaser does not become the owner of those goods merely by virtue of the delivery to or the use, possession or enjoyment by him thereof; or
>
> (bb) the seller is entitled to the return of those goods if the purchaser fails to comply with any term of that agreement".

The main difference between the definition of an "instalment credit agreement" in the VAT Act and the definition of an "instalment agreement" in the NCA is that the VAT Act refers to "corporeal movable goods" and specifically to machinery or plants irrespective of whether they are movable or immovable which at face value appears to be broader than the NCA definition that relates to "movable goods" only.

Generally, the time of supply, thus the period during which the VAT liability must be accounted for, is the earlier of when an invoice is issued or the time any consideration is received by the supplier (s 9(1) of the VAT Act). An exception to this position is, however, when the supply that is made constitutes an instalment credit agreement as defined in the VAT Act. In such an instance the supply occurs at the earlier of when the goods are delivered or any payment of the consideration is received by the credit provider (s 9(3)(c)). However, if the consumer has a cooling-off right in terms of section 121 of the NCA, the day after the last day of the cooling-off period is deemed to be the time of supply (s 9(2)(b)).

Comparing the specific time of supply rules pertaining to instalment credit agreements, it is clear that, contrary to the general time of supply rules stipulated in the VAT Act, the issuing of an invoice will not trigger any VAT liability but rather the delivery of the goods. Nonetheless, in both instances the VAT liability can be triggered once any consideration is paid. Importantly, once *any* payment has been made or the goods have been delivered, the VAT vendor will be liable to pay VAT on the entire value of the supply (Silver *Deloitte VAT handbook* (2018) para 4.3.5).

Section 10(6) of the VAT Act provides that when calculating the (output) VAT liability, the consideration of a supply made in terms of an instalment credit agreement will be the cash value of that specific supply. In turn, section 1 of the VAT Act defines "cash value" with regard to an instalment credit agreement as

> "(a) where the seller or lessor is a banker or financier, an amount equal to or exceeding the sum of the cost to the banker or financier of the goods, including any cost of erection, construction, assembly or installation of the goods borne by the banker or financier and the tax leviable under section 7(1)(a) in respect of such supply by the banker or financier; or

(b) where the seller or lessor is a dealer, an amount equal to or exceeding the price (including tax) at which the goods are normally sold by him for cash or may normally be acquired from him for cash (including tax) and any charge (including tax) made by the seller or lessor in respect of the erection, construction, assembly or installation of the goods if such charge is financed by the seller or lessor under the instalment credit agreement".

Accordingly, the cash value includes the cost of acquisition of the goods and VAT. The cash value is normally the amount which is capitalised to the cost of an asset, for example the purchase price, import duties, transportation, installation costs and any other costs directly attributable to bringing the asset to the location and in the condition necessary for it to be used as intended. However, the cash value does not include the cost of providing credit, namely, the interest or finance charges (SARS *VAT 404 guide for vendors* (19 October 2018) 36).

From the consumer's perspective, if she is a VAT vendor who uses the goods to make taxable supplies, she would be able to deduct the tax fraction (15/115) that is included in the consideration from any other output tax liability in that specific time period, provided that the input tax is not denied in terms of section 17(2) of the Vat Act (s 16(1) read with para (a) of the definition of input tax in s 1 and s 7(1)(a)).

3 2 Surrender or repossession of goods

From the above it is clear that when a credit provider VAT vendor supplies goods, it must account for output tax on the entire value of the supply once the goods are delivered or any payment is received. Similarly, the consumer, if she is a VAT vendor, would be able to claim input tax on this supply. This raises the question of what would happen if the goods are subsequently surrendered or repossessed due to the consumer defaulting on the instalment agreement. This is a pertinent question as in reality the credit provider had not supplied the entire value of the supply and should not have to account for the entire output tax. Moreover, the consumer did not pay the entire consideration of the supply and should not be able to claim the entire tax fraction amount as input tax.

Provisions in the VAT Act aim to rectify this distortion. Section 8(10) contains a deeming provision relating to surrender or repossession of goods that are subject to an instalment credit agreement and provides as follows:

"For the purposes of this Act –

(a) where any goods are repossessed; or

(b) where there is a surrender of goods,

under an instalment credit agreement, a supply of such goods shall be deemed to be made by the debtor under such instalment sale credit agreement to the person exercising the person's right or obligation of possession under such instalment credit agreement, and where such debtor is a vendor the supply shall be deemed to be made in the course of furtherance of the vendor's enterprise unless such goods did not form part of the assets held or used by the vendor for purposes of the vendor's enterprise" (own emphasis).

The effect of this provision is that the consumer is deemed to have made a supply that falls within the ambit of section 7(1)(a) of the VAT Act. Thus, if the consumer is a VAT vendor, she must account for output tax on this supply. An exception to this would be if the initial deduction of input tax was denied when the goods was supplied to her (s 17(3) of the VAT Act) for instance when she bought a motor car as a delivery vehicle. Section 9(8) of the VAT Act stipulates that the time of this deemed supply is the day on which the goods are surrendered or repossessed.

Section 10(16) of the VAT Act provides further in respect of the value of this deemed supply that

> "the *consideration in money* for that supply shall be deemed to be an amount equal to the *balance of the cash value* of the goods … *which has not been recovered* on the date on which the supply of the goods by the debtor is deemed by section 9(8) to be made: Provided that the said balance shall be deemed to be *the amount remaining after deducting from the cash value so much of the sum of the payments made by the debtor under the said agreement* as, on the basis of an apportionment in accordance with the rights and obligations of the parties to the said instalment sale agreement, may *properly be regarded as having been made in respect of the cash value*" (own emphasis).

The unpaid balance of the principal debt still owing under an instalment credit agreement at that time will be regarded as the cash value in terms of which the consumer's output tax liability must be determined.

From the credit provider's point of view, it would be able to claim input tax in terms of this deemed supply when the surrendered or repossessed goods will be used to make further taxable supplies, for instance by selling a repossessed computer to another consumer.

Whilst claiming input tax relating to domestic goods usually is dependent on whether there was output tax incurred when the specific goods were acquired, in certain instances a VAT vendor would be able to claim input tax even though there was no output tax associated with acquiring the goods. This is referred to as notional input tax (Silver *Deloitte VAT handbook* (2018) para 10.9). As paragraph (c) of the definition of input tax in section 1, which deals specifically with input tax when goods are surrendered or repossessed, does not require the consumer (debtor) to be a VAT vendor, the credit provider would have a claim for notional input tax, as long as it is used to make taxable supplies.

Therefore, the credit provider would be able to claim input tax regardless of whether the consumer who is making the deemed supply in relation to the surrender or repossession is a VAT vendor or not.

4 Discussion

It is clear that the VAT Act has significant implications for parties who enter into instalment agreements governed by the NCA and who are VAT vendors. Accordingly it is imperative that they familiarise themselves with these provisions especially insofar as the VAT Act prescribes certain measures that deviate from its general provisions to specifically address the levying of and accounting for VAT in respect of repossessed or surrendered goods.

As pointed out above, the definition of an "instalment agreement" in the NCA differs from the definition of an "instalment credit agreement" in the VAT Act. Therefore, it may be asked what the significance of these different definitions is. The VAT Act had already been in operation for a couple of years by the time the NCA was enacted. Had the legislature intended to align the definition of "instalment credit agreement" in the VAT Act with that of "instalment agreement" in the NCA there would have been an indication of such change in Schedule 2 of the NCA which contains the amendments effected by the NCA to existing laws at the time it came into operation. Although amendments are affected by the NCA to sections 8(3) and (2) of the VAT Act, no substitution of the definition of an "instalment credit agreement" with the definition of "instalment agreement" as per the NCA is listed in Schedule 2. It

thus appears that the legislature wanted the definition of "instalment credit agreement" in the VAT Act to remain intact. The essence of both definitions is that they apply where movable goods are sold on credit and repaid in instalments. However, the VAT Act elaborates on the aspect of movable goods by pertinently also including machinery and plants in the definition of instalment credit agreement. The words "whether movable or immovable" that follow the reference to machinery or plants have obviously been inserted to cater for the situation where machinery or a plant that would otherwise be regarded as movable has been affixed to land or immovable property. The most likely reason why the legislature would have wanted to retain the definition of "instalment credit agreement" in the VAT Act is obviously because it would apply to situations where movables are supplied on credit regardless of whether the NCA applies to that instalment agreement or not. The legislature thus did not want to limit the application of the VAT Act only to the narrow instances where an instalment agreement is governed by the NCA.

In relation to VAT consequences in the event of repossession or surrender of goods financed under an instalment agreement in terms of the NCA, the outstanding balance of the "cash value" of the deemed supply is used. This "cash value" is similar to the meaning of "principal debt" as referred to in the NCA in the sense that neither includes the interest that accrues due to the granting of credit. It may be asked exactly how the value on which VAT is to be charged on repossessed or surrendered goods that were financed in terms of an instalment agreement governed by the NCA is to be calculated and whether this value is influenced by the mandatory process that the NCA prescribes for subsequent valuation of the goods in terms of section 127. As indicated, section 127(2) mandates the credit provider to have the goods appraised very soon after repossession or surrender and such appraisal will then result in the goods being valued at a specific "cash value". Therefore, one might make the mistake of assuming that this "cash value" as determined in accordance with section 127(2) is the value on which VAT must be calculated when the goods are repossessed or surrendered. However, such an assumption would be wrong as there is no provision in either the NCA or the VAT Act that requires VAT to be levied on this valuation amount determined in accordance with section 127(2). Section 10(16) of the VAT Act is also not made subject to section 127(2). This seems logical if one accepts that the legislature did not want to narrow the reach of section 10(16) to instalment agreements governed by the NCA only but rather wants the deeming provisions contained in the aforementioned section to apply to all credit agreements that fall within the broader definition of "instalment credit agreement" in the VAT Act. Accordingly, the outstanding balance of the cash value in the case of goods repossessed or surrendered under an instalment agreement governed by the NCA would not refer to the value as per section 127(2), but to the outstanding principal debt on date of repossession or surrender, that means the outstanding principal balance as it is before the repossessed or surrendered goods are valued. In this regard, it is therefore important to note that obtaining an appraisal as part of the repossession or surrender procedure in terms of section 127(2) read with section 131 of the NCA is not to establish a value that is used in determining the consumer's financial obligation in terms of the VAT Act. Rather, this appraisal has no influence on the calculation of output VAT on the deemed supply but is merely a measure that the NCA has introduced to ensure that the credit provider does not sell the repossessed or surrendered goods for far below its actual value, thereby prejudicing the consumer who will

then be liable for a greater shortfall. However, insofar as calculating such consumer's eventual outstanding obligation for purposes of the NCA is concerned, the amount of the valuation of the goods will be taken into account to reduce the outstanding principal debt (s 127(5)).

The difference in amounts used when dealing with repossessed or surrendered goods for purposes of calculating the consumer's outstanding obligations in terms of the NCA and for calculating her VAT obligations under the VAT Act respectively, can be ascribed to the fact that the purpose of establishing the financial obligations in the two Acts is different. Whilst the NCA's provisions deal with calculating the settlement value when goods are surrendered or repossessed, the VAT Act's provisions are concerned with rectifying the output and input tax that was claimed in the original supply of the goods.

However, it should be pointed out that although section 127, which applies particularly to surrendered or repossessed goods, appears not to influence the calculation of the amount on which VAT must be calculated in respect of the deemed supply contemplated in section 10(16) of the VAT Act, there is another provision in the NCA that may be relevant in this context, namely, section 126(3). It appears that section 126(3) may have an impact on the amount used for purposes of calculating the VAT on the deemed supply in terms of section 10(16) of the VAT Act as it sets out a method for allocating payments received by a consumer:

> "(3) A credit provider must credit each payment made under a credit agreement to the consumer as of the date of receipt of the payment, as follows –
> (a) Firstly, to satisfy any due or unpaid interest charges;
> (b) secondly, to satisfy any due or unpaid fees or charges; and
> (c) thirdly, to reduce the amount of the principal debt."

As peremptory wording is used in section 126 of the NCA, the allocation of payments must occur on the date of payment and the principal debt will only be reduced if there are no due or unpaid interests, fees or charges (a similar order of payment is acknowledge in terms of common law in instances where payments are not allocated by the debtor or creditor – see *Standard Bank of South Africa Ltd v Oneanate Investments (Pty) Ltd* 1998 1 SA 811 (SCA) 832f–g). An allocation method ensures that credit providers do not arbitrarily allocate payments and prepayments received by consumers, which results in legal certainty. Furthermore, section 126(3) protects consumers as the payment allocation must be done on the day the payment is received and as such no unnecessary interest accrues.

It is important to consider whether this methodology would apply when calculating the cash value in terms of section 10(16) of the VAT Act to determine the applicable input and output tax. Pertinent to note is that this methodology mandates the allocation of any payments first to interest and then to other charges and fees (which do not form part of the cash value as envisaged by the VAT Act, and which cash value, as pointed out above, is similar to the concept "principal debt" in the NCA, which does not include interest and fees and charges other than those mentioned in section 102). However, as the methodology imposed by section 126(3) results in the principal debt (cash value) being reduced last in this ranking, the cash value associated to the deemed supply when surrender or repossession under the NCA takes place will be more than what would have been the case if another payment allocation method was followed. By virtue of the mandatory allocation of payments received in respect of instalment agreements under the NCA it would thus appear that it would have

the effect that output VAT would be levied on a larger amount than the legislature, from the perspective of the VAT Act, might have intended.

To illustrate the effect that section 126(3) of the NCA may have on determining the relevant VAT consequences, assume that X bought movable goods worth R10 000 by way of an instalment agreement; R1 000 was already due and payable in terms of the agreement and the interest that has accrued is R200. If X pays R500, because of the methodology set out in section 126 of the NCA, the principal debt will only be reduced by R300. Thus, if the consumer is a VAT vendor, she would need to account for R1 265,22 (R9 700 × 15/115) if the goods are repossessed or surrendered. In turn, the credit provider would be able to claim input tax to the value of R1 265,22.

If a different method is used than the one set out in section 126(3) of the NCA, the principal debt amount would be lesser. Using the same example as above, if X's payment of R500 is first allocated to the outstanding and payable principal debt instalment, the overall outstanding principal debt would be reduced to R9 500, which would result in the consumer being liable for output tax to the amount of R1 239,13 (R9 500 × 15/115). Sequentially, the credit provider's input tax claim would be R1 239.13.

Accordingly, this would mean that the consumer, if she is a VAT vendor, would need to account for more output tax and the credit provider VAT vendor would be able to claim more input tax if section 126(3) of the NCA applies.

Considering the possible impact of the section 126(3) methodology on the VAT consequences of an instalment agreement governed by the NCA, it is paramount to scrutinise whether section 126(3) would indeed apply to the VAT calculations. At first glance it may appear that this methodology would not apply to the VAT calculations as section 10(16) of the VAT Act stipulates that the balance of the cash value, that is, the amount remaining after deducting payments made by the debtor, would constitute the consideration. As cash value does not include interest, it appears that for VAT purposes any allocation of payments to interest in terms of section 126(3) should be disregarded. This means that the VAT consequences should only be concerned with what was the initial principal debt less any payments made by the debtor.

In spite of this reference to cash value, a portion of the proviso in section 10(16) of the VAT Act could possibly point towards considering the interest and section 126(3) of the NCA. The relevant portion, dealing with the amount that can be deducted as payments made by the debtor, requires "an apportionment in accordance with the rights and obligations of the parties to the said instalment sale agreement".

As this does not specifically indicate that it only relates to rights and obligations in terms of the VAT Act, it could be argued that when the specific instalment sale agreement is subject to the provisions of the NCA, the NCA's prescribed allocation of payment method would constitute an obligation of the credit provider in terms of the instalment sale agreement. Accordingly, payments made by the consumer would then need to be apportioned in accordance with section 126(3) of the NCA.

If this interpretation is correct it will lead to unintended consequences because section 126(3) of the NCA aims to ensure legal certainty and protect consumers, but when applied in the VAT context, it would be to the detriment of the consumer, who is a VAT vendor, and work in favour of the credit provider VAT

vendor. Given that the consumer would at that time already be in financial distress, the fact that the method of allocation of payments in terms of section 126(3) could add to his financial burden by requiring him to account for a larger amount of output tax on a deemed supply in terms of section 10(16) than would have been the case if section 126(3) did not apply.

5 Conclusions

The contribution highlights the importance of not considering one piece of legislation in isolation. It became clear that there are certain overlaps between the NCA and VAT Act when dealing with credit granted in respect of the sale of goods and possible surrender or repossession of these goods at a later stage. When a consumer buys movable goods by way of an instalment agreement subject to a cooling-off right in terms of section 121 of the NCA, it should also be noted that it has an impact on when a taxable supply for VAT purposes has been made. Moreover, specific VAT rules pertaining to the time and value of supply of goods or services in terms of instalment credit agreements would apply when a consumer acquires movable goods by way of an instalment agreement in terms of the NCA. Whilst the provisions of the NCA and VAT Act pertaining to repossession and surrendering would in most instances be relevant to a credit provider, as it would mostly be registered as a VAT vendor, a consumer will only be affected by the VAT provisions in this regard when the consumer is a registered VAT vendor and not simply an ordinary person on the street.

Although most of the differences between the NCA and the VAT Act in relation to repossession or surrendering can be ascribed to the different perspectives of these pieces of legislation, the allocation of payment methodology could clearly have an impact on the input and output tax associated with the repossession or surrendering of goods. It is favourable for the credit provider as it can claim more input tax, whilst the already "cash strapped" consumer would be liable for more output tax on the deemed supply when surrender or repossession occurs. It is submitted that the legislature did not intend that the methodology should have this result on the VAT consequences. Consequently we recommend that section 126(3) of the NCA should explicitly exclude this methodology from calculating the VAT consequences associated to repossession or surrendering of goods.

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