

The price of advertising vs the VAT Act

An efficient advertising campaign can often be the difference between a successful and an unsuccessful business venture. When advertising the price of a product, however, businesses must be mindful of the provisions of the Value-Added Tax Act 89 of 1991 (VAT Act). This issue recently came up in the matter of Security Outfitters Safe Gear/L Munian/2016-4420F, a ruling handed down by the Directorate of the Advertising Standards Authority of South Africa (ASA Directorate) on 18 November 2016 (Ruling).

By [Louis Botha](#) 28 Nov 2016



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Facts

The complainant, Munian, lodged a consumer complaint against a print advertisement for safety gear clothing sold by the respondent, Over-All Gear CC. The respondent's advertisement featured different ranges of security uniforms, reflective jackets, safety boots and conti suits. At the bottom of the advertisement it stated, among other things, "Prices valid until stocks last. Prices excluding VAT". The complainant objected to the fact that the advertised prices excluded VAT. The respondent submitted, among other things, that it was a registered VAT vendor, is charged VAT in all processes of manufacture or purchasing of stock and is therefore entitled to charge VAT on its prices. For these reasons, the respondent's advertising clearly indicated that its prices exclude VAT, meaning that there could be no confusion. In support of this argument, the respondent made reference to other safety wear companies that excluded VAT and provided a copy of its VAT registration documentation from SARS.

Ruling of the ASA Directorate

In terms of clause 19.4 of section II of the ASA's Advertising Code of Practice (Code), s64 and s65 of the VAT Act have to be considered. Section 64(1) of the VAT Act states that any price charged by a vendor for a taxable supply shall for purposes of the VAT Act be deemed to include any VAT that is to be levied on such supply in terms of s7(1)(a). Section 65 of the VAT Act states that any price advertised or quoted by a VAT vendor must include VAT and the vendor must state in the advertisement or quote that the price includes VAT, unless the total amount of VAT in terms of s7(1)(a), the price exclusive of tax and the price inclusive of tax are advertised or quoted. Importantly, s65 goes on to state that if the VAT vendor decides to advertise or quote the VAT, the price exclusive of VAT and the price inclusive of VAT separately, both prices must be advertised or quoted with equal prominence and impact.

In its ruling, the ASA Directorate referred to its decision in Republic Bus & Truck/W Heckroodt/18961 (2 February 2012), where SARS had clarified, among other things, that the practice of only reflecting a price excluding VAT on an advertisement does not comply with the requirements of s65 and that it is not permissible to quote the price excluding VAT and have a statement that VAT has been excluded. In light of the above authority, the ASA Directorate found that the mere inclusion of a statement to the effect that "prices exclude VAT" is not compliant with the provisions of the VAT Act, which in turn means that

such advertising contravenes clause 19.4 of section II of the Code. The fact that the respondent is registered for VAT and entitled to charge VAT is not relevant to this enquiry.

The ASA Directorate therefore upheld the complaint and made the following order:

- the advertising must be withdrawn;
- the process to withdraw the advertising must be done with immediate effect on receipt of the Ruling;
- the withdrawal of the advertising must be completed within the deadlines stipulated by Clause 15.3 of the ASA's Procedural Guide, which states that the time within which an advertisement must be withdrawn depends on where the advertisement appeared e.g. newspapers, radio etc; and
- the advertising may not be used in its current format.

Comment

In its Ruling, the ASA Directorate noted that the practice of the respondent in this case appears to be relatively widespread in the respondent's industry, but that it cannot impose the Ruling on other advertisers as it can only act on complaints against one advertiser at a time. Taxpayers who are making use of this practice should therefore take heed of this Ruling and amend their advertising accordingly, so as to prevent themselves from being hauled before the ASA at a later stage. Although s58 of the VAT Act does not list the abovementioned practice as an offence for which a taxpayer could pay a fine or face imprisonment, a taxpayer could suffer reputational damage if it is found to have contravened this provision of the VAT Act and the issue becomes public.

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