Dear Sir/Madam

CALL FOR COMMENTS: DRAFT BINDING GENERAL RULING – USE OF PRE-DETERMINED EXCHANGE RATES

We refer to the call for comments on the Draft Binding General Ruling relating to the Use of Pre-determined Exchange Rates (draft BGR). Set out below please find the SAICA National Tax Committee’s submission comments.

The purpose of the draft BGR is to prescribe the foreign exchange rate that must be applied to determine the consideration in Rand (ZAR) for purposes of complying with section 20(4) and 20(5) of the VAT Act No. 89 of 1991, as well as determining the vendor’s output tax liability for a standard rated supply where the consideration was agreed between the contracting parties in a foreign currency.

Comments

1. Paragraph 5 provides that a vendor is required to issue a tax invoice within 21 days of the date of supply and the exchange rate to be used must be the daily rate as published on the
South African Reserve Bank website. Although we are in agreement that the time of supply in the draft BGR is aligned with the legislation, we wish to comment on the potential practical difficulties this may create.

Where the time of supply is not the same date as the date on which the tax invoice is issued the South African Revenue Service (SARS) will find it difficult to audit the transaction. From a practical point of view and for consistency purposes it is proposed that the date the tax invoice is issued be used as the conversion date provided the tax invoice is issued, as required by the legislation, within 21 days of the actual date of supply. In most cases the issue of an invoice will trigger the time of supply.

2. Due to the fact that certain taxpayers may not have applied the principles as set out in this draft BGR to date and as systems may create difficulties for vendors to comply, we request SARS to consider the inclusion of a transitional arrangement where taxpayers can, if required, agree on an individual basis with SARS, a reasonable implementation date to provide for any system developments or enhancements that may be required.

In considering this request SARS should take cognisance of the fact that any extension of the implementation date for a period would not result in any financial gain or loss to SARS as the transactions impacted by this draft BGR are as far as we are aware limited to supplies between vendors where the recipient entity would be entitled to a full input tax credit. We accept that SARS may not consider any delay in implementation where the supplying entity is supplying goods or services where the recipient entity would not be entitled to an input tax credit or where the input tax credit may be limited.

3. In addition we request that guidance is provided in the draft BGR to cater for those circumstances where vendors have entered into contracts providing for a pre-determined exchange rate to be used to convert the foreign currency to ZAR. In these cases the parties would have entered into a contract which provides for the consideration for the supply in ZAR to be determined using a pre-determined exchange rate which arguably is contrary to what is required by law.

Clear guidance would need to be provided to ensure that both parties accept any changes that would need to be made to the contract. It is proposed that a transitional period of 6
months should also be allowed in these circumstances to allow for processes to be implemented and for the necessary amendments to contracts to be effected.

Please do not hesitate to contact us, should you have any questions regarding the above.

Yours faithfully

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