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Submission File

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South African Revenue Service
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PRETORIA
0001

BY E-MAIL: policycomments@sars.gov.za

COMMENT ON DRAFT REGULATIONS ISSUED IN TERMS OF SECTION 74(1) READ WITH SECTION 23(3)(B)(II) OF THE VALUE-ADDED TAX ACT, 1991 (ACT NO. 89 OF 1991)

Dear Sir/ Madam,

We refer to the call for comment on the above-mentioned Draft Registration Regulations issued in terms of section 74(1) read with section 23(3)(b)(ii) of the Value-Added Tax Act, No. 89 of 1991. Set out below is SAICA National Tax Committee’s comments on the Draft Registration Regulations.

Introduction

The Draft Regulations deal with the application of sections 23(3)(b)(ii) and 23(3)(d) of the VAT Act. More particularly the Regulations deal with:

- The specific proof that a person must provide in order to be successfully registered.
- The requirements that must be met by a person applying for voluntary registration as a vendor under section 23(3)(b)(ii) of the VAT Act.
- The prescribed activities that would constitute an activity for which a long lead-time is normally experienced before any taxable supplies can be made under section 23(3)(d) of the VAT Act.
The comments to follow directly address the objectives of the draft Regulations.

**Section 23(3)(b)(ii) of the VAT Act**
The proof required should satisfy the Commissioner for SARS that the person will make taxable supplies with a value of at least R50 000 in the 12-month period after registration.

**Paragraph 2(2) of the Draft Regulation**
In principle we agree with the R4 200 turnover level per month test. We however put the following forward for your consideration:

- The application of the two and seven month test is not clear. Must it be two/seven consecutive months, or can any two months in the seven-month period be used for the computation of the average turnover? We recommend that this issue be clarified to avoid the use of exceptionally high turnover months as a basis to affect a registration without a reasonable expectation of the trend continuing.
- We further recommend that clarity be provided on the computation of the value of supplies for the purposes of the value of supply registration threshold determination. Does the R4 200 include VAT or is the value of supplies the actual amount charged to recipients prior to being registered for VAT?

**Paragraph 2(5) & (6) of the Draft Regulation**

*General*
We do not believe that these tests are necessarily indicative of a reasonable expectation to make taxable supplies with a value of R50 000 in the next 12-month period. In our view it merely indicates that the person has incurred debt or will incur expenses in the future. There is, in our opinion, not a close enough link to the expected revenue and the costs/debt incurred to warrant a deduction of future revenue. At best it can be said that there is an expectation of potential revenue if everything works out as planned.

Section 23(3)(d) requires that the activities be listed in the Regulation. The activities are not listed in the Regulation. The briefing note lists these activities, but they are not referred to in the Regulation itself.
Consideration should be given to adding enterprises that conduct significant levels of research and development with the aim of developing a saleable solution to the list of qualifying activities.

**PARAGRAPH 2(5)**

Paragraph 2(5) of the proposed draft regulations specifies which persons finance agreements may be entered into, i.e. banks registered in terms of the Bank Act, credit providers as defined in the national Credit Act or any designated entity, public authority or any other person who continuously or regularly provides finance. A large number of projects are funded by foreign investors who are not banks registered in terms of the Bank act, credit providers as defined in the National Credit Act, or any designated entity, public authority or any other person who continuously or regularly provide finance. As it is, the South African economy is stagnating and is dependent on direct foreign investment. The proposed financing requirements as set out in this paragraph will have a negative impact on direct foreign investment, which is stagnant at present as noted by the Minister of Finance in the 2014 budget commentary document in which he stated that “(N)et foreign direct investment in the first three quarters of 2013 was R29 billion, unchanged from its level during the same period in 2012. Direct investment was largely driven by international firms expanding through their domestic subsidiaries, but also reflected rising interest in renewable energy, automotive equipment and financial services.” (Our emphasis).

Care should be taken to ensure that the regulations do not frustrate the efforts of much needed potential investors.

**PARAGRAPH 2(6)**

Paragraph 2(6)(a)(ii) of the proposed draft regulations deal with situations where expenditure has been incurred and capital goods have already been acquired and the vendor is able to produce proof of payment or an extended payment agreement. Paragraph 2(6)(b) then states that “the total annual repayment of items contemplated in sub-paragraph (6)(a)(i) and (ii), where applicable, will in the following 12 months reckoned from the date of registration exceed R50 000.” The term “repayment” is not used in sub-paragraph (6)(a)(i) and (ii). It is therefore not clear whether this requirement only applies where an extended payment
agreement has been entered into as provided for in sub-paragraph (6)(a)(ii). If not, then vendors who incurred expenditure to acquire capital goods for cash are technically not able to register as for value-added tax purposes.

Paragraph 2(1)(g) in the briefing note deals with infrastructure development and it seems to apply mainly to buildings or similar permanent installations and structures. It is not clear if the infrastructure development referred to here also include infrastructure development related to renewable energy projects, electricity generation projects such as wind farm developments or photovoltaic power farms, to name but a few which are capital intensive to construct and the completion phase of which often exceed 12 months from the date of development. A broad definition or more detailed explanation is required. Care should also be taken to ensure that the regulations do not frustrate the efforts of much needed potential investors in broad infrastructure development projects.

We further recommend that the regulation be reviewed on an on-going basis to add further qualifying activities in the future where appropriate.

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

Yours faithfully

Piet Nel CA(SA)
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The South African Institute of Chartered Accountants