Dear Sir/Madam

CALL FOR COMMENTS: DRAFT VAT INTERPRETATION NOTE 49 – DOCUMENTARY PROOF

We refer to the call for comments on the above mentioned Draft VAT Interpretation Note (“draft IN”). Set out below please find the SAICA National Tax Committee’s submission comments.

Introduction
This submission provides inputs on the draft VAT Interpretation Note 49 (issue 2) dealing with documentary proof required in terms of section 16(2) to substantiate a vendor’s entitlement to input tax or a deduction as contemplated in section 16(3).

Paragraph 5: Documentary proof
It would be useful if the draft IN could expand on what is meant by a “statement” in terms of section 54(3). In some instances where a group company is acting as the agent, all the information is readily available in the centralised accounting system of the group, and it would be meaningless to generate a separate document summarising the information which is already available to the principal. In such case it would make sense for the financial records of the agent to comprise the “statement” as contemplated by section 54(3).
The reference to section 20(7) in the second paragraph is incorrect and should read section 20 to include all the subsection of that section. The paragraph should also include a reference to section 21(3).

**Paragraph 5.1: Commissioner’s discretion**

With regard to Items G and H and the proposed new Item I, the Commissioner has a discretion in terms of section 16(2)(f) of the VAT Act to consider any other documents that may be submitted as substantiation for the vendor’s entitlement to claim input tax.

We recommend that reference to the Commissioner’s discretion be included under this paragraph.

**Paragraph 5.1 Table A Item A: Repossessions**

An asset repossessed under an instalment credit agreement is deemed by section 8(10) to be a supply by the debtor to the person exercising his right of possession, even if the debtor is not a vendor.

Par (c) of the definition of input tax includes the tax fraction of the consideration deemed by section 10(16) to be the consideration for the deemed supply.

The person exercising his right of possession is therefore entitled, in terms of section 16(3)(a)(i) of the VAT Act to claim such VAT as a deduction.

Section 20(1) of the VAT Act excludes a debtor, being a vendor, who is deemed to make a supply in terms of section 8(10), from the obligation to issue a tax invoice.

In summary therefore, a deduction for VAT on repossessions is claimed in terms of section 16(3)(a)(i) and not section 16(3)(a)(ii)

Table A Item A should therefore be amended to clarify that no tax invoice is required in the case of goods repossessed.
Paragraph 5.1 Table A Item C: Repossessions
Table A Item C par (c) should be amended to remove the reference to goods repossessed.

Paragraph 5.1 Table A Item E: Fixed property
We recommend that Table A Item E be amended to stipulate that proof of payment is also required.

Paragraph 5.1 Table A Item F: Importation of goods
Section 16(3)(a)(iii) provides that an amount may be deducted during a tax period if the amount was charged in terms of section 7(1)(b) in respect of goods imported into the Republic, and such amount was invoiced or paid, whichever is the earlier.

An invoice is defined as any document notifying an obligation to make payment. Accordingly, the Bill of Entry processed by the SARS Customs division will comprise an “invoice” as contemplated by section 16(3)(a)(iii).

Where a vendor is therefore registered for VAT on an invoice basis, the vendor qualifies for a deduction of import VAT paid in the tax period in which the Bill of Entry is processed by the SARS Customs division.

However, section 16(2)(d) provides that a vendor may not claim a deduction for VAT unless a Bill of Entry and the receipt of payment of the VAT is held by the vendor making the deduction, or by the vendor’s agent, at the time the VAT return in respect of the importation is furnished.

Where SARS has entered into an agreement with the vendor or with the vendor’s agent in terms of which the vendor or the vendor’s agent is allowed to defer the payment of the import duties and VAT, it is possible that the vendor or the vendor’s agent may not have the receipt of payment of the import VAT at the time the VAT return in respect of the importation is submitted.

There is therefore a clear discrepancy between the provisions of section 16(3)(a)(iii) which clarifies the tax period in which an input tax deduction may be claimed in respect of the

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1 Section 1, definition of “invoice”
importation of goods into the Republic, and section 16(2)(d) with regard to the documentation required to substantiate the input tax deduction in instances where SARS, by contractual agreement with the vendor or the vendor’s agent, allows for the deferment of the payment of the import VAT.

Paragraph (b) of Item F should therefore be amended to stipulate that the requirement for proof that the import VAT was paid will only be required in instances where the vendor or the vendor’s agent does not have a valid deferment arrangement with the SARS.

**Paragraph 5.1 Table A Item H: Debit and credit notes and irrecoverable debts**
We recommend that this item be split into two separate items, i.e. Item H dealing with debit and credit notes, and Item I dealing with irrecoverable debts, to make it clear that for section 21(2)(b) and section 21(7) the credit note and debit note respectively is required, and for irrecoverable debts claimed in terms of section 22(1) and 22(1A) the information as set out in paragraph (a) and (b) of Item H is required. For a deduction in terms of 22(4), the vendor would require proof that the VAT was paid as output tax in terms of section 22(3), and the proof of payment of the consideration or a portion thereof.

It is unclear what is required to prove that the VAT was charged and declared in a VAT return. Would a vendor require a copy of the VAT return and supporting schedules reflecting the specific line item or would an extract from the account showing the tax coding be sufficient? This will create a substantial administrative burden for large companies.

**Paragraph 5.2: Commissioner’s discretion**
We recommend that reference to the Commissioner’s discretion in terms of section 16(2)(f) of the VAT Act be included under this paragraph.

**Paragraph 5.2 Table B Item A: Repossessed goods**
Table B Item A should be amended to clarify that no tax invoice is required in the case of goods repossessed (see paragraphs above).
Paragraph 5.3 Table C Item A: Indemnity payments
This item should be clarified with regard to the first bullet point in that the insurer is entitled to claim a deduction in the case of a reinstatement or replacement of the goods if the insurer is in possession of a tax invoice issued by the supplier.

Paragraph 5.3 Table C Items E and G: Adjustments
These items should be amended to stipulate that the information required under paragraph (c), i.e. the calculation of the amount, is also required for claims for periods less than 5 years preceding the date of the adjustment.

It is unclear what would constitute acceptable proof of the open market value. Is a tax invoice necessary? There is no time restriction for output tax? Why the time restriction for input tax? (Section 18(4))

Paragraph 5.3 Table C Items I: Properties in possession
We recommend that paragraph (a) under the “Unrecovered loan balance” be amended to be more specific as to what is meant by “accounting records” and/or to include the debtors ledger account.

It is unclear what would constitute proof that the defaulter is not and will not be held liable for payment of the outstanding amount. Also, Banks hold debtors liable over a long period of time.

Paragraph 6
Please see the comments with regard to the payment of the import VAT.

Other general comments
The draft IN currently does not deal with the documentary requirements where supplies are made to/on behalf of agents or principles as envisaged in section 54 of the VAT Act. Common examples in practice are where cellular phone contracts are in the names of employees as agents for an undisclosed principal (the employer), expenses incurred by employees on behalf of employers and subsequently reimbursed by employers to employees (for example parking fees, toll fees, subsistence fees while being away overnight on business, etc.), etc. In practice obtaining the required documentation in compliance with the VAT Act
(especially the VAT registration number requirement) is often challenging, notwithstanding the fact that the supplies are clearly consumed by the vendor in the course of its enterprise.

The draft IN does not deal with the documentary requirements to claim a deemed input tax credit on the repossession of goods supplied under an instalment credit agreement (paragraph (c) of the definition of input tax in section one of the VAT Act).

The subject of the draft IN reads: “Documentary proof required in terms of section 16(2) to substantiate a vendor’s entitlement to “Input Tax” or a deduction as contemplated in section 16(3)”’. We recommend that the subject be changed to read: “Documentary proof required in terms of section 16(2) to substantiate a deduction of Input Tax”. This is because a vendor’s entitlement or permission to claim input tax is provided for in section 17 of the VAT Act.

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

Yours faithfully

Piet Nel CA(SA)                     Muneer Hassan CA(SA)
PROJECT DIRECTOR: TAX               SENIOR EXECUTIVE: STANDARDS

The South African Institute of Chartered Accountants