Dear Sir/Madam

SUBMISSION: DRAFT BINDING GENERAL RULING (VAT) THE VALUE-ADDED TAX TREATMENT OF THE SUPPLY AND IMPORTATION OF VEGETABLE OIL

Introduction

1. Thank you for affording the South African Institute of Chartered Accountants the opportunity to provide our feedback and inputs on the above matter.

2. Below are our comments. You are welcome to contact us should you wish to clarify any issue.

Background

3. Item 14 of Part B of Schedule 1 to the VAT Act lists the following item qualifying to be supplied at the zero-rate:

   “Vegetable oil marketed and supplied for use in the process of cooking food, but excluding olive oil.”

4. The two critical requirements to qualify to supply or import vegetable oil at the zero-rate are therefore (1) that it must be marketed for use in the process of cooking and (2) that it must be supplied for use in the process of cooking food.

5. The draft binding general ruling seeks to set the parameters within which the requirements would be regarded as having been met.

Comments

Paragraph 2.1 – “For use” requirement

6. The second paragraph under paragraph 2.1 of the draft BGR states that:
“In order for the zero-rate to apply, the oil must be a “vegetable oil” that is marketed and supplied in the process of cooking food.” (our underlining).

7. The test that Item 14 contains is that the vegetable oil must be “marketed and supplied for use in the process of cooking food…” (our underlining).

8. The distinction may on the face of it seem insignificant, but on closer scrutiny the distinction becomes very important.

9. “For use” means that the onus is on the supplier to only sell vegetable oil to recipients that intend using the oil for cooking purposes. This onus in our opinion an unfair onus placed on the supplying vendor, as Item 14 does not contain any presumption as to use.

10. It is this fundamental flaw in the legislation that causes the difficulty in applying the rules in practice as the supplying vendor could never truly determine the motive of the purchasing vendor.

11. Submission: It is submitted that SARS should express some view on the matter and interpretation that can assist in making this a practical requirement. And reduce the supplying vendors risk by providing certainty.

Paragraph 2.1 – Deemed by display

12. The second paragraph under paragraph 2.1 of the draft BGR further states that:

“There is no specific legislation that requires vegetable oil to be labelled as oil for use in the process of cooking food. As a result vegetable oil that is displayed with other cooking oils will be regarded as being supplied and marketed for use in the process of cooking oil”.

13. This pragmatic approach is welcomed though some concerns still do remain as to how strict SARS will implement this and what justification will be needed for the exception in practice.

14. However concern is expressed in for example the wholesale to retailer space which the BGR does not deal with. For example where a wholesaler displays vegetable oil together with (say) furniture oil on bulk to retail outlets, the supply of the vegetable oil will not qualify to be zero-rated due to its proximity with the furniture oil.

15. A further example is stock displayed with other items as promotional sales. Does that mean when the sales are paid for at the outlet, the point of sale register must be set up for two VAT rates applicable to the sale of the exact same product, the rate being determined with reference to the aisle where the client picked up the product?
16. **Submission**: The following amended wording is proposed: “There is no specific legislation that requires vegetable oil to be labelled as oil for use in the process of cooking food. As a result vegetable oil that is displayed for retail sale with other cooking oils will be generally regarded as being supplied and marketed for use in the process of cooking oil unless the vendor…….”

17. **Submission**: Some guidance and clarity is also needed for wholesale sale.

**Paragraph 2.1. – Documentary proof**

18. The third paragraph under paragraph 2.1 of the BGR determines that the vendor must obtain and retain documentary proof substantiating the vendor’s entitlement to the zero-rate.

19. If the physical location of the vegetable oil plays a role in the determination of the VAT rate to be applied, on what basis should the supplying vendor dispose of the onus of proof (close circuit TV to see where the client picked up the oil). This same concern applies to the “for use” requirement discussed above.

20. **Submission**: SARS should provide practical guidance as to how vendors will meet this requirement.

**Paragraph 2.2(a) – Proximity test**

21. This is a good example of the interpretational difficulties caused by the flawed legislation.

22. The proximity with other products cannot be a persuasive indicator of the intended use or the purpose for which the products are marketed.

23. At best is could be an indicator of consumer behaviour, which is a scientific field of research often completely delinked from the ultimate application to which consumer put goods.

**Conclusions**

24. In our opinion a policy decision should be made to either remove the zero-rate completely (in line with the Davis Tax Commission’s recommendation of reducing the number of zero-rated categories of supplies), or the zero-rating of pure vegetable oil should be zero-rated unconditionally as the current legislative requirements place an unreasonable obligation on the supplying vendor.

Yours sincerely

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