11 August 2010

South African Revenue Service
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PRETORIA
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BY E-MAIL: YMiller@sars.gov.za

Dear Madam

VALUE-ADDED TAX (“VAT”) – DIFFICULTIES IN APPLYING FOR REGISTRATION

Through the SAICA National Tax Committee and the VAT Sub-Committee, we wish to draw your attention to the difficulties currently being experienced with VAT registration applications, in respect of both compulsory and voluntary VAT registrations, where the level of taxable supplies is based on the projected/expected taxable income as demonstrated by cash flow projections or business plans.

In this regard, we have set below the challenges that we have had when submitting applications for VAT registration on behalf of our clients.

Background

As a general rule, the Value-Added Tax Act No. 89 of 1991 (“VAT Act”) provides that any person carrying on an ‘enterprise’, as defined, and whose taxable supplies exceed or are likely to exceed a value R1 million in any period of twelve months is liable to register as a vendor for VAT purposes. Registration under the circumstances would comprise compulsory VAT registration.

Alternatively, any person who carries on any enterprise whose taxable supplies exceed or are likely to exceed R50,000 but less than R1 million in any period of twelve months may apply for voluntary registration as a VAT vendor. The VAT legislation thus envisages that VAT registration may be based on the expectation of future taxable supplies, but does not provide guidance on the information required to satisfy SARS of the expected level of those taxable supplies for a person looking to obtain VAT registration. Accordingly, in the absence of the guidance in the VAT legislation, SARS has thus issued guidance on the information and the documentation required as evidence of projected/expected taxable supplies.
In this regard, SARS has in the past accepted business plans and feasibility study reports as proof of projected revenue streams for VAT registration purposes. However, we have observed that currently SARS is no longer accepting business plans or budget forecasts as proof of the level of expected taxable supplies.

In fact, SARS has issued a notice to ‘Tax Practitioners’, dated 30 March 2010 which specifically states that SARS will not accept the following documentation for VAT registration purposes:

- Cash flow projections;
- Business plans;
- Tender proposals (prior to tender being awarded); and
- Ambitious non-factual plans.

**Legal Principles**

In terms of section 23 (1) (b) of the VAT Act, every person who, on or after the commencement date, carries on any enterprise and is not registered, becomes liable to be registered at the commencement of any month where there are reasonable grounds for believing that the total value of the taxable supplies to be made by that person in the period of 12 months reckoned from the commencement of the said month will exceed R1 million.

Section 3(d) of the VAT Act provides that notwithstanding the provisions of subsections (1) and (2), every person who satisfies the Commissioner that, on or after the commencement date that person is continuously and regularly carrying on an activity which, in consequence of the nature of that activity, can reasonably be expected to result in taxable supplies being made for a consideration only after a period of time and where the total value of taxable supplies to be made can reasonably be expected to exceed R50,000 in a period of 12 months may apply to the Commissioner for registration in such form as the Commissioner may direct and provide the Commissioner with such further particulars and any documentation as the Commissioner may require in such form for the purpose of registering that person.

**The Challenges**

As noted above, SARS has in the past relied on information such as business plans, feasibility studies, signed contracts, franchise agreements, projections, or other kind of proof indicating that the consideration for taxable supplies within a twelve month period by the person seeking VAT
registration was likely to exceed the R1 million threshold.

However, in an effort to prevent fraudulent registrations, SARS’s criterion for determining projected taxable supplies has been modified and hence VAT registration for applications accompanied by financial information such as business plans, cash flow projections, tender proposals (prior to tender being awarded) and ambitious non-factual plans have recently been denied.

Furthermore, the changes have also been extended to voluntary registrations and SARS now requires applicants to reach the annual threshold for taxable supplies of R50 000 prior to submitting an application for voluntary registration.

In our view, these requirements do not comply with the provisions of the VAT Act which clearly provides for the application for VAT registration, where the applicant has reasonable grounds for believing that its taxable supplies will exceed or is likely to exceed R1 million in case of compulsory registration or R50,000 in case of voluntary registration.

Accordingly, whilst the Commissioner for SARS has the discretion of setting out the documentation required as proof of expected level of taxable supplies, it is our view that providing a prescriptive list of documents that are not acceptable as proof of expected turnover is contrary to the intention of the VAT legislation. Our view is based on the fact that the documents listed by SARS, including feasibility reports, cash-flow plans and tender documents are commercial documents generally accepted for business planning purposes. SARS needs to consider each case on its own merits as opposed to applying a prescriptive list of documents. SARS also needs to take cognisance that in certain instances an applicant for VAT registration is not in a position to enter into agreements for the supply of goods and services prior to certain registration formalities, but that does not necessarily imply a fraudulent registration for VAT purposes.

Further, it is our view that SARS’s insistence on taxable supplies prior to processing application for VAT registration is also contrary to the definition of an ‘enterprise’ as defined in the VAT Act, which inter alia is to the effect that anything done towards the commencement or termination of an enterprise is deemed to be part of the enterprise. For instance, SARS denying a game lodge VAT registration during its start-up/construction phase on the basis that it is yet to commence ‘trading’ is contrary to the intention of the VAT legalisation.

It is acknowledged that in certain instances it may be appropriate not to register entities that are still in the process of tendering for particular work, but the decision to register a person in this position should be considered based on all the information provided to SARS and not just the tender proposal document.
Request

We request that SARS revises its Notice 08/2010 to exclude the section that precludes VAT registration applicants from relying on cash-flow projections, tender documents and business plans as proof of taxable turnover. It is our view that SARS should assess each and every VAT registration application on its own merits and not rely on a prescriptive list that does not necessarily take cognisance of commercial realities.

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

Yours faithfully

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