Dear Sir/Madam

SUBMISSION: DRAFT BINDING GENERAL RULING (BGR) ON ALTERNATIVE DOCUMENTARY PROOF ACCEPTABLE TO THE COMMISSIONER TO SUBSTANTIATE A VENDOR’S ENTITLEMENT TO A DEDUCTION UNDER SECTION 16(3)

Please find below our response to the request for comments on the draft BGR on alternative documentary proof acceptable to the Commissioner to substantiate a vendor’s entitlement to a deduction under section 16(3).

Background

1. Section 16(2)(g) was introduced into the VAT Act after the South Atlantic Jazz Festival judgment highlighted some of the practical difficulties experienced by recipient vendors where suppliers do not comply with documentary requirements contained in the VAT and Tax Administration Acts.

2. The section reads as follows:

“No deduction of input tax in respect of a supply of goods or services, the importation of any goods into the Republic or any other deduction shall be made in terms of this Act, unless…in the case where the vendor, under such circumstances prescribed by the Commissioner, is unable to obtain any document required in terms of paragraph (a), (b), (c), (d), (e) of (f), the vendor is in possession of documentary proof, containing such information as is acceptable to the Commissioner, substantiating the vendor’s entitlement to the deduction at the time a return in respect of the deduction is furnished.” (Our emphasis)

3. The main difficulty, in practice, is experienced with regards to the issuing of tax invoices or the information reflected on tax invoices where tax invoices are issued. This is very
prevalent where vendors deal with, for example, local councils. Changing invoicing
details to new recipients of supplies made by local authorities is challenging in practice
and often takes prolonged periods of time to affect.

4. In our opinion, the introduction of section 16(2)(g) of the VAT Act should have assisted to
address these practical difficulties.

Specific disclosure requirements

Paragraph 2.1.1(ii)

5. The practical application of the requirement that the identity of the recipient’s VAT
registration number and name must be available needs to be clarified.

6. The physical recipient of the supply will have its own VAT registration number and name. The challenge in practice arises where the supplier continues issuing documentation in
the name of another person, which often happens in the case of municipal accounts. An
example is where the invoice is issued to a tenant (as recipient of the relevant supply). When the tenant changes, the supplier’s system may not be updated timeously and the
tax invoice may still be issued in the name of the previous tenant reflecting that person’s
VAT registration number and details, instead of being issued in the name of the new
tenant and new recipient of the related supply.

7. In our opinion the tax invoice will be *prima facie* evidence that the supply has been made
to the recipient reflected on the tax invoice issued. The onus would be on the vendor to
prove that the supply has been made to the vendor.

8. In our opinion, the amendment to section 16(2) was aimed to overcome such practical
challenges. This does not appear to have been achieved based on the current wording of
the BGR.

Paragraph 2.1.2

9. If the requirements contained in the draft BGR are compared to the requirements of
section 20(8) of the VAT Act, they appear to be identical in most respects.

10. This makes sense if regard is had to the fact that the practical difficulties relate to taxable
supplies where tax invoices are involved, but may be confusing for some readers.

11. We recommend that this issue be dealt with more fully in the “Purpose” paragraph of the
draft BGR (paragraph 1). The purpose should be to determine the qualifying
circumstances and link the required documentation to the circumstances.
12. With regards to paragraph 2.1.2(a) of the draft BGR, we noted that SARS is of the view that the identity of the non-registered supplier can be confirmed with a copy of that supplier's identity document OR a copy of the supplier's driver's license. Based on our understanding, there is no clear indication on a person's driver's license to establish whether the holder is a resident of the Republic. Furthermore, section 20(8) only makes reference to an identity document in the case of a natural person and a business letterhead (or similar document) in all other cases. Accordingly, we recommend that SARS provides clarity in this regard.

Paragraph 2.2

13. The paragraph deals with alternative documentary proof in respect of a deduction as contemplated in section 16(2)(d) – (f).

14. In practice, documentary challenges often only arise after a transaction has been concluded.

15. We therefore recommend that the Commissioner be allowed to grant backdated rulings, provided that the circumstances resulting in the challenges fall within the circumstances “prescribed by the Commissioner”.

Yours sincerely

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