Dear Sir/Madam

CALL FOR COMMENT: VAT DRAFT INTERPRETATION NOTE: SECTIONS 20(1), (2), (4), 21(1), (2) AND (4), RECIPIENT-CREATED TAX INVOICES; DEBIT NOTES OR CREDIT NOTES

We refer to your call for comment regarding the above-mentioned document that was placed on your website. Set out below please find SAICA VAT-sub-committee’s (a sub-committee of SAICA’s National Tax Committee) submission.

General comments
We welcome this Interpretation Note(IN) and the status of the self-invoicing rules as a Binding General Ruling. This will assist businesses’ ability to perform various business operations effectively.

A significant part of the draft IN deals with the general requirements of tax invoices and related issues. We recommend that consideration be given to dealing with these issues more crisply (possibly with reference to other practice/interpretation notes dealing with the subject matter of tax invoices, credit and debit notes).

We further recommend that the extensive reference to sections in the VAT Act be removed from the main body of the draft IN and be incorporated as an addendum.

We lastly recommend that the IN deals with the consequences for vendors incorrectly applying self-invoicing based on their incorrect understanding of the IN. A possible solution could be a requirement of businesses to advise SARS if they apply self-invoicing, without the need for formal approval by SARS. This will assist SARS to identify possible deviations from SARS’ interpretation of the rules timeously and communicate interpretational difficulties to the larger vendor base.
Specific comments

Paragraph 3 – The law
With reference to section 20(2)(c) of the Value-Added Tax Act, No 89 of 1991 ("the VAT Act"), it is noted that the recipient which created a tax invoice/debit note/credit note is required to retain a copy of the tax invoice/debit note/credit note. The VAT Act does not specify that the copy tax invoice/debit note/credit note needs to clearly reflect that it is a "copy" for VAT purposes. The Draft also does provide any clarity regarding this important issue.

Third last paragraph of paragraph 4.1
The paragraph states that “circumstances exist where the supplier is unable to issue a tax invoice due to circumstances beyond the supplier’s control.” In our opinion self-invoicing should also apply in circumstances where it is impractical for the supplier to issue the tax invoice/credit note. This will assist with operational efficiencies which will benefit all stakeholders.

Paragraph 4.3 – Rebates
We accept that the issue of rebates and credits is complex and a detailed discussion is beyond the scope of the Draft IN. Consideration should however be given to broadening the ambit of self-invoicing to allow the parties to the transactions to elect whether to go the tax invoice or credit note route. This treatment will pose no risk to the Commissioner and will avoid unnecessary disputes between SARS and taxpayers.

The third sub-paragraph states that "(H)owever, where the “rebates” are payment for a separate taxable supply of services by the customer to the supplier, the customer is required to …". We are of the opinion that the current wording is confusing and should be amended to read as follows:

"(H)owever, where the “rebates” are payment for a separate taxable supply of services by the customer to the supplier, the customer, if a vendor, is required to …" (proposed amendment included in bold).

Examples
It will be most useful if examples which deal with rebates are included in the Interpretation Note. We recommend that one or two examples be inserted indicating circumstances where self-invoicing would not be appropriate or where the Commissioner’s specific approval would be required.

Please do not hesitate to contact me should you wish to discuss the above.

Yours faithfully

M Hassan CA (SA)
PROJECT DIRECTOR: TAX
The South African Institute of Chartered Accountants