27 May 2009

South African Revenue Service
Private Bag X923
PRETORIA
0001

BY E-MAIL: policycomments@sars.gov.za

Dear Sir/Madam

COMMENTS ON THE DRAFT INTERPRETATION NOTE: DOCUMENTARY PROOF REQUIRED TO CLAIM INPUT TAX OR OTHER DEDUCTIONS IN TERMS OF SECTION 16(2)

We refer to the above-mentioned call for comment. Set out below please find SAICA VAT-sub-committee’s (a sub-committee of SAICA’s National Tax Committee) submission.

Table A – Item B
A vendor who acquires second-hand goods from a non-registered vendor is required to, where the value of the supply to him is in excess of R1 000, obtain and maintain a declaration (on a VAT 264 form) from the supplier that states whether or not the supply is a taxable supply. Kindly provide clarity on whether this declaration must be on a VAT 264 form or whether it may be in another format such as a written declaration signed by the supplier.

Table A – Item C
A vendor who acquires fixed property and wants to claim a deduction under the provisions of section 16(3)(a)(ii)(bb)(A) may claim an input tax deduction in the tax period in which the transfer duty has been paid in full. The deduction is further limited to the amount of transfer duty paid in terms of paragraph (i) to the Proviso to paragraph (b) of the definition of “input tax” in section 1 of the VAT Act. According to the Draft Interpretation Note only the records as is required for the acquisition of second-hand goods are required in order to claim a deduction under the said provision. This does not, however, provide any evidence that the transfer duty has been paid in part or in full and neither does it indicate the extent of the transfer duty paid.

We therefore propose that, in addition to the documents set out in the Draft Interpretation Note, the vendor retain a copy of the Transfer Duty Receipt.
Table C – Item G
There are 5 items listed as documentary proof required. We do not understand the motivation/reasons for these documentary requirements as in these circumstances the vendor is in effect "supplying" itself and would not generally generate some of the documents noted.

Section 16(3)(h) of the VAT Act allows a vendor to claim a deduction in respect of goods which are deemed to be supplied by the vendor wholly in the course of his enterprise. Since the vendor is required to perform a calculation to determine the amount of input tax claimable, we propose that the vendor retain a copy of the calculation as well as proof of any amount previously claimed, if applicable.

Table C – Item L
A vendor is deemed to make a taxable supply under the provisions of section 8(27) of the VAT Act if he received an excess amount in respect of a taxable supply made by him if that excess amount has not been refunded within four months of receipt. If the vendor subsequently refunds this amount, a deduction is available under section 16(3)(m) of the VAT Act. The Draft Interpretation Note indicates that the documents that are required are (a) “proof of payment of the refund the of the amount…” and (b) “proof of refund made to customer…”. This appears to be one and the same, i.e. proof that the amount was refunded by the vendor to the client/customer.

In this regard we propose that the following documents be retained:

1 proof that output tax has indeed been accounted for on the excess amount received;

2 proof that the excess amount has subsequently been refunded to the customer.

Input tax on imported goods
The conclusion of the Draft Interpretation Note indicates that the time of supply for imported goods is “the period during which the VAT on importation is paid”. We are of a different view, as discussed below.

Section 16(3)(a)(iii) allows a vendor to claim a deduction of input tax in respect of goods imported into the Republic in the earlier tax period in which the vendor is invoiced or he has paid for the goods. Section 16(2) of the VAT Act, however, requires that the vendor hold a bill of entry or other document prescribed in terms of the Customs & Excise Act together with the receipt for the payment of the tax at the time that any return in respect of that importation is furnished. The foreign supplier will generally invoice the vendor for the supply of the goods either before the goods arrives in the Republic or at the time that the goods arrive in the Republic. The requirement remain, however, that the goods must have been imported into the Republic in order for the vendor to claim the deduction.

In terms of section 13(1) goods are deemed to be imported into the Republic when it is cleared and entered for home consumption. It is therefore our view that the vendor may claim a deduction in respect of goods imported into the Republic in the tax period in which it was imported, i.e. in the tax period in which it was cleared and entered for home consumption, provided that the vendor holds the bill of entry and proof that the tax had
been paid by the time that the return in respect of that tax period is furnished, i.e. generally by the 25\textsuperscript{th} of the following month.

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

Yours faithfully

M Hassan CA (SA)

\textbf{PROJECT DIRECTOR: TAX}

\textit{The South African Institute of Chartered Accountants}