Ref: #263568

15 May 2009

South African Revenue Service
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PRETORIA
0001

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

Dear Sir/Madam

DRAFT INTERPRETATION NOTE NO. 31 (ISSUE 2) VAT: DOCUMENTARY PROOF REQUIRED TO SUBSTANTIATE A VENDOR’S ENTITLEMENT TO APPLY THE ZERO RATE TO THE SUPPLY OF GOODS OR SERVICES IN TERMS OF SECTION 11(3)

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.

Introduction
We have reviewed the Draft Interpretation Note No. 31 (issue 2) (hereafter referred to as “the Draft IN”).

The Draft IN does not specifically indicate whether or not it replaces VAT Interpretation Note No. 30 (Issue 2). There are however a number of conflicting documentary requirements between the two Interpretation Notes. There are also a number of critical issues dealt with in VAT Interpretation Note No. 30 that are not dealt with in the Draft IN. It is therefore critical that the status of VAT Interpretation Note No. 30 (issue 2) be clarified.

Conflicting issues between the Interpretation Notes
The main areas of conflict are between the required categories of documentation required to be obtained and retained to support the zero-rating of supplies. If the Draft IN is to replace VAT Interpretation Note 30 (issue 2), this is to be expected. This issue needs to be clarified though.
We will not deal with each discrepancy between the Draft IN and VAT Interpretation Note 30 (issue 2) as the discrepancies are to be expected. As a general comment though, the purpose of the documentary retention requirement is to ensure that there is no loss of revenue to the fiscus. A risk-based approach is followed to achieve this outcome.

We have noticed that the requirement to retain removal documentation as prescribed in the Customs and Excise Act has been removed in the Draft IN while the requirement to obtain proof of delivery in the export country has been retained. In our opinion the Customs removal documentation represents stronger evidence of the export of goods than proof that the goods have been delivered. We base this view on the fact that the vendor may have control over the generation of the proof of delivery documentation, but limited if any control over the generation of the Customs documentation. From a risk management perspective we therefore propose that the requirement to retain proof of delivery be replaced with the requirement to obtain and retain Customs removal documentation, where applicable.

**Critical issues not addressed in the Draft IN**
The Draft IN does not deal with the following critical issues:

i. The interpretation of the term “consigned or delivered”

ii. The interpretation of the term “supplier’s cartage contractor”.

iii. Special types of supplies dealt with in paragraph 6 of Interpretation Note No. 30 (Issue 2).

iv. The critical periods within which goods must be exported from SA and the period within which the documentary proof must be obtained. The treatment that must be applied where the relevant documentation is not received within the prescribed period as well as the VAT treatment should the documentation be received subsequently.

v. The specific rules applicable to the “proof of payment” requirement.

**Specific comments**

*Table A - Item A*

Kindly refer to the previous comment regarding the definition of a “supplier’s cartage contractor.” Based on the wording of the Draft IN there will be no need in the future for the cartage contractor to be registered for VAT purposes.

Paragraph (g)(i) - the paragraph refer to “proof that the motor dealer”. This is probably just a typing error that needs to be corrected – it probably needs to refer to “the vendor.”
Table A - Item B
Paragraph (d) – refers to proof that the goods have been exported by the foreign-going ships or aircraft will be challenging for the supplier of the goods as the supplier has no control over the export process. We submit that proof that the goods have been delivered to a foreign going ship or aircraft is sufficient for the purposes of section 11(1)(a)(i) of the VAT Act.

Table A - Item U
Paragraph (b) – this paragraph currently requires written confirmation that the purchaser is not a resident of the Republic and not a vendor for South African VAT purposes. It is not clear as to who is required to prepare this written confirmation. Should it be the vendor or the non-resident?

Paragraph (d) – the paragraph currently requires that the supplier must obtain a declaration from the resident recipient of the supply that the goods are to be used wholly for the purposes of making taxable supplies. On a pure technical point the declaration should state that the recipient will acquire the goods for the “purpose of consumption, use or supply” in the course of making taxable supplies.

Table A - Items W & X
Paragraph (c) – why is proof of payment a requirement in light of the fact that no export takes place?

Table B – Item E
Paragraph (c)(ii) – to obtain proof of delivery of the goods may in practice not be achievable. The agent only arranges the insurance and is not otherwise involved in the supply chain.

Table B – Item I
Paragraph (c) currently requires written confirmation that the recipient is not a resident of the Republic and not a vendor for South African VAT purposes. Other items such as J, K, M, R and V have the same requirement only if the above is not stated in the recipient’s order or contract between the recipient and the vendor. It appears to be a typing error.

Table B – Items I, J, K, M, R and V
Paragraph (c) - under each of the abovementioned items– this paragraph currently requires written confirmation that the recipient/warrantor is not a resident of the Republic and not a vendor for South African VAT purposes where not stated in the recipient’s order or contract between the recipient and the vendor. It is not clear as to who is required to prepare this written confirmation. Should it be the vendor or the non-resident?

General comment – proof of payment requirement
The purpose of zero-rating supplies is to avoid taxing the consumption of goods or services that do not occur in South Africa. The purpose is to ensure that goods and
services actually leave South Africa. In our opinion payment of the underlying debt does not assist to dispose this onus of proof as it essentially deals with the financing part of the agreement. We therefore recommend that this requirement be removed in all instances as it only serves to create operational difficulties in practice where sufficient other evidence exists prove that a supply qualifies to be zero-rated.

**Adjustments on subsequent receipt of documentation**

It is noted that the SARS has removed the words “Should the vendor receive the documentation, in respect of which output tax was calculated, within **one year** from the date of the tax invoice, the vendor may claim an input tax adjustment in the tax period in which this documentation is received. The rate of tax applicable to the adjustment is the rate of tax in force at the date of issue of the tax invoice.”

Does this mean that vendor would need to now submit a written application to claim an input tax adjustment in this regard as it is not allowed to make an adjustment automatically? This becomes a practical issue for the vendor as it is required to wait for approval from SARS, which may take a few months, before it is allowed to claim make an adjustment. This will also create a cash flow problem for the vendor.

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

Yours faithfully

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