Dear Sir/Madam

COMMENTS ON DRAFT INTERPRETATION NOTE – SECTIONS 8(7), 8(16), 11(1)(e) AND 18A: SALE OF AN ENTERPRISE OR PART THEREOF AS A GOING CONCERN

We refer to the above-mentioned call for comment. Enclosed is the SAICA VAT-sub-committee’s draft submission on the matter.

Paragraph 4.8 – Supply of an income-earning activity

The draft Interpretation Note states that “the intention should be that the new owner must be placed in a possession of a business which can be operated in that same form, without any further action on his part”.

Based on this overriding intention, we are of the view that where the enterprise requires for example specialised knowledge to continue in the same form, such as farming, the transfer of an income earning activity may also require that the necessary skilled employees (key employees) be transferred to the purchaser in order to fulfil this requirement. This is on the basis that the purchaser may not have the necessary skills to continue with the enterprise in the same form without the transfer or appointment of certain key employee/s. We acknowledge that this will not be a requirement in all cases.

Furthermore, we believe that the purchaser must merely be placed in a situation to continue with a similar business as opposed to the same business (for example where a purchaser buys a bread bakery which is intended to be use as a pizza take away).

Consequently, we recommend that this requirement be changed to read as follows: “The intention should be that the new owner must be placed in a possession of a business which can be operated in a similar form, with limited action on his part”.

Paragraph 4.8.2 – Leasing activities

Currently, the zero-rating is applicable where the fixed property together with the existing lease agreements is transferred by the seller to the purchaser.
We suggest that an example/scenario be included to put it beyond doubt that the zero-rating will still apply even though the terms of the lease agreements are amended by the purchaser after transfer of the leasing business by the seller to the purchaser.

**Paragraph 4.11 – Addendums**

We further recommend that the draft Interpretation Note be amended to include a paragraph dealing with a situation where the seller initially issued a tax invoice to the purchaser reflecting the standard rate of VAT, and thereafter the parties enter into an addendum to zero rate the supply. In such an instance, we believe that the seller must issue a credit note to cancel the tax invoice, which reflects the incorrect VAT rate, and thereafter issues a tax invoice reflecting the correct VAT rate (i.e. the zero rate of VAT).

Mention should also be made that the additional documentary requirements, as set out in Interpretation Note No 31 dated 31 March 2005, be adhered to.

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

Yours faithfully

Obakeng Mathibe  
**PROJECT MANAGER: TAX**  
*The South African Institute of Chartered Accountants*