PRACTICAL DIFFICULTIES WITH IMPORT/EXPORT PROCESS

Dear Sir

The following comments have been provided by members of SAICA’s VAT sub-committee which is a sub-committee of the National Tax Committee.

1 The purpose of this submission is to highlight practical difficulties experienced in the import/export legs of the overall supply chain, both from a VAT and Customs and Excise perspective. We trust that this submission will assist South Africa in the ongoing process of establishing systems to facilitate efficient international trade, to remove trade barriers, to trade competitively in an international market and to take a leading role in Africa as a financial and training hub.

2 Temporary importation of goods for processing in SA and subsequent export

2.1. The Customs & Excise Act and the VAT Act (Schedule 1) both provide for the exemption from VAT and duty when goods are temporarily imported into South Africa for the purpose of further processing and subsequent re-export. This approach is in line with international practice and is based on the general principle that VAT and customs duty should not be levied because no consumption takes place in South Africa.

2.2. In practice SARS requires a provisional payment or some other form of guarantee to secure the VAT and duty while the goods are in South Africa. From a risk management perspective this approach is understandable, but in practice a difficulty arises where the goods imported cannot be identified as being the same goods exported, in which case Customs refuses to release the security, resulting in a permanent cost to the importer and thus making the processing in South Africa uneconomical. Examples are import of precious metal containing material for refining and subsequent metal exports, rough diamonds imported for cutting and
polishing in SA and subsequent export and numerous other toll manufacturing arrangements.

2.3. The treatment of instances where the processing fee is paid by the retention of a portion of the goods processed in SA (a barter transaction). SARS requires the foreign entity that pays the processing fee in kind to register for VAT in South Africa if the foreign entity sends its goods to South Africa for processing on a regular basis. Registration for VAT in South Africa in these circumstances and the related administrative burden is generally not acceptable to foreign entities and they would rather seek to process their goods elsewhere. As this is a reality of the commercial nature of many toll manufacturing arrangements, we recommend that SARS develops a clear policy and supporting administrative procedures to address this situation. SARS’ discretionally powers should be defined clearly with regards to these “mixed imports”. Ideally there should be no discretion and the administrative processes clearly set out in an Interpretation Note.

2.4. From a VAT point of view, where the importer simply pays the import VAT where SARS customs refuses to allow the VAT exemption for whatever reason, SARS VAT department refuses a refund on the basis that it does not comprise "input tax" because the importer does not become the owner of the goods imported. This creates an additional cost of 15.4% (if the uplift of 10% on the value of goods is taken into account) on refining or processing services rendered in South Africa, which make the processing services uneconomical and South Africa uncompetitive in the international market with regard to these services.

2.5. This interpretation of “input tax” by SARS, i.e. that the importer must acquire ownership of the goods before the VAT qualifies as input tax, has wider implications. For example, where specialised equipment is imported into South Africa for a specific purpose that does not render the owner liable for VAT registration in SA, the importer will be unable to claim the import VAT, thereby resulting in an additional unrecoverable cost, even where the goods may be applied by the importer for taxable supplies.

3 Application of the VAT Act and Customs and Excise Act at operational level

3.1. In our opinion the current wording of the various Acts with regard to temporary imports is clear and unambiguous. Practical difficulties however arise in the interpretation and application of the various Acts at operational level. To address the practical difficulties we recommend that standard approaches be instituted for all Revenue Offices and that the relevant procedure is made public by means of interpretation notes. The interpretation note/s should, _inter alia_, address the following issues:

3.1.1. The playing field should be levelled for importers utilising the exemption and those that don’t.

3.1.2. The nature of the guarantees required should be standardised and not be significantly different from case to case and should preferably only be called for in exceptional circumstances.

3.1.3. The range of guarantees acceptable must be clear and be governed by international best practice.
3.1.4. Where a yield formula is applied, clear guidelines on how the yield methodology would be applied and the treatment of waste. Currently it appears that Customs has a major concern with "waste" remaining in SA as a result of the processing in SA. We recommend that this issue be addressed in a clear policy and procedure document.

3.1.5. Clear policy/procedures on how to deal with problems/challenges emerging as a result of the consistently changing international trade environment.

3.1.6. Clear policies and procedures on how to deal with “smelting pot goods” – the application of “same value goods” principles and quantities.

4 Re-importation of goods temporarily exported for processing outside SA

4.1 The Customs & Excise Act and the VAT Act (Schedule 1) both provide for the exemption from VAT and duty when the goods previously exported are re-imported into South Africa. A similar problem as in 1 above arises in that where Customs cannot identify the goods re-imported as being the same goods exported, they refuse the VAT exemption. An example is the exportation of rough diamonds for polishing or cutting outside SA and which are then returned to South Africa.

4.2 Another practical difficulty experienced is the lack of alignment between the VAT and other fiscal legislation. For example a person can conduct an enterprise for VAT purposes (due to the wide “any activity test” applied by SARS) without having a permanent establishment “(PE)” for income tax purposes. While being a vendor for VAT purposes, the same person would not be able to register as an importer due to the fact that it would not have a PE in South Africa. Such a person will also have difficulty obtaining an import permit.

4.3 To address the above difficulties we recommend that a task team be established as soon as possible to align the VAT and other legislation to ensure that the above undesirable outcomes are addressed as soon as possible.

5 Security for VAT payment

5.1. Where goods are temporarily imported for processing, the VAT must be secured by a provisional payment or guarantee. The release of the provisional payment or guarantee when the goods are exported (in the case where the goods can be identified by Customs as being the same goods imported), takes a long time and causes major cash flow problems for the importer. In some cases this has a negative impact on the trading abilities of the importer, because much needed working capital is tied up in a security payment with SARS Customs which hampers the ability of the importer to trade.

5.2. The provisional payment or guarantee results in an additional administrative burden on the importer/manufacturer. In cases where a cash deposit is required by SARS, the importer also incurs direct costs in the form of finance charges and possible opportunity costs associated with the funds locked up in the deposits. The cash flow cost associated with “VAT exempt” temporary imports is
substantially higher as a result of the provisional payment required for the entire period the goods remain in South Africa, as opposed to where import VAT is paid but reclaimed by the importer as input tax. In the latter case the VAT is funded only for one or two months.

5.3. There is further no apparent reason as to why the VAT on temporary imports should be secured by a provisional payment or guarantee if the importer would in any event qualify to claim the VAT is input tax if it becomes payable.

6 Destruction of goods in bond

Although the Customs & Excise Act provides for a duty exemption when goods are destroyed in bond, no similar provision is contained in the VAT Act. SARS's view is that VAT is payable on such goods. Any "waste" remaining after the destruction process is not dealt with in either the VAT or Customs & Excise Act.

7 Valuation of goods imported

7.1 Where goods are imported from neighbouring countries it is in certain circumstances not possible to determine the value of the goods at the time they are imported due to quality control processes that needs to be carried out by the recipient, international prices, etc.

7.2 Examples are ore mined in a neighbouring country imported into SA for refining or processing; logs cut in forests in a neighbouring country imported by millers into SA. When the ultimate price payable by the recipient the supplier exceeds the price declared at the border on importation, Customs levies additional VAT, penalties and interest. Customs requires Vouchers of Correction ("VOC’s") to be submitted within limited time periods which cannot always be adhered to due to the time it takes to carry out the quality and value processes. If the price ultimately paid for the goods is lower than the value on which import VAT was paid, no adjustment is required.

7.3 The issuing of VOC’s where only VAT is payable on the importation of goods (mainly imports from the BLNS countries), causes practical difficulties for vendors in South Africa who imports goods on a regular basis. Under these circumstances VAT is collected and payable at the border post. The vendor would be entitled to a full input tax deduction. To subsequently submit a voucher of correction where the value of the goods may have changed makes no sense. Various border posts do not accept VOC’s under these circumstances, while others insist on VOC’s and impose penalties and interest where VOC’s were not submitted.

7.4 We understand that the information contained on VOC’s where VAT only is payable are mainly used for statistical purposes. Consideration should be given to establishing other mechanisms of obtaining the trade information as the current processes is an obstacle in the way of efficient trade.
8 Importation of goods for charitable purposes

8.1 Separate applications for the exemption of customs duty and for VAT on the importation of goods for charitable purposes needs to be submitted where the goods imported are subject to customs duty and VAT. The process is not streamlined and is not dealt with by a single department within SARS. This increases the cost of these applications significantly for the charitable institution. The Customs exemption must be granted before the goods are being shipped, resulting in time delays and storage costs being incurred. The VAT exemption is only granted after the goods have been shipped, because the air waybill or other shipping documentation needs to be presented before the VAT exemption is granted.

8.2 If the VAT exemption is not granted for whatever reason after the goods have been shipped, the charitable institution or the donor of the goods will be subjected to an additional unexpected cost upon importation, or additional storage costs whilst the refusal to grant the exemption is disputed. It would be preferable if SARS could grant the VAT exemption before the goods are shipped to South Africa.

8.3 It would further simplify the application processes significantly if the VAT and Customs procedures can be aligned and if only one application is submitted for the exemption for both VAT and Customs Duty.

9 Minimum amounts for duty free imports of goods and services

9.1 The Customs and Excise Act and the VAT Act provides for goods within certain minimum monetary value limits and/quantities to be imported duty free. However, no such minimum amounts apply to VAT on imported services. VAT is therefore payable on all services imported irrespective of the monetary value of such services, which results in virtually all individuals acquiring services on-line via the internet from time to time to commit an offence as contemplated by section 58(d) of the VAT Act, irrespective of the amount involved.

9.2 Consideration should be given to introduce minimum monetary amounts for the acquisition of imported services free of VAT to simplify the administration by SARS and not to criminalise individuals that occasionally acquire foreign services on-line and who are unaware of the imported services provisions of the VAT Act.

10 Zero rating of ancillary transport services

10.1 Section 11(2)(c) provides for the zero rating on ancillary transport services where they are supplied in respect of goods transported from a place in South Africa to another place in South Africa by the same supplier of transport services as contemplated by section 11(2)(a).

10.2 Section 11(2)(e) provides for the zero rating of ancillary transport services if they are rendered in respect of the exportation of goods from South Africa, but only if the services are supplied to a non-resident.
10.3 No provision is made for the zero rating of ancillary transport services that are supplied directly in connection with the exportation of goods from a place within South Africa to an export country where the recipient is a resident of South Africa.

10.4 There appears to be no apparent reason as to why ancillary services which are generally rendered as an integral part of transport services should not also be zero rated if they are supplied directly in connection with the exportation of goods.

11  Customs warehouses

11.1 Section 13(1)(ii) provides for the zero rating of goods supplied where they have been entered into a Customs and Excise storage warehouse and have not been cleared for home consumption. However, this provision should apply to all Customs and Excise warehouses, including manufacturing warehouses, and should not be limited to storage warehouses only.

12  Schedule 1, Item 470

12.1 Paragraph 2(b) of the Notes in Schedule 1, Item 470 states that item no 470.02 is allowed only for parts to be used and the goods submitted for repair etc. must be exported within 6 months from the date of importation thereof.

12.2 However, item 470.02/00.00/01.00 refers to goods (including parts therefore) for repair, cleaning or reconditioning.

12.3 The Notes relating to 470.02 should therefore be aligned with the description of item 470.02.

13  Government Notice 2761, definition of qualifying purchasers

13.1 The definition of a “foreign enterprise” states that it is an enterprise or a business which is carried on continuously or regularly by any person (including RSA passport holders) in an export country in the course or furtherance of which goods and services are supplied to any other person for consideration.

13.2 It is not clear from this definition as to whether a South African enterprise that has foreign enterprise activities in addition to its South African enterprise activities, or a foreign enterprise that is also VAT registered in South Africa as a result of its South African activities would fall within the ambit of the definition of a “qualifying purchaser”.

13.3 The definition further requires that the foreign enterprise must supply goods and services in an export country. It is not certain as to whether foreign enterprises that supply only goods or only services in an export country would fall within the definition of a “qualifying purchaser”.

13.4 Government Notice 2761 further requires that the foreign enterprise must submit appropriate evidence in the form of a trading licence. It is not clear as to what is considered to be a “trading license” and many foreign jurisdictions do not issue
such a document. It is further not clear as to why such a document is required for an enterprise to be considered to be a “qualifying purchaser”.

Please do not hesitate to contact me should you require further information.

Yours faithfully

M Hassan CA(SA)

PROJECT DIRECTOR: TAX

The South African Institute of Chartered Accountants

cc: laconnell@sars.gov.za