REQUEST FOR COMMENT: NEW VAT REGISTRATION PROCESS

The SAICA VAT sub-committee’s submission on the above-mentioned subject is set out below. We thank you for the opportunity to provide comment.

Introduction

Following the issuing of the SARS Notice Number 25/2008 on 6 November 2008, SARS issued two press releases dated 7 & 13 November 2008 respectively. In the press releases SARS indicated its intention to alter the current process of registration as VAT vendors. SARS’ stated intention with the proposed changes is to “include more stringent verification of application for VAT registration, investigations of existing VAT vendors who are under the turnover threshold and a review of risk measures for refunds”.

The original suggested revised procedures were amended following discussions with various stakeholders (including SAICA). The following revised procedures were put forward for consideration and comments by the stakeholders.

1. Only practitioners in possession of a valid PR number will be accommodated.
2. A practitioner must submit an original letter of authority or power of attorney together with the application form, in which they are duly authorised to act on behalf of the vendor.
3. SARS will do the following validation on new applications at branches:
   i. Completeness of the form – incomplete forms will not be processed.
   ii. Each application must include FICA proof – municipal or telephone account with physical address – original, not more than 3 months old.
   iii. Confirmation that the applicant is a valid enterprise. This will entail a short interview with a SARS auditor. We advise practitioners to either empower themselves with all relevant information relating to the vendor upfront, or to ensure...
that the vendor is available telephonically to answer any questions SARS may have during the interview.
iv. The above may be followed up by a site visit to the vendor if required.

Purpose of this submission

The purpose of this submission is to provide inputs into the suggested revised VAT registration requirements. It does not deal with the intended more stringent VAT refund control procedures and general risk management methodologies.

The VAT principles

Section 4 of the Value Added Tax Act (“the VAT Act”) determines that the Commissioner for the South African Revenue Service is responsible for carrying out the provisions of the VAT Act.

A vendor is defined in section 1 of the VAT Act as any person who is or is required to be registered under the VAT Act.

A taxable supply is defined in section 1 of the VAT Act as any supply of goods or services which is chargeable with tax (VAT) under the provisions of section 7(1)(a) of the VAT Act.

Section 7(1)(a) of the VAT Act imposes tax (VAT) on the supply by any vendor of any goods or services supplied by him in the course or furtherance of any enterprise carried on by him.

Section 23(1) of the VAT Act determines that every person who carries on an enterprise becomes liable to register for VAT either at the end of any month where the total value of taxable supplies made by that person in the period of 12 months ending at the end of that month in the course of carrying all enterprises has exceeded R300,000 (R1m w.e.f. 1 March 2009) or at the commencement of any month where there are reasonable grounds for believing that the total value of the taxable supplies to be made by that person in the period of 12 months reckoned from the commencement of the said month will exceed the amount of R300,000 (R1m w.e.f. 1 March 2009).

Section 23(4)(b) determines that a person who has become liable to register as a vendor for VAT purposes (as envisaged above) is deemed to be a vendor from the time that he/she so became liable (irrespective of whether actually registered or not). The Commissioner has been given discretion to allow a later date to be the effective date of registration.

Section 33(1) of the Constitution of South Africa determines that everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

Application of the legal VAT principles

A person carrying on any enterprise where the expected value of taxable supplies will exceed the VAT registration threshold is deemed to be a VAT vendor for VAT purposes. The person will accordingly be required to account for output tax on any supplies made by him irrespective of whether the person is actually registered as a VAT vendor. This mechanism represents a critical control mechanism in the overall VAT systems to ensure the integrity of the VAT net.
The above mechanism is however based on the assumption that the administrator of the VAT Act (the Commissioner for SARS) is in a position to effectively manage the process of registration of vendors. Without this capacity vendors are prejudiced in the sense that they have to account for output tax on their supplies but are not allowed to issue tax invoices. The recipients of the supplies would accordingly not be entitled to an input tax deduction not being in possession of a valid tax invoice. For the suppliers this may put commercial transactions in jeopardy. The suppliers would also not be entitled to any input tax deductions until they are registered, a process over which they have little control.

The above situation gives rise to potential distortions at two levels, neither of which is acceptable within the context of VAT systems:

i. Delays in compulsory registrations would result in a mismatch between the tax periods in which input and output tax are accounted for. This will distort the equilibrium in the VAT system which is an essential element of all VAT systems and cannot be tolerated.

ii. Delays in registration may result in the loss of commercial transactions for vendors. This may cause a serious infringement of a vendor’s ability to trade freely. No tax administration process should negatively affect a taxpayer’s ability to trade. The general principle of tax being neutral in trading decisions is placed in jeopardy.

As far as taxpayers’ rights under the South African Constitution are concerned, the process implemented by SARS must be administratively fair. To delay registration as a matter of course, due to SARS’ concerns with risk considerations, will result in punishing the majority of law abiding taxpayers due to a small percentage of defaulters. This situation is exacerbated where the taxpayer has no recourse in the absence of clear and formal timeframes within which SARS have to complete its processes. In a situation where the taxpayer is prejudiced with no recourse, it is doubtful that SARS’ procedures will constitute fair administrative action as envisaged in the South African Constitution.

Practical difficulties

General verification process
The documentation required is not significantly different from what was previously required. As a general principle we support the requirements. One point to note is that SARS should make clear on the VAT 101 whether it requires certified copies of the various documents stipulated in section 9.

We also support the proposed interview requirement, provided that SARS can guarantee that auditors will be available to conduct the interviews and that the interviews will be conducted by suitably qualified and experienced people.

Practitioners’ issues

Verification process
SAICA members that are registered tax practitioners need to do a verification of their clients in any event before engaging them, as do the banks before opening a new bank account. In
our opinion it does not make sense for SARS to repeat the same verification process on their side as well, which will only delay the registration.

**Interviews**

As far as the interviews with SARS auditors is concerned, this process is based on the assumption that resources will always be available to conduct the interviews. As mentioned above, for this process to be administratively fair, SARS must guarantee the availability of auditors to conduct the interviews. Ideally SARS should implement a process whereby appointments can be scheduled in advance to avoid delays as far as possible.

Where registrations are performed for non-residents the availability of the non-resident to answer questions that practitioners cannot deal with will often present a challenge in practice for a number of reasons (for example different time zones). Mechanisms need to be put in place to deal with these challenges to avoid undue delays in the process.

**Costs of effecting VAT registrations**

Registered tax practitioners that assist vendors with their VAT registrations are generally principals, and if they are required to submit VAT registration applications on behalf of their clients in person, it will significantly increase the cost of VAT registrations for businesses.

**Person responsible for submitting VAT returns**

SARS does not specify who the person is that must submit the VAT registration application in person in the case of a company, close corporation, association, etc., i.e. whether it is a director, shareholder, public officer or the representative vendor. It should be noted that directors and shareholders are generally not involved in the administration of their companies, and it will be inefficient or impractical to expect of them to submit a VAT registration application form in person.

**Method of submission**

The SARS notice 28/2008 states that a registration application may be submitted by post, but the new draft registration form VAT 101e requires that the applicant or his representative must submit the form in person.

**Proof of identity**

SARS does not specify in notice 28/2008 who the person is that must submit proof of identity, i.e. whether it is the representative vendor that must submit such proof, and the format in which such proof must be submitted. The current requirement is to submit a certified copy of the VAT representative’s identity document.

**Physical address**

The requirement that states the physical address of the business must be supplied cannot be complied with by non-resident entities with no physical presence in South Africa. It will also not be possible for SARS to physically inspect business premises in the absence of such premises. It is also uncertain as to what will be considered to be the physical business address of a joint venture formed between two or more entities for carrying out a specific business
activity, such as a construction project. New business enterprises or new companies within an existing group of companies or joint ventures formed for specific projects will not have municipal accounts.

SARS should consider accepting alternative evidence to prove that a business exists, for example, where work is carried out at a construction site by an overseas supplier, the contract stipulating that work is carried out on site should be sufficient evidence.

**Recent bank statements**

Non-residents generally make use of third party bank accounts due to the onerous process of opening a non-resident bank account in South Africa. The third parties may be reluctant to provide non-residents with their confidential information as reflected on their bank statements for VAT registration purposes.

**General risk management issues**

As far as the risk management with regards to the verification process is concerned, it is our understanding that SARS will merely rely on the internal control and verification procedures carried out by the practitioner. The practitioner should only be held liable if he/she did not carry out the verification procedures at all, or if he/she acted in a grossly negligent manner. If the client can intentionally mislead a practitioner who diligently carried out his/her verification procedures, so can the client mislead SARS as well. In these cases the practitioner cannot be held liable.

SARS should agree a set of generic verification procedures with practitioners so that consistent tests can be applied. This should also help limit the practitioner’s liability in cases of fraud or misrepresentation by the applicant.

In many instances, new registrations result from new companies/entities/JVs being formed by existing clients as a result of restructuring, M&A transactions, etc. Where it is a brand new client, the practitioner will generally in any event carry out verification procedures beforehand, and so will the bank. SARS should recognize this and should place reliance on these controls.

As a general principle we are of the opinion that most fraud results from the claiming of refunds and not from the registration process. SARS should rather focus their review procedures on refunds claimed as opposed to the registration process.

**Foreign company registrations**

In the case of a foreign company or organisation with no physical presence or operations in South Africa, who is obliged to register for VAT in South Africa, it is not practical for the vendor to submit the application form in person.

**Recommendations**

i. Every possible effort should be made to avoid delays in VAT registrations – where delays are unavoidable, there should be clear guidelines governing SARS’ behaviour, including agreed timeframes within which registrations must be affected or formally rejected (with appropriate reasons).
As far as foreign registrants are concerned, we recommend that SARS should form an “International desk” to assist foreign entities that are required to register for VAT purposes in South Africa. These entities are generally in a VAT paying situation and their VAT registrations should not be delayed by applying the same verification procedures as applied to South African vendors, with which they cannot comply.

Where practitioners are required to perform some or all of the verification processes, clear guidelines should be implemented to regulate practitioners’ potential personal liability.

Authorised employees of registered tax practitioners should be allowed to submit the VAT registration applications to SARS on behalf of vendors.

SARS should specify who the person is that should submit the VAT registration form in person, and should accept a VAT registration application form submitted by an authorised representative of the entity.

SARS should enlist the assistance of the tax profession in devising VAT fraud prevention methodologies so that practical measures can be adopted to combat VAT fraud.

SARS should accept and process VAT registration application forms that are submitted by mail and in person, as the “personal” submission of VAT application forms will not necessarily combat VAT refund fraud. SARS should also consider accepting electronic and on-line VAT registration applications.

SARS should specify who is required to submit proof of identity and the format of such proof, i.e. whether a certified copy of that person’s identity document is still acceptable.

With regard to non-resident entities, please see our suggested solution under (ii) above.

SARS should reconsider requesting municipal accounts as proof of physical business addresses, and should only carry out site visits in exceptional circumstances, or as part of the process of verifying a suspicious VAT refund, and not as part of the registration process.

Please see our suggested solution for non-resident entities under (ii) above. The VAT 119i and a cancelled cheque should further be accepted by SARS as sufficient information regarding the banking details. Alternative financial information should be requested if SARS wants to verify the financial information of the vendor.

Risk management methodologies should be primarily developed and focused on the refund process.

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*

cc: chili@sars.gov.za
    RCarolissen@sars.gov.za