CALL FOR COMMENT: DRAFT VAT 419 – GUIDE FOR MUNICIPALITIES

We refer to your call for comment regarding the above-mentioned. In this regard please find SAICA’s comments, which have been provided by members of our VAT sub-committee which is a sub-committee of the National Tax Committee.

Our comments will follow the current flow of the draft document on a paragraph-by-paragraph basis.

1) Paragraph 2.3.1, page 11: the second bullet, starting with “In the course…” does not flow from the introduction.

2) Paragraph 2.5, page 11: “Municipal rates” is defined as – means…”. The definition does not flow from the introduction.

3) Paragraph 2.6, page 12: refer to the third paragraph that refers to section 8 – this is not correct, as section 8 does not only provide for categorizing an event, transaction or receipt as a supply, or not. We recommend that the wording be amended to reflect the true nature of section 8, alternatively indicate that it includes this type of categorization.

4) Paragraph 2.8, page 13: refer to the first paragraph – throughout the rest of the document the phrase “consumed, used or supplied”, instead of “consumed, used or applied” is used. We recommend that this sentence be changed for consistency.

5) Paragraph 2.9, page 13: refer to the first bullet under the examples. The sentence structure indicates that the input tax is subsequently applied for exempt supplies. We recommend that the sentence be amended.
6) Paragraph 3.2, page 14: refer to the opening sentence of the last paragraph on the page. Should the phrase “…and is trading for the principal’s account.” not read “…and trading is for the principal’s account”?

7) Example 6, page 18: the example indicates that the payment received from Province B is a grant. We recommend that an example with regard to section 8(23) also be inserted.

8) Paragraph 4.1, page 19: refer to the first bullet of the second paragraph. It should read “standard rated supplies”.

9) Example 10, page 20: the conclusion appears to be unsupported in law. If this practical approach makes sense, we recommend that the VAT Act be amended accordingly to put this beyond doubt.

10) Paragraph 5.1, page 26: refer to the second and third paragraphs, the last bullets. SARS appears to be of the view that Transfer Duty must have been paid for a notional input tax deduction to be made. This is not supported by the VAT Act as it is clear the limitation of input tax is only applicable to transactions where Transfer Duty was paid, or an exemption was given. With regard to transactions where Transfer Duty is not paid, i.e. where the rate is 0%, there is no limitation of input tax and the full input tax can be claimed. If SARS disagrees with this interpretation, we recommend that this aspect be given serious consideration, not only in this guide, but also in the guide on fixed property. If this policy remains in the guides, we recommend that SARS elaborates on the basis for this interpretation and consider amending the VAT Act to put the matter beyond doubt.

11) Paragraph 5.2.2, page 29: refer to the third paragraph. We recommend that it be mentioned at this stage already that municipalities were required to use the turnover-based method from 1 July 2006.

12) Example 17, page 30: please include the categories of grants received, i.e. grants that are for taxable supplies only, grants used for exempt supplies only and grants used for both these types of supplies.

13) Paragraph 5.3, page 32: the heading, “Accounting basis” is misleading as it really deals with payments received over the transitional period. We recommend that the heading be changed to, for example “Payments made in respect of expenses incurred prior to 1 July 2006”.

14) Paragraph 6.2, page 34: we suggest that SARS discusses the treatment of, e.g. electricity, where it is bought in bulk as a supply, and subsequently an exempt division uses a portion thereof.

15) Example 24, page 35: the bakkie was bought on 1 March 2006 – should it not be 2007?

16) Paragraph 7.1, page 37: refer to the second paragraph. Whilst the levying of property rates may be unique to municipalities, supplies made for no consideration are certainly not. We recommend that the paragraph be amended accordingly.

17) Paragraph 7.3, page 39: refer to the third bullet, “Where the municipality has an “unfunded mandate”’. The reason for the view that input tax can be claimed is not clear. Is it because there is a supply of, e.g. the medicines from the municipality to the Province, albeit at nil consideration? This appears to be the case when regard is given to
example 27. Please provide more clarity with regard to this aspect, as it will have an impact on other industries as well.

18) Paragraph 7.4, page 41: refer to the second last paragraph, starting with “In this regard…”, the last sub-bullet. We suggest that this aspect be discussed under the general discussion on grants (paragraph 4.5), and also the effect that this would have in the calculation of the input tax apportionment percentage.

19) Glossary, “Enterprise”, page 46: refer to the last bullet. Persons who are not vendors can still carry on an enterprise.

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

Yours faithfully

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