The South African Institute of Chartered Accountants

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South African Revenue Service
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PRETORIA
0001

BY E-MAIL:  RMoodley3@sars.gov.za

Dear Sir

CALL FOR COMMENT: VAT REGISTRATION DIFFICULTIES

We refer to the above-mentioned call for comment. Set out below please find the SAICA VAT-subcommittee’s submission.

Introduction
This submission should be read in conjunction with the previous submission made by SAICA on the issue of the revised registration requirements and practical difficulties associated with it. For ease of reference we have attached the previous submission. This submission contains mostly practical difficulties currently being experienced by our members.

The interview process
As indicated in our previous submission, we support the interview process in principle provided that SARS can guarantee that auditors will be available to conduct the interviews and that conductors of interviews are suitably qualified.

In practice the process SARS applies does not constitute an interview; instead SARS relies on a risk assessment checklist which leads SARS registration officials to request additional information and documents that are not required in the VAT 101e. The risk assessment checklists are not in the public domain. This often leads to practitioners and vendors not being able to collate all information in preparation of its submission to SARS. This necessitates more than one visit to the SARS branch office for the VAT registration form to be submitted, with a cost implication for vendors, over and above the disruptive effect on business operations.
Specific information requirements

General
SARS branch offices consider VAT registration applications to be incomplete where certain information requested cannot be supplied, for example:

- The income tax and employees tax registration numbers of the entity; and
- The personal income tax numbers of the directors of the company.

In the case of foreign entities liable for registration in South Africa, they are often not liable to register for income tax or employee’s tax in South Africa in terms of the Income Tax Act. Foreign directors of companies that do not earn any income from South Africa are also not liable to register for income tax in South Africa. Notwithstanding the aforesaid, VAT registration officials at SARS branch offices insist on this information to be supplied before they accept the VAT registration application forms, which causes a stalemate situation.

Bank statements for new companies
SARS offices require bank statements for all new registrations. In the case of a new company, bank statements are generally not available, the bank account being new. We recommend that a pragmatic approach be adopted in these cases and that a confirmation letter from the bank is accepted as sufficient proof.

Proof of address
SARS informed members of SAICA verbally that where the registrant is unable to produce a utility bill then a letter from the registrant confirming the business address will suffice. This practice is however not a formal practice and is not applied consistently.

Verification procedures
The verification procedures of SARS branch offices are not limited to a review of the documents and information required by the form VAT 101e, but extends to an audit of the personal tax affairs of the directors and the representative vendor before the VAT registration application of the entity is considered.

The personal tax affairs of directors or representative vendors are not relevant with regard to the processing of the VAT registration application form. If SARS requires the personal tax affairs of these officials to be a prerequisite for VAT registration, it should specify accordingly on the form VAT 101e, and should extend this requirement to existing vendors to avoid procedurally unfair discrimination against new applicants.

The fact that the branch office officials subjectively requires additional information and documentation that are not listed in the VAT 101e form as being required for purposes of VAT registration unnecessarily delays the registration process, and also causes high levels of frustration and increases the cost of registration dramatically.

The additional information requested is not standardised amongst SARS branch offices and it seems that it is left up to the subjective discretion of the VAT registration official. It further seems that certain SARS branch office officials are requesting any additional information and documents in a deliberate attempt not to process VAT registration applications.
It is doubtful as to whether SARS is entitled to request any additional information in terms of section 23 read with section 57A of the VAT Act which does not relate to the vendor or person applying for registration.

**Specific issues relating to non-resident vendors**
The registration for VAT is currently area restricted; vendors are required to submit the application to the SARS branch where the business is situated for validation of information. In which area must vendors submit the application form of a non-resident with no premises in South Africa?

Documents required with all registration applications include a recent copy of the business’ municipal account. How does SARS accommodate the situation of non-residents with no physical presence in South Africa?

Vendors are required to stipulate the capacity of the representative vendor. This can only be the individual owner, partner, public officer, trustee, curator, liquidator, executor, administrator, treasurer, or accounting officer for a municipality or public authority. Where a non-resident vendor with no presence in SA appoints a third party to act as its representative vendor, that person will not act in any of the stipulated capacities as he or she merely acts as representative vendor.

Kindly also refer to the issues pertaining to non-resident registrations referred to under the specific information required section of this document.

**Shelf companies**
The current legislation does not provide for shelf companies to be registered for VAT while the companies are still dormant. While we accept that shelf companies do not conduct an enterprise for VAT purposes before the commencement of trading activities, we request that consideration be given to providing for an exception in the case of “accredited suppliers of shelf companies” (specific rules will need to be formulated to govern this issue). This will assist to streamline business operations in the case where existing businesses are transferred to shelf companies. This is critical where a business is disposed off as a going concern where both the purchasing and disposing entities need to be registered as VAT vendors.

**Consistency amongst SARS offices**
There does not appear to be consistency amongst the various SARS offices in applying the new rules. Frustration has been expressed by SAICA members who experience that the rules seem to change from day-to-day. For example, certain SARS offices still require a vendor to come into their offices personally for an interview. Our understanding is that a practitioner may appear on behalf of a vendor provided that a letter of authority to act on behalf of the vendor is attached to the application for registration. The letter of authority must reflect the tax practitioner’s registration number.

We recommend that the practical processes be standardised and be communicated with the various SARS offices. The processes should further be in the public domain to assist practitioners and vendors to arrange their affairs accordingly.

**Time period to affect registration**
We understand that a VAT registration currently takes between 10 and 15 working days (but this is not guaranteed). The time delay could be a significant stumble block in the way of business operations. We recommend that consideration be given to expediting the process. The subsequent payment of VAT refunds to vendors could be suspended pending the verification process. This should address SARS’ concerns with risk management.
**Deregistrations where turnover < R20 000**

SARS currently suspends the registration status of vendors whose declared levels of taxable supplies have fallen below R20 000 per annum. Once the vendors have provided proof that they are eligible to remain registered the vendors have to reapply for registration as the suspension activates the deregistration process. This approach denies the vendor the right to provide proof that it should remain registered before SARS exercises its discretion against the vendor. We believe that this practice cannot be reconciled with what constitutes fair administrative action and should be discontinued.

**Recommendations**

i  The majority of the issues raised above are process related issues and varying interpretations and applications applied by different SARS Offices. The uncertainty caused by this situation is the main source of frustration experienced by the SAICA members. This can be effectively dealt with by issuing uniform instructions to all SARS offices and placing the instructions in the public domain.

ii  SARS should specify all the information and documentation that is required for purposes of the VAT registration in the form 101e. Additional information or documentation should only be requested in exceptional circumstances.

iii  The personal tax affairs of directors and the representative vendor should not form part of the verification process, as it is unrelated to the person applying for registration, and there can be many unrelated reasons as to why an individual’s tax affairs are not up to date. If this should form part of the verification process, then SARS should specify accordingly in the form VAT 101e and should extend it to existing vendors as well to prevent SARS from unfairly discriminating against new applicants only.

iv  Vendors whose actual level of taxable supplies has fallen below the voluntary registration threshold of R20 000 per annum should be provided the opportunity to furnish evidence that they should not be deregistered before SARS deregisters them. SARS could determine a time frame within which the information should be supplied after which deregistration would be automatic. The current practice is however not acceptable.

Yours faithfully
Annexure – previous submission on revised VAT registration process

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 Services is responsible for carrying out the provisions of the VAT Act.

A *vendor* is defined in section one 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 one 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 the person’s 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 been 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 no control.

The above situation gives rise to potential distortions at two levels, neither of which is acceptable within the contest 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 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.

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 suitable 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 go through 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 on the process.
Costs of affecting 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 details regarding 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 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 between two existing vendors will not have municipal accounts.

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 gross 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.

In many instances new registrations result from new companies/entities/JV’s 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’ behavior including agreed timeframes within which registrations must be affected or formally rejected (with appropriate reasons).

ii. 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 to South African vendors, and with which they cannot comply.

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

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

v. 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.
vi. 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.

vii. 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.

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

ix. 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.

x. 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.

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

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

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