21 November 2008

South African Revenue Service
Private Bag X923
PRETORIA
0001

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

Dear Madam

REQUEST FOR COMMENT: PROPOSED VAT 101E REGISTRATION FORM

Set out below please find the SAICA VAT sub-committee’s submission on the above-mentioned subject.

Front Page

The new VAT 101e form stipulates on the front page that the form will only be accepted if submitted in person. However, the note from SARS to Practitioners on 13 November 2008 states that applications submitted by mail should also be considered. SARS should clarify its position in this regard.

Section 1: Particulars of person applying / liable for registration

We have noted that the form does not provide for a foreign donor funded project.

Section 2: Particulars of enterprise

It is not clear what will be considered to be the physical business address of the vendor in some instances.

- In the case of a non-resident with no physical presence in South Africa, will it be the foreign business address, the business address of the accounting officer or the VAT representative?
- What is the business address of a joint venture, partnership or consortium formed for a specific project? and
- What is the business address of a foreign donor funded project?
Section 4: Financial Particulars

4.1 We are of the view that a welfare organization and a foreign donor funded project should not be required to submit any financial information. The requirement for financial information in respect of the said registrations causes great confusion and delays with registration at SARS branch offices.

4.2 It is proposed that the estimated input tax deductions also be provided as part of this section. Where it is expected that the vendor will be in a VAT payable position, the registration should not be delayed by additional verification procedures. If the vendor is expected to be in a refund situation, SARS can verify the vendor more closely. The VAT 201’s can then also be reviewed in view of this information submitted.

Section 6: Particulars of representative vendor

The new VAT101e states that the representative vendor should ensure that they are familiar with the provisions of the Value-Added Tax Act, no 89 of 1991 (“the VAT Act”).

Many foreign entities which are based off-shore, conduct an “enterprise” as defined in section 1 of the VAT Act and therefore are liable to register for VAT purposes. However, in many cases these entities do not have any employees in South Africa and therefore the services of a third party are required. These non-resident vendors make use of the services of independent persons such as lawyers or tax practitioners who may not necessarily have any VAT expertise. Where these persons do not have the necessary VAT knowledge, they usually rely on the information provided by the vendor and input from other tax practitioners in order to ensure that the Form VAT 101 is completed correctly.

We recommend that the requirement for the representative vendor to be familiar with the VAT Act be extended to allow representative vendors who are not familiar with the VAT Act to be assisted by registered practitioners.

Section 7: Particulars of external auditor / bookkeeper / accountant / tax practitioner

The tax practitioner number will only apply in the case of a registered tax practitioner, since not all accountants, bookkeepers etc. are registered tax practitioners.

Section 9: Attachments required

Recent copy of the business municipal account

Non-residents who do not have a physical address in the Republic will not be able to provide a copy of a municipal account. Historically, SARS requested a letter from the vendor in terms of which it appointed the accounting officer and the physical address of the accounting officer and that of the VAT representative.

We recommend that this information continue to be sufficient in cases where non-resident vendors do not have a physical presence in the RSA.

We also point out that it will not always be possible for a start-up business to provide SARS with a recent copy of the Business Municipal account. This is evident since vendors are required to register within 21 days within which they become liable to register, and since start up businesses do not necessarily have a physical address. Further, in many cases the non-resident will not have business premises in SA and will thus not be using municipal services with the result that it will not be in a possession of a municipal account.
In addition, where a vendor leases premises, it will most probably not receive a municipal account, since the landlord will generally receive the municipal account.

**The bank account**

As is the case with municipal accounts, start up businesses may not necessarily have opened a bank account three months before application for registration as a VAT vendor is filed. As a result the requirement to provide three months bank statements may, in these circumstances, prove to be impossible.

Further, non-residents may elect not to open a bank account in South Africa. On the basis that section 44(3)(d) allows the registrant to use another person’s bank account provided the VAT 119i is completed (this document provides for an indemnification in favour of SARS). In terms of the proposed requirements, a vendor will be obliged to provide SARS with the statements from a local bank account which, in terms of the aforementioned, could belong to an unrelated third party. The third parties may not want to provide this confidential information to SARS. Generally the representative vendor uses either a trust account or a business account for the registration of the person for whom he acts as representative vendor. It follows that the bank statements of a third party may contain the transactions of a number of taxpayers and will not easily provide SARS with assurance that the registrant will be conducting an enterprise. We suggest that in these cases this requirement should be done away with and that alternative proof of the enterprise be sought such as the offshore head office’s financial statements.

**Section 11: Notes**

- In the case of non-resident clients who have no physical presence/address (refer paragraphs above) it is not clear to which branch office the application should be made.

- Will SARS provide contact persons and details of each office? (i.e. where the practitioner is situated in Johannesburg and the client is located in Durban, the practitioner should be placed in a position to have reasonable access to the relevant contact persons at that office)

- According to the proposed VAT101e form, the VAT registration application will only be accepted if applied for in person by the registered tax practitioner. This clearly does not provide for the prevailing practice whereby employees (who are not registered tax practitioners themselves) of the practitioners are tasked with submitting the application on behalf of the tax practitioners at the local SARS office. The proposed requirement will create both logistical and economic difficulties for the vendors and the tax practitioners.

**Tender Registrations**

The proposed SARS VAT 101e form clearly states that the VAT registrations may only be applied for in respect of a tender, once the tender has been awarded. This approach clearly does not support the entrepreneurial culture in South Africa and could disadvantage previously disadvantaged individuals wanting to expand their businesses by participating in lucrative business tenders. Further, it is common cause that in most instances, a VAT registration certificate serves as a prerequisite for participation in the tender process. Thus, businesses which are not in possession of a VAT registration certificate, will automatically be excluded from the tender process. Tender registrations should in our view, be treated no different from any other business which merely submits a business plan for registration purposes.
**Additional Suggestions**

In addition to the above, we further suggest that:

- More emphasis be placed on the declaration of the anticipated income figures. Usually an estimate is sufficient, however we suggest that more accurate financial information be required and scrutinised during the submission of the VAT 201 returns.

- A letter is attached to the VAT101e form setting out the exact nature of the business, the reasons for registering, the basis on which the turnover was calculated and the estimated input tax deductions.

- Persons acting as representative vendors are assisted by the tax practitioners during the site visit to ensure that the correct facts and information are provided to the SARS auditors.

- Any refunds claimed or, alternatively, reaching an accumulated value of R 20 000, should be audited by SARS before they are refunded. This will ensure that large amounts are not refunded without an appropriate audit from SARS.

We look forward to receiving feedback from you in respect of the comments and suggestions.

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

Yours faithfully

M Hassan CA(SA)

**PROJECT DIRECTOR: TAX**

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