Ref#: 205332
Call for comment

9 May 2008

South African Revenue Service
Private Bag X923
PRETORIA
0001

By e-mail: policycomments@sars.gov.za

Dear Sir / Madam

CALL FOR COMMENT: DRAFT GUIDE FOR MOTOR DEALERS (VAT 420)

Introduction
Your request for comments on the draft Guide for Motor Dealers (VAT 420) issued by the South African Revenue Service ("SARS") refers. 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 follow the current flow of the draft document on a paragraph-by-paragraph basis.

General comments
It appears as if industry input was not obtained before the draft guide was prepared. Certain terminology is therefore not in line with the industry terminology. We suggest that the industry be consulted before the guide is finalised.

Given the target audience, namely motor dealers, certain sections of the draft guide are in our view too legalistic. In some areas the draft guide is too technical and not user-friendly. We suggest a more layman’s approach.

The draft guide is ambiguous in certain places and contains technical errors or incorrect interpretation of the VAT Act.

In some sections of the draft guide, the understanding of the nature of and parties to transactions is not correct.

The draft guide does not deal with dealer swaps.
Chapter 1

Paragraph 1.2, par 1, line 3 (suggest change to text)

… services are supplied, are generally taxable for VAT purposes.

Paragraph 1.2, par 2, line 1 (suggest change to text)

… must levy VAT on all taxable supplies made …

Paragraph 1.3, par 2, line 3 (suggest change to text)

… (there are some expenses, such as entertainment, [that are] in respect of which input tax paid is specifically denied).

Paragraph 1.4, par 1, line 1 (comment)

It is not only the sale of motor vehicles that constitutes a supply of goods; the activities referred to should include all business activities necessary to supply motor vehicles.

Paragraph 1.4, par 2, line 2 (suggest change to text)

… register as a vendor if its gross vehicle sales income exceeds …

Example 1 (comment)

A person is required to register within 21 days of the end of the month where taxable supplies for 12 month period exceed R300 000. Therefore in this example the person is required to register within 21 days from 30 April 2006. However, taking into account that the person’s taxable supplies exceeded R25 000 in each of the first three months in which it traded, it can be argued that at this stage there were reasonable grounds for believing that the person’s taxable supplies would exceed R300 000 in a 12 month period and that the person was already liable to register. We suggest that the example be changed to eliminate any confusion.

Example 1, Answer, line 1 (suggest change to text)

… on a continuous [and] or regular basis…

Chapter 2

Paragraph 2.1, Scenario (comment)

The Guide deals with the supplies made by motor dealers. In that paragraph only the supply of goods by motor dealers are dealt with. SARS should include in this paragraph the services that motor dealers supply. They should perhaps split the supply of services into 2 categories:

i) The supply of (direct or physical) services by motor dealers in servicing and repairing motor vehicles.

ii) Motor dealers also supply (indirect or sub-contracted) services where they sell credit life, smash and grab products and tracking devices to their customers on which the motor dealer earns commissions. These and other services are more
or less dealt with in the rest of Chapter 2, but they are not properly introduced as supplies made by motor dealers.

**Paragraph 2.2, 1st bullet point (suggest change of text)**

- A client wishes to buy a motor vehicle from the motor dealer, but requires finance from a financial institution. In this instance the motor dealer [supplies a] sells the motor vehicle to...
- The motor dealer supplies a motor vehicle to a client on credit (for example, under an instalment credit agreement) and charges VAT at the standard rate on the selling price. [In addition, the motor dealer provides credit (for example, under an instalment sale agreement) to the client in respect of the acquisition of the motor vehicle.]

**Example 2, Scenario (comment)**

Consider to change in line with the changes suggested for bullet points above. Also see Example 6.

**Example 3, Scenario, line 3 (suggest change to text)**

… of the Republic, Joe Soap on credit [In addition, ABC Motors supplies the finance.] in terms of …

**Example 4, Answer, par 1 (suggest change to text)**

ABC Motors is an agent in selling the motor vehicle. [As] Although Joe Soap, being the principal, is liable for levying any VAT payable on the sale of the motor vehicle, [and] Joe Soap is not a vendor, with the result that VAT must not …

**Paragraph 2.4, line 3 (suggest change to text)**

The motor dealer [must] should preferably obtain confirmation …

**Example 5, Scenario (suggest change to text)**

During April 2007, Joe Soap Construction approached ABC Motors to sell his single cab bakkie used in his construction business. Joe Soap is a vendor in respect of his construction business and claimed input tax on the acquisition …

**Example 5, Answer, par 1, line 6 (suggest change to text)**

… will be deemed to include tax, with the result that Joe Soap will still be liable for the VAT albeit no VAT was charged.

**2.6, line 1 (suggest change to text)**

… commission earned [(for example, kickbacks)], output tax…

**Paragraph 2.5 (comment)**
In the last paragraph it states that the principal will have to be timeously informed by the agent. This clause should clearly indicate the obligation on the agent and should also state the specific timeframe in terms of section 54.

**Paragraph 2.6, 1st bullet point (suggest change to text)**

- Dealer [introductory] incentive commission (DIC)

**Paragraph 2.6, 4th bullet point (comment)**

Volume rebates are not payments for supplies, but instead variance of consideration (see section 21).

**Example 6, Scenario, line 5 (suggest change to text)**

… a dealer’s [introductory] incentive commission …

**Paragraph 2.7, par 2, line 2 (suggest change to text)**

… market value of the [supply] goods or services received as consideration (i.e. the open market value of the advertising benefit received).

**Paragraph 2.7, par 3, line 4 (suggest change to text)**

… the open market value of the [supply] use of the motor vehicle supplied by ABC Motors to Joe Soap was R5 700 per month (including VAT). Equally, the open market value of the [supply] advertising services supplied by Joe Soap …

**Paragraph 2.8 (comment)**

We suggest a discussion that a cession is normally, in these circumstances, supplies of two commodities (i.e. the vehicle itself and the debtor). Normally no value is attached to the vehicle, hence supplied for no consideration. The rationale is that since the vehicle is supplied on ICA, it has the effect that the dealer only has title without any use.

Also reflect this in Example 8.

**Example 8, Answer (comment)**

Also address any VAT paid by XYZ in respect of the motor vehicle, if applicable.

**Example 9, Answer (suggest change to text)**

- … However, [this will not occur as] since ABC Motors has ceded its rights to receive the rental income to Bank XYZ, no rentals will become payable by Joe Soap to ABC Motors, with the result that [Therefore] ABC Motors will not be liable for output tax [in this instance] on rentals payable by Joe Soap.
- However, as the cession …
- In this instance Bank XYZ will be entitled to claim the VAT paid on such session as input tax and will be liable to account for VAT on every rental payable to it by Joe Soap.
Paragraph 2.10 (suggest change to text)

Where a dealer insures all its vehicles held in stock and a motor vehicle is damaged or stolen while in the motor dealer’s possession, output tax must be accounted for by the motor dealer in respect of the indemnity payment received from its insurer for the damaged or…

Paragraph 2.11, par 2, line 1 (suggest change to text)

… from the purchaser for the actual cost of [incurred in obtaining] the licence …

Paragraph 2.11, par 2, line 4 (suggest change to text)

… motor vehicle, the registration and licence fees charged …

Paragraph 2.11, par 2, line 5 (suggest change to text)

… be the amount charged in addition to the actual cost [in excess of the costs] of the licence and registration. Since the licence fee per se is not subject to VAT, it follows that output tax will [therefore] be accounted for [only] in respect of the fee only and not …

Paragraph 2.12, heading “As part of the cost of the car” (suggest change to text)

… be accounted for in respect of [the] any fee that [is] might be charged additionally for the service plan.

Paragraph 2.12, heading “As part of the cost of the car” (comment)

The content contradicts the heading. We suggest that the guide deals with both scenarios, i.e. where the service plan is included in the selling price and where a separate fee is charged in addition to the selling price.

Paragraph 2.12, heading “Motor dealer acting as agent” (suggest change to text)

… in respect of the sale of the service plan, output tax must be accounted for on the commission received.

Paragraph 2.12, general (comment)

- Regard should be given to the rate of VAT where the service plan and vehicle are supplied to a non-resident who would export the vehicle. Further, to consider the VAT implications where a non-resident dealer will affect repairs and maintenance and charges the local dealer for it;
- Extended warranties sold by parties other than the manufacturer (e.g. insurers) should be discussed;
- The guide should also deal with warranties granted by local manufacturers as well as claims by local dealers or manufacturers from non-resident manufacturer in respect of damages not covered under warranty (i.e. ex gratia payments).
- Here the guide deals with service and maintenance plans, SARS previously issued a General VAT Ruling (number 414). Generally in the motor industry customers request motor dealers to reflect the cost of the standard service or maintenance plan as a separate item on the tax invoice, in order for these customers (vendors) who use these vehicles in
the course of their business of making taxable supplies to claim an input tax credit in respect of the maintenance cost. The guide should deal with this practical issue and perhaps state that where the motor dealer is informed by the manufacturer (or OEM (original equipment manufacturer)) of the values of these standard service and maintenance plans, that the motor dealer is allowed to reflect the cost of that plan separately on the tax invoice issued to the customer for the supply of the vehicle.

**Paragraph 2.13, general (comment)**

Page 13 of the Guide deals with warranty claims, this however only deals with warranty claims in respect of services rendered by the local motor dealer where the claim is submitted to the non-resident motor vehicle manufacturer (warrantor). The guide should perhaps also deal with the VAT treatment on warranty claims submitted to the local motor vehicle manufacturer (warrantor). The guide should perhaps deal with the time of supply in this regard. Earlier date of issue of invoice or date of payment. After the motor dealer effected the repairs to the vehicle in terms of the warranty it submits a warranty claim to the local manufacturer (warrantor) in respect of the cost of its services rendered and parts used. This claim does not constitute an ‘invoice’ for tax purposes as the local manufacturer still has to evaluate the claim and the amount paid out by the local manufacturer may differ from the claim submitted. The time of supply should therefore only be once the payment is received. Some (we believe most) local manufacturers have VAT rulings for self-invoicing. The motor dealers however receive the payment in respect of the claim in most cases before they receive the ‘self invoicing tax invoice’ from the local manufacturer (warrantor).

**Chapter 3**

**Paragraph 3.1, lines 2 and 3 (suggest change to text)**

… motor vehicle to a purchaser in terms of a “direct export” (refer to Interpretation Note 30) must be zero-rated … and … the supply in terms of an “indirect export” (refer to Regulation 2835) where VAT may be levied …

**Examples 10, 11, 12 and 13 (comment)**

We suggest that a different surname than “Black” be used as it may be construed in a racial context.

Further, using Mr. J Soap and Mrs. J Soap in example 12 may confuse the issue. Rather use Joe and Jane.

**Example 10 (comment)**

The highlighting of non-resident may be interpreted as a requirement for the zero rate to apply only if the goods are sold and exported to a non-resident. It is suggested that the words should not be highlighted. Goods can of course be supplied to a resident but exported from South Africa.

**General (comment)**
Consider including an example or examples where a dealer sells a vehicle to a customer, who finances the vehicle on rental or ICA, where the vehicle is exported by the dealer, financer or customer.

Chapter 4

Paragraph 4.3, lines 2 and 5 (suggest change to text)

… dealer is entitled to claim the VAT paid on importation as input tax, provided the motor dealer …; and… the motor dealer cannot also claim notional input tax …

Paragraph 4.4, paragraph 2 (comment)

We suggest that the guide should further elaborate on the deemed supply on the fringe benefit. In particular, emphasis should be placed on the fact that the 0.6% will apply to all demo vehicles regardless of whether they constitute “motor cars” or not.

We also suggest an example in this regard.

Paragraph 4.5, line 8 (suggest change to text)

… the seller of the motor [car] vehicle stating that the …

Paragraph 4.5 (suggestion)

Regarding the ‘resident in SA requirement’ in practice it often happens that a customer cannot produce an ID book or passport that states he is a SA resident. What other proof would be acceptable to SARS? Would a person’s drivers’ licence, his naturalization certificate or permanent resident permit as provided for by the Department of Home Affairs be acceptable?

- In a document provided by SARS on Special Cases where no tax invoices are required to claim input tax (February 2005) it is stated that:

Where a vendor purchases second-hand goods from a non-vendor, the purchaser (vendor) has to record the details of the transaction in terms of section 20(8) of the Value-Added Tax Act, 1991 (“the VAT Act”) to substantiate the input tax claim. Form VAT 264
has been designed specifically for the purpose of assisting vendors to keep all the required records in this regard, which are as follows:
- Name, address and I.D. No. of the supplier (I.D. No. of the representative person if it is a company or close corporation);
- Date of acquisition;
- Quantity or volume of goods;
- Proper description of the goods;
- Consideration for the supply;
- Declaration by the supplier stating that the supply is not a taxable supply;
- The vendor must verify the person’s I.D. No. with the I.D. book or passport; and
- Where the value of the supply is R1 000 or more, the vendor must obtain and retain a copy of the person’s I.D., and, in the case of a company or cc, a business letterhead or similar document is also required which shows the name and registration number allocated by the Registrar of Companies.

In the previous version of SARS’ VAT 404 – VAT Guide for Vendors, a chapter was dedicated to Frequently Asked Questions. The answer to the question ‘35. What records do I need to claim input tax on 2nd hand goods?’ stated that ‘The name, address and I.D. no. of the supplier who must be a resident. The I.D. no. must be checked against the I.D. book or passport of the supplier’.

**Paragraph 4.7 (comment)**

- Explain the nature and purpose of a floorplan, namely to finance a dealer’s stock on floor;
- A floorplan agreement is not between the financier and the manufacturer, but between the dealer and the financier;
- A floorplan can also apply to second-hand vehicles purchased and does not only apply to new vehicles acquired from the manufacturer. Further, a floorplan can apply to imported vehicles where the manufacturer is not in RSA;
- Floorplans are not loan agreements, but ICA’s; and
- Floorplans are not loans of vehicles, but ICA’s.

**Paragraph 4.8 (comment)**

Also deal with VAT on indemnity payments received, especially where a policy is ceded.

**Paragraph 4.9 (comment)**

Indicate what the “finder’s fee” is for.

**Paragraph 4.10 (comment)**

The entire over-allowances section pre-supposes that the over allowance, by implication, exceeds the open market value. Often this is not the case. In any event, the actual open market value of motor vehicles are generally determined as the average between the trade-in and retail price. This, despite the fact that dealers generally tend to offer considerations below trade-in value.

Page 22 of the Guide dealing with the section 72 ruling application.

**Suggestion**

It is important to note that this arrangement is not a general ruling and every vendor who trades in this manner must apply to the Commissioner to make such an arrangement in terms of section 72. In this regard, the Commissioner can, before making an arrangement in terms of section 72, request additional information or impose additional requirements that must be complied with before a vendor can utilise the said arrangement.
VAT News number 31 of February 2008 deals with section 72 rulings. The Guide must specify that motor dealers should apply to SARS’ Head Office (in Brooklyn Pretoria) for these rulings to prevent any confusion on the motor dealer’s side.

**Glossary**

“*Value of supply*”

Means the [price charged, excluding] monetary value which is subject to VAT.

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*