Dear Sirs

CALL FOR COMMENT: DRAFT INTERPRETATION NOTE 39: VAT TREATMENT OF PUBLIC AUTHORITIES, GRANTS AND TRANSFER PAYMENTS

Set out below, please find comments from SAICA’s National Tax Committee regarding the above-mentioned document that was released on your website for comment.

General comments

Our general impression of the Draft Interpretation Note (the DIN) is that it has been well thought through and is of a very high technical quality. The difficulty with a document of this nature however, is in dealing with so many technical issues, that the practical implications almost get lost due to the sheer volume of information.

From a document composition point of view, we therefore suggest that the introduction to the DIN indicates who would be affected by the changes in legislation and a brief summary of the practical implications for such parties (similar to what is currently dealt with in paragraph 7 of the DIN, but probably more abridged).

Specific comments

1. Paragraph 2.2 – General principles

1.1. Third paragraph

The paragraph refers to “unless the payment is a financial service, for example, the purchase of shares or a loan”. We recommend that reference be made to...
“exempt supplies” as financial services are merely one example of the larger category of exempt supplies.

1.2. Fifth paragraph

The paragraph currently reads: “However, these entities are not required to pay output tax on the market value of their assets on the date of registration.” Technically the value of supply rule for section 8(2) of the Value Added Tax Act No. 89 of 1991 (the VAT Act) is the lower of cost or market value. In practice it is likely to always be the market value, but it may not necessarily be so where fixed property is involved. We recommend that you give some consideration to the current wording in the DIN, i.e. whether it would add any value to the reader of the document or whether it is merely of academic value and adding to the complexity.

2. Paragraph 4: Application of the law before 1 April 2005

2.1. Paragraph 4.4: Definition of “services”

A practical example of where sections 8(5) and 11(2)(p) are applicable would be useful to further clarify the definition of services.

2.2. Paragraph 4.5: Definition of “transfer payment”

We recommend that consideration be given to shortening the discussion on transfer payments, given that the legislation has been amended to resolve past disputes in this regard.

3. Application of the law on or after 1 April 2005

3.1. Paragraph 6.12: Section 18(4) – change in use adjustments (denial of input tax) [Refer to paragraph 5.4]

The paragraph currently reads: “Section 18(4) ….. to wholly taxable use”. Kindly note that section 18(4) also applies where there is a change in use from wholly exempt/non-enterprise purposes to a partial use for taxable/enterprise purposes. We recommend that this issue be addressed in the DIN.

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

Yours faithfully

M Kendall CA(SA)
TECHNICAL ASSISTANT: TAX
The South African Institute of Chartered Accountants