26 February 2007

Legal and Policy Division
South African Revenue Service
Private Bag X923
PRETORIA
0001

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

Dear Sirs

CALL FOR COMMENT: VAT 404 – DRAFT UPDATED GUIDE FOR VENDORS

We refer to your call for comment placed on the website. Set out below, please find comments from SAICA’s National Tax Committee:

GENERAL

We request that changes made to guides and drafts that had previously been released for comments be made in bold letter type. Furthermore, to indicate which amended version of the documents is published for comment enabling reviewers to track changes.

The guide should make reference to VAT rulings available on SARS’ website and possibly attach a listing as an annexure to the guide.

CHAPTER 2: REGISTERING YOUR BUSINESS

1. Page 11 – paragraph 2.3.3: reference is made to a form VAT 101 DON, but we note that the form is not available on the SARS’ website.

CHAPTER 5: TAXABLE SUPPLIES

2. Page 21 – paragraph 5.2 (third bullet): the examples of standard rated supplies refer to fish and canned foods, which may be confusing, whilst pilchards in tins or cans are classified as basic foodstuffs and are zero rated.

3. Page 24 – paragraph 5.3.10: Dealing with services supplied to non-residents refers to section 11(2)(l); a very detailed section and often creating many problems in practice; a
reference to the section may be useful. It may also provide further clarity if a reference
to section 11(2)(l)(ii)(bb) is included in the example, to make it clear that this is not an
example in respect of section 11(2)(l)(iii), i.e. the requirement that the non-resident
should not be in the Republic at the time that the services are rendered.

4. Page 25 – paragraph 5.4: we recommend that the following references be included to
provide further clarity:
   4.1. Deemed supplies to designated entities equals standard rated (section 8(5)); and
   4.2. Deemed supplies to non-designated entities equals zero rated (section 8(5A)).

CHAPTER 6: EXEMPT SUPPLIES

5. Page 30 – paragraph 6.6 (second last bullet): the word “a” before disability policies
should be deleted.

CHAPTER 7: INPUT TAX

6. Page 33 – paragraph 7.3 third bullet point under factors affecting the amount of input
tax to be claimed: reference is made to paragraphs 7.5 below; which should most
probably be 7.4; but there is no such paragraph, as the headings go straight from 7.4 to
7.6, i.e. the numbering for the last section of Chapter 7 is wrong.

7. Page 34

7.1. We note that the comment about the turnover based method being the only
approved method without obtaining a specific ruling, has been deleted from the
previous Guide. In our view, this is an omission, as this provides background as to
why a vendor would need to obtain written approval should he seek to use one of
the methods listed on page 36.

7.2. The block setting out the turnover based method: the formula reflects the
calculation of taxable supplies over “total value of all supplies”, however, note 2
to the formula provides that income earned by the enterprise not constituting
supplies, should also be included. Our comments in respect of note 2 are as
follows:

7.2.1. The word ‘supply’ is defined in the VAT Act and refers to taxable and
exempt supplies. The inclusion of the words: “plus the value of any other
income earned by the enterprise (whether in respect of a supply or not)”
in note 2, therefore, seems like an anomaly between the formula and
SARS’ interpretation thereof (e.g. SARS has agreed in the past that
dividends may be excluded from the formula, as it is not received in
respect of a ‘supply’); and

7.2.2. It is not clear what is meant by “any other income” not received in
respect of a supply.

7.2.3. The formula refers to “all supplies”, whereas note 2 refers to all
“standard rated and zero rated taxable supplies”. Clarity is needed on the
intention of the wording used.
7.3. Third last paragraph on page: we note that in the old Guide, this paragraph used to be followed by a paragraph explaining the de minimis rule, but that this has now been deleted. We would recommend that the explanation of the de minimis rule be included.

8. Page 41 – last paragraph (first line): the word ‘note’ was omitted after ‘interpretation’.

CHAPTER 8: CALCULATION AND SUBMISSION OF VAT

9. Page 43

9.1. Paragraph 8.2: we note that the paragraph referring to the faxing of VAT returns has now been deleted. Does this mean that VAT returns may no longer be faxed? If so, it should be communicated clearly to vendors to stop this practice. Especially as paragraph 8.3, the last bullet refers to “e.g. faxing”.

9.2. Last bullet point paragraph 8.3: we welcome the insertion providing guidance as to how ‘amended returns’ should be dealt with.

CHAPTER 11: TAX INVOICES

10. Page 61

10.1. First bullet point regarding tax invoices: tax invoices should always beissued, not just for supplies over R3 000. Supplies exceeding R3 000, however, require full tax invoices to be issued.

10.2. Bullet points regarding tax invoices: we noted that the R1 000 threshold for issuing full tax invoices has been amended to refer to R3 000. However, what about a reference to the fact that the R50 threshold will be changed to R100?

10.3. Second last bullet point regarding tax invoices: the recipient’s VAT registration number is only required when issuing full tax invoices, i.e. for supplies exceeding R3 000.

11. Page 63

11.1. Paragraph 11.6.2 (last line): the paragraph reference should be 11.6.1 instead of 11.5.1.

11.2. Paragraph 11.7: although reference is made to VATNEWS 20 setting out the requirements for electronic tax invoices, it may be useful to also include it in the Guide, as newly registered vendors will often use the Guide as their first point of reference and will not necessarily readily have access to previous copies of VATNEWS publications.
CHAPTER 13: ADJUSTMENTS

12. Page 67
   12.1. Paragraph 13.2 (last line): For purposes of clarity insert the underlined words in the sentence referring to “account for output tax on the payment received in the tax period in which the payment is received”.

   12.2. Paragraph 13.3 (last sentence of paragraph 2): the reference to a debit note issued should be changed to a credit note issued.

CHAPTER 14: OBJECTIONS AND APPEALS

13. Page 72
   13.1. Paragraph 14.1.3 (third bullet point): should it not read your representative rather than our representative?

   13.2. Paragraph 14.1.4 (last bullet point): the word ‘appeal’ should be inserted as follows: “(ADR) procedures or rather appeal to the Special Board …”

14. Page 73 – paragraph 14.2.6: Consideration should be given to including the fact that even if a settlement is reached during the ADR meeting, this would still be subject to approval by SARS’ Head Office and that vendors will only thereafter receive a recordal for signature. This paragraph may create the impression that if an agreement is reached during the meeting, assessments will automatically be changed.

CHAPTER 18: FREQUENTLY ASKED QUESTIONS (FAQ’S)

15. Page 86 – Question 43: why was the reason for medical schemes not being entitled to claim input tax removed? We suggest that the explanatory reason should not have been removed.

CHAPTER 19: GLOSSARY

16. Page 93 – definition of ‘domestic goods and services’: The last sentence in the old Guide pertaining to the treatment of separate charges has now been deleted. Was this an oversight, as this is in our view an important aspect of the concept “all-inclusive charge”?

Please do not hesitate to contact me should further information be required.

Yours faithfully

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