24 November 2017

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The South African Revenue Service
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RE: ANNEXURE C PROPOSALS FOR BUDGET 2018: VALUE-ADDED TAX

We have attached the Annexure C Proposals from the SAIT Value-Added Tax Work Group. We appreciate the opportunity to participate in the process and would welcome further dialogue.

Please do not hesitate to contact us should you need further information.

Yours sincerely

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Vice-chair of the Value-Added Tax Work Group

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ANNEXURE C SUBMISSIONS FOR 2018 BUDGET: VALUE-ADDED TAX

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ANNEXURE C SUBMISSIONS FOR 2018 BUDGET: VALUE-ADDED TAX

1. PARAGRAPH (II) OF THE PROVISO TO THE DEFINITION OF "ENTERPRISE" IN SECTION 1 AND SECTION 50(2) OF THE VAT ACT: REQUIREMENTS FOR SEPARATE VAT BRANCHES, ENTERPRISES OR DIVISIONS

1.1 The legal nature of the problem

Section 50 (1) of the VAT Act read with section 50(2) provides that:

Where separate enterprises are carried on by any vendor or an enterprise is carried on by any vendor in branches or divisions, the vendor may apply to the Commissioner for separate VAT registrations of such enterprise, division or branch, where:

- it maintains *an independent system of accounting*; and
- is separately identifiable by the nature of its activities carried on or the location of the separate enterprise, branch or division.

These requirements are similarly stated in paragraph (ii) of the proviso to the definition of "enterprise" in section 1.

1.2 Detailed factual description

Based on experience, the words "independent system of accounting" is often interpreted by vendors to mean that the said enterprise, branch or division will need to implement a separate accounting or ERP system to collect, store and process accounting data.

It is our view that the intention of the legislation was not to impose an additional cost on the vendor by procuring multiple accounting systems for the enterprises, branches or divisions requiring separate VAT registrations. Instead, a vendor, should be required to keep separate accounting records for the said enterprise, branch or division requiring separate VAT registration (i.e. the activities of the said enterprise, branch or division must be clearly distinguished or 'ring-fenced' from the vendor's remaining or other activities in or outside South Africa, within the same accounting/ERP system).

1.3 The nature of the business impacted

All vendors who register separate enterprises, branches or divisions and foreign companies who want to separate the activities in South Africa from its main business outside South Africa.

1.4 Proposal

We recommend that the phrase "maintains an independent system of accounting" is amended to read *"maintains a separate set of accounting records"* instead.

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Previously reported matters include

2. SECTION 21(1) OF THE VAT ACT: CREDIT AND DEBIT NOTES

2.1 The legal nature of the problem

Vendors that make taxable supplies must issue tax invoices to recipients within 21 days of the date of the supply. Vendors must issue credit and debit notes for supplies under specific scenarios. These scenarios cover cancelled supplies, fundamental changes to a supply, adjustment to agreed consideration, the return of supplies and the correction of mispriced tax invoices.

2.2 Detailed factual description

Where a vendor have issued a tax invoice with the incorrect name of the recipient, or where the tax invoice contains an error which is not covered in the above circumstances, the vendor is prohibited from issuing a credit note to correct the mistake because it falls outside the list of permissible scenarios.

2.3 The nature of businesses affected

All vendors that issue tax invoices.

2.4 Proposal

We recommend that the scenarios in section 21(1) of the VAT act be expanded to include any scenario where a tax invoice had been issued in error or where any detail on the tax invoice would mean that the document would not constitute a valid tax invoice as defined in section 20(4) or (5) of the VAT Act.
In practice, we experience that SARS allows for credit and debit notes to be issued in these scenarios but it is not supported by the current legislation.

3. SECTION 21(3)(a) OF THE VAT ACT: CREDIT NOTES FOR SUPPLIES AFTER SALE OF AN ENTERPRISE AS A GOING CONCERN

3.1 The legal nature of the problem

Company A sells its enterprise to Company B. Subsequent to the acquisition of the enterprise a customer of Company A returns goods acquired from Company A, but the return is made to Company B.

Section 21(3)(a) provides that where the amount shown as tax charged in a tax period exceeds the actual tax charged in respect of a supply, the supplier shall provide the recipient with a credit note.

In the instance where the enterprise has been sold and the goods are returned to the purchaser, this creates an issue since the purchaser cannot issue a credit note from a

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VAT perspective and will accordingly not have the requisite documentary evidence to claim the input tax deduction.

3.2 Detailed factual description

Similar to the provisions of bad debts written off where it has been acquired on a non-recourse basis.

3.3 The nature of the businesses impacted

All vendors where goods can be returned subsequent to a sale of the business or the sale of agreements (e.g. instalment credit agreements).

3.4 Proposal

We suggest an amendment to legislation that will allow the purchaser of an enterprise or agreements to issue a credit note in respect of goods supplied by the supplier but returned to the purchaser of the enterprise or agreement.

4. SECTION 21(3)(a) AND SECTION 21(3)(b) OF THE VAT ACT: CREDIT AND DEBIT NOTES

4.1 The legal nature of the problem

Section 21(3)(a)(i) and section 21(3)(b)(i) provide that when a credit note/ debit note is issued the credit note/debit note must contain the words “credit note” or “debit note”.

4.2 Detailed factual description

Certain international IT systems require customization to include the prescribed wording.

4.3 The nature of the businesses impacted

All vendors who issue and/or receive credit and/or debit notes.

4.4 Proposal

We recommend that section 21(3) of the VAT Act be amended to provide for the use of the alternative wording for a “credit note” or debit note” such as “credit memo” or debit memo” or “debit” or “credit invoice”.

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5. ZERO-RATING OF LOOP TRANSACTIONS IN RELATION TO SERVICES SUPPLIED BY A VENDOR TO A NON-RESIDENT NON-VENDOR

5.1 The legal nature of the problem

A loop transaction in relation to services takes place where a South African vendor supplies services to a non-resident non-vendor by rendering these services on its behalf to another South African vendor. There is currently no provision available to provide for the zero-rating of loop transactions in relation to services (unless they are tied to movable property).

5.2 Detailed factual description

Company A, a non-resident non-vendor is contracted by Client, a South African vendor to perform to perform services for Client. Company A sub-contracts its South African subsidiary, Company B to render the services to Client on its behalf. Company B renders the services and invoices Company A who invoices Client.

5.3 The nature of the businesses impacted

Multinational groups where a South African Client contracts with the offshore company for the rendering of services who, in turn, sub-contracts some of the work to a South African group company.

5.4 Proposal

Loop transactions in relation to services should be zero-rated provided that the ultimate recipients of those services (the South African vendor) is fully taxable.

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