

8 August 2016

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The South African Revenue Service
Lehae La SARS, 299 Bronkhorst Street
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RE: 2016 TAXATION LAWS AMENDMENT BILLS: COMMENTS FROM MEMBERS (VALUE-ADDED TAX WORK GROUP)

We are responding to the request for submissions from the public as announced in the 8 July 2016 National Treasury media statement. This response addresses the proposals relating to value-added tax.

1. Relief for second-hand gold sales

We support the proposed change with minor modifications. In 2014, notional input tax credits were denied in the case of “gold” and “goods containing gold” in order to prevent fraud. We agree that the amendment went too far, unfairly targeting innocent second-hand trading.

Given that the main purpose of the amendment is to exclude the sale of items containing only small amounts of gold (e.g. computers and other electronics), the legislation should be amended to fully reflect that intention. The amendment should simply exclude items containing insignificant amounts (e.g. less than 10 per cent) of gold in terms of value if the item is sold in the same or substantially the same state.

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In suggesting this change, we note gold jewellery does not consist “solely” of gold but often contains other alloys.

2. Cash invoice method for municipal entities

We have no objection to the extension of the full cash-basis system of invoices for municipal entities. However, we again fail to see why similar relief cannot be provided to smaller businesses.

We at least note that relief should at least be allowed when smaller businesses are dealing with public authorities, municipalities and municipal entities. As is fully recognised in section 15(2A), these entities frequently fail to make payment in a timely fashion. Delays are often a year or longer. Companies (especially smaller companies) contracting with public authorities, municipalities and municipal entities should be allowed to account for these contracts on a payments basis. The cash-flow shortfalls resulting from the invoice basis in terms of these contracts aggravate already serious cash-flow problems and can even drive these businesses into insolvency.

3. Relief for defective invoices

We support the proposed attempt to provide relief for vendors with defective invoices due to circumstances beyond their control. However, we believe that the requirement of a formal rulings process for relief would be fairly onerous and excessive. Invoice defects periodically arise without easy correction. The counter-party may have undergone a reorganisation or other change or simply have faulty systems. Not all counter-parties are co-operative or have efficient processes. Many governmental entities are particularly difficult to handle once a defective invoice is issued.

In cases such as these, a quick less-formal process is required obtain relief. We would accordingly request that more informal discretionary process be considered to address these situations as long as the vendor with the defective invoice comes forward timeously.

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4. Time limit for refunds

We are a little confused by the proposed changes. The statement of objects specifically states that “[i]t is proposed that an input tax deduction be limited in certain instances to the tax period in which the time of supply occurred.” However, we fail to see this change within the proposed bill. We are also wary of an overly restrictive approach to refunds.

5. Non-executive directors (suggested within Annexure C of the Budget Review)

We had hoped that the confusion the taxation of non-executive (and other directors) would be clarified based on the indications made in Annexure C of the Budget Review. We had also suggested in a prior submission that compliance and enforcement ease would tilt exclusively in favour of imposing payroll tax over VAT in all cases when payment is made to directors.

Without returning to the merits of our prior suggestion, we would at least suggest that the law be amended to prevent double taxation. Directors should not be subject to both the payroll tax and VAT. We concede the existence of proviso (iii) to the section 1 “enterprise” definition, but we believe that the proviso does not provide full protection.

- Firstly, the proviso only covers common law employees, not deemed Fourth Schedule employees (despite the reference to the Fourth Schedule “remuneration” definition).
- Secondly, paragraph (bb) overrides the relief if the employment is in respect of “any enterprise carried on by him independently” of the employer.

We would suggest that the proviso be adjusted to fully prevent double taxation. Amounts subject to payroll tax should simply not be subject to VAT.

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6. Power to alter VAT rates

The proposed amendments seek to modify the Minister's powers to alter VAT rates, including the extension of Parliamentary ratification from 6-to-12 months. This change is admittedly consistent with the Minister's power to propose tax rate changes for income tax rates as well as the rates of other taxes. The purpose of this power is to allow for general tax rate changes that normally take effect shortly after the Minister's speech, which are then ratified via a rates and monetary amounts bill (with the new rates / monetary amounts normally taking effect from 1 March or 1 April). This power can be used to adjust rates up or down.

Despite the above, we believe that changes in VAT rates should be treated differently. The company system changes for VAT rate alternations are far more intensive. The sticker price of all goods must be changed when a new rate goes into effect, even goods already stocked on shelves. This change in price will take longer to operationalise than rate changes associated with income tax, including payroll.

More importantly, the politics associated with the VAT are far more sensitive than with other taxes, especially any proposed VAT rate increase whatever the cause. It is beyond question that unions and low-income groups will fight hard against VAT rate increases. Any perceived short-cut in the consultation / Parliamentary process will be viewed as grounds for objection and protest. Care must be taken to ensure that perceived violations of process associated with the toll road debate are not repeated should any VAT rate increase be required.

We thank National Treasury and SARS for continuing the process of policy dialogue and welcome the next opportunity to engage.

Yours sincerely

Victor Terblanche

Chair of the Value-Added Tax Work Group