

16 August 2018

The National Treasury
240 Madiba Street
PRETORIA
0001

The South African Revenue Service
Lehae La SARS, 299 Bronkhorst Street
PRETORIA
0181

BY EMAIL: Nombasa Langeni (Nombasa.Langeni@treasury.gov.za)
Adele Collins (acollins@sars.gov.za)

RE: DRAFT TAXATION LAWS AMENDMENT BILL (TLAB), 2018 AND DRAFT TAX ADMINISTRATION LAWS AMENDMENT BILL (TALAB), 2018: COMMENTS PERTAINING TO KEY VALUE-ADDED TAX ISSUES

We have attached the comments from the SAIT Value-Added Tax Work Group on the on the draft Taxation Laws Amendment Bill (draft TLAB), 2018 and draft Tax Administration Laws Amendment Bill (draft TALAB) 2018 pertaining to key value-added tax issues. 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

Severus Smuts

Vice-chair of the Value-Added Tax Work Group

VALUE-ADDED TAX

1. Cryptocurrency

1.1 Treasury Proposal

It has been proposed that the issue, acquisition, collection, buying or selling or transfer of ownership of any cryptocurrency be included in section 2(1)(o) of the VAT Act as a deemed financial service and hence an exempt supply.

1.2 Comment

We query whether the treatment of cryptocurrency as a financial service will be the most appropriate treatment from a VAT perspective. The deemed financial service and consequential exemption from VAT makes sense from a cryptocurrency trader's perspective, but we submit that the VAT exemption could give rise to unintended consequences for others. Cryptocurrencies could in some cases be used to pay for the supply of goods or services, for example, where a retailer accepts cryptocurrency as a means of payment. The original supply of goods or services should not give rise to a concern for the retailer. However, should the retailer subsequently sell or barter the cryptocurrency, such supply would be an exempt supply under the proposed amendment. The result will be that a portion of the retailer's supplies will be exempt from VAT, resulting in input tax apportionment issues in the hands of the retailer.

As an alternative, we recommend that Treasury consider whether cryptocurrency should not rather be treated the same as "money" and exclude it from the definition of "goods" and "services" in section 1(1). We don't think an exemption, as proposed, is the best solution and suggest that the treatment in other jurisdictions also be considered.

We further recommend that the term "cryptocurrency" be defined in section 1(1) to ensure that items such as digital vouchers are not inadvertently treated as cryptocurrencies.

2. Cancelling an incorrect tax invoice (section 20 of the VAT Act)

2.1 Treasury Proposal

Vendors that make taxable supplies must issue tax invoices to recipients. 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. Where a vendor has issued a tax invoice with, for example, 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.

The proposed amendment prescribes that where an original tax invoice contains a material mistake that does not fall under the above-mentioned specific scenarios, that the original invoice must be cancelled (without issuing a credit note) and a correct invoice must be issued, without affecting the time of supply. A proper audit trail will also have to be kept between the original invoice and the correct invoice and the reasons for the cancellation must be documented.

2.2 Comment

In practice, many/most vendors use ERP (Enterprise Resource Planning) systems. The capability within the ERP system determines how invoices and debit and credit notes are processed and the VAT is accounted for by the organisation. In our experience, most financial systems would require a credit note to be generated before a replacement invoice can be generated so that the credit note can effectively cancel the original invoice before a new invoice is issued. Although this credit note need not be issued to the recipient, the VAT adjustment will be processed to the VAT account. The same applies when the 'new' tax invoice is generated. This means the VAT in relation to credit note and 'replacement' tax invoice will be accounted in the VAT return which is not in terms of the proposed amendment to section 20.

To cater for the above, we recommend that the scenarios in section 21(1) of the VAT Act dealing with credit notes also 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 this case the credit note must be 'issued' to the recipient. 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.

There seems no logical reason for restricting the proposed provision to situations where there is a "*material*" error. The fact that an error has occurred that the parties to the supply wish to correct by issuing a correct tax invoice should suffice. Clarity could be given by making reference that a material error relates to non-compliance with any of the requirements of section 20(4) or section 20(5) of the VAT Act.

It is also recommended that this amendment be extended to section 21(3) of the VAT Act.

3. Goods returned to the purchaser of a going concern (section 21 of the VAT Act)

3.1 Treasury Proposal

Where an enterprise has been sold as a going concern as contemplated in section 11(1)(e) of the VAT Act, the purchaser of the enterprise will be allowed to issue a credit note in respect of goods that were supplied by the seller of the enterprise but that is returned to the purchaser.

3.2 Comment

The proposal is welcomed as it will ease the compliance burden and/or cost for the purchasing vendor who acquires the rights and obligations in relation to past supplies made by the seller.

Firstly, similar considerations apply for all sales of a business, even those that are standard rated and where the corporate rules (section 42, 44, 45 and 47 of the Income Tax Act) as envisaged in section 8(25) apply.

In addition, it may well transpire later that the original document issued by the supplier was not a valid tax invoice (refer proposed amendment to section 20) or that one of the other criteria in section 21(1) (refer paragraphs (a), (b), (c) and (e)) applies.

The amendment should therefore also cater for the above circumstances.

4. Prescription rules (section 44 of the VAT Act)

4.1 Treasury Proposal

It is proposed that a vendor be required to claim overpaid VAT within 5 years from the date it was paid to SARS and that claims will not be considered valid if the enterprise's banking details for the payment of the refund have not been provided.

4.2 Comment

We query whether these administrative matters should not rather be dealt with in the Tax Administration Act.