30 June 2020

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

VIA EMAIL: SARS policycomments@sars.gov.za

RE: DRAFT INTERPRETATION NOTE: VALUE-ADDED TAX CONSEQUENCES OF POINTS-BASED LOYALTY PROGRAMMES

Dear Sir/Madam

We would like to thank you for the invite to comment on this draft interpretation note dealing with points-based loyalty programmes. We recognise that this area of VAT law can be complex (borne out even by the lively debate that the SAIT VAT Technical Work Group had on this!).

As a general matter, there are different views held in the SAIT VAT Technical Work Group regarding the statements of law made within the draft interpretation note. However, our main concern relates to the need for clarifying how those statements of law actually apply to the many different factual scenarios of point-based loyalty programmes.

We list below a few specific (non-exhaustive) comments below.

Yours sincerely,

Members of the SAIT VAT Technical Work Group
Structure and approach of the draft interpretation note

1. The draft interpretation note addresses the VAT effects of a multi-party loyalty point programme as its starting point of departure. This approach has the advantage in that it ensures that the roles of all the parties to a loyalty points programme are detailed and the VAT consequences discussed. However, it also has the consequence that the draft interpretation note starts on a fairly complex level without a gradual build-up.

2. Most notably, application of the law to one of the most complex forms of loyalty programmes does not really assist with the VAT law’s application to more simple scenarios. The multi-party scenario has split the loyalty programme operator, the loyalty partner and the redemption partner into different entities. Most programmes are simpler.

3. It is also hard to determine the impact of the scenario, because the scenario does not indicate whether the parties are technically or economically connected or highlight issues relating to agency relationships. The scenario additionally seems to focus on business interactions between retailers and similar entities without describing the role of financial institutions (i.e. partially exempt entities) who often provide loyalty points of their own.

4. We accordingly recommend that the draft interpretation note introduces (also by way of diagram as done with the multi-party programme) the loyalty points programme concept and its VAT effects initially through a simple or singular programme in which the retailer (i.e. seller of goods and / or services) assumes the roles of loyalty programme operator, loyalty partner, and redemption partner and the member (i.e. buyer of goods and / or services). The draft interpretation note can then build on this platform by moving ultimately through to a multi-party programme.

Discount programmes

5. Loyalty programmes have evolved over the years. Today, the most common form of loyalty programme provides simple discounts with a single retailer. In a programme of this nature, consumers obtain points with every purchase. These points then generate a discount for a subsequent purchase from the same retailer. In these programmes, the loyalty programme operator, the loyalty partner and the redemption partner are commonly a single entity. In a few cases, other supporting retailers may be involved.

6. Unfortunately, the draft interpretation note explicitly does not address general discount programmes and certain other variations of these schemes. It is understandable that an interpretation note cannot cater for all possible scenarios. However, one disadvantage of this exclusion is that stakeholders and SARS may still seek to apply the principles laid down in the draft interpretation note to all such programmes, which could result in disputes between SARS and the taxpayer (an outcome that a draft interpretation note is specifically intended to avoid).
7. We accordingly recommend that the draft interpretation note explicitly cover general discount programmes in order to clarify their VAT treatment.

Caveats

8. While typical interpretation notes are supposed to comprehensively cover a given tax section or subject, the draft interpretation note contains a number of caveats throughout. The interwoven nature of these caveats is adding to the confusion, especially since some of these caveats do not appear to be of an outright nature.

9. We accordingly recommend that the scope of the draft interpretation note be set out clearly in terms of section and factual scenarios. Any caveats required should also be addressed at the start of the draft interpretation note, and the draft interpretation note should make it explicit that any language should not be implicitly read to cover scenarios beyond the draft interpretation note’s reach.

Current VAT Rulings

10. We understand that there are a number of private VAT rulings dealing with specified VAT loyalty programmes. We query whether these private rulings will still remain in force and effect or be altered in some way. We suggest that the draft interpretation note either explicitly recognise the continued validity of these rulings or that the recipients of these rulings be contacted separately to clarify their situations.

The Way Forward

11. In conclusion, the SAIT VAT Technical Work Group in the main agrees with the content or technical conclusions reached in terms of the introduction and analysis of the multi-party programme. The SAIT VAT Technical Work Group would nonetheless require more time to conduct a more comprehensive analysis of the technical conclusions reached as potentially applied to specific scenarios.

12. We accordingly recommend that SARS extend the time in which comment may be provided by a further three months in order to gather more information on the variety of common factual scenarios. In making this assumption, we understand that approximately 70 programmes are in operation in South Africa, which complicates the drafting if one is to rely on implicit application. A workshop with SARS and industry in this regard may even be in order or at least a solid cavass of the industry (which SAIT is more than willing to facilitate).

13. We further believe that an international comparison in this area would be in order to compare the potential range of viable possible policy options. New Zealand would presumably be the likely starting point given that South Africa’s VAT used the New Zealand VAT as its genesis.

End.