

TAX & EXCHANGE CONTROL ALERT

IN THIS ISSUE

VAT RULINGS...HOW AND WHEN TO APPLY

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In practice, circumstances or proposed transactions may arise in terms of which the value-added tax implications flowing therefrom are not always clear. It is a person's very desire for certainty that underlies the provisions of the Value-Added Tax Act, No 89 of 1991 and the Tax Administration Act, No 28 of 2011 that enables the Commissioner of the South African Revenue Service to issue rulings regarding the VAT treatment of supplies made to or by a vendor in the course or furtherance of his enterprise.

CUSTOMS HIGHLIGHTS

This week's selected highlights in the Customs and Excise environment since our last instalment.

VAT RULINGS...HOW AND WHEN TO APPLY

In terms of s41B of the VAT Act, read with Chapter 7 of the TAA, a person, being a party to a proposed transaction, or a class of affected persons, may apply to the Commissioner for a VAT ruling or VAT class ruling dealing with the interpretation or application of the VAT Act, to a specific set of facts or scenario.

In order to obtain a VAT ruling, applicants are required to submit a VAT ruling application letter together with a duly completed and signed VAT301 form.



Human beings crave certainty – even when it limits them. – Robin S. Sharma.
In practice, circumstances or proposed transactions may arise in terms of which the value-added tax (VAT) implications flowing therefrom are not always clear. It is a person's very desire for certainty that underlies the provisions of the Value-Added Tax Act, No 89 of 1991 (VAT Act) and the Tax Administration Act, No 28 of 2011 (TAA) that enables the Commissioner of the South African Revenue Service (SARS) to issue rulings regarding the VAT treatment of supplies made to or by a vendor in the course or furtherance of his enterprise.

In terms of s41B of the VAT Act, read with Chapter 7 of the TAA, a person, being a party to a proposed transaction, or a class of affected persons, may apply to the Commissioner for a VAT ruling or VAT class ruling dealing with the interpretation or application of the VAT Act, to a specific set of facts or scenario. Such a ruling is then dealt with as if it were a binding private ruling or a binding class ruling issued under the TAA.

Furthermore, s72 of the VAT Act provides the Commissioner with discretion to make an arrangement or to give a direction to a vendor or class of vendors to overcome difficulties, anomalies or incongruities that have arisen or may arise in regard to the application of any of the provisions of the VAT Act, where this arrangement does not have the effect of substantially reducing or increasing the ultimate liability for tax levied under the VAT Act. Therefore, where a vendor finds that the application of the VAT Act gives rise to certain difficulties, anomalies or incongruities, such vendor may request that the Commissioner exercise his discretion in terms of s72 of the VAT Act by means of issuing a VAT ruling to such vendor.

In order to obtain a VAT ruling, applicants are required to submit a VAT ruling application letter together with a duly completed and signed VAT301 form. Where the services of a tax practitioner

or legal representative are used, the application must also be accompanied by a signed power of attorney form. Although not specifically required, it is also recommended that a tax clearance certificate accompany an application for a VAT binding ruling. This is on the basis that SARS may refuse to process an application where the taxpayer has any outstanding tax issues with SARS. Submitting a tax clearance certificate, therefore, assists in expediting the acceptance of a VAT ruling application.

All VAT ruling applications must be submitted via email to VATRulings@sars.gov.za and once accepted, generally takes SARS approximately 20 to 60 business days to process, depending on the complexity thereof.

In terms of s79(4) of the TAA, an application must contain certain prescribed information, including, *inter alia*, a full and proper description of the transaction; the impact that the transaction may have upon the tax liability of the applicant; the reasons why the applicant believes the ruling should be granted and the relevant statutory provisions or issues and the applicant's interpretation thereof. SARS may reject an application for a VAT binding ruling where the requirements of the TAA are not adhered to. SARS may also reject an application where the application deals

VAT RULINGS...HOW AND WHEN TO APPLY

CONTINUED

A VAT class ruling, as well as a VAT ruling, is binding on the Commissioner for the duration of its validity unless the specific facts and circumstances underlying the ruling issued have substantially altered.



with matters listed in s80 of the TAA, which include, for example, a proposed transaction that is hypothetical or not seriously contemplated at the time of the application; an application submitted for academic purposes or an application that contains a frivolous or vexatious issue. Public Notice 748, which was issued by the Commissioner for SARS and published in the Government Gazette on 24 June 2016 in terms of s80(2) of the TAA, includes the matters for which SARS will reject a VAT ruling application. These include, *inter alia*, the liability of a supplier or the entitlement to deduct input tax in respect of a party that is not an applicant to the application; applications that require the Commissioner to determine whether a person is acting in an agent or principal capacity; confirmation that a supply of accommodation constitutes 'commercial accommodation'; or if an expense is directly attributable to a taxable supply.

During the ruling process, SARS may request additional information or a meeting with the applicant to clarify issues pertaining to the application, following which an applicant may be required to update the application with additional facts. SARS is required to inform an applicant of its intention to issue a negative ruling, in which case, the applicant may choose to withdraw his/her application. This prevents the situation where an applicant is prejudiced by a negative ruling issued by SARS. It is important to note that the Rulings division of SARS is a separate division and that they, therefore, do not inform other divisions within SARS, for example, the audit division, of the proposed transaction, or of any issues identified by the applicant in the ruling application. There is accordingly virtually no risk to a vendor seeking a VAT ruling or VAT class ruling from SARS.

A VAT class ruling, as well as a VAT ruling, is binding on the Commissioner for the duration of its validity unless the specific facts and circumstances underlying the ruling issued have substantially altered. A ruling, therefore, serves to provide guidance as to SARS's views on certain transactions before entering into them and therefore serves to mitigate the risks of proposed transactions. As there is virtually no risk in applying for a VAT ruling, it is advisable to apply for such a ruling in cases of uncertainty. Prior to the expiration of a ruling, a vendor may apply for the renewal or extension thereof, provided that there have been no material changes to the underlying facts.

To the extent that SARS refuses to issue a positive ruling on an interpretation of the law, provided that there is no dispute of fact, a vendor may consider applying to the High Court to obtain a declaratory order in respect of the interpretation and application of the specific provisions of the VAT Act.

The process of applying for a VAT ruling is a fairly efficient process and comes at no cost payable by the applicant to SARS, as opposed to an advance ruling application for which an application fee is payable. Given SARS's recent stringent approach to tax collections, and the penalties imposed in respect of non-compliance, there does not seem to be any reason as to why a vendor should not obtain a ruling where there is any uncertainty regarding the correct VAT treatment of any transactions entered into, or to be entered into by such vendor.

Varusha Moodaley

CUSTOMS AND EXCISE HIGHLIGHTS

Please note that this is not intended to be a comprehensive study or list of the amendments, changes and the like in the Customs and Excise environment, but merely selected highlights which may be of interest.

In the event that specific advice is required, kindly contact our Customs and Excise specialist, Director, Petr Erasmus.



This week's selected highlights in the Customs and Excise environment since our last instalment.

1. Draft rules for Chapter VB of the Customs & Excise Act, No 91 of 1964 (Act) in respect of the health promotion levy imposed on sugary beverages manufactured in or imported into the Republic in terms of item 191.00 in Section A of Part 7 of Schedule No. 1 has been published.
2. On 30 October 2017, proposed regulations regarding the control of the import or export of waste have been published for comment. The Government Gazette states the following:

The Explanatory Note provides as follows:

"The Minister of Finance announced in the February 2016 Budget a decision to introduce a tax on sugar-sweetened beverages to help reduce excessive sugar intake. The Health Promotion Levy on sugary beverages has been introduced in the Rates and Monetary Amounts Bill. Rules in the Customs and Excise Act, 1964 have been drafted to facilitate the imposition of the sugar tax".

Please note that the forms referred to in Rule 541.06 will be published today (10 November 17) for comment due on 30 November 2017.

Comments to: [C&E_
legislativecomments@asars.gov.za](mailto:C&E_legislativecomments@asars.gov.za).

"Members of the public are invited to submit to the Minister, within 30 days from the date of the publication of this Notice in the Gazette, written representations on or objections to the following addresses:

By post to: The Director-General:
Department of Environmental Affairs

Attention: Mr Anben Pillay

Private Bag X447, Pretoria 0001

By hand at: Environment House,
473 Steve Biko Street, Pretoria,
Arcadia, 0082.

By email: apillay@environment.gov.za

Tel: (012) 399-9827.

The draft Regulations can also be accessed at <http://sawic.environment.gov.za> under "Documents for Comment" or obtained at the Department's offices."

CUSTOMS AND EXCISE HIGHLIGHTS

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3. Amendment of Schedule 1 Part 1:
 - 3.1 Substitution of tariff subheadings 1001.91 and 1001.99 as well as 1101.00.10 and 1101.00.90 to increase the rate of customs duty on wheat and wheaten flour from 75,24c/kg and 112,85c/kg to 91c/kg and 136,50c/kg respectively.
4. Amendment to Schedule 4:
 - 4.1 Insertion of rebate item 460.17/87.03/04.04 to create a rebate provision for vintage and/or internationally collectable motor vehicles classifiable in tariff heading 87.03 subject to both an import control and rebate permit issued by ITAC.
5. Please advise if additional information is required.

Petr Erasmus

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