

Value-Added Tax

Discussion Document: Proposed Policy Resulting from
Non-Compliance with Section 11(3)

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You are invited to send your comments regarding this Discussion Document on or before 7 December 2009 to:

policycomments@sars.gov.za.

Due to time constraints it will not be possible to respond individually to comments received.

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Preamble

In this discussion document –

- **“Direct Export”** refers to the supply by a vendor of movable goods under a sale or an instalment credit agreement where the goods are consigned or delivered by the vendor to the recipient at an address in an export country which is taxable at the zero rate in terms of section 11(1)(a)(i), read with paragraph (a) of the definition of “exported” in section 1 and section 11(3), as explained in Interpretation Note No. 30 (Issue 2) – 15 March 2006 – Documentary Proof Required on Consignment or Delivery of Movable Goods to a Recipient at an Address in an Export Country (IN 30);
- **“Direct Export Input Tax Time Period”** means a maximum period of 12 months commencing from the earlier of the time an invoice is issued or any payment of consideration is received by the vendor in respect of the supply of goods, as explained in IN 30;
- **“Direct Export Output Tax Time Period”** means a maximum period of three months commencing from the earlier of the time an invoice is issued or any payment of consideration is received by the vendor in respect of the supply of goods, as explained in IN 30;
- **“General Input Tax Time Period”** means a maximum period of 12 months commencing from the date of the tax invoice, as explained in Interpretation Note No. 31 – 31 March 2005 – Documentary Proof Required for the Zero-Rating of Goods and Services (IN 31);
- **“General Output Tax Time Period”** means the time that the relevant VAT 201 return is submitted to SARS, as explained in IN 31;
- **“Indirect Export”** refers to the supply by a vendor of movable goods under a sale or an instalment credit agreement where such goods are exported by air or sea by the recipient of the supply, and the vendor may elect to charge VAT at the zero rate in terms of section 11(1)(a)(ii), read with the Part Two of the Export Incentive Scheme, published as Notice 2761 in *Government Gazette* 19471 of 13 November 1998 (the Scheme) and paragraph (d) of the definition of “exported” in section 1;
- **“Indirect Export Input Tax Time Period”** means a maximum period of 12 months commencing from the date of the original tax invoice, as provided for in the Scheme;
- **“Indirect Export Output Tax Time Period”** means a maximum period commencing on the date of the relevant tax invoice and ending on the last day of the tax period which ends after the expiry of a period of two months calculated from the date of the relevant tax invoice, as provided for in the Scheme;

- “**VAT**” means value-added tax; and
- legislative references to “**sections**” are to sections of the Value-Added Tax Act, No. 89 of 1991 unless otherwise stated.

1. Purpose

This discussion document sets out a proposal in respect of a revised approach to the current VAT practice pertaining to output tax adjustments. In this regard, a vendor making a taxable supply of goods or services in terms of section 11 to a recipient will account for output tax at the rate of zero per cent. However, where the vendor does not obtain the documentary proof required in terms of section 11(3) within the specified time period an output tax adjustment is required.

The discussion document will also set out a revised approach regarding the deduction of input tax by a vendor in the instance where the documentary proof is subsequently received by that vendor.

2. Introduction

VAT is a tax that is levied on the domestic consumption of goods or services in a country and is collected at each stage of the production and distribution chain. In this regard, the South African VAT system is destination-based in that VAT is imposed on goods or services consumed in the Republic regardless of where the goods are produced or the services are rendered.

Accordingly, every supply of goods or services in the Republic by a vendor is subject to VAT at the standard rate in terms of section 7(1)(a), unless an exemption or exception applies thereto. The zero-rating provisions in terms of section 11 constitute an exception to this general rule in that tax relief is allowed on the supply of goods or services which satisfy the requirements contained in section 11. In particular, where consumption of goods or services is in an export country, the supply, being an export of goods or services, is zero-rated aligning to the destination-based principle.

In a VAT system, as with all tax systems, it is an inherent fact that exceptions (such as the zero-rating of the supply of goods or services) to the general rule pose risks for a tax administration. In light of these inherent risks, section 11(3) imposes an obligation on a vendor making a zero-rated supply to obtain and retain documentary proof acceptable to the Commissioner within the specified time period.

As VAT is a self-assessment tax, a vendor needs to determine at the time of making a supply whether tax is indeed chargeable, as well as, the applicable rate of tax which should be charged. A vendor can only conclude that tax is chargeable at the zero rate where the requirements of sections 11(1) or 11(2), as well as section 11(3), are complied with.

In the event that a vendor is not in possession of the relevant documentary proof and is, therefore unable to comply with section 11(3), the vendor must account for output tax at the standard rate as envisaged by section 64(1), that is, the vendor is not allowed to zero-rate the supply. However, having regard to the commercial reality that it is not always possible for a vendor to be in possession of the relevant documentary proof at the time that the supply is made, the Commissioner may vary the time period within which a vendor is required to obtain the acceptable documentary proof. As a result, measures were introduced to provide for adjustments to be made by a vendor in circumstances where the relevant documentary proof is not obtained.

3. Current approach

In light of the above, a vendor making a taxable supply of goods or services subject to VAT at the zero rate in terms of section 11 is required to adopt the following approach:

- A vendor not in possession of the documentary proof that is acceptable to the Commissioner in terms of section 11(3) within the specified output tax time period¹, is required to deem the supply to be at the standard rate [in terms of section 64(1)].
- As a result, the vendor is required to declare output tax on the supply by applying the tax fraction to the consideration. This output tax amount must be included as an output tax adjustment in the relevant VAT 201 return. However, having regard to the principles of VAT (i.e. VAT should not be a cost to a business within the VAT chain unless legislation specifically provides otherwise), an extended period is allowed to enable the vendor to obtain the required documentary proof.
- A vendor that subsequently obtains the relevant documentary proof within the specified input tax time period² may deduct the output tax adjustment previously declared as an input tax adjustment in the tax period in which the relevant documentary proof is obtained.

4. Proposed approach

It is proposed that the following approach be applied by a vendor making a taxable supply of goods or services subject to VAT at the zero rate in terms of section 11:

- A vendor not in possession of the documentary proof that is acceptable to the Commissioner in terms of section 11(3) within the specified output tax time period³ is required to declare output tax on this supply by applying the tax fraction to the consideration as envisaged by section 64(1). This output tax must be included as an output tax adjustment in the relevant VAT 201 return.
- A vendor who has accounted for the output tax adjustment and who subsequently obtains the relevant documentary proof required in terms of section 11(3) within five years after the date upon which the output tax adjustment was declared may apply, in terms of section 44(2), read with section 44(3), for the output tax that was paid to be refunded by the Commissioner. The claim for the refund must fulfill the requirements of section 44(3), including the proviso to section 44(3)(a), where applicable.

¹ Being either the General Output Tax Time Period, the Direct Export Output Tax Time Period or the Indirect Export Output Tax Time Period.

² Being either the General Input Tax Time Period, the Direct Export Input Tax Time Period or the Indirect Export Input Tax Time Period.

³ Being either the General Output Tax Time Period, the Direct Export Output Tax Time Period or the Indirect Export Output Tax Time Period.

5. General

The proposed approach will result in amendments or revisions in respect of the following VAT publications:

- IN 30.
- Draft Interpretation Note No. 31 (Issue 2) – Documentary Proof Required for the Zero-Rating of Goods and Services.
- The Scheme.
- Interpretation Note No. 40 – 4 December 2007 – VAT Treatment of the Supply of Goods and/or Services to and/or from a Customs Controlled Area of an Industrial Development Zone.
- VAT404: Guide for Vendors.

6. Conclusion

This document is intended to promote discussion between SARS and stakeholders and, therefore, comment is invited on the proposed approach in paragraph 4.