

INTERPRETATION NOTE: NO. 83 (Issue 2)

DATE: 09 April 2015

ACT : VALUE-ADDED TAX ACT NO. 89 OF 1991
SECTION : SECTIONS 20(4), (5), (7), 21(1) AND (5)
SUBJECT : APPLICATION OF SECTIONS 20(7) AND 21(5)

Preamble

In this Note unless the context indicates otherwise –

- “**BGR**” means a binding general ruling issued under section 89 of the Tax Administration Act, 2011;
- “**section**” means a section of the VAT Act;
- “**VAT**” means value-added tax;
- “**VAT Act**” means the Value-Added Tax Act No. 89 of 1991; and
- any other word or expression bears the meaning ascribed to it in the VAT Act.

1. Purpose

This Note –

- sets out the requirements that must be met in order for the Commissioner to apply the provisions of sections 20(7) and 21(5);
- withdraws VAT Practice Note: No 2 dated 25 September 1991; and
- replicates under 5, paragraphs 2 and 3 of Binding General Ruling (VAT) No. 27 “Application of sections 20(7) and 21(5)”.

2. The law

The relevant sections of the VAT Act are quoted in the **Annexure**.

3. Application of the law

Tax invoices

A vendor making a taxable supply of goods or services must, under section 20(1), issue a tax invoice to the recipient within 21 days of the date of that supply. However, section 20(2) allows a recipient of a supply, after obtaining approval from the Commissioner, to issue a tax invoice for supplies made to it.¹ The document issued by the recipient in this instance shall, subject to certain conditions, be deemed to be a tax invoice provided by the supplier under section 20(1).

¹ See Interpretation Note No. 56 (Issue 2) “Recipient-Created Tax Invoices; Credit and Debit Notes” and corresponding Binding General Ruling (VAT) No. 15, both dated 31 March 2014, for the requirements that must be satisfied in respect of recipient-created tax invoices.

A document must contain certain information prescribed in section 20 to qualify as a “tax invoice”. Section 20(7) allows the Commissioner, subject to such conditions considered necessary, to direct in instances where there would be sufficient records available to establish the particulars of a supply and the Commissioner is satisfied that it is impractical to issue a full tax invoice, that –

- any one or more of the particulars specified in subsection (4) or (5) shall not be contained in a tax invoice; or
- a tax invoice is not required to be issued; or
- the particulars specified in subsection (4) or (5) be furnished in any other manner.

Credit and debit notes

A vendor that has issued a tax invoice in relation to a supply, and the amount shown as tax charged on the tax invoice exceeds the actual tax chargeable for the supply, is required to issue a credit note under section 21(3)(a). A debit note on the other hand must be issued where the actual tax chargeable exceeds the tax shown on the tax invoice under section 21(3)(b). A recipient of a supply, after obtaining approval from the Commissioner, may however issue a credit or debit note for a supply made to it as contemplated in section 21(4). The document issued by the recipient in this instance shall, subject to certain conditions, be deemed to be provided by the supplier under section 21(3).

Section 21(5) allows the Commissioner to direct, in instances where there would be sufficient records available to establish the particulars of a supply and the Commissioner is satisfied that it is impractical to issue a full credit or debit note, that –

- any one or more of the particulars specified in section 21(3) shall not be contained in a credit or debit note; or
- a credit or debit note, as the case may be, is not required to be issued.

3.1 Requirements

3.1.1 Sufficient records

The first requirement to be considered in the application of sections 20(7) and 21(5) is that the Commissioner needs to be satisfied that there are **sufficient records** available to establish the particulars of a supply or category of supplies. The phrase “sufficient records” is limited to the records available to establish the particulars that would be furnished in any other manner in respect of tax invoices, or omitted from tax invoices, credit or debit notes as the case may be. Alternatively, where a tax invoice, credit or debit note is not required to be issued, sufficient records must be available to determine all the particulars of the supply. In light of the above, records may include but are not limited to –

- information stored on a database;
- a document setting out the particulars of the supply (for example, a bordereau, delivery note and so forth); or
- a contract concluded between the parties.

3.1.2 Impractical

The second requirement to be considered in the application of sections 20(7) and 21(5) is that the vendor has to satisfy the Commissioner that it is **impractical** to require a full tax invoice, credit or debit note to be issued or that the relevant document is not required to be issued at all. The term “impractical” is defined² as “not adapted for use or action; not sensible or realistic”. It is submitted that the phrase “not adapted for use or action” is not applicable in these circumstances. However, “not sensible or realistic” is appropriate in this context. As a result, the circumstances of the vendor must demonstrate why it is not sensible or realistic to require that a full tax invoice, credit or debit note be issued, not issued at all or that certain particulars be furnished in any other manner in the case of tax invoices. These circumstances will generally be evidenced in, but not limited to –

- the nature of the supplies made by the vendor;
- confidential agreements that require certain details to be disclosed in code form; or
- accepted industry practice.

The phrase “impractical to issue” implies that the provisions of sections 20(7) and 21(5) are only applicable to the vendor responsible to issue the tax invoice, credit or debit note under sections 20(1), (2) or 21(3) and (4). As a result, only the vendor making the supply or, in the case of recipient-created tax invoices, credit and debit notes, the recipient so authorised, may request for permission to apply the provisions of section 20(7) or 21(5).

4. Date of implementation

The direction by the Commissioner under section 20(7) or 21(5) will only apply to tax invoices, credit or debit notes issued or required to be issued on or after the date of approval.

5. Binding General Ruling (VAT) No. 27 “Application of sections 20(7) and 21(5)”

BGR 27 has been issued to prescribe the circumstances and conditions that a vendor must comply with in order to rely on the directive. Vendors not able to comply with the criteria stipulated in this BGR, may apply for a decision in writing by sending an e-mail to **VATrulings@sars.gov.za** or by facsimile to 086 540 9390. The application should consist of a completed VAT 301 form and must comply with the provisions of section 79 of the Tax Administration Act excluding section 79(4)(f), (k) and (6).

For ease of reference the ruling is set out below.

Ruling

The Commissioner, subject to the conditions listed below, directs under sections 20(7)(b) and 21(5)(b) that a tax invoice, credit or debit note need not be issued.

² <http://oxforddictionaries.com/> [Accessed 19 March 2015].

Approved conditions

The Commissioner considers that it would be impractical to require that a tax invoice, credit or debit note be issued when the transactions in question consist of a number of progressive or periodic taxable supplies made by a registered vendor in accordance with a written contract for a supply of goods or services which provides for a regular payment of a determinable amount. This will apply in the following circumstances:

- Rental agreements for movable or immovable property
- Royalty agreements
- Short-term insurance

The Commissioner's direction in respect of the aforementioned transactions, is on condition that –

- (a) the recipient is in possession of the contract document which contains the following information:
 - (i) The names, addresses and VAT registration numbers of the supplier and recipient. The VAT registration number of the recipient will only be required if the recipient is a vendor. Furthermore, the name and VAT registration number of the recipient will not be required if the consideration for the supply does not exceed R5 000;
 - (ii) A description of the goods or services supplied; and
 - (iii) A statement that the supplies are charged with VAT at the applicable rate.
- (b) the supplier and the recipient retain proof of payment of each amount paid where the relevant contract does not contain the consideration payable;
- (c) the contract mentioned above contains a statement that the contract complies with the Commissioner's direction under section 20(7) or 21(5), as the case may be; and
- (d) the abovementioned contract which includes the relevant particulars must be retained for a period contemplated in compliance with section 55 read with Part A of Chapter 4 of the Tax Administration Act No. 28 of 2011.

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act.

Period for which this ruling is valid

This BGR is effective from date of issue and will apply until it is withdrawn or the relevant legislation is amended.

All rulings or decisions issued regarding the application of section 20(7) or 21(5) remain in force until such rulings expire or are specifically withdrawn.

6. Conclusion

This Note sets out the requirements that have to be met in order for the Commissioner to apply the provisions of section 20(7) or 21(5). A vendor that satisfies the requirements does not have to apply for prior approval from the Commissioner to not issue a tax invoice, credit or debit note.

Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE

Annexure – The law

Section 1(1) – Definitions

“tax invoice” means a document provided as required by section 20;

Section 20 – Tax invoices

(1) Except as otherwise provided in this section, a supplier, being a registered vendor, making a taxable supply (other than a supply contemplated in section 8(10)) to a recipient, must within 21 days of the date of that supply issue a tax invoice containing such particulars as are specified in this section: Provided that—

- (i) it shall not be lawful to issue more than one tax invoice for each taxable supply;
- (ii) if a vendor claims to have lost the original tax invoice, the supplier or the recipient, as the case may be, may provide a copy clearly marked "copy".

(2) Where a recipient, being a registered vendor, creates a document containing the particulars specified in this section and purporting to be a tax invoice in respect of a taxable supply of goods or services made to the recipient by a supplier, being a registered vendor, that document shall be deemed to be a tax invoice provided by the supplier under subsection (1) of this section where—

- (a) the Commissioner has granted prior approval for the issue of such documents by a recipient or recipients of a specified class in relation to the taxable supplies or taxable supplies of a specified category to which the documents relate; and
- (b) the supplier and the recipient agree that the supplier shall not issue a tax invoice in respect of any taxable supply to which this subsection applies; and
- (c) such document is provided to the supplier and a copy thereof is retained by the recipient:

Provided that where a tax invoice is issued in accordance with this subsection, any tax invoice issued by the supplier in respect of that taxable supply shall be deemed not to be a tax invoice for the purposes of this Act

...

(4) Except as the Commissioner may otherwise allow, and subject to this section, a tax invoice (full tax invoice) shall be in the currency of the Republic and shall contain the following particulars:

- (a) The words "tax invoice" in a prominent place;
- (b) the name, address and VAT registration number of the supplier;
- (c) the name, address and where the recipient is a registered vendor, the VAT registration number of the recipient;
- (d) an individual serialized number and the date upon which the tax invoice is issued;
- (e) full and proper description of the goods (indicating, where applicable, that the goods are second-hand goods) or services supplied;
- (f) the quantity or volume of the goods or services supplied;
- (g) either—
 - (i) the value of the supply, the amount of tax charged and the consideration for the supply; or
 - (ii) where the amount of tax charged is calculated by applying the tax fraction to the consideration, the consideration for the supply and either the amount of the tax charged, or a statement that it includes a charge in respect of the tax and the rate at which the tax was charged:

Provided that the requirement that the consideration or the value of the supply, as the case may be, shall be in the currency of the Republic shall not apply to a supply that is charged with tax under section 11.

(5) Notwithstanding anything in subsection (4), where the consideration in money for a supply does not exceed R5 000, a tax invoice (abridged tax invoice) shall be in the currency of the Republic and shall contain the particulars specified in that subsection or the following particulars:

- (a) The words "tax invoice" in a prominent place;
- (b) the name, address and VAT registration number of the supplier;
- (c) an individual serialized number and the date upon which the tax invoice is issued;
- (d) a description of the goods (indicating, where applicable, that the goods are second-hand goods) or services supplied;
- (e) either—
 - (i) the value of the supply, the amount of tax charged and the consideration for the supply; or
 - (ii) where the amount of tax charged is calculated by applying the tax fraction to the consideration, the consideration for the supply and either the amount of the tax charged, or a statement that it includes a charge in respect of the tax and the rate at which the tax was charged:

Provided that this subsection shall not apply to a supply that is charged with tax under section 11.

...

(7) Where the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of any supply or category of supplies, and that it would be impractical to require that a full tax invoice be issued in terms of this section, the Commissioner may, subject to such conditions as the Commissioner may consider necessary, direct—

- (a) that any one or more of the particulars specified in subsection (4) or (5) shall not be contained in a tax invoice; or
- (b) that a tax invoice is not required to be issued; or
- (c) that the particulars specified in subsection (4) or (5) be furnished in any other manner.

Section 21 – Credit and debit notes

(1) This section shall apply where, in relation to the supply of goods or services by any registered vendor—

- (a) that supply has been cancelled; or
- (b) the nature of that supply has been fundamentally varied or altered; or
- (c) the previously agreed consideration for that supply has been altered by agreement with the recipient, whether due to the offer of a discount or for any other reason; or
- (d) the goods or services or part of the goods or services supplied have been returned to the supplier, including the return to a vendor of a returnable container, the vendor in such case being deemed for the purposes of this Act to have made the supply of the container in respect of which the deposit was charged, whether the supply was made by him or any other person; or
- (e) an error has occurred in stipulating the amount of consideration agreed upon for that supply,

and the supplier has—

- (i) provided a tax invoice in relation to that supply and the amount shown therein as tax charged on that supply is incorrect in relation to the amount properly chargeable on that supply as a result of the occurrence of any one or more of the above-mentioned events; or
- (ii) furnished a return in relation to the tax period in respect of which output tax on that supply is attributable, and has accounted for an incorrect amount of output tax on that supply in relation to the amount properly chargeable on that supply as a result of the occurrence of any one or more of the abovementioned events.

...

(3) Subject to this section, where a tax invoice has been provided as contemplated in subsection (1)(i), and—

- (a) the amount shown as tax charged in that tax invoice exceeds the actual tax charged in respect of the supply concerned, the supplier shall provide the recipient with a credit note, containing the following particulars:
 - (i) The words "credit note" in a prominent place;
 - (ii) the name, address and VAT registration number of the vendor;
 - (iii) the name, address and, where the recipient is a registered vendor, the VAT registration number of the recipient, except where the credit note relates to a supply in respect of which a tax invoice contemplated in section 20(5) was issued;
 - (iv) the date on which the credit note was issued;
 - (v) either—
 - (aa) the amount by which the value of the said supply shown on the tax invoice has been reduced and the amount of the excess tax; or
 - (bb) where the tax charged in respect of the supply is calculated by applying the tax fraction to the consideration, the amount by which the consideration has been reduced and either the amount of the excess tax or a statement that the reduction includes an amount of tax and the rate of the tax included;
 - (vi) a brief explanation of the circumstances giving rise to the issuing of the credit note;
 - (vii) information sufficient to identify the transaction to which the credit note refers;
- (b) the actual tax charged in respect of the supply concerned exceeds the tax shown in the tax invoice as charged, the supplier shall provide the recipient with a debit note, containing the following particulars:
 - (i) The words "debit note" in a prominent place;
 - (ii) the name, address and VAT registration number of the vendor;
 - (iii) the name, address and, where the recipient is a registered vendor, the VAT registration number of the recipient, except where the debit note relates to a supply of goods in respect of which a tax invoice contemplated in section 20(5) was issued;
 - (iv) the date on which the debit note was issued;
 - (v) either—
 - (aa) the amount by which the value of the said supply shown on the tax invoice has been increased and the amount of the additional tax; or

(bb) where the tax charged in respect of the supply is calculated by applying the tax fraction to the consideration, the amount by which the consideration has been increased and either the amount of the additional tax or a statement that the increase includes an amount of tax and the rate of the tax included;

(vi) a brief explanation of the circumstances giving rise to the issuing of the debit note;

(vii) information sufficient to identify the transaction to which the debit note refers:

Provided that—

- (A) it shall not be lawful to issue more than one credit note or debit note for the amount of the excess;
- (B) if any registered vendor claims to have lost the original credit note or debit note, the supplier or recipient, as the case may be, may provide a copy clearly marked "copy";
- (C) a supplier shall not be required to provide a recipient with a credit note contemplated in paragraph (a) of this subsection in any case where and to the extent that the amount of the excess referred to in that paragraph arises as a result of the recipient taking up a prompt payment discount offered by the supplier, if the terms of the prompt payment discount offer are clearly stated on the face of the tax invoice.

...

(5) Where the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of any supply or category of supplies and that it would be impractical to require that a full credit note or debit note be issued in terms of this section, the Commissioner may, subject to any conditions that the Commissioner may consider necessary, direct—

- (a) that any one or more of the particulars specified in paragraph (a) or, as the case may be, paragraph (b) of subsection (3) shall not be contained in a credit note or, as the case may be, a debit note; or
- (b) that a credit note or, as the case may be, a debit note is not required to be issued.