



South African Revenue Service



MEMORANDUM OF UNDERSTANDING
ON
PROCESSING AND ADMINISTERING
THE VALUE-ADDED TAX REFUND SYSTEM

BETWEEN

THE SOUTH AFRICAN REVENUE SERVICE

AND

THE SWAZILAND REVENUE AUTHORITY

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PREAMBLE

The South African Revenue Service, hereinafter referred to as “SARS”;and the Swaziland Revenue Authority, hereinafter referred to as “SRA”

RECOGNISING The Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Eswatini on mutual assistance and co-operation and the prevention of fiscal evasion with respect to Value-Added Tax;

ACKNOWLEDGING that a Memorandum of Understanding on processing and administering Value-Added Tax refunds must be developed and agreed to between the Parties;

DESIRING to put into place an efficient and effective Value-Added Tax refund system between the Parties; and

NOTING that this document constitutes the Memorandum of Understanding between the two Parties which sets out operational procedures regarding matters relating to the Value-Added Tax refund process, procedure

HAVE AGREED AS FOLLOWS:-



ARTICLE 1

DEFINITIONS AND INTERPRETATION

1. In this Memorandum, unless the context clearly requires a different interpretation, the expressions listed hereunder shall have the meanings assigned to them and cognate expressions shall have corresponding meanings:-

“Memorandum” – means this Memorandum of Understanding;

“Parties” – means SRA and SARS;

“VAT” – means Value-Added Tax.

“The Regulation” – means the regulation issued in terms of section 74(1) read with paragraph (d) of the definition of the “exported” in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991). This document emanates from South African law.

“Qualifying purchaser” – has the meaning assigned to it in The Regulation. For purposes of this Memorandum, such person will also include South African passport holders who export movable goods from South Africa to Eswatini, provided that the South African passport holder furnishes a valid SRA tax number and trading license number with the refund claim in order to evidence that such South African passport holder is either registered for tax in Eswatini or carrying on a business in Eswatini.



“Claims and Refund Manager” means the person that may be appointed from time to time, being responsible for managing, administering or rendering any advice, service or assistance regarding the operation of a refund system in accordance with the tax legislation of Eswatini and South Africa, as the case may be.

“South African VAT” means the VAT levied at the standard rate in terms of section 7(1)(a) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991) by a registered South African vendor.

ARTICLE 2

BACKGROUND

1. Currently qualifying purchasers of goods which incurred VAT in South Africa are required to present the goods and tax invoices at the SARS Customs offices at the designated border posts in order to proceed with the VAT refund claim from the VAT Refund Administrators office at the designated border post.

On arrival in Eswatini, the importer of those moveable goods is required to declare them to the Swaziland Revenue Authority (Customs Department) and to pay the VAT due on those goods.

2. In order to streamline Customs procedures to give effect to the VAT refund system as agreed to and to minimise the inconvenience for qualifying purchasers, the Parties agreed on new Customs border procedures and new refund procedures for movable goods purchased in South Africa where South African VAT was charged on the supply of the movable goods and exported to Eswatini.



ARTICLE 3

SCOPE OF THE MEMORANDUM

1. This Memorandum covers South African VAT paid by a qualifying purchaser on movable goods in South Africa to a South African VAT vendor.
2. Such VAT paid in South Africa by a qualifying purchaser will be refunded directly by SARS to the SRA, or upon written authorisation from the SRA to pay the said amount to their appointed Claims and Refund Manager.
3. Qualifying purchasers who have paid South African VAT on movable goods shall not pay VAT at the standard rate to the SRA upon importation of the movable goods into Eswatini if the qualifying purchaser is in possession of a valid South African tax invoice.

ARTICLE 4

EXCLUSIONS

1. This Memorandum will not cover the following:
 - (a) South African VAT levied and paid on services rendered in South Africa;
 - (b) South African VAT levied and paid on goods to be imported into Eswatini through postal services if the goods were a direct export from South Africa;
 - (c) South African VAT levied and paid on goods imported into Eswatini via an airport in Eswatini, if those goods have been processed under The Regulation at an international airport in South Africa.



ARTICLE 5

REFUND PROCEDURES

1. The refunds in respect of the VAT shall be administered by each Party or by a Claims and Refunds Manager, who has been appointed by the SRA, subject to the tax legislation administered by each Party and in accordance with the provisions of this Memorandum.
2. Refunds of South African VAT shall be paid directly by SARS to the SRA in respect of the importer's liability for the Eswatini VAT at the standard rate levied on the importation of movable goods into Eswatini.
3. The Claims and Refund Manager will not refund South African VAT to the qualifying purchaser but instead will facilitate the refund of the South African VAT directly to the SRA.
4. All VAT refund claims processed by the SRA and the Claims and Refund Manager must be in the form agreed upon between the parties and must contain the passport number of the qualifying purchaser.

ARTICLE 6

DESIGNATED BORDER POSTS

1. Designated border posts are:
 - (a) Oshoek/Ngwenya
 - (b) Jeppe's Reef/Matsamo
 - (c) Mananga
 - (d) Nerston/Sandlane
 - (e) Golela/Lavumisa



- (f) Mahamba
2. Tax invoices submitted and processed at all designated border posts will be refunded as follows:
- (a) Tax invoices inclusive of South African VAT will be refunded only if attached to the refund form or refund envelope;
 - (b) All tax invoices must meet the specifications of a valid tax invoice as required in the South African VAT legislation as detailed in Article 8;
 - (c) For commercial exports of goods from South Africa, the tax invoices must be declared and endorsed by both Parties at the designated border posts responsible for facilitating the export and import of the movable goods between South Africa and Eswatini.
 - (d) For non-commercial exports of goods from South Africa, the tax invoices must be declared and endorsed by the SRA at the designated border posts responsible for facilitating the export and import of the movable goods between South Africa and Eswatini.

ARTICLE 7

NON DESIGNATED BORDER POST

1. Non Designated border posts are:
- (a) Josefsdal/Bulembu;
 - (b) Waverley/Lundzi
 - (c) Onverwacht/Nsalitje
 - (d) Houtkop/Sicunusa
 - (e) Bothashoop/Gege;



2. VAT on tax invoices submitted at non designated border posts will not be refunded by SARS; VAT on any such imports will be payable by the importer to the SRA.

ARTICLE 8

TAX INVOICES

1. All tax invoices submitted in respect of refund claims must be original tax invoices and comply with the requirements of a valid tax invoice under the South African VAT legislation as follows:
 - (a) Full tax invoice – where the consideration inclusive of VAT is greater than the threshold prescribed in the South African VAT legislation -
 - (i) The words “tax invoice”;
 - (ii) The name, address and VAT registration number of the South African supplier;
 - (iii) The name and address of the recipient;
 - (iv) The tax invoice number and date upon which the tax invoice is issued;
 - (v) Full and proper description of the goods – also indicating where applicable, that the goods are second-hand goods;
 - (vi) The quantity and volume of the goods supplied;
 - (vii) Either –



- (1) The value of the supply, the amount of VAT and the total consideration for the supply; or
 - (2) Where the consideration includes VAT, the amount of VAT charged or a statement that the consideration includes VAT at the standard rate.
- (b) Abridged tax invoice – where the consideration inclusive of VAT is equal to or less than the full tax invoice threshold prescribed in the South African VAT legislation–
 - (i) The words “tax invoice”;
 - (ii) The name, address and VAT registration number of the South African supplier;
 - (iii) The tax invoice number and date upon which the tax invoice is issued;
 - (iv) A description of the goods – also indicating where applicable, that the goods are second-hand goods;
 - (v) Either –
 - (1) The value of the supply, the amount of VAT and the total consideration for the supply; or
 - (2) Where the consideration includes VAT, the amount of VAT charged or a statement that the consideration includes VAT at the standard rate.



ARTICLE 9

NEW REGISTRABLE GOODS

1. Refund claims in respect of new registrable goods (vehicles) must be accompanied by the following documents:
 - (i) Valid South African tax invoice;
 - (ii) Proof of authorised release by SARS;
 - (iii) SRA VAT refund envelope or SRA VAT refund form;
 - (iv) Proof of registration in Eswatini;
 - (v) Copy of passport of owner in Eswatini/Copy of South African passport holder and SRA vehicle certificate; and
 - (vi) Where applicable, the manufacturer's certificate for a new vehicle.

ARTICLE 10

DETERMINING AND MONITORING OF AMOUNTS REFUNDABLE

1. Verification for refund claims for movable goods exported to Eswatini shall be on the following basis:
 - (a) The claim must be submitted by a Qualifying Purchaser;
 - (b) The movable goods must be exported from South Africa within 90 days from the date of the tax invoice;

- (c) The request for a refund, together with the relevant documentation must be received by the Claims and Refund Manager within 90 days from the date of export;
 - (d) Refund claims of less than a value of R250 VAT inclusive will not be accepted; and
 - (e) The refund claim documentation must accompany a VAT255 form provided by the Claims and Refund Manager.
2. Refund claims in respect of registrable goods shall be submitted to the Claims and Refunds Manager in accordance with the requirements of The Regulation for such goods.
- (a) For second hand goods, including second hand cars and other registrable goods, on which notional input tax has been claimed by registered RSA vendors, SRA will process the refund claims on behalf of the qualifying purchaser. VAT at the standard rate will apply to import of second hand and registrable goods into Eswatini.
 - (b) The Claims and Refund Manager will separate these refund claims related to second hand goods from claims related to other goods, and process claims related to second hand and registrable goods in separate batches.
 - (c) After approval from SARS the SRA will initiate payment of the refund directly to the qualifying purchaser.

ARTICLE 11

OBLIGATIONS FOR SRA

1. The SRA shall communicate to SARS, in writing, of the appointment of the Claims and Refund Manager and any changes of appointment of the Claims and Refund Manager. The communication must be made within 21 days of such appointment or change of appointment.

2. The SRA shall ensure that the Claims and Refund Manager performs the necessary functions relating to processing and submission of refund claims from SRA to SARS
3. The SRA will provide SARS with a copy of the Service Level Agreement with their Claims and Refund Manager.
4. At the designated border posts, the Claims and Refund Manager will on behalf of the SRA collect the:
 - (a) South African tax invoices;
 - (b) SRA refund forms (applies to non-commercial exports of goods from South Africa); and
 - (c) SRA refund envelopes (applies to commercial exports of goods from South Africa).
5. For commercial exports of goods from South Africa, where the tax invoice exceeds R5000.00, inclusive of VAT, proof of authorised release by SARS customs shall be submitted in addition to the requirements listed in paragraph 4.
6. SRA will verify that the South African tax invoices lodged at border posts are valid tax invoices as required by Article 8.
7. On a weekly basis, SRA will submit the refund claims and all relevant documentation to the Claims and Refund Manager who will perform verification procedures before forwarding the refund claims to SARS for compliance testing and payment.
8. For second-hand goods including second hand registrable goods on which notional input tax was claimed by the South African VAT registered supplier, Article 10(2) applies. In the case of second-hand registrable goods, such refund will be processed after proof of registration in Eswatini has been verified or vehicle clearance is provided.

9. SRA will exchange information with SARS where collusion resulting in non compliance is suspected or detected on refund claims.
10. SRA shall ensure that the Claims and Refund Manager separates refund claims related to second-hand goods including second hand registrable goods from claims related to other new goods, and processes claims related to second-hand and registrable goods in separate batches to SARS.

ARTICLE 12

OBLIGATIONS FOR SARS

1. For registrable second-hand goods, refund claims will only be paid once registration of those goods in Eswatini is verified or vehicle clearance is provided. SARS will require verification of such registration or vehicle clearance to be submitted by the Claims and Refund Manager within 2 months after the date of export of the registrable second-hand goods.
2. SARS will pay 100% of the South African VAT refundable. This amount will be paid directly to the SRA on receipt of batches forwarded by the Claims and Refund Manager into the bank account stipulated by the SRA, or upon written authorisation from the SRA to pay the said amount to their appointed Claims and Refund Manager.
3. Remittance of VAT refunds from SARS to the SRA will be made on a weekly basis.
4. Paid refund claims which are subsequently rejected by SARS will be offset against the payment due in respect of subsequent batches, where, *inter-alia*, tax invoices are invalid or any other conditions laid out in this Memorandum relating to a claim that has not been met.
5. SARS agrees to favourably consider the refund of VAT to the SRA in respect of refund claims where the South African vendor is not in good standing with SARS.



6. SARS will honour all VAT refund claims where the South African vendor has intentionally levied VAT on a tax invoice and supplied a valid tax invoice but failed to pay such VAT to SARS. Enforcement procedures by each Party will be followed to deal with such situations.
7. A list containing the details of the South African supplier and the qualifying purchaser in respect of rejected VAT refunds, together with reasons, will be forwarded by SARS to the SRA via the Claims and Refund Manager on a monthly basis.
8. SARS will exchange information with SRA where collusion resulting in non compliance is suspected or detected on refund claims.

ARTICLE 13

TRANSITIONAL MATTERS

1. Where there is a change in the standard rate of VAT, in accordance with the Value-Added Tax Act, 1991 (Act No. 89 of 1991), the amount to be refunded in terms of this Memorandum and the Regulation, must be determined in accordance with the standard rate of VAT that was levied, in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), by the registered South African vendor.
2. Where South African VAT, in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), is levied at a rate that is higher than the rate that is levied by Eswatini on the importation of movable goods into Eswatini, SARS will refund such South African VAT, to the SRA and the SRA will refund the difference between the South African VAT and the Eswatini VAT to the qualifying purchaser.



ARTICLE 14

MEETINGS

The Parties agree to meet on a quarterly basis, alternating between Pretoria and Mbabane, to discuss matters arising from rejected VAT refund claims and other matters related to this Memorandum.

ARTICLE 15

AMENDMENT

The Parties may, at any time, amend this Memorandum by mutual consent in writing.

ARTICLE 16

LEGAL OBLIGATIONS

The signing of this Memorandum is not intended to create legal obligations on the Parties.

ARTICLE 17

ENTRY INTO FORCE

This Memorandum becomes effective from the date that the Agreement between the Government of the Republic of South Africa and the Government of the Kingdom of Eswatini on Mutual Assistance and Co-operation and the Prevention of Fiscal Evasion with respect to Value-Added Tax, enters into force or the date this Memorandum is signed (whichever is the later).

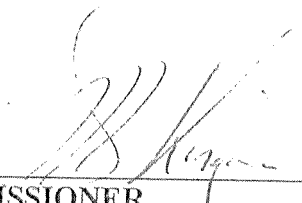


ARTICLE 18

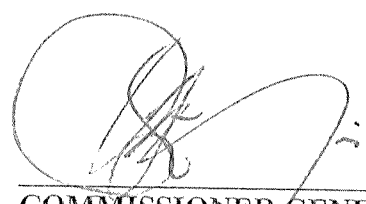
DURATION AND TERMINATION

This Memorandum shall remain in force until either Party gives the other a three months written notice of its intention to terminate the Memorandum.

DONE at PRETORIA on 10th day of DECEMBER in the year 2018



COMMISSIONER
SOUTH AFRICAN REVENUE SERVICE



COMMISSIONER GENERAL
SWAZILAND REVENUE AUTHORITY