



**MEMORANDUM OF UNDERSTANDING
ON PROCESSING AND ADMINISTERING
THE VALUE-ADDED TAX REFUND SYSTEM
BETWEEN THE
SOUTH AFRICAN REVENUE SERVICE
AND THE
LESOTHO REVENUE AUTHORITY**

TDK 16

PREAMBLE

The South African Revenue Service hereinafter referred to as "SARS", and the Lesotho Revenue Authority, hereinafter referred to as "LRA":

RECOGNISING that the Government of the Republic of South Africa and the Government of the Kingdom of Lesotho have entered into an agreement 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 facilitate and improve the operation of the 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, procedures, and obligations and supersedes all previous memoranda between the Parties in this respect;

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:

"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 the Government of the Republic of South Africa and the Government of the Kingdom of Lesotho, as the case may be;

"Direct export" means a supply of goods exported in terms of paragraph (a) of the definition of "exported" in section 1(1) of the South African Value-Added Tax Act, No. 89 of 1991 (South African VAT Act) i.e. the South African vendor consigns or delivers the goods to an address in Lesotho;

"Indirect export" means a supply of goods exported in terms of paragraph (d) of the definition of "exported" in section 1(1) of the South African VAT Act; i.e. the qualifying purchaser removes the goods from South Africa for conveyance to an address in Lesotho.

"Lesotho" – means the Government of the Kingdom of Lesotho;

"Lesotho VAT" – means VAT levied in terms of Section 5 of the Lesotho VAT Act, No. 9 of 2001.

"Memorandum" – means this Memorandum of Understanding;

"Parties" – means LRA and SARS;

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

“South Africa” means the Government of the Republic of South Africa;

“South African VAT” means VAT levied in terms of section 7(1)(a) of the South African VAT Act at the rate of 15 per cent by a registered South African vendor;

“The Regulation” means the regulation issued in terms of section 74(1) read with paragraph (d) of the definition of “exported” in section 1(1) of the South African VAT Act;

“VAT” means Value-Added Tax;

“VAT refund claim” means a claim for a refund of South African VAT levied at 15 per cent and paid by a Qualifying purchaser.

ARTICLE 2 BACKGROUND

In consequence of the Agreement on Mutual Assistance and Co-operation and the Prevention of Fiscal Evasion with Respect to Value-Added Tax between South Africa and Lesotho, both countries have agreed to the Customs and VAT refund procedures in respect of movable goods exported as an Indirect export from South Africa into Lesotho.

ARTICLE 3

SCOPE OF THE MEMORANDUM

1. This Memorandum will cover a VAT refund claim on the acquisition of movable goods in South Africa and exported as an Indirect export to Lesotho.
2. A VAT refund claim which qualifies for a refund in terms of the Regulation will be refunded directly by SARS to the LRA or its appointed Claims and Refund Manager.
3. A Qualifying purchaser who paid South African VAT on the acquisition of movable goods and is entitled to a refund of such VAT in terms of the Regulation shall not pay Lesotho VAT to the LRA upon importation of the movable goods into Lesotho, if the Qualifying purchaser is in possession of the documentary proof required in terms of this Memorandum.

ARTICLE 4

EXCLUSIONS

This Memorandum will not cover a VAT refund claim:

- (a) on services rendered in South Africa;
- (b) on the acquisition of movable goods in South Africa and exported as a Direct export to Lesotho;
- (c) in respect of the acquisition of movable goods where the South African tax invoice or other documentary proof required in terms of this Memorandum is deficient. Provided that where a VAT refund claim is rejected and the LRA has corrected that VAT refund claim, the re-submission of that VAT refund claim must be made within 90 days from the date that, that VAT refund claim was rejected by SARS; or

- (d) which is not submitted within 90 days from the date of the South African tax invoice or any other period allowed in terms of the Regulation or a ruling issued in terms of the South African VAT Act.

ARTICLE 5 REFUND PROCEDURES

1. The refunds in respect of the South African VAT paid by a Qualifying purchaser on the acquisition of movable goods in South Africa shall be administered by each Party or by a Claims and Refund Manager, who has been appointed by a Party, subject to the tax legislation administered by each Party and in accordance with the provisions of this Memorandum.
2. Refunds of South African VAT paid by a Qualifying purchaser on the acquisition of movable goods in South Africa shall be paid directly by SARS to the LRA, or its appointed Claims and Refund Manager. The LRA must apply this VAT refund as payment against the Qualifying purchaser's liability for the VAT levied at 15 per cent on the importation of those movable goods into Lesotho.
3. Only VAT refund claims falling within the ambit of this Memorandum must be processed by the LRA and its Claims and Refund Manager. The VAT refund claim must be submitted to SARS together with the documentary proof required in terms of the Regulation and this Memorandum.
4. VAT refund claims for travellers must be submitted to SARS together with the documentary proof required in terms of the Regulation and this Memorandum as follows:
 - (a) LRA refund form;
 - (b) valid South African tax invoice, endorsed by LRA Customs;

- (c) copy of the Qualifying purchaser's passport, or a declaration by the LRA that the Qualifying purchaser's passport has been verified;
 - (d) documents indicated in article 9 in respect of registrable goods; and
 - (e) proof of payment in respect of South African tax invoices that are in excess of R10 000, inclusive of South African VAT, as provided for under guidelines agreed to between SARS and LRA.
5. VAT refund claims for travellers must be submitted to SARS together with the documentary proof required in terms of the Regulation and this Memorandum as follows:
- (a) LRA refund envelope;
 - (b) valid South African tax invoice;
 - (c) copy of the Qualifying purchaser's passport, or a declaration by the LRA that the Qualifying purchaser's passport has been verified;
 - (d) trading license, the LRA tax certificate in case of a business or any other document acceptable to SARS;
 - (e) relevant export and import clearance documents acceptable to SARS;
 - (i) in the case of Customs transactions requiring formal clearance, the first page of the SARS Customs declaration reflecting both the Local Reference Number (LRN) and Movement Reference Number (MRN);
 - (ii) proof of LRA import documentation and endorsed by LRA Customs; and
 - (iii) in the instance where the export took place via air, a copy of the air waybill duly endorsed with the shipped on board details.
 - (f) documents indicated in article 9 in respect of registrable goods; and

- (g) proof of payment in respect of South African tax invoices that are in excess of R10 000, inclusive of South African VAT, as provided for under guidelines agreed to between SARS and LRA.

ARTICLE 6

DESIGNATED COMMERCIAL PORTS

1. Designated border posts are:
 - (a) Maseru Bridge;
 - (b) Maputsoe Bridge/Ficksburg;
 - (c) Caledonspoor;
 - (d) Van Rooyen's Gate;
 - (e) Qacha's Nek.
2. The designated international airport is the OR Tambo International Airport.

ARTICLE 7

NON-DESIGNATED COMMERCIAL PORTS

1. Non Designated border posts are:
 - (a) Peka Bridge;
 - (b) Sani Pass;
 - (c) Ramatseliso's Gate;
 - (d) Sephapho's Gate;
 - (e) Tele Bridge;
 - (f) Makhaleng.

ARTICLE 8 TAX INVOICES

1. All South African tax invoices submitted in respect of VAT refund claims must be original South African tax invoices and comply with the requirements of a valid tax invoice under the South African VAT Act as follows:
 - (a) A full South African tax invoice is a document required to be issued in terms of section 20(4) of the South African VAT Act where the consideration, inclusive of South African VAT, is greater than the threshold prescribed in the South African VAT legislation. A full South African tax invoice must contain:
 - (i) The words "invoice", "tax invoice" or "VAT 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) A 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; and either
 - (aa) The value of the supply, the amount of VAT and the total consideration for the supply; or
 - (bb) Where the consideration includes VAT, the amount of VAT charged or a statement that the consideration includes VAT at the standard rate of 15 per cent.
 - (b) An abridged South African tax invoice is a document required to be issued in terms of section 20(5) of the South African VAT Act where the consideration, inclusive of South African VAT, is equal to or less

than the full tax invoice threshold prescribed in the South African VAT Act. An abridged South African tax invoice must contain:

- (i) The words "invoice", "tax invoice" or "VAT 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; and either
 - (aa) The value of the supply, the amount of VAT and the total consideration for the supply; or
 - (bb) Where the consideration includes VAT, the amount of VAT charged or a statement that the consideration includes VAT at the standard rate of 15 per cent.

ARTICLE 9

REGISTRABLE GOODS (NEW AND SECOND-HAND)

1. VAT Refund claims in respect of registrable goods (vehicles) must be accompanied by the following documents:
 - (a) LRA VAT refund envelope or a copy of the LRA VAT 11 (LRA tax clearance) form as applicable;
 - (b) valid South African tax invoice;
 - (c) copy of the passport of the Qualifying purchaser and where the Qualifying purchaser holds a South African passport, a copy of the LRA VAT 11;
 - (d) for new goods the manufacturer's certificate; and
 - (e) for second-hand goods:
 - (i) a copy of the South African Police Service clearance certificate (SARPCO clearance); and
 - (ii) a copy of the South African vehicle registration certificate if applicable.

ARTICLE 10

DETERMINING AND MONITORING OF AMOUNTS REFUNDABLE

1. Verification of VAT refund claims for movable goods exported to Lesotho shall be on the following basis:
 - (a) The VAT refund claim must be submitted by a Qualifying purchaser or its cartage contractor;
 - (b) The movable goods must be exported as an Indirect export from South Africa within 90 days from the date of the South African tax invoice or any other period allowed in terms of the Regulation or a ruling issued in terms of the South African VAT Act;
 - (c) The VAT refund claim, together with the relevant documentation must be received by the Claims and Refund Manager within 90 days from date of export or any other period allowed in terms of the Regulation or a ruling issued in terms of the South African VAT Act;
 - (d) VAT refund claims, in respect of movable goods exported as an Indirect export at one time, of less than R250.00, inclusive of South African VAT, will not be accepted; and
 - (e) The VAT refund claim documentation must accompany a VAT255 form.
2. VAT refund claims in respect of second-hand goods and registrable goods shall be submitted to the Claims and Refund Manager in accordance with the requirements of the Regulation for such goods.
3. For second-hand and second-hand registrable goods on which South African notional input tax was claimed by a registered South African vendor, the amount that will qualify for a VAT refund will be limited to the South African VAT charged in excess of the South African notional input tax deducted by the registered South African vendor.

4. The Claims and Refund Manager will separate VAT refund claims related to second-hand and registrable goods from VAT refund claims related to other goods, and process VAT refund claims related to second-hand and registrable goods in separate batches.

ARTICLE 11

OBLIGATIONS FOR LRA

1. The LRA has currently engaged the services of Morisk Investments (Proprietary) Limited to officiate as its Claims and Refund Manager.
2. Any changes of appointment of the Claims and Refund Manager shall be communicated in writing to SARS three months before such changes occur.
3. The LRA shall ensure that the Claims and Refund Manager performs the necessary functions relating to processing and submission of VAT refund claims from LRA to SARS in accordance with this Memorandum and the Regulation.
4. The LRA shall ensure that a copy of the Service Level Agreement between the LRA and the Claims and Refund Manager is submitted to SARS.
5. LRA will verify that the South African tax invoices lodged in respect of a VAT refund claim, are in compliance with Article 8.
6. On a weekly basis, the LRA may submit the VAT refund claims and all relevant documentation to the Claims and Refund Manager who will perform verification procedures before forwarding the VAT refund claims to SARS for compliance testing and payment.
7. In the case of second-hand registrable goods, such VAT refund claim will only be submitted by the LRA if accompanied by the LRA VAT11 form.

8. LRA will exchange information with SARS where:
 - (a) collusion resulting in non-compliance is suspected or detected on VAT refund claims;
 - (b) South African VAT is charged at the standard rate of 15% on movable goods that is exported as a Direct export from South Africa into Lesotho; and
 - (c) movable goods are exported as an Indirect export from South Africa into Lesotho and the documentary proof as required in terms of this Memorandum and the Regulation are deficient.
9. LRA shall ensure that the Claims and Refund Manager separates VAT refund claims related to second-hand goods and registrable goods from VAT refund claims related to other new goods, and processes VAT refund claims related to second-hand goods and registrable goods in separate batches to SARS.
10. A list of non-compliant VAT refund claims together with reasons will be forwarded by LRA to SARS on a monthly basis.

ARTICLE 12

OBLIGATIONS FOR SARS

1. For second-hand registrable goods, VAT refund claims will only be paid once the LRA provides the LRA VAT11 form. Where the VAT refund claim is not accompanied by the LRA VAT11 form, SARS will require the LRA VAT11 form to be submitted by the Claims and Refund Manager within 2 months after the VAT refund claim was received.
2. SARS will pay 100% of the VAT refund claims that fully adhere to the requirements set out in this Memorandum and the Regulation. This amount will be paid directly to the LRA or its Claims and Refund Manager, into the bank account stipulated by the LRA.
3. Remittance of VAT refunds from SARS to the LRA will be made on a weekly basis.

4. SARS agrees to favourably consider the refund of South African VAT to the LRA in respect of VAT refund claims where the registered South African vendor is not in good standing with SARS.
5. SARS will honour all VAT refund claims qualifying in terms of the Regulation where the registered South African vendor has intentionally levied South African VAT on a South African tax invoice and supplied a valid South African tax invoice in respect of the Indirect export but failed to pay such VAT to SARS. Enforcement procedures by each Party will be followed to deal with such situations.
6. A list of rejected VAT refund claims, together with reasons, will be forwarded by SARS to the LRA via the Claims and Refund Manager on a monthly basis.

ARTICLE 13 TRANSITIONAL MATTERS

Where South African tax legislation is changed, SARS will allow the LRA a transition period, agreed to in writing between the Parties, to conform to the changes in South African legislation.

ARTICLE 14 MEETINGS

The Parties agree to meet on a quarterly basis, alternating between Pretoria and Maseru, 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 takes effect from the date that the Agreement on Mutual Assistance and Co-operation and the Prevention of Fiscal Evasion with Respect to Value-Added Tax between the Government of the Republic of South Africa and the Government of the Kingdom of Lesotho enters into force, or the date this Memorandum is signed (whichever is the later).

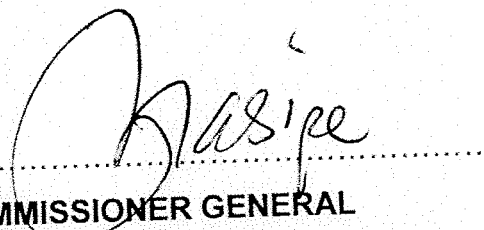
ARTICLE 18 DURATION AND TERMINATION

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

DONE at KAMPALA on 18th day of NOVEMBER in the year 2019.



COMMISSIONER
SOUTH AFRICAN REVENUE SERVICE



COMMISSIONER GENERAL
LESOTHO REVENUE AUTHORITY