



South African Revenue Service

## INTERPRETATION NOTE 42 (ISSUE 2)

DATE: 12 December 2016

**ACT : VALUE-ADDED TAX ACT 89 OF 1991**  
**SECTION : SECTIONS 7(1)(a), 11(1)(a) AND 11(2)(f)**  
**SUBJECT : THE SUPPLY OF GOODS OR SERVICES BY THE TRAVEL AND TOURISM INDUSTRY**

### *Preamble*

In this Note unless the context indicates otherwise –

- **“foreign tour operator”** means a tour operator situated in an export country that arranges tours and other ancillary services to non-residents;
- **“international transport services”** means services provided by VAT-registered vendors involved in the transportation of passengers by air (including charter services), sea or railway, with or without their luggage, from a place –
  - in the Republic to an export country;
  - in an export country to a place in another export country; or
  - in an export country to a place in the Republic;
- **“local entrepreneur”** means a VAT-registered vendor operating as a travel agent, tour operator or travel broker by arranging tours or supplying other ancillary services to a non-resident tourist or a foreign tour operator;
- **“non-resident”** means a person who is not a resident of the Republic;
- **“non-resident tourist”** means a person, being a non-resident, travelling in the Republic temporarily;
- **“section”** means a section of the VAT Act;
- **“tour package”** means an all-inclusive package offered by either a local entrepreneur or a foreign tour operator consisting of, amongst others, transport, accommodation, meals, guided tours and excursions;
- **“VAT”** means value-added tax;
- **“VAT Act”** means the Value-Added Tax Act 89 of 1991; and
- any other word or expression bears the meaning ascribed to it in the VAT Act.

All guides, interpretation notes, forms and rulings referred to in this Note are available on the SARS website at [www.sars.gov.za](http://www.sars.gov.za).

## 1. Purpose

This Note provides guidance to local entrepreneurs in applying current VAT legislation to the supply of tour packages and related goods or services to non-resident tourists and foreign tour operators, with specific emphasis on the application of section 11(2)(l). It does not deal with the supply of hunting safari packages or other supplies made by professional hunters and taxidermists.<sup>1</sup>

## 2. Background

Most local entrepreneurs offer or assemble a marketable tour package comprising a range of services. These tour packages may be sold or assembled directly by the local entrepreneur to or on behalf of a non-resident tourist, or to or on behalf of a foreign tour operator, who may then on-sell the tour package to a non-resident tourist. The local entrepreneur profits by either adding a mark-up to the total cost of the tour package supplied or by receiving a commission for the service of assembling the tour package. As a result of the uncertainty that exists regarding the proper VAT treatment of goods or services supplied by local entrepreneurs, this Note is intended to clarify the relevant principles to be applied in order to achieve consistency in the travel and tourism industry.

## 3. The law

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

The South African VAT system is a destination-based system that imposes tax on goods or services consumed in South Africa, irrespective of where the goods are produced or the services are supplied. Consequently, the supply of goods or services consumed in the Republic is taxable at the standard rate of 14% whereas provision is made for the supply of goods or services consumed outside South Africa to be zero-rated, namely, being taxable at the rate of 0%. Neither the nature nor the location of the person to whom the goods or services are supplied is the deciding factor that determines whether the zero-rating provisions apply. Instead, the determining factor is **where** that person consumes the goods or services supplied, subject to certain exceptions. Therefore, when goods or services are physically rendered to a non-resident tourist in the Republic, VAT at the standard rate must be levied where the goods or services are consumed in the Republic.<sup>2</sup>

Various provisions in the VAT Act dictate the VAT treatment of the supply of specific services that are consumed outside the Republic, such as section 11(2)(a) that deals with the supply of international transport services. Section 11(2)(l) is a general provision that provides for, amongst others, the supply of services by a local entrepreneur to a non-resident tourist or foreign tour operator to be zero-rated, but contains three subparagraphs that direct the circumstances in which the zero-rating of the supply of services to a non-resident tourist or foreign tour operator is excluded. These exclusions have recently been the subject of more than one court case. In the *Master Currency* case it was confirmed that each of the exclusions contained in section 11(2)(l) apply independently of one another. As a result, the supply of

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<sup>1</sup> See Interpretation Note 81 dated 12 March 2015, which addresses the VAT treatment of these types of supplies.

<sup>2</sup> See *Master Currency (Pty) Ltd v Commissioner for South African Revenue Services*, 2014 (6) SA 66 (SCA) in [17] in which the principles and application of section 11(2)(l) were confirmed.

services to a non-resident tourist is tested against all three of these exclusions in order to determine whether the services supplied can be zero-rated.<sup>3</sup>

The most recent court case is that of *XO Africa Safaris CC v Commissioner for the South African Revenue Service* in which the courts confirmed SARS's view on the correct treatment of supplies made by a local entrepreneur under section 11(2)(l). The courts specifically dealt with the third<sup>4</sup> exclusion contained in section 11(2)(l), which has the effect of standard-rating a service supplied to a person where such person or any other person is in the Republic at the time the service is rendered.

### **3.1 Discussion of the judgments in *XO Africa Safaris CC v Commissioner for the South African Revenue Service* in both the Tax Court and Supreme Court of Appeal**

This case concerned an appeal lodged against an assessment raised by the Commissioner on the services supplied by a local entrepreneur. The local entrepreneur levied VAT at the zero rate on the tour packages it supplied to foreign tour operators in terms of an agreement with the foreign tour operators. These foreign tour operators would in turn sell the same tour packages to non-resident tourists visiting the Republic. Both the Tax Court and the Supreme Court of Appeal confirmed the Commissioner's VAT treatment of the tour packages and the interpretation of the zero rating provisions set out in section 11(2)(l).

The local entrepreneur contracted with local suppliers for services to be used by non-resident tourists during their tour of the Republic. Invoices were received and payments were made by the local entrepreneur for the various services acquired, for example, hotel accommodation and restaurant reservations. The local entrepreneur would then on-supply the services it acquired from the local service providers to the foreign tour operator. The foreign tour operator would be invoiced by and pay the local entrepreneur for those services.

The dispute arose as a result of the local entrepreneur zero-rating the services supplied to the foreign tour operator by applying the provisions of section 11(2)(l). SARS disagreed with XO Africa Safaris CC's VAT treatment of the services it supplied to the foreign tour operator.

#### **3.1.1 Principles relied on by the Tax Court**

The Tax Court<sup>5</sup> only regarded the contract between the local entrepreneur and the foreign tour operator as relevant to the transaction at hand. The Tax Court found that, in light of this contract, the local entrepreneur had acted as principal of the services it supplied to the foreign tour operator, who then on-supplied the services to the non-resident tourists. The local entrepreneur was not an intermediary, but rather assumed responsibility for the services to be enjoyed by the non-resident tourists during their stay in the Republic.

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<sup>3</sup> See Interpretation Note 85 dated 27 March 2015 for full discussion of the *Master Currency* case.

<sup>4</sup> Section 11(2)(l)(iii).

<sup>5</sup> See TC-VAT 969 CTN – 30 March 2015.

Essentially, the Tax Court held that the local entrepreneur incorrectly levied VAT at the zero rate since the services rendered by the local entrepreneur fell within one of the exclusions contained in section 11(2)(l). The Tax Court concluded that the services, for example, hotel accommodation, restaurant booking, supplied by the local entrepreneur, that were physically rendered to the non-resident tourists during their stay in the Republic, satisfied the circumstances contained in section 11(2)(l)(iii), which prohibits the application of the zero rate.

The Tax Court confirmed two important principles that are currently applied by the SARS, namely –

- services that are contractually supplied to one party but physically rendered to another party consuming the services in the Republic, cannot be zero-rated under section 11(2)(l); and
- in determining whether section 11(2)(l)(iii) is applicable, the time that the service is actually rendered to the recipient must be considered rather than the time of supply of the service as contemplated in section 9.

### **3.1.2 The judgment of the Supreme Court of Appeal**

Dissatisfied with the outcome in the Tax Court, XO Africa Safaris CC lodged an appeal at the Supreme Court of Appeal (SCA).<sup>6</sup> Having considered oral evidence and documents such as the contracts between the local entrepreneur and the foreign tour operator, the SCA found the appellant's arguments contradictory to the facts submitted by the witnesses and contained in the agreements. These included, amongst others, the letter of agreement, the standard terms and conditions of the contracts and the itinerary attached to the letter of agreement, which all clearly identified the local entrepreneur as the provider of the services.

In the SCA's view the agreements were indicative of the fact that the local entrepreneur was the one who undertook to provide the services to the foreign tour operator and the local entrepreneur received payment for those services provided. The SCA further held that the local entrepreneur did not directly provide the goods or services so acquired to the foreign tour operator but to the non-resident tourist who was in the Republic at the time that the goods or services were provided. These services were therefore sufficiently distinct from the class of services envisaged in section 11(2)(l) and could not be zero-rated. This interpretation had regard to the historical purpose underlying the zero-rating provisions contained in section 11(2)(l) and found that it was clear that such services would attract VAT at the rate of 14% instead, as these services were rendered by the local entrepreneur in the Republic and consumed by the non-resident tourist in the Republic.

In dismissing the appeal, the SCA agreed that the local entrepreneur had contracted with local service providers in order to render the local services to the non-resident tourist during their tour in the Republic. It was, in the SCA's view, incorrect to hold that the only services supplied by the local entrepreneur to the foreign tour operator were nothing other than organisational services involved in assembling the tour packages.

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<sup>6</sup> See *XO Africa Safaris v CSARS* [2016] ZASCA 160.

#### 4. Agent and principal

##### 4.1 Local entrepreneur supplying services as agent

###### 4.1.1 Agency

It is common practice in the travel and tourism industry for local entrepreneurs to supply goods or services on behalf of foreign tour operators to non-resident tourists. This relationship between local entrepreneurs and foreign tour operators is regulated by the common law principle of agency.

There are usually three parties to an agency contract concluded by an agent on behalf of the principal, namely, the –

- (a) principal;
- (b) agent; and
- (c) third party.

Often this relationship is vested in terms of a contract, whereby the local entrepreneur is appointed by the foreign tour operator (the principal) and granted authority to act on behalf of the principal (as agent) in respect of assembling tour packages or services in the Republic for non-residents (third party).

The VAT Act confirms the common law relationship between the principal and agent and prescribes the VAT consequences of this legal relationship. It is therefore necessary to give a brief overview of the main features of the common law principle of agency:<sup>7</sup>

- (i) The principal must grant the agent the necessary authority to act on behalf of the principal. Authority is a unilateral act by the principal which empowers the agent to enter into, alter or terminate legal relationships between the principal and third parties. No formalities (for example, a contract) are necessary for the granting of this authority from the principal to the agent.
- (ii) Where there is a contract between the principal and agent, the authority is independent and is granted together with the contract.
- (iii) If a dispute arises, the person relying on the authority (namely, the agent) has to prove that the authority existed at the time the legal act was concluded.
- (iv) The principal must exist, although the principal need not be disclosed. In the case of an undisclosed principal, both the agent and the third party must nevertheless be aware that the contract is concluded on behalf of a principal with the third party.
- (v) All rights and duties undertaken by the agent are the rights and duties of the principal and not the agent.
- (vi) The agent must make it clear to the third party that the agent is representing someone else and not acting in his or her personal capacity.

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<sup>7</sup> See CJ Nagel(Ed), *Commercial Law*, 3<sup>rd</sup> Edition (2006), LexisNexis (Durban).

#### 4.1.2 Differences between an agent and principal from a VAT perspective

For VAT purposes, the differences between an agent and a principal can be summarised as follows:

Agent	Principal
Not the owner of the goods or services acquired on behalf of the principal.	Owner of the goods or services acquired on behalf of the principal by the agent.
May not alter the nature or value of the supplies made between the principal and the third parties.	May alter the nature or value of the supplies made to the third parties.
Transactions concluded on behalf of the principal will not affect the agent's turnover except for the commission or fee earned by the agent for performing the duties as agent.	The total sales represent the principal's turnover whereas the mark-up is the principal's profit percentage. The commission charged by the agent is part of the principal's expenses.
Only declares the commission for VAT purposes.	Declares gross sales for VAT purposes.
May issue and receive a tax invoice on behalf of the principal. The agent must maintain sufficient records to enable the name, address and VAT registration number of the principal to be ascertained.	If the agent issues a tax invoice in this instance, then the principal should not issue a tax invoice as well. Should the agent not issue a tax invoice, it remains the responsibility of the principal to issue the tax invoice.

#### 4.1.3 The service of arranging tour packages by an agent

The service supplied by a local entrepreneur of arranging tour packages, consisting of transport, accommodation, meals, sightseeing tours etc, may be supplied to a foreign tour operator for the benefit of the non-resident tourist or directly to the non-resident tourist. The local entrepreneur will charge a fee or commission for the service of arranging the tour package. In this instance, the local entrepreneur acting as agent in arranging or assembling the tour package is not the one physically supplying the services to the non-resident tourist.

The local entrepreneur arranging the tour package on behalf of, and therefore as agent of, the foreign tour operator or non-resident tourist, will levy VAT at the zero rate on the fee or commission charged for the service of arranging the tour package, subject to the non-resident tourist or foreign tour operator being outside of the Republic at the time the tour package is assembled. On the other hand, the agent must levy VAT at the standard rate on the fee or commission charged for the service of arranging the tour package should either the foreign tour operator or non-resident be in the Republic at the time the services are rendered.

The services supplied by the local entrepreneur acting as agent are illustrated below:

**Example 1**

N, an American citizen who is a permanent resident of America, contacts a travel agent in the Republic and a local entrepreneur, TT (Pty) Ltd, to arrange a family vacation to the Republic at the end of the year. N is not in the Republic at the time that TT (Pty) Ltd assembles the tour package. The service of arranging the tour package that TT (Pty) Ltd renders to N is zero-rated for VAT purposes, because N is not in the Republic at the time TT (Pty) Ltd supplies these services to N.

**Example 2**

D, a Portuguese citizen, who permanently resides in Portugal, is in the Republic on business. During D's stay in the Republic, D contracts with LBW CC, a travel agent in the Republic and a local entrepreneur, to arrange accommodation for D's children who will join D later for an extended vacation. The service supplied to D by LBW CC is standard-rated for VAT purposes, because D is in the Republic at the time the service is rendered.

**4.2 Local entrepreneur supplying services as principal**

A local entrepreneur can also supply the goods or services as a principal. The local entrepreneur will acquire goods or services from the relevant service providers after which a tour package is assembled which will subsequently be supplied to either a foreign tour operator or directly to a non-resident tourist. The individual components of a tour package, namely, the separate goods or services supplied by the local entrepreneur, must be identified and be treated according to their nature for VAT purposes. The VAT treatment of the goods or services generally supplied by a principal which forms part of a tour package is discussed in 5 below.

**Example 3**

V, a Welsh citizen and resident of Wales, whilst in Wales contacts LED CC, a local entrepreneur in the Republic to arrange and supply accommodation and domestic travel for the family's vacation to the Karoo in the Republic. LED CC acquires the necessary accommodation and domestic travel by air and supplies it to V. The services supplied by LED CC (namely, of accommodation and flights) to V are standard-rated for VAT purposes. This is due to the fact that V is in the Republic at the time the services are rendered.

## 5. The VAT treatment of the different supplies which may form part of a tour package

### 5.1 International transport services

Generally, the supply of all modes of international transport of passengers is subject to VAT at the zero rate, which must be substantiated by the required documentation.<sup>8</sup>

The following international transport services are subject to VAT at the rate of 0%:

#### 5.1.1 The passengers are transported from a place in an export country to a place in another export country

Both the point of origin and the point of destination of the transport of the passengers must be located outside the Republic in order for the supply of the transport services to qualify for zero-rating. For example, the services of transporting passengers provided by a shipper.

##### **Example 4**

B purchases an ocean liner ticket for a cruise ship sailing from Dubai to Switzerland from ABC Cruisers (a vendor) situated in Cape Town. The supply by ABC Cruisers of the transport by sea (the voyage) to B is subject to VAT at the rate of 0%.

#### 5.1.2 The passengers are transported from a place in the Republic to a place in an export country

The point of origin must be located in the Republic, such as Bloemfontein, and the point of destination in an export country, such as Paris, France.

The domestic leg of a journey of passengers that are transported by air from one place in the Republic to another place in the Republic and forming part of an overall international journey, constituting “international carriage”<sup>9</sup> as defined, is zero-rated. It is necessary here to highlight that, in order for this supply to be zero-rated, the supplier of the transport service must be responsible for the entire movement of the passengers between such points, meaning it must be responsible for both the domestic and international transport of the passengers and their luggage.

##### **Example 5**

X books a flight with LA airlines, a local entrepreneur, for a return trip from Cape Town to Paris, France. X is currently staying in Sandton, Johannesburg, and must therefore first fly from Johannesburg to Cape Town and then proceed from Cape Town to Paris, France. As LA airlines is responsible for X’s entire journey, LA airlines will levy VAT at the zero rate in respect of the supply of both flights to X as it constitutes international carriage.

<sup>8</sup> See Interpretation Note 31 (Issue 4) dated 9 March 2016 “Documentary Proof Required for the Zero-Rating of Goods or Services”.

<sup>9</sup> See Article 1 of the Convention set out in the Schedule to the Carriage by Air Act 17 of 1946.

**Example 6**

P intends on attending the World Hockey championships in New Zealand after spending a few days visiting friends in Johannesburg, in the Republic. P is currently residing in Durban, and must therefore first fly from Durban to Johannesburg. P books a flight with AAA airlines, a local entrepreneur, for the domestic journey between Durban and Johannesburg. Upon arrival in Johannesburg, P books a flight with GMO airlines, also a local entrepreneur, from Johannesburg to Wellington, New Zealand. Since two different airlines are responsible for P's journey, only the international leg is subject to VAT at the zero rate in respect of the flight supplied by GMO airlines. The domestic leg of the journey undertaken by P is subject to VAT at the standard rate since the overall journey is not "international carriage" as defined.

**5.1.3 The passengers are transported from a place in an export country to a place in the Republic**

The point of origin must be located in an export country, such as Barcelona, Spain, and the point of destination must be located in the Republic, such as Port Elizabeth.

**Example 7**

S books a bus trip with CB, a local entrepreneur, on a luxury bus liner from Mozambique to Durban. The supply of the transport by CB to S is zero-rated.

**5.2 Domestic transport services**

This relates to travel from a place in the Republic to another place situated in the Republic.

**5.2.1 Domestic air travel**

Flights to and from places in the Republic are subject to VAT at the standard rate, provided the domestic air travel does not form part of "international carriage" as defined.<sup>10</sup>

**5.2.2 Domestic road or rail travel**

The transport of any fare-paying passengers by road or rail and their personal effects is exempt from VAT under section 12(g) provided certain conditions are met. This does not apply to game-viewing drives, which is subject to VAT at the standard rate of 14%.

**5.3 Miscellaneous services relating to transport****5.3.1 Cancellation or change of travel arrangements**

In the event that a fee is charged in order to subsequently cancel or change travel arrangements, the supply of the service would be subject to VAT at the standard rate if the non-resident tourist or foreign tour operator requesting the cancellation or change is inside the Republic at the time the cancellation or change is made by the local entrepreneur. Conversely, should the tour package be cancelled or changed for the non-resident tourist or foreign tour operator whilst the non-resident tourist or

<sup>10</sup> See 5.1.2.

foreign tour operator is outside the Republic, that fee is subject to VAT at the zero rate.

### 5.3.2 Meal, beverages and other entertainment supplied on-board an aircraft or ocean liner

Any meals, beverages and entertainment, such as films, provided to and consumed by passengers who are transported on board aircrafts and ships during domestic travel, are subject to VAT at the standard rate of 14% if a consideration in addition to the fare paid is charged.

### 5.4 Accommodation

The supply of “commercial accommodation” as defined, that is, lodging or board and lodging together with domestic goods and services,<sup>11</sup> by a local entrepreneur to any person, including a non-resident, is subject to VAT at the standard rate if the accommodation is supplied in the Republic. The wide definition of “accommodation” in section 1(1) ensures that all types of commercial accommodation supplied in the Republic are standard-rated. Examples of commercial accommodation include accommodation at an inn, boarding house, camping ground, caravan sites etc.

The consideration for the supply of commercial accommodation that is provided for an unbroken period of more than 28 days at an all-inclusive fee is deemed to be 60% of the all-inclusive charge. The full consideration is subject to VAT if the commercial accommodation is provided for a period of 28 days or less. The full value of meals, beverages and other entertainment supplied for a separate charge is, however, subject to VAT at the standard rate on the full amount.<sup>12</sup>

#### Example 8

##### *Facts:*

R is attending a 15-day conference on horticulture held in Bloemfontein, during September 2016. R will stay at RG Lodge for the duration of the conference. While attending the conference, R hears about the annual Rose Festival that is held in Bloemfontein every September. The festival is two weeks (14 days) in duration and R decides to extend the stay at RG Lodge. The total cost to R for this 29-day period (an all-inclusive charge but excluding VAT) is R35 000 and includes dinner, cleaning and all other related services.

<sup>11</sup> The term “domestic goods and services” is defined in section 1(1) to include, amongst others, cleaning, electricity, meals, water etc.

<sup>12</sup> See Chapter 6 of the *VAT 411 – Guide for Entertainment, Accommodation and Catering* for more information on the various types of charges and the VAT treatment of such charges.

*Result:*

RG Lodge, being a vendor, must levy VAT on only 60% of the total value of the supply made to R as the stay exceeded 28 days at RG Lodge. The VAT on the supply is calculated as follows:

$$R35\ 000 \times 60\% = R21\ 000 \times 14\% = R2\ 940.$$

### **5.5 Meal, beverages and other entertainment<sup>13</sup>**

Meals consumed at restaurants in the Republic and entertainment, such as musicals and plays, attended in the Republic are subject to VAT at the standard rate of 14%.

### **5.6 Game viewing**

Game viewing comprises the leisure activity of viewing wild life from a customised game viewing vehicle. The supply of game viewing is not an exempt supply under section 12(g), but subject to VAT at the standard rate of 14%.

### **5.7 Travellers cheques and foreign exchange**

A local entrepreneur may, in certain instances, supply the service of converting cash to travellers' cheques or exchanging one currency for another (such as South African Rand to United States Dollars) to foreign tour operators or non-resident tourists. In this regard, the local entrepreneur makes a supply of financial services, which is exempt from VAT under section 12. However, to the extent that the local entrepreneur charges a fee, commission or similar charge for the supply, the said service will not be deemed to be financial services. Foreign exchange services and issuing of travellers cheques supplied by a local entrepreneur to a person in the Republic for which a fee is charged will always be taxable at the standard rate of 14% since it is a service which is consumed in the Republic.

### **5.8 Duty free areas at airports**

Services rendered at duty free areas situated at airports in the Republic to non-resident passengers are standard-rated as the services are consumed by the non-residents in the Republic.<sup>14</sup> The supply of goods to non-resident passengers in duty free areas may be zero-rated because such goods are subsequently exported from the Republic.

## **6. Tax invoices, debit notes and credit notes**

A local entrepreneur must issue a tax invoice within 21 days of the date of the supply made to the non-resident tourist or foreign tour operator containing all of the particulars listed under section 20(4) and (5). A credit or debit note must be issued by the local entrepreneur in the event that the VAT reflected on the original tax invoice is incorrect and must contain all the particulars prescribed in section 21(3), subject to exceptions.

<sup>13</sup> See the *VAT 411 – Guide for Entertainment, Accommodation and Catering*.

<sup>14</sup> See the *Master Currency* case.

## 6.1 Discretionary relief for vendors on tax invoices and other documentary proof

The Commissioner has a discretion under the VAT Act to allow local entrepreneurs that have sufficient records available and that find it impractical to issue a full tax invoice, debit note or credit note –<sup>15</sup>

- to omit one or more of the particulars specified in section 20 or 21, from the tax invoice, or debit or credit notes;
- not to issue a tax invoice, debit note or credit note as required;
- to furnish the particulars that must be reflected on the tax invoice, in another manner.<sup>16</sup>

A vendor that experiences difficulties in obtaining the required documentary proof (namely, a valid tax invoice) may apply to the Commissioner for a ruling under section 41B for approval to use alternative documentary proof under section 16(2)(g), where certain circumstances prevail. In this regard, refer to Binding General Ruling 36 dated 24 October 2016 “Circumstances Prescribed by the Commissioner for the Application of Section 16(2)(g)”.

## 6.2 Tax invoicing obligations as agent

In the event that the local entrepreneur acts as agent, the local entrepreneur may issue and receive tax invoices, debit notes or credit notes on behalf of the principal (being the foreign tour operator or non-resident). In this instance, the local entrepreneur must maintain sufficient records to enable the name, address and VAT registration number of the principal to be ascertained. The local entrepreneur must also issue a statement to the principal under section 54(3) containing all of the particulars as set out in the said section.

If the local entrepreneur, acting as agent, has issued the required tax invoice, debit note or credit note in respect of a supply made on behalf of the principal, the principal may not also issue a tax invoice, debit note or credit note in respect of that supply made.

Notwithstanding the fact that the local entrepreneur’s details are reflected on the tax invoice, debit note or credit note, the principal will remain liable to declare output tax and deduct input tax on the acquisition of goods or services should the principal be a registered vendor.

## 7. Conclusion

Local entrepreneurs acting as agent on behalf of a foreign tour operator or non-resident are only allowed to zero-rate the supply of arranging the tour for which a fee or commission is earned where the foreign tour operator or non-resident is situated outside of the Republic at the time the tour is arranged. Should the non-resident or foreign tour operator be present in the Republic when the services of the local entrepreneur are enlisted, the services supplied by the local entrepreneur must be standard-rated.

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<sup>15</sup> See Binding General Ruling 27 dated 26 March 2015 “Application of Sections 20(7) and 21(5). See also Interpretation Note 83 (Issue 2) dated 9 April 2015 “Application of Sections 20(7) and 21(5)”.

<sup>16</sup> See Chapter 13 of the *VAT 404 – Guide for Vendors*.

Tour packages and the components that make up a tour such as accommodation, transport, sightseeing and other goods or services supplied by a local entrepreneur as principal to non-residents or foreign tour operators are subject to VAT at the standard rate, unless the supply is exempt under section 12 or is for example, international flights that is subject to VAT at the zero rate.

The zero-rating of any supplies made by the local entrepreneur is subject to the local entrepreneur retaining the supporting documentary evidence as is acceptable to the Commissioner. This is set out in Interpretation Note 31 (Issue 3).

Should further clarity on any of the matters dealt with in this Note be required, it is recommended that an application for a VAT ruling or VAT class ruling be submitted to the Commissioner either by e-mail to **VATRulings@sars.gov.za** or by facsimile on +27 86 540 9390. The application must be accompanied by a completed VAT 301 form and must comply with the provisions of section 79 of the Tax Administration Act 28 of 2011, excluding section 79(4)(f), (k) and (6). No ruling will be issued, confirming whether persons are acting as principal or agent in respect of the supply of goods or services, as this is a factual enquiry.<sup>17</sup>

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<sup>17</sup> See Government Notice 748 in *Government Gazette* 40088 of 24 June 2016.

## Annexure – The law

### Section 1(1) – Definitions

“**commercial accommodation**” means—

- (a) lodging or board and lodging, together with domestic goods and services, in any house, flat, apartment, room, hotel, motel, inn, guesthouse, boarding house, residential establishment, holiday accommodation unit, chalet, tent, caravan, camping site, houseboat or similar establishment, which is regularly or systematically supplied and where the total annual receipts from the supply thereof exceeds R120 000 in a period of 12 months or is reasonably expected to exceed that amount in a period of 12 months, but excluding a dwelling supplied in terms of an agreement for the letting and hiring thereof;

...

“**Republic**”, in the geographical sense, means the territory of the Republic of South Africa and includes the territorial waters, the contiguous zone and the continental shelf referred to respectively in sections 4, 5 and 8 of the Maritime Zones Act, 1994 (Act 15 of 1994);

“**resident of the Republic**” means a resident as defined in section 1 of the Income Tax Act: Provided that any other person or any other company shall be deemed to be a resident of the Republic to the extent that such person or company carries on in the Republic any enterprise or other activity and has a fixed or permanent place in the Republic relating to such enterprise or other activity;

“**supply**” includes performance in terms of a sale, rental agreement, instalment credit agreement and all other forms of supply, whether voluntary, compulsory or by operation of law, irrespective of where the supply is effected, and any derivative of “**supply**” shall be construed accordingly;

“**vendor**” means any person who is or is required to be registered under this Act: Provided that where the Commissioner has under section 23 or 50A determined the date from which a person is a vendor that person shall be deemed to be a vendor from that date;

“**export country**” means any country other than the Republic and includes any place which is not situated in the Republic: Provided that the President may by notice in the Gazette determine that a specific country or territory shall from a date and to the extent indicated in the notice, be deemed not to be an export country.

### Section 7 – Imposition of value-added tax

(1) Subject to the exemptions, exceptions, deductions and adjustments provided for in this Act, there shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the value-added tax—

- (a) on the supply by any vendor of goods or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him;
- (b) on the importation of any goods into the Republic by any person on or after the commencement date; and
- (c) on the supply of any imported services by any person on or after the commencement date,

calculated at the rate of 14 per cent on the value of the supply concerned or the importation, as the case may be.

## Section 11 – Zero-rating

(1) Where, but for this section, a supply of goods would be charged with tax at the rate referred to in section 7(1), such supply of goods shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero per cent where—

- (a) the supplier has supplied the goods (being movable goods) in terms of a sale or instalment credit agreement and—
  - (i) the supplier has exported the goods in the circumstances contemplated in paragraph (a), (b) or (c) of the definition of “exported” in section 1; or
  - (ii) the goods have been exported by the recipient and the supplier has elected to supply the goods at the zero rate as contemplated in Part 2 of an export incentive scheme referred to in paragraph (d) of the definition of “exported” in section 1: Provided that—
    - (aa) where a supplier has supplied the goods to the recipient in the Republic otherwise than in terms of this subparagraph, such supply shall not be charged with tax at the rate of zero per cent; and
    - (bb) where the goods have been removed from the Republic by the recipient in accordance with the provisions of an export incentive scheme referred to in paragraph (d) of the definition of “exported” in section 1, such tax shall be refunded to the recipient in accordance with the provisions of section 44(9); or

...

(2) Where, but for this section, a supply of services would be charged with tax at the rate referred to in section 7(1), such supply of services shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero per cent where—

- (k) ...
- (l) the services are supplied to a person who is not a resident of the Republic, not being services which are supplied directly—
  - (i) in connection with land or any improvement thereto situated inside the Republic; or
  - (ii) in connection with movable property (excluding debt securities, equity securities or participatory securities) situated inside the Republic at the time the services are rendered, except movable property which—
    - (aa) is exported to the said person subsequent to the supply of such services; or
    - (bb) forms part of a supply by the said person to a registered vendor and such services are supplied to the said person for purposes of such supply to the registered vendor; or
  - (iii) to the said person or any other person, other than in circumstances contemplated in subparagraph (ii)(bb), if the said person or such other person is in the Republic at the time the services are rendered,

and not being services which are the acceptance by any person of an obligation to refrain from carrying on any enterprise, to the extent that the carrying on of that enterprise would have occurred within the Republic; or

...

(3) Where a rate of zero per cent has been applied by any vendor under the provisions of this section, the vendor shall obtain and retain such documentary proof substantiating the vendor's entitlement to apply the said rate under those provisions as is acceptable to the Commissioner.

### Section 12 – Exempt Supplies

The supply of any of the following goods or services will be exempt from the tax imposed under section 7(1)(a)—

(a) The supply of any financial services, but excluding the supply of financial services which, but for this paragraph, would be charged with tax at the rate of zero rate under section 11;

...

(g) the supply by any person in the course of a transport business of any service comprising the transport by that person in a vehicle (other than a game viewing vehicle contemplated in paragraph(e) of the definition of “motor car” in section 1) operated by him of fare-paying passengers and their personal effects by road or railway(excluding funicular railway, not being a supply of any such services which, but for this paragraph would be charged with tax at the zero percent under section 11(2)(a);

...

(3) Where a rate of zero per cent has been applied by any vendor under the provisions of this section, the vendor shall obtain and retain such documentary proof substantiating the vendor's entitlement to apply the said rate under those provisions as is acceptable to the Commissioner.

### Section 16 – Calculation of tax payable

(2) No deduction of input tax in respect of a supply of goods or services, the importation of any goods into the Republic or any other deduction shall be made in terms of this Act, unless—

...

(g) in the case where the vendor, under such circumstances prescribed by the Commissioner, is unable to obtain any document required in terms of paragraph (a), (b), (c), (d), (e) or (f), the vendor is in possession of documentary proof, containing such information as is acceptable to the Commissioner, substantiating the vendor's entitlement to the deduction at the time a return in respect of the deduction is furnished:

### Section 20 – Tax invoices

(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” on 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 serialised 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;

...

(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”, “VAT Invoice” or “invoice”
- (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.

## Section 21 – Credit and debit notes

(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”;
  - (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 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”;
  - (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.

### Section 54 – Agents and auctioneers

- (3) Where—
- (a) a tax invoice or a credit note or debit note in relation to a supply has been issued—
    - (i) by an agent as contemplated in subsection (1); or
    - (ii) to an agent as contemplated in subsection (2); or
  - (b) a bill of entry or other document prescribed in terms of the Customs and Excise Act in relation to the importation of goods is held by an agent as contemplated in subsection (2A),

(Proposed amendment: Para. (b) to be substituted by s. 34 (1) (b) of Act No. 44 of 2014 with effect from the date on which the Customs Control Act, 2014 takes effect – date not determined.)

- (b) a release notification or other document prescribed in terms of the Customs Control Act in relation to the importation of goods is held by an agent as contemplated in subsection (2A),

the agent shall maintain sufficient records to enable the name, address and VAT registration number of the

- (i) supplies made on or after 1 January 2000 by or to the agent on behalf of the principal, the agent shall notify the principal in writing by means of a statement within 21 days of the end of the calendar month during which the supply was made or received of the particulars contemplated in paragraphs (e), (f) and (g) of section 20(4) in relation to such supplies; or
- (ii) goods imported by the agent on behalf of the principal, the agent shall notify the principal in writing by means of a statement within 21 days of the end of the calendar month during which the goods were imported of the full and proper description of the goods, the quantity or volume of the goods, the value of the goods imported and the amount of tax paid on importation of the goods, together with the receipt number of the payment of such tax.