

**INTERPRETATION NOTE 103**

DATE: 14 September 2018

**ACT : VALUE-ADDED TAX ACT 89 OF 1991**  
**SECTION : SECTION 11(2)(a), (b), (c), (d) AND (e)**  
**SUBJECT : THE VALUE-ADDED TAX TREATMENT OF SUPPLIES OF INTERNATIONAL AND ANCILLARY TRANSPORT SERVICES**

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***Preamble***

In this Note unless the context indicates otherwise –

- **“ancillary transport services”** means stevedoring services, lashing and securing services, cargo inspection services, preparation of customs documentation, container handling services and the storage of transported goods or goods to be transported;
- **“domestic transport services”** relates to the supply of transport services from a place in the RSA to another place in the RSA;

- **“international carriage”** as defined in the Convention means –
  - “...
    - 2. ... any carriage in which, according to an agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.
    - 3. Carriage to be performed by several successive carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under a single contract or a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.”
- **“international transport services”** comprise the transportation of passengers or goods from a place –
  - outside the RSA to another place outside the RSA; or
  - in the RSA to a place in an export country; or
  - in an export country to a place in the RSA;
- **“Interpretation Note 31”** means Interpretation Note 31 (Issue 4) dated 9 March 2016 – “Documentary proof required for the zero-rating of goods and services” including any future updates;
- **“RSA”** means the Republic of South Africa;
- **“section”** means a section of the VAT Act;
- **“the Convention”** means Article 1 of the Convention set out in the Schedule to the Carriage by Air Act 17 of 1946;
- **“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.

## 1. Purpose

This Note sets out the –

- VAT treatment of the international transportation of passengers and/or goods;
- VAT treatment of ancillary transport services; and
- rate of tax applicable to each of the aforementioned transportation services.

This Note does not deal with the VAT treatment of exempt passenger transport as envisaged in section 12(g).

## **2. The law**

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

## **3. Application of the law**

### **3.1 Introduction**

The supply of international transport services generally involves more than one party and various supplies in order to effect the movement of passengers or goods from one place to another. It is important for a vendor involved in the supply of transportation services, ancillary transport services or the arranging thereof to determine what the service is that it is rendering as the rate at which VAT must be levied will depend thereon. In this regard, it is essential to have regard to the agreements in place between the supplier of the services and the recipient thereof.

The VAT Act makes provision for the supply of transportation of passengers or goods to be subject to VAT at the zero rate under certain circumstances.

In order to ascertain the correct VAT treatment of the supply of international transport services, the vendor must consider the nature of the service and the requirements of the relevant provisions of the VAT Act. A detailed discussion of the applicable provisions of the VAT Act which are relevant to the supplies of transport services is set out below.

### **3.2 International transport services**

It is important for any person involved in the supply of transport services, ancillary transport services and the arranging thereof to determine the nature and characteristics of the services rendered as well as the capacity in which that person is acting, for example as principal or as agent. In order to provide an end-to-end service for the movement of goods, freight forwarders enter into agreements with various parties in terms of which the parties agree to supply services in their respective territories. These services are evidenced by the applicable transport documents (for example, the master, house or airway bill of lading or the road consignment note). These documents may differ depending on the mode of transport.

#### **3.2.1 International transport services of passengers or goods**

The supply of international transport services of passengers or goods by any mode of transport is zero-rated under section 11(2)(a).

#### **3.2.2 Domestic leg of international transport services**

The domestic leg of international transport services to passengers by aircraft must be zero-rated under section 11(2)(b), to the extent that the transport constitutes "international carriage" as defined in the Convention.

The supply of international transport services to a passenger who contracts with an airline will be zero-rated under section 11(2)(a). Often, the international transport of passengers includes the transport of passengers from a place in the RSA, to another place in the RSA (domestic leg), which may be supplied by a single carrier or a series of carriers (successive carriers). The contracting airline has to contract a domestic carrier to provide this domestic leg. It is this supply of the domestic

transport service to the contracting airline to the extent that the transport constitutes "international carriage" that is zero-rated under section 11(2)(b).

In order for the supply of the domestic transport to be zero-rated under section 11(2)(b), the domestic flight must –

- be contracted or booked at the same time as the international flight; and
- be referenced to the international flight (that is, the ticket must reflect all flights).

### **Example 1 – Domestic carriage**

*Facts:*

Passenger X is flying to London (England) and purchases an air ticket from Airline C (vendor) for the flight from Cape Town to Johannesburg, and an air ticket from Airline A (vendor) for a flight from Johannesburg to London.

What is the VAT treatment of the passenger flights?

*Result:*

Airline C is supplying a domestic passenger flight to Passenger X and VAT at the standard rate must be levied. The zero rate under section 11(2)(b) is not applicable as the transport by Airline C does not constitute "international carriage" as defined in the Convention.

Airline A is supplying an international transport service from Johannesburg to London to Passenger X and VAT at the zero rate must be levied under section 11(2)(a)(ii).

### **Example 2 – International carriage**

*Facts:*

Passenger X is flying to London (England) and purchases an air-ticket from Airline A (vendor) for the flight from Cape Town to London. Airline A contracts with Airline C (vendor) to fly Passenger X from Cape Town to Johannesburg, from where Airline A flies Passenger X to London.

What is the VAT treatment of the passenger flights?

*Result:*

Airline C is supplying a domestic transport service to Airline A as part of the supply of an international transport service by Airline A to Passenger X. Airline C may therefore zero-rate its supply of the domestic transport services under section 11(2)(b) as the transport is by aircraft and constitutes "international carriage".

Airline A is supplying an international transport service to Passenger X, originating at a place in the RSA (Cape Town) and ending at a place in an export country (United Kingdom). Airline A must charge VAT at the zero rate under section 11(2)(a)(ii).

### 3.2.3 Domestic leg of an international transport service and ancillary transport service

The international transportation of goods will generally include a domestic transport leg as well as ancillary transport services. Ancillary transport services are those services that are rendered in support of the transportation of goods and have been specifically defined for purposes of the VAT Act.

The VAT rate applicable to a domestic transport service, the domestic leg of an international transport service or ancillary transport service in relation to goods is determined under sections 7(1)(a), 11(2)(c) or 11(2)(e). A vendor must follow the guidelines set out below to ascertain which section of the VAT Act applies to the particular supply, which in turn will establish the applicable rate of VAT to be levied.

#### (a) Same supplier requirement [section 11(2)(c)]

Section 11(2)(c) zero-rates the domestic leg of the international transport of goods, as well as any ancillary transport services rendered, where these services are supplied by the same vendor, who is contracted by the customer to provide the zero-rated international transport service.

In order to qualify for the zero-rating under section 11(2)(c), a vendor that is contracted to provide the international transport service and domestic and/or ancillary transport services does not have to physically perform the domestic and/or ancillary transport services. For example, a freight forwarder contracted by a client to provide a door-to-door international transport service does not have to physically perform the ocean carriage itself, attend to the Customs clearance of the goods or physically transport the goods from the harbour to the customer's premises. The freight forwarder may for example, subcontract another transport company to move the goods from the harbour to the customer's premises or subcontract the ocean carriage to a shipping line. This will not disqualify the freight forwarder from applying the zero rate as envisaged under section 11(2)(c) when invoicing its customer. The freight forwarder who contracts with the customer is therefore the person who is *contractually supplying* these services even if they are rendered by someone else.

A vendor should thus consider the following to ascertain if the zero rate under section 11(2)(c) is applicable:

- Is the vendor contractually obliged to supply an "international transport service" as defined?
- Does that international transport service incorporate a domestic transport leg or an ancillary transport service?
- Is the vendor supplying the international transport service also contractually supplying the domestic leg of that international transport service or the ancillary transport services?

If the answer to all of the questions is "yes", then the vendor may zero rate the domestic leg of a supply of an international transport service or ancillary transport services under section 11(2)(c), whether the supply is made to a resident or a non-resident.

In the event that the domestic transport service or ancillary transport services are not contractually supplied by the same supplier who supplies the international transport service, the domestic transport service and/or ancillary transport services do not

qualify for the zero rate under section 11(2)(c) and is subject to VAT at the standard rate under section 7(1)(a), unless the provisions of section 11(2)(e) apply [see **3.2.3(b)**].

**Example 3 – Vendor supplying international transport services and ancillary transport services**

*Facts:*

Freight Forwarder X SA (vendor), contracts with Company A (vendor), to ship Company A's goods from the Port of Durban to St Petersburg (Russia) and to prepare the customs documentation for export.

What is the VAT treatment of the services?

*Result:*

Freight Forwarder X SA is supplying an international transport service to Company A from a place in the RSA to a place in an export country and must charge VAT at the zero rate under section 11(2)(a)(ii).

The preparation of customs documentation is an ancillary transport service supplied by Freight Forwarder X SA to Company A. The ancillary transport services are supplied by the same vendor supplying the international transport service being Freight Forwarder X SA. In light of this, Freight Forwarder X SA must charge VAT at the zero rate under section 11(2)(c) on the supply of the ancillary transport services.

**Example 4 – Vendor supplying international transport services and ancillary transport services (subcontracting)**

*Facts:*

Freight Forwarder X SA (vendor), contracts with Company A (vendor), to transport Company A's goods from Polokwane to St Petersburg (Russia) and to prepare the customs documentation for export. Freight Forwarder X SA subcontracts Rail Co (vendor) to store and move the goods from Polokwane to the Port of Durban, and Shipping Line X (vendor) to move the goods from the Port of Durban to St Petersburg.

What is the VAT treatment of the services?

*Result:*

Rail Co is providing a domestic transport service to the Freight Forwarder X SA between two places in the RSA. This supply is not zero-rated under section 11(2)(c), as Rail Co is not the same supplier providing the services to which section 11(2)(a) applies, and as such Rail Co must charge VAT at the standard rate. VAT at the standard rate must also be levied on the supply of its storage service (an ancillary transport service).

Shipping Line X is providing an international transport service to Freight Forwarder X SA from a place in the RSA to a place in an export country. Shipping Line X will charge VAT at the zero rate under section 11(2)(a)(ii).

Freight Forwarder X SA is providing an international transport service to Company A which incorporates a domestic leg and ancillary transport services (preparation of customs documentation).

Freight Forwarder X SA must charge VAT at the zero rate on the international transport service from the Port of Durban to St Petersburg under section 11(2)(a)(ii). Freight Forwarder X SA must also zero-rate the supply of the domestic and ancillary transport services under section 11(2)(c).

**Example 5 – Vendor supplying international transport services and ancillary transport services (comprehensive example)**

*Facts:*

Company A (vendor) purchases goods from a supplier in Germany and has to collect the goods from the supplier's premises. Company A contracts with Freight Forwarder X SA (vendor) to import the goods from Berlin (Germany), attend to the Customs clearance and to deliver the goods to Company A at its premises in Boksburg. Freight Forwarder X SA subcontracts Freight Forwarder X GmbH in Germany (a non-resident, non-vendor) to move the goods from the supplier's premises in Berlin to the Port of Hamburg from where they will be exported and to clear the goods for Customs purposes in Germany. Freight Forwarder X SA further subcontracts Shipping Line X (vendor) to ship the goods from the Port of Hamburg to the Port of Durban. Lastly, Transport Co (vendor) is subcontracted by Freight Forwarder X SA to attend to the Customs clearance of the goods and to transport the goods from the Port of Durban to Company A's premises in Boksburg.

What is the VAT treatment of the various services?

*Result:*

Freight Forwarder X SA is supplying an international transport service to Company A and must charge VAT at the zero rate under section 11(2)(a)(iii).

Freight Forwarder X SA must also charge VAT at the zero rate on the supply of the domestic and ancillary transport services under section 11(2)(c) in light of the fact that Freight Forwarder X SA is the same person contractually supplying the international transport service.

Shipping Line X is supplying an international transport service to Freight Forwarder X SA and must charge VAT at the zero rate under section 11(2)(a)(iii).

Transport Co is supplying domestic transport and ancillary transport services to Freight Forwarder X SA and must charge VAT at the standard rate under section 7(1)(a). This supply is not zero-rated under section 11(2)(c), as Transport Co is not the same supplier providing the services to which section 11(2)(a) applies. The services supplied by Freight Forwarder X GmbH to Freight Forwarder X SA are not subject to VAT in the RSA.

Note that even though none of the different legs or aspects of the international movement of the goods are physically rendered by Freight Forwarder X SA, it must still zero-rate its supply to Company A. Freight Forwarder X SA is contractually supplying the services to Company A.

**(b) Domestic and/or ancillary transport services supplied to non-resident, non-vendors [section 11(2)(e)]**

The VAT Act makes provision for the zero rate to be levied in certain instances under section 11(2)(e). A vendor that is not contracted to supply an international transport service but is contracted to supply a domestic transport service or an ancillary transport service that is an integral part of or directly in connection with an international movement of goods, may zero-rate the supply of the domestic or ancillary transport service provided that these services are supplied directly –

- in connection with the –
  - exportation of goods from the RSA; or
  - importation of goods into the RSA; or
  - movement of goods through the RSA from one export country to another export country; and
- to a person who is neither a resident of the RSA nor a vendor, otherwise than through an agent or other person.<sup>1</sup>

Whether the services are directly in connection with, for example, the importation or exportation of the goods into or from the RSA, is a question of fact and depends on the circumstances of each case. The term “directly in connection with” means that the domestic or ancillary transport service must be an essential and constituent part of the international movement of goods, necessary for the completeness or delivery thereof. In essence, without the need for the goods to be transported internationally, these services would not have been necessary and/or rendered. Indicators of whether the supply of services is directly in connection with the importation or exportation of goods to or from the RSA, would be delivery to a designated commercial port from where the goods will be exported, collection from a port of importation, or services supplied relating to the preparation of the goods for export or import.

A vendor must comply with the requirements set out in (i) and (ii) before applying the zero rate to the supply of a domestic transport service or ancillary transport service under section 11(2)(e).

**Example 6 – Vendor contracting directly with a non-resident**

*Facts:*

Company F (a non-resident, non-vendor) purchases goods from a supplier in Kimberley for delivery to its customer in Bloemfontein. Company F contracts directly with Road Haulier Inc. (vendor) to collect the goods from the supplier’s premises in Kimberley and to deliver them to Company F’s customer in Bloemfontein.

What is the VAT treatment of the services?

<sup>1</sup> This means that the vendor must contract directly with the non-resident client and must not enter into the contract through the agent of the non-resident.

*Result:*

Road Haulier Inc. is supplying a local transport service between two places in the RSA which is not directly in connection with the importation or exportation of goods to or from the RSA, or the movement of goods through the RSA, and must charge VAT at the standard rate on the supply of its domestic transport service under section 7(1)(a).

**Example 7 – Supplies of transport services by various parties***Facts:*

Company A (vendor) contracts with Transport Co SA (vendor) to transport goods from Germany to the Port of Durban. Company A also contracts, with Clearing Agents (Pty) Ltd (vendor) to clear the goods through Customs and with Rail Co (vendor) to transport the goods to Boksburg. Transport Co SA subcontracts Transport Co GmbH in Germany (a non-resident, non-vendor) to transport the goods to the Port of Durban. Upon arrival, Transport Co GmbH hands the goods over to Clearing Agents (Pty) Ltd, which clears the goods through Customs. Rail Co collects the goods at the Port of Durban and transports the goods to Boksburg.

What is the VAT treatment of the services?

*Result:*

Transport Co SA is supplying an international transport service to Company A and must charge VAT at the zero rate under section 11(2)(a)(iii).

Clearing Agents (Pty) Ltd is supplying an ancillary transport service being the preparation of customs documents to Company A, and must charge VAT at the standard rate. Clearing Agents (Pty) Ltd cannot apply the zero rate to the aforementioned service under section 11(2)(c) as it is not supplying the international transport. Clearing Agents (Pty) Ltd can furthermore not apply the zero rate under section 11(2)(e) as it has not contracted with a non-resident, non-vendor for the supply of its service but with a vendor (that is, Company A).

Rail Co is supplying a domestic transport service to Company A, and must charge VAT at the standard rate. Rail Co is not supplying the international transport service, and, therefore, cannot apply the zero rate under section 11(2)(c). Furthermore, Rail Co has not contracted with a non-resident, non-vendor for the supply of its services and may not apply the zero rate under section 11(2)(e).

Company A is entitled to a deduction of the VAT paid in respect of the various services acquired, subject to meeting the requirements of sections 1(1), definition "input tax", 16(2), 16(3), 17 and 20.

**Example 8 – Vendor contracting directly with a non-resident principal to supply a domestic transport service**

*Facts:*

Company F, a German company, contracts with Freight Forwarder X GmbH (a non-resident, non-vendor) to deliver goods to Company A (vendor) in Boksburg. Freight Forwarder X GmbH delivers the goods to the Port of Durban and subcontracts Freight Forwarder X SA (vendor) in the RSA to clear the goods through Customs and to transport the goods from the Port of Durban to Company A in Boksburg. Freight Forwarder X SA subcontracts the domestic transport service to Transport Co (vendor).

What is the VAT treatment of the services?

*Result:*

Freight Forwarder X SA is supplying the domestic leg of an international movement of goods and an ancillary transport service, being the preparation of the customs documentation, directly to Freight Forwarder X GmbH, a non-resident and non-vendor. These services are directly in connection with the importation of goods and, in light of this, Freight Forwarder X SA must charge VAT at the zero rate under section 11(2)(e).

Transport Co is supplying a domestic transport service between two places in the RSA to Freight Forwarder X SA, a vendor, and must charge VAT at the standard rate.

Freight Forwarder X SA may deduct the VAT paid to Transport Co as input tax, subject to meeting the requirements of sections 1(1), definition "input tax", 16(2), 16(3), 17 and 20.

**(c) Domestic or ancillary transport services supplied to an agent of a non-resident [section 54(6)]**

A vendor that has contracted with a non-resident through an agent<sup>2</sup> or any other person to supply the domestic leg of an international movement of goods, is not entitled to apply the zero rate under section 11(2)(e) and is obliged to levy VAT at the standard rate under section 7(1)(a). The agent of the non-resident would be a person who arranged such transport and applied the zero rate on its services as envisaged in section (2)(d)<sup>3</sup>.

Relief is, however, granted to non-resident recipients of domestic transport services, who are not vendors, under section 54(6). The general rule regarding supplies acquired by an agent on behalf of a principal is that it is the principal and not the agent that is entitled to deduct the input tax under section 16(3) read with section 54(2). Section 54(6), however, specifically provides that where the agent and the principal agree, the provisions of the VAT Act will apply as if the supply had been made to the agent, provided that the –

- transport service is not subject to VAT at the zero rate;

<sup>2</sup> This means that the vendor must contract directly with the non-resident client and must not enter into the contract through the agent of the non-resident.

<sup>3</sup> As discussed further in **3.2.4**

- principal is not a resident and not a vendor;
- agent is a vendor; and
- transport service, or the arranging of the transport service, is directly in connection with the importation or exportation of goods which are being moved to, from or through the RSA.

In these circumstances, the agent may deduct the VAT incurred as input tax under section 16(3)(a). The agent is then in a position to pass the transportation or ancillary transport costs on to the non-resident principal free of VAT.

**Example 9 – Vendor contracting with an agent of a non-resident principal**

*Facts:*

Company F, a non-resident, non-vendor, contracts with Freight Forwarder X SA as its agent, to arrange the movement of its goods from Kimberley to Vancouver (Canada). Freight Forwarder X SA contracts, on behalf of Company F, with Transport Co (vendor) to provide the domestic transport service, which is to move the goods from Kimberley to Cape Town. Freight Forwarder X SA also contracts with Airline C (vendor) to transport the goods to Vancouver by air.

What is the VAT treatment of the services?

*Result:*

Airline C is supplying an international transport service to Company F, being the principal, and may zero-rate the supply of the flight from Cape Town to Vancouver under section 11(2)(a)(ii). International transport services may be zero-rated irrespective of whether the vendor contracts through an agent or any other person.

Transport Co is supplying a domestic transport service to Company F. As Transport Co has not contracted directly with Company F, but contracted with Company F's agent, it is not entitled to zero-rate the supply under section 11(2)(e) and VAT at the standard rate must be levied. As the supply is deemed to be made to Company F's agent (being Freight Forwarder X SA) under section 54(6), Freight Forwarder X SA may deduct the VAT paid as input tax under section 16(3) provided that the requirements as discussed in **3.2.3(c)** are complied with.

**3.2.4 The arranging of international transport services**

A vendor that is contracted to arrange the international transportation of passengers or goods may zero-rate the supply under section 11(2)(d). The zero-rating of the arranging service in section 11(2)(d) will only apply if the international transport services being arranged are transport services to which any of the provisions of section 11(2)(a), (b) or (c) as set out in **3.2.1** to **3.2.3** apply.

**Example 10 – Arranging of an international transport service***Facts:*

Company F, a non-resident, non-vendor, contracts with Freight Forwarder X SA as its agent, to arrange the movement of its goods from Kimberley to Vancouver (Canada). Freight Forwarder X SA contracts, on behalf of Company F, with Transport Co (vendor) to provide the domestic transport service, which is to move the goods from Kimberley to Cape Town. Freight Forwarder X SA also contracts with Airline C (vendor) to transport the goods to Vancouver by air.

What is the VAT treatment of the services?

*Result:*

The arranging of an international transport service falls within the ambit of section 11(2)(d) and Freight Forwarder X SA must zero-rate the supply of the arranging service to Company F.

**Example 11 – Arranging of a domestic transport service***Facts:*

Company X (non-resident, non-vendor) requests that its subsidiary (vendor) contracts, as its agent, with Transport Co (vendor) to transport containers from a depot in Port Elizabeth to the Port of Durban from where Freight Forwarder X GmbH will export the containers. Company X's subsidiary contracts with Transport Co to supply the domestic transport service on behalf of Company X.

What is the VAT treatment of the services?

*Result:*

The subsidiary must charge VAT at the standard rate under section 7(1)(a) on the supply of the arranging service. The subsidiary is not entitled to apply the zero rate under section 11(2)(d), because the transport service arranged was not a supply to which the provisions of sections 11(2)(a), (b) or (c) apply.

**Example 12 – Vendor contracting with an agent of a non-resident principal (comprehensive example)***Facts:*

Freight Forwarder X GmbH (non-resident, non-vendor) requests that its subsidiary Freight Forwarder X SA (vendor) contracts, as its agent, with Transport Co (vendor) to transport containers from a depot in Port Elizabeth to the Port of Durban from where Freight Forwarder X GmbH will export the containers. Freight Forwarder X SA contracts with Transport Co to supply the domestic transport service on behalf of Freight Forwarder X GmbH.

What is the VAT treatment of the services?

*Result:*

Transport Co is supplying a domestic transport service to Freight Forwarder X GmbH. As Transport Co has not contracted directly with Freight Forwarder X GmbH, but contracted with Freight Forwarder X GmbH's agent, that is, Freight Forwarder X SA, it is not entitled to zero-rate the supply under section 11(2)(e) and must charge VAT at the standard rate.

As the supply is deemed to be made to Freight Forwarder X GmbH's agent (being Freight Forwarder X SA) under section 54(6), Freight Forwarder X SA may deduct the VAT paid on the supply by Transport Co as input tax under section 16(3), provided that the requirements as discussed in **3.2.3(c)** are complied with.

Freight Forwarder X SA is supplying an arranging service to Freight Forwarder X GmbH, which is zero-rated under section 11(2)(d).

### **3.2.5 Documentary requirements**

The vendor's entitlement to apply the zero rate to a supply of international transport services or ancillary transport services as set out in this document, is always subject to the vendor obtaining and retaining the documentary proof acceptable to the Commissioner under section 11(3) within the prescribed time period. The acceptable documentary proof in relation to the supply of international and ancillary transport services is set out in Interpretation Note 31.

## **4. Conclusion**

The international transportation of goods or passengers is a taxable supply, and so is the supply of any ancillary transport services associated with it. These services must however, be zero-rated under the various provisions contained in section 11(2) subject to the requirements for the zero-rating being met. In this regard, it is important to note that should the vendor fail to obtain and retain the documentary evidence acceptable to the Commissioner set out in Interpretation Note 31 within the prescribed time periods, the supply will not qualify to be zero-rated. Furthermore, a vendor supplying domestic or ancillary transport services in connection with imported or exported goods must establish whether the vendor has contracted directly with a non-resident, non-vendor, or with the agent of the non-resident non-vendor, before applying the zero or standard rate.

In the event that the VAT implications of a specific transaction are not covered in this Note, an application for a VAT ruling or decision may be made 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 VAT301 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) where applicable.

## Annexure A – The law

### Section 1(1) – Definitions

**1.<sup>000</sup>Definitions.**—(1) In this Act, unless the context otherwise indicates—

“**ancillary transport services**” means stevedoring services, lashing and securing services, cargo inspection services, preparation of customs documentation, container handling services and storage of transported goods or goods to be transported;

“**enterprise**” means—

(a) in the case of any vendor, any enterprise or activity which is carried on continuously or regularly by any person in the Republic or partly in the Republic and in the course or furtherance of which goods or services are supplied to any other person for a consideration, whether or not for profit, including any enterprise or activity carried on in the form of a commercial, financial, industrial, mining, farming, fishing, municipal or professional concern or any other concern of a continuing nature or in the form of an association or club;

(b) ...

Provided that—

...

(v) any activity shall to the extent to which it involves the making of exempt supplies not be deemed to be the carrying on of an enterprise;

...

“**input tax**”, in relation to a vendor, means—

(a) tax charged under section 7 and payable in terms of that section by—

(i) a supplier on the supply of goods or services made by that supplier to the vendor; or

(ii) the vendor on the importation of goods by him; or

(iii) the vendor under the provisions of section 7(3);

where the goods or services concerned are acquired by the vendor wholly for the purpose of consumption, use or supply in the course of making taxable supplies or, where the goods or services are acquired by the vendor partly for such purpose, to the extent (as determined in accordance with the provisions of section 17) that the goods or services concerned are acquired by the vendor for such purpose;

### Section 7 – Imposition of tax

**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;

calculated at the rate of 14 per cent on the value of the supply concerned or the importation, as the case may be.<sup>4</sup>

<sup>4</sup> It should be noted that the rate of 15% must be applied, having regard to section 67A, with effect from 1 April 2018 in accordance with the announcement by the Minister of Finance in the Budget Speech on 21 February 2018.

## Section 11 – Zero-rating of services

**11. Zero rating.**—(2) Where, but for this section, a supply of services, other than services contemplated in section 11(2)(k) that are electronic 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—

- (a) the services (not being ancillary transport services) comprise the transport of passengers or goods—
  - (i) from a place outside the Republic to another place outside the Republic; or
  - (ii) from a place in the Republic to a place in an export country; or
  - (iii) from a place in an export country to a place in the Republic; or
- (b) the services comprise the transport of passengers from a place in the Republic to another place in the Republic to the extent that that transport is by aircraft and constitutes “international carriage” as defined in Article 1 of the Convention set out in the Schedule to the Carriage by Air Act, 1946 (Act No. 17 of 1946); or
- (c) the services (including any ancillary transport services) comprise the transport of goods from a place in the Republic to another place in the Republic to the extent that those services are supplied by the same supplier as part of the supply of services to which paragraph (a) applies; or
- (d) (i) the services comprise the—
  - (aa) insuring;
  - (bb) arranging of the insurance; or
  - (cc) arranging of the transport,
 of passengers or goods to which any provision of paragraph (a), (b) or (c) applies; or  
 ...
- (e) the services comprise the transport of goods or any ancillary transport services supplied directly in connection with the exportation from or the importation into the Republic of goods or the movement of goods through the Republic from one export country to another export country, where such services are supplied directly to a person who is not a resident of the Republic and is not a vendor, otherwise than through an agent or other person;

(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

**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—

- (a) a tax invoice or debit note or credit note in relation to that supply has been provided in accordance with section 20 or 21 and is held by the vendor making that deduction at the time that any return in respect of that supply is furnished; or
  - (b) (i) a document as is acceptable to the Commissioner has been issued in terms of section 20(6); or
    - (ii) a document issued by the supplier in compliance with section 20(7) or 21(5); or
- ...

- (e) a tax invoice or debit or credit note has been provided as contemplated in section 54(2) and a statement as contemplated in section 54(3)(a) is held by the vendor at the time a return in respect of the supply to the vendor is furnished;

...

Provided that where a tax invoice or debit note or credit note in relation to that supply has been provided in accordance with this Act, or a bill of entry or other document has been delivered (including by means of an electronic delivery mechanism) in accordance with the Customs and Excise Act, as the case may be, the Commissioner may determine that no deduction for input tax in relation to that supply or importation shall be made unless that tax invoice or debit note or credit note or that bill of entry or other document is retained in accordance with the provisions of section 55 and Part A of Chapter 4 of the Tax Administration Act.

(3) Subject to the provisions of subsection (2) of this section and the provisions of sections 15 and 17, the amount of tax payable in respect of a tax period shall be calculated by deducting from the sum of the amounts of output tax of the vendor which are attributable to that period, as determined under subsection (4), and the amounts (if any) received by the vendor during that period by way of refunds of tax charged under section 7(1)(b) and (c) and 7(3)(a), the following amounts, namely—

- (a) in the case of a vendor who is in terms of section 15 required to account for tax payable on an invoice basis, the amounts of input tax—
- (i) in respect of supplies of goods and services (not being supplies of second hand goods to which paragraph (b) of the definition of "input tax" in section 1 applies and supplies referred to in subparagraph (iiA)) made to the vendor during that tax period;
- ...
- (b) in the case of a vendor who is in terms of section 15 required to account for tax payable on a payments basis, the amounts of input tax—
- (i) in respect of supplies of goods and services made to the vendor in respect of which the provisions of section 9(1), (3)(a), (b) or (d) or (4) apply, to the extent that payments of any consideration which has the effect of reducing or discharging any obligation (whether an existing obligation or an obligation which will arise in the future) relating to the purchase price for those supplies have been made during that tax period;

...

## Section 54 – Agents and auctioneers

**54. Agents and auctioneers.**—(1) For the purposes of this Act, where an agent makes a supply of goods or services for and on behalf of any other person who is the principal of that agent, that supply shall be deemed to be made by that principal and not by that agent: Provided that, where that supply is a taxable supply and that agent is a vendor, the agent may, notwithstanding anything to the contrary in this Act, issue a tax invoice or a credit note or a debit note in relation to such supply as if the agent had made a taxable supply, and to the extent that that tax invoice or credit note or debit note relates to that supply, the principal shall not also issue a tax invoice or a credit note or a debit note, as the case may be: Provided further that where an agent issues a tax invoice on behalf of a principal, such tax invoice must be issued within 21 days of the date of that supply by that agent.

...

(6) Notwithstanding anything in subsection (2), where any vendor makes a taxable supply (other than a supply that is charged with tax at the rate of zero per cent under section 11) of goods or services to an agent who is a vendor and is acting for or on behalf of another person who is the principal for the purposes of that supply, and—

- (a) the principal is not a resident of the Republic and is not a vendor; and

- (b) (i) the supply is directly in connection with either the exportation, or the arranging of the exportation, of goods from the Republic to any country or place outside the Republic, or the importation, or the arranging of the importation, of goods to the Republic from any country or place outside the Republic, including, in either case, the transportation of those goods within the Republic as part of such exportation or importation, as the case may be;

this Act shall, where such agent and such principal agree, apply as if the supply were made to that agent and not to the principal.

## Annexure B – Extract from Interpretation Note 31

### 5. Documentary proof

The documentary proof, acceptable to the Commissioner, which must be obtained and retained by a vendor in order to substantiate the entitlement to apply the zero rate under section 11(1) and (2), is set out in Tables A and B. Any words or phrases that are underlined have the meaning as described in Annexure B.

In instances where a Binding General Ruling (BGR) applies to a vendor which requires the vendor to obtain and retain additional documents not listed in Table A or B, the vendor is required to meet the documentary requirements of both the BGR and this Note.

...

### 5.2 Supply of services [section 11(2)]

Table B below provides an overview of the documentary proof to be obtained and retained by a vendor in respect of a supply of services under section 11(2), as well as references to the relevant sections and schedules of the VAT Act.

**Table B – Vendors making a supply of services under section 11(2)**

ITEM	DESCRIPTION OF SUPPLY	DOCUMENTARY PROOF REQUIRED
<b>A</b>	International transport services in respect of goods [section 11(2)(a)]	<ul style="list-style-type: none"> <li>a) Tax invoice;</li> <li>b) The applicable transport document indicating the collection and delivery addresses or the point of origin and the point of destination;</li> <li>c) Signed delivery note or goods received note; and</li> <li>d) Proof of payment.</li> </ul>
<b>B</b>	International transport services in respect of passengers [section 11(2)(a)]	Tax invoice reflecting the ticket number, point of origin, point of destination and recipient's details.
<b>C</b>	Domestic air transportation associated with the international carriage by air of passengers [section 11(2)(b)]	Tax invoice reflecting the ticket number, the point of origin, the point destination and recipient's details.

ITEM	DESCRIPTION OF SUPPLY	DOCUMENTARY PROOF REQUIRED
<b>D</b>	Local transport services of goods provided by the same supplier of the international transport services [section 11(2)(c)]	<ul style="list-style-type: none"> <li>a) Tax invoice;</li> <li>b) A copy of the transport contract, the house bill of lading and the ocean bill of lading or airway bill of lading, indicating the port of discharge and place of delivery;</li> <li>c) Proof of delivery of the goods; and</li> <li>d) Proof of payment.</li> </ul>
<b>E</b>	The insuring or the arranging of the insurance or the arranging of the international transportation of passengers or goods [section 11(2)(d)]	<ul style="list-style-type: none"> <li>a) Tax invoice;</li> <li>b) A copy of the insurance or transport contract;</li> <li>c) In the case of the arranging of international transportation of goods or passengers, proof that the underlying transport service was zero-rated; and</li> <li>d) Proof of payment.</li> </ul>
<b>F</b>	Certain services comprising the transport of goods or any ancillary transport services supplied directly to a person that is not a resident of the Republic and not a vendor [section 11(2)(e)] (see also paragraphs 3.2 and 4.2 of Practice Note 10)	<ul style="list-style-type: none"> <li>a) Tax invoice;</li> <li>b) Written confirmation from the recipient that it is not a resident of the Republic and not a vendor;</li> <li>c) Proof of payment; and</li> <li>d) In the case of services comprising the transport of goods – <ul style="list-style-type: none"> <li>(i) the applicable SARS Customs proof of export, or proof of import; and</li> <li>(ii) a copy of the transport document.</li> </ul> </li> </ul>