

PRACTICE NOTE NO: 11

10 February 1992

Transport-related services (section 11 of the Act)

1. Introduction

Various services are rendered in the Republic or the specified countries which are related to the transportation of goods but which may be distinguished from the services of transporting goods from one point to another and ancillary transport services. Transport services and ancillary transport services are services which are rendered directly in connection with the particular movement of specific goods from one point to another. They can never be rendered independently of the movement of goods to which they relate. These services are dealt with in VAT Practice Note No 10. The transport related services, which form the subject of this practice note, can be distinguished from transport services and ancillary transport services in that they may be rendered independently of any particular movement of specific goods. They are usually rendered in connection with the means of conveyance of goods or passengers.

Various parties may be involved in supplying transport-related services. It is important for any person involved in the supply of, or in the arranging of the supply of, transport related services to determine what service he is rendering and in what capacity he is acting. The determination of what service is being rendered will determine at what rate VAT must be charged on that service, that is whether the supply of the services attracts VAT at the standard rate of 10 per cent or at zero rate. The determination of the capacity in which he is acting will determine in which manner any VAT charged by other parties involved in providing transport-related services should be treated.

In order to determine what service is being rendered it is essential to examine the terms of the contract between the supplier of the service and the recipient of the service.

In order to determine the capacity in which a person is acting the contractual relationship between the person and his client must be examined. The person supplying transport-related services will often need to involve other parties in order to render his services. He may contract with these parties as a principal or as an agent on behalf of his client.

The name or style under which a person's trade or occupation is carried on is irrelevant in determining the capacity in which he acts. The contractual relationship between his client and himself is the determining factor. Where the person enters into contracts with other parties in his own name or upon his own liability and responsibility he is acting as a principal. Any goods or services supplied to him in order to enable him to render his services will give rise to an input tax deduction in his hands.

When in addition to the charge for his own service, the costs of these goods or services are passed on to his client, whether a profit margin is added to these costs or not, the rate of VAT applicable to his total service is determined by the nature of his own service. The itemising of the various goods or services acquired in order to render his service does not affect his principle.

Where the person acts as an agent on behalf of his client any goods or services acquired on behalf of his client will not give rise to an input tax deduction in his own hands and the costs of the goods or services, including any VAT charged by the supplier of those goods or services will be passed on to his client. Depending on the client's circumstances the VAT charged on the goods or services may give rise to an input tax deduction in the client's hands. Where the person enters into contract for the supply of goods or services to his client on his client's behalf and upon his client's liability and responsibility he is acting as an agent. There is one exception to the rule that an agent cannot obtain an input tax deduction in his own hands in respect of goods or services acquired on behalf of his principal. This exception is dealt with in paragraph 6 of this practice note.

2. Ship and aircraft handling services

The supply in the Republic or a specified country of any ship handling or aircraft handling services is subject to VAT at the standard rate of 10 per cent. An exception to this general rule is contained in paragraph 5. Examples of handling services are: -

Ship handling:

- port and harbour dues
- dock and berth charges
- dry dock charges
- mooring charges
- demurrage (charge for failing to load or discharge a ship within specified time)
- security and fire services.

Aircraft handling:

- aircraft landing, parking or housing fees
- apron services
- security and fire services.

3. Pilotage, salvage and towage services

The supply in the Republic or a specified country of any pilotage, salvage and towage services is subject to VAT at the standard rate of 10 per cent. An exception to this general rule is contained in paragraph 5.

4. Services provided in connection with the operation or management of ships and aircraft

Services supplied in connection with the operation or management of ships and aircraft are subject to VAT at the standard rate of 10 per cent. An exception to this general rule is contained in paragraph 5.

Examples to these services are:

- supervision of maintenance, survey and repair of ships and aircraft
- engagement and provision of crews
- arrangements for loading and discharging
- arrangements for bunker fuel
- arrangement for victualling and storing.

5. Handling services; pilotage, salvage and towage services; services supplied in connection with operation or management of ships and aircraft; supplied to foreign-going ships and foreign-going aircraft

In terms of section 11(2)(h), the supply of services which comprise:

(i) the handling, pilotage, salvage or towage of any foreign-going ship or foreign-going aircraft while situated in the Republic or a specified country; or

(ii) services provided in connection with the operation or management of any foreign-going ship or foreign-going aircraft;

are subject to VAT at the rate of zero per cent, provided:

(a) the services are supplied to a person who is:

- not a resident of the Republic; and
- not resident nor carrying on business in a specified country; and
- not a vendor;

(b) the services are supplied directly to the aforementioned person otherwise than through an agent or other person.

In order to qualify for a zero rating all of the following conditions must be met.

5.1 The services must be of the nature described in paragraph (i) or (ii) above.

5.2 The services must be supplied in connection with a foreign-going ship or a foreign going aircraft. If the ship or aircraft does not fall with the definition of a foreign going ship or foreign-going aircraft, the services will not qualify for a zero rating.

5.3 The services must be supplied to a person who is:

- not a resident of the Republic; and
- not resident nor carrying on business in a specified country; and
- not a vendor.

If the recipient of the services does not meet one or more of the above criteria the supply of the services will not qualify for a zero rating.

5.4 The services must be supplied directly to the person otherwise than through an agent or other person. The suppliers of the service must therefore contract with a person directly and not through an agent or other intercessionary in the Republic or a specified country. Where the suppliers of these services debits the charges for the services to a ledger account held, for example, by a ship's agent on behalf of his client, the supplier of the service will charge VAT at the standard rate of 10 per cent. This will apply whether the supplier issues an invoice in the name of the agent, some other intercessionary or the recipient of the services himself. The addressing of an invoices as follows:

Master & Owners, m/v (name of vessel)
c/o Ship's Agent (Pty) Ltd
P O Box XXXXX
Durban

does not in itself alter the fact that the services have been rendered through an agent or other person.

6. Handling services; pilotage, salvage or towage services; services provided in connection with the operation or management of foreign-going ships and foreign-going aircraft acquired on behalf of a foreign principal

The general rule is that services supplied to an agent on behalf of his principal are supplied to the principal and not to the agent. The implication of this rule is that the principal and not the agent is entitled to claim an input tax deduction in respect of the supply of those services. An important exception to this rule exists in the case of handling, pilotage, salvage and towage services and services rendered in connection with the operation or management of ships and aircraft.

In terms of section 54(6)(b)(ii), provided certain conditions are met, the agent acting on behalf of a principal, who is not a resident of the Republic and is not a vendor, may treat the supply of services made to him on behalf of his principal as if the supply had been made to him. The implication of this is that the agent may claim a deduction of input tax in respect of these supplies in his own hands and pass the costs of those goods or services on to his principal without any VAT.

The conditions which must be met are:

- the supply to the agent must be a taxable supply charged with VAT at 10 per cent; and
- The supply must comprise:

the handling;

pilotage, salvage or towage of any foreign-going ship or foreign-going aircraft while present in the Republic or a specified country; or

services provided in connection with the operation or management of any foreign-going ship or foreign-going aircraft;

- the agent and principal agree that the agent is to act as principal in relation to the supplies.

This arrangement is not available where an agent is acting for a principal who is a resident of the Republic or is registered as a vendor.

Services supplied to passengers or crew are not supplied in connection with the operation or management of a ship or aircraft. Examples of these services are:

- accommodation supplied to crews
- medical and dental services supplied to crews
- domestic transport supplied to crews.

The suppliers of these services will charge VAT at the standard rate of 10 per cent. As the services are not supplied in connection with the operation or management of a foreign-going ship or aircraft, but rather in respect of the crews, the agent may not claim a deduction or input tax in respect of these services. The cost of these services including VAT would therefore be passed on to the owner or master by the agent.

7. Arranging of supply of certain goods or services pertaining to foreign-going ships and foreign-going aircraft

Various parties act as representatives for the masters and owners of foreign-going ships and foreign-going aircraft while these craft are situated in the Republic. These parties arrange and may even contract for a wide variety of goods and services to be supplied to the masters and owners of foreign-going ships and foreign-going aircraft.

A fee is usually charged for the service of arranging the supplies of various goods and services. In terms of section 11(2) where the service of arranging is rendered to a person who:

- is not a resident of the Republic; and
- is not resident nor carrying on business in a specified country; and
- is not a vendor.

the fee for the service of arranging the supply of the goods or services may be zero-rated provided the fee is charged in relation to the arranging of the supply of certain specified goods or services.

The supplies of specified goods and services are:

- goods delivered to the owner or charterer of any foreign-going ship or foreign-going aircraft provided the supply of the goods would be subject to VAT at the zero rate. (Refer to paragraph 9) The goods contemplated are victuals and ship's stores, fuel and any other goods which are for consumption or use in the ship or aircraft, but not cargo;
- the repair, maintenance, cleaning or reconditioning of a foreign-going ship or foreign-going aircraft;
- the services comprising the handling, pilotage, salvage or towage of any foreign-going ship or foreign-going aircraft while situated in the Republic or a specified country;
- services provided in connection with the operation or management of any foreign-going ship or foreign-going aircraft.

Where a composite management fee is charged to a ship owner or aircraft owner in respect of the arranging of some of all the specified goods or services listed above, the dominant or main reason for the composite fee will determine its VAT treatment. The fact that various ancillary services falling outside the ambit of the specified goods or services are also arranged by the representative of the ship owner or aircraft owner does not detract from the essential nature of the services supplied in return for the composite fee charged.

Where the fee for arranging the supply of goods or services is charged to a resident of the Republic, or a person resident or carrying on business in a specified country or a vendor, the fee will attract VAT at the standard rate of 10 per cent.

8. Repair, maintenance, cleaning and reconditioning of foreign-going ships and foreign-going aircraft

In terms of section 11(2)(g)(iv), services supplied directly in respect of the repair, maintenance, cleaning or reconditioning of a foreign-going ship or foreign-going aircraft are subject to VAT at the rate of zero per cent.

In order to qualify for zero rating:

- the service must be supplied directly in connection with repair, maintenance, cleaning and reconditioning;
- the craft in respect of which the services are rendered must qualify as a foreign-going ship or foreign-going aircraft.

It is important to note that in the case of services which meet these conditions, the service will be zero-rated irrespective of to whom the service is rendered. The zero rating will therefore apply whether the services are rendered directly to the master or owner of a foreign-going ship or a foreign-going aircraft or whether they are supplied via an agent or other intermediary.

In terms of section 11(1)(b), the supply of any goods in the course of repairing, renovating, modifying or treating a foreign-going ship or foreign-going aircraft is zero-rated provided the goods supplied:

- are wrought into, affixed to, attached to or otherwise form part of the foreign-going ship or foreign-going aircraft; or
- being consumable goods, become unusable or worthless as a direct result of being used in that repair, renovation, modification or treatment process.

The zero rating therefore applies to goods such as parts, components or other materials provided by the supplier of the service in order to effect the repair or maintenance service. The zero rating does not extend to the supply of the parts, components or materials to the supplier of the service. The repair of parts or components, if carried out on board a foreign-going ship or foreign-going aircraft is regarded as the repair of the ship or aircraft. The repair of a part or component which is removed from the ship or aircraft for repair may also be regarded as the repair of the ship or aircraft, provided that it is to be replaced in the same ship or aircraft after repair.

9. Goods for use or consumption in a foreign-going ship or foreign-going aircraft

In terms of section 11(1)(a) read with paragraph (b) and (c) of the definition of exported the supply of any goods under a sale is zero-rated if the goods are delivered by the vendor (supplier) to the owner or charterer of any foreign-going ship or foreign-going aircraft when such ship or aircraft is going to a destination in an export country and the goods are for use or consumption in such ship or aircraft.

In order to qualify for the zero rating the supply of the goods must fulfil the following conditions:

- the goods must be movable goods;
- the goods must be supplied by way of a sale (or an instalment credit agreement);
- the goods must be delivered to the owner or charterer of a foreign-going ship or a foreign-going aircraft.
- the foreign-going ship or foreign-going aircraft must be going to a destination in an export country; and
- the goods must be for use or consumption in the foreign-going ship or foreign-going aircraft.

An exception applies in the case of goods delivered to the owner or charterer of a ship or vessel which is:

- registered in an export country;
- utilised for the purposes of a commercial, fishing or other concern conducted outside the Republic and any specified country;
- utilised by a person who is: -

not a vendor; and

not a resident of the Republic of any specified country.

Where the supply of goods meets all these conditions the supply may be zero-rated despite the fact that the ship is not going to a destination in an export country.

It is important to note that in the case of a supply of goods which meets all the above requirements, the supply is zero-rated irrespective of whether the master or owner is invoiced directly or whether the invoice is issued to an agent of the master or owner.

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