Stakeholder Relations,
Anti-Corruption and
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Dear Mr Nomvalo

VALUE-ADDED TAX: RECENT PUBLICATION ON APPORTIONMENT POLICIES

The purpose of this communication is to –

- alert you of a recent publication issued by one of your members, in response to which, the South African Revenue Service (SARS) is receiving queries from other members;
- inform you of the SARS position and response to the matter; and
- Request that you communicate the SARS response below to your members.

The law

Vendors that acquire goods or services partly for the purpose of making taxable supplies and partly for another purpose (exempt supplies or out of scope activities), may only deduct the VAT incurred on these expenses as “input tax” to the extent that the intended use thereof is for the making of taxable supplies. The extent is determined under section 17(1) of the Value-Added Tax Act, 89 of 1991 (the VAT Act) in accordance with a method prescribed in a Binding General Ruling (BGR), VAT class ruling or VAT ruling.

BGR 16 (Issue 2), issued 30 March 2015, prescribes the turnover-based method as the only method that may be used, without obtaining approval, provided the method is fair and reasonable. Where the said method is not fair and reasonable, the vendor is required to obtain approval by way of a binding private VAT ruling to apply an alternative apportionment method.

Publication

A recent publication by KPMG dated 9 November 2020 alleging a new policy adopted by SARS on the inclusion of dividend income in the VAT apportionment method, per application by vendors, has been brought to SARS' attention. SARS wishes to highlight and clarify the following, pursuant to discussions with the author of the publication, and request the following be communicated to your members:

- The publication by KPMG dated 9 November 2020 does not correctly reflect the principles currently being applied by SARS when considering the appropriateness of including dividend income, or proxy, to reflect the investment activity of a specific vendor in the apportionment formula.

- An apportionment method is approved to a specific vendor or class of vendors by the Commissioner for SARS by way of a VAT Ruling under section 41B of the VAT Act. This means that the specific ruling is not an "official publication" as defined in the Tax Administration Act, 28 of 2011 and therefore can only be relied on by the vendor or class of vendors to whom the ruling is issued.

- To date, SARS has not yet published any further official publications which contain policies or principles adopted relating to VAT apportionment other than BGR 16. Notwithstanding, any principles or new policies adopted are applied to all vendors applying for the approval of an alternative apportionment method, to the extent that such policies appropriately reflect the business of that specific vendor.

- SARS regards the aforementioned publication to be inaccurate and misrepresentative. It creates the impression that SARS has adopted a new VAT apportionment policy that purports to be an official policy position in the absence of an official publication.

Apportionment reform

Earlier this year, SARS commenced a process to reform VAT apportionment, particularly where BGR 16 is considered inappropriate. This reform entails a process during which both the administrative approach to VAT apportionment as well as current principles and policies being applied are re-considered. In this regard, SARS envisages consulting with the relevant policy divisions as well as engaging with key public stakeholders to obtain feedback and discuss any changes that may be proposed. Once this process has been finalised, it is planned that official policies and administrative procedures will be published in an official publication and made available to the public at large.

As soon as the aforementioned process has been finalised, the final policy surrounding dividend inclusion in the apportionment formula, amongst others will be included in the official publication referred to above.

Yours faithfully

Mark Kingon
Head: Stakeholder Relations
17 November 2020