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*Submission File*

26 November 2018

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0001

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Dear Ms Majola and Ms Collins

**SUBMISSION – ADDITIONAL VALUE ADDED TAX (VAT) ANNEXURE C 2019  
BUDGET REVIEW COMMENTS**

1. In addition to our submission submitted on 23 November 2018, we present herewith an addition written submission on the request for Annexure C 2019 on behalf of the South African Institute of Chartered Accountants (SAICA) National Tax Committee (NTC) and SAICA Value-added Tax subcommittee, as set out in Annexure A.
2. Our submissions include a combination of representations, ranging from serious concerns about the impact or effect of certain provisions to simple clarification or suggestions for potentially ambiguous provisions, in relation to either existing sections or the latest amendments to the Value Added Tax Act, No 89 of 1991 (the VAT Act), as contained in the Taxation Laws Amendment Bill, 2018 (TLAB2018) and the Taxation Administration Laws Amendment Bill, 2018 (TALAB2018), respectively.
3. We have deliberately tried to keep the discussion of our submissions as concise as possible, which does mean that you might require further clarification. In this respect, you are more than welcome to contact us in this regard.
4. As always, we thank National Treasury (NT) and the South African Revenue Service (SARS) for the on-going opportunity to participate in the development of the South African tax law.



Should you require any further clarification on any of the matters raised please do not hesitate to contact us.

Yours sincerely

**Christo Theron**  
**CHAIRPERSON: VAT COMMITTEE**  
*The South African Institute of Chartered Accountants*

**Madelein Grobler**  
**PROJECT DIRECTOR: TAX**



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## ANNEXURE A

### **CATEGORY – VALUED ADDED TAX & CUSTOMS**

#### **Section 11(1)(q) of the VAT Act – Zero-rating of certain categories of supplies made in South Africa**

##### Legal nature

5. Section 11(1)(q) of the VAT Act allows a South African supplier to supply goods at the zero rate of VAT where the goods are delivered to a VAT vendor in South Africa on the instruction of a non-resident/non-vendor.

##### Factual description

6. The special rule contained in section 11(1)(q) of the VAT Act is aimed at ensuring that irrecoverable VAT is not incurred within the overall supply chain where goods are supplied to a person who acquires such goods wholly for VAT enterprise purposes.
7. In practice global buying houses operating from places outside South Africa procure goods and services in any jurisdiction and arrange for such goods or services to be delivered to the client of the global procurement business. If the global procurement business procures goods from a South African supplier it could issue an instruction to deliver the goods at an address in an export country or at a South African address of the purchaser is a South African client. The purpose of section 11(1)(q) is that such goods may be supplied at the zero rate of VAT if the South African recipient of the goods acquires such goods wholly for that person's VAT enterprise purposes.
8. The VAT vendor supplying the goods at the zero rate of VAT must make the decision whether the supply made contractually to the non-resident and delivered to the South African recipient may be made at the zero rate of VAT.
9. The practical challenge is that for a supply to be zero rated in terms of section 11(1)(q) of the VAT Act, the non-resident may not be a VAT vendor in South Africa (i.e. a person that is or should be registered as a VAT vendor in South Africa). The onus is therefore placed on the supplier in South Africa to determine whether the non-resident is a VAT vendor in South Africa (a person that is or should be registered as a VAT vendor in South Africa).
10. In practice it would be difficult for the non-resident to determine whether he/she should be registered in South Africa. The terms "regularly" or "continuously" are difficult to interpret in practice and may vary from instance to instance depending on the level of procurement by the non-resident in South Africa. While the determination is challenging for the non-resident, we submit that it is impossible for the South African supplier.

*The nature of the businesses impacted*

11. All suppliers of goods in South Africa supplying goods on the instruction of international buying houses and delivering such goods to South African recipients.

*Proposal*

12. We recommended that section 11(1)(q)(i) of the VAT Act be amended as follows:

*“are supplied by a vendor to a person who is not a resident of the Republic and not a registered vendor ...”*

**Section 1(1) of the VAT Act – Definition of “enterprise” – Proviso (ii) to the definition**

*Legal nature*

13. “Enterprise” is defined in section 1(1) of the VAT Act as *“in the case of any vendor, any activity which is carried on continuously or regularly by any person in the Republic or partly in the Republic ...”*
14. “Vendor” is defined in section 1(1) of the VAT Act as *“any person ...”*
15. Proviso (ii) to the definition of “enterprise” in section 1(1) of the VAT Act determines that:  
*“any branch or main business of an enterprise permanently situated at premises outside the Republic shall be deemed to be carried on by a person separate from the vendor, if –*  
  
*(aa) the branch or main business can be separately identified; and*  
  
*(bb) an independent system of accounting is maintained by the concern in respect of the branch or main business;”*

*Factual description*

16. Where a non-resident executes a single/or multiple contracts in South Africa requiring the non-resident to register as a VAT vendor in South Africa and the non-resident does not maintain separate records with regards to such contracts, the VAT returns submitted by the non-resident will have to reflect all taxable supplies made by the legal person. This would be the case notwithstanding that the majority of the activities carried on by the legal non-resident person will be entirely de-linked from any South African activity carried on by the person.
17. Furthermore, such activities will all represent zero rated supplies of goods or services. To zero rate such supplies the non-resident will be required to comply with the South African VAT Act requirements to zero rate a supply, failing which, the supply will be regarded as a taxable supply at the standard rate of VAT after the expiry of certain period of time.

*The nature of the businesses impacted*

18. Any non-resident conducting a VAT enterprise in South Africa, if the non-resident does not maintain an independent accounting system for the South African and non-South African activities.

*Proposal*

19. The above outcome could never have been envisaged by the legislator and should be clarified by way of an amendment of the law or by way of Interpretation Note/Binding General Ruling.

**Section 1(1) & 23(1) of the VAT Act – Electronic services – Proviso (ii) to the definition of “enterprise”**

*Legal nature*

20. “Enterprise” is defined in section 1(1) of the VAT Act as *“in the case of any vendor, any activity which is carried on continuously or regularly by any person in the Republic or partly in the Republic ...”*
21. Paragraph (b)(vi) of the definition of “enterprise” in section 1(1) of the VAT Act includes the supply of certain electronic services in the definition of enterprise.
22. Section 23(1)(a) of the VAT Act that:
- “Every person who, on or after the commencement date, carries on any enterprise and is not registered, becomes liable to be registered –*
- (a) at the end of any month where the total value of taxable supplies made by that person in the period of 12 months ending at the end of that month in the course of carrying on all enterprises has exceeded R1 million;”*
23. Section 23(1A) of the VAT Act determines that:
- “Every person who carries on any enterprise as contemplated in paragraph (b)(vi) of the definition of “enterprise” in section 1 and is not registered becomes liable to be registered at the end of any 12-month period ending at the end of that month where the total value of taxable supplies made by that person has exceeded R1 million.”*
24. Proviso (ii) to the definition of “enterprise” in section 1(1) of the VAT Act determines that:
- “any branch or main business of an enterprise permanently situated at premises outside the Republic shall be deemed to be carried on by a person separate from the vendor, if –*
- (aa) the branch or main business can be separately identified; and*

- (bb) *an independent system of accounting is maintained by the concern in respect of the branch or main business;”*

Factual description

25. We contend that section 23(1A) of the VAT Act has no further relevance once the R1 million registration threshold has been harmonized, unless the intention of the legislator is to treat the enterprise carried on by the person as envisaged in paragraph (b)(vi) of the definition of “enterprise” in section 1(1) of the VAT Act as two separate enterprises for VAT purposes in respect of which the registration thresholds must be applied separately.
26. If they are to be treated as separate enterprises, the R1 million registration threshold should be applied to each enterprise separately. If not, the combined value of supplies by the “electronic services enterprise” and the “general paragraph (a) enterprise” must be used to determine the registration threshold.
27. This issue is currently unclear from the wording of section 23(1) of the VAT Act.

The nature of the businesses impacted

28. Any supplier of electronic services who also conducts other taxable activities in South Africa (most foreign holding companies will fall into this category).

Proposal

29. We recommend that section 23(1)(a) of the VAT Act be amended to exclude the value of supplies relating to electronic services.