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National Treasury Policy Department and Ms Adele Collins
National Treasury / South African Revenue Service

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Dear National Treasury and Ms Collins

COMMENTS ON THE DRAFT REGULATIONS ON DOMESTIC REVERSE CHARGE RELATING TO VALUABLE METALS

The South African Institute of Chartered Accountants (SAICA) welcomes the opportunity to make a submission to the National Treasury and the South African Revenue Service (SARS) on the Draft Regulations on Domestic Reverse Charge (DRC) relating to valuable metals issued in terms of section 74 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

The Draft Regulations introduce a Domestic Reverse Charge Mechanism and apply in respect of supplies of defined valuable metals between vendors and make provision for the purchasing vendor to declare and pay to SARS the VAT charged on the acquisition of defined valuable metals and claim the input tax thereon, within the same tax period or within 12 months after the end of the tax period in which the tax invoice was issued. The Draft Regulations also prescribe additional requirements for the tax invoice, administrative matters as well as additional responsibilities for both the supplying vendor and the purchasing vendor.

We set out below our comments on the Draft Regulations.

COMMENTS

Definition of "domestic reverse charge"

1. The definition of "domestic reverse charge" stipulates that it only applies to supplies between vendors. It therefore seems that the deduction of input tax on second-hand goods in terms of section 16(3)(a)(ii)(aa) will not be impacted by the Draft Regulations, provided that the goods comprise "second hand goods" as defined in section 1(1) of the VAT Act.

2. Submission: The Draft Explanatory Memorandum (EM) to the Draft Regulations should clarify this aspect.

Definition of "valuable metal"

Valuable metal content

3. The definition stipulates that "valuable metal" means any metallic good which is constituted of, but not limited to, gold, copper, zinc, magnesium, lead or uranium. The words "is constituted of" could be interpreted that the metallic good must comprise mainly (i.e. more than 50%) of the metallic goods listed in the definition of valuable metal. Metallic goods supplied for smelting, refining or processing do not always constitute more than 50% of the listed valuable metals. The question then arises as to whether such product comprises a "valuable metal" because it does not comprise mainly of the metals listed in the definition.

4. Submission: The words "is constituted of" in the definition should be replaced by the words "contains any amount of" if it is the intention that all goods containing the metals listed in the definition which are supplied for processing by way of smelting or refining into a gold bearing bar are to be regarded as a "valuable metal".

5. As mentioned above, the current definition of "valuable metal" stipulates it means any *metallic good* which is constituted of, but not limited to, gold, copper, zinc, magnesium, lead or uranium. However, goods which contain gold which are not metallic goods are also supplied to refineries for purposes of extracting their gold content, for example carpets, computer processors and computer motherboards.

6. Submission: The Draft EM should clarify that any goods which are not metallic in nature are excluded from the DRC.

7. The Draft EM stipulates that the VAT rules regarding single supplies, mixed supplies and composite supplies will be applicable as these are prone to abuse and malpractice.

8. Submission: Clarification is required as to whether a product which constitutes partly of metallic goods as listed in the definition and partly of other material, which is in the form of a gold bearing bar or similar item, or which is processed into a gold bearing bar or similar item, will be subject to the DRC only to the extent of the metallic goods content thereof or whether the entire product is subject to the DRC.

Valuable metal type

9. The current definition stipulates that "valuable metal" means any metallic good which is constituted of, but not limited to, gold, copper, zinc, magnesium, lead or uranium.

10. Submission: The words "not limited to" the current definition results in the list of metals in the definition not being exhaustive. To avoid uncertainty and leaving the definition open for interpretation, we suggest that a complete list of metals rather be provided.

Purpose of acquisition

11. Paragraph (a) of the definition stipulates that "valuable metal" means any metallic good which is constituted of, but not limited to, gold, copper, zinc, magnesium, lead or uranium which is *processed* by way of smelting, refining or other similar process, into a gold bearing bar or *similar item*. The goods will only be processed after supply thereof, whereas the application of the DRC must be applied at the time of acquisition. The purpose for which the goods are acquired by the purchaser must therefore be established at the date the goods are supplied.

12. The concept of "similar item" in the "valuable metal" definition is also not entirely clear. It is proposed that "gold bearing bar[s] or similar item[s]" will constitute "valuable metal" and therefore subject to the Regulations whereas the Draft EM (pages 3 and 6) makes reference to "gold bars, gold doré and gold granules".

13. Submission: To clarify the definition, we suggest that it be amended to stipulate that a "valuable metal" is a metallic good which is *acquired by the recipient for purposes of processing* by way of smelting, refining or other similar process, into a gold bearing bar or similar item.

14. The ambit of the Regulations with regard to "*similar items*" should also be clarified.

15. Where metallic goods (e.g. scrap jewellery) are smelted, refined or otherwise processed, the resultant gold product could take one of many forms (e.g., gold bars, granules, wire, etc.). It is not clear how a supplying vendor would know whether its metallic goods will be "processed … into a gold bearing bar or similar item" and therefore constitute "valuable metal" for purposes of the Regulations, particularly where co-mingling occurs (e.g. a refinery would generally acquire gold bearing material from various vendors which it then mixes together for melting/processing into various gold products, not only gold bars). However, the Draft EM (on page 7) indicates that vendors will be required to give regard to "the VAT rules regarding single supplies, mixed supplies and composite supplies" without any indication as to how this might be practically achieved.

16. Submission: The Draft Regulations should address the above concerns raised.

Ancillary supply

17. The current definition includes *any ancillary supply* in connection with paragraphs (a) and (b) of the definition of "valuable metal" but such supply is not defined.

18. It is therefore not clear on what basis to determine whether a supply is "ancillary" to the supply of valuable metal and therefore subject to the Regulations (e.g. only refining type services provided by the refinery processing the valuable metal, or also transportation and cash-in-transit services provided by entirely different vendors, etc.).

19. Submission: The term "ancillary supply" in the context of the Draft Regulations should be defined or be described in more detail.

Permit issued by cabinet minister

20. The definition of "valuable metal" excludes any metallic good produced by *a mine*, holding *a valid permit* issued by the cabinet member responsible for Mineral Resources, before refining for upgrading to the London Good Delivery standard.

21. In certain instances, a vendor may process mining dumps or tailings and provide such material to a mine to extract the gold and other precious metal content. Such entity may not be considered to be a "mine" within the normal meaning of the word. It is not clear as to what is contemplated by the requirement that, in order to be excluded from the definition of "valuable metal", the material must be produced by an entity that is a "mine" holding a "valid permit".

22. Furthermore, the Regulations thus appear to be very broad and could potentially apply to mining companies as well. This is because the definition of "valuable metal" excludes any metallic good "produced by a mine" which would mean that buy-in transactions would still be caught by the Regulations.

23. The exclusion relating to mining companies relate only to those mines holding a valid permit. It is not clear whether "permit" includes a mining right or other mining licenses. If not, a mine holding a mining permit will be excluded from the Regulations whereas a mine holding a mining right will be subject to the Regulations.

24. Submission: The terms "mine" and "valid permit" need to be more fully described or clarified in the Draft Regulations.

Metallic goods supplied by mines

25. As mentioned above, the definition of "valuable metal" excludes any metallic good produced by a mine, holding a valid permit issued by the cabinet member responsible for Mineral Resources, before refining for upgrading to the London Good Delivery standard

26. This implies that any metallic good supplied by a mine after refining is not excluded from the definition. It is not clear as to whether it is intended that all supplies by mines of refined precious metal should be subject to the DRC. There does not seem to be any reason as to why any supplies by mines of metallic goods, whether before or after refining, should be subject to the DRC. In addition, the London Good Delivery standard sets out the rules describing the physical characteristics of gold and silver bars only, which are used in settlement in the wholesale London bullion market. It does not apply to any other refined metals such as platinum, for example.

27. Submission: We recommend that *all* supplies of metallic goods made by a mine holding a valid permit be excluded from the definition of "valuable metal".

Co-mingling of mine production and other products

28. A mine may acquire gold containing metallic goods supplied by a vendor which is then co-mingled by the mine for processing or smelting into a gold bearing bar before it is further refined. If the goods acquired by the mine are not excluded from the definition of "valuable metal" then the question arises as to what the status of the gold bearing bars are that are produced by the mine, i.e. as to whether such golds bars comprise "valuable metal" or partly comprise "valuable metal".

29. Submission: The definition of "valuable metal" should be clarified with regard to the status of the gold containing bars which are produced by the mine in these circumstances. If they are only partly considered to be "valuable metal" in relation to composite supplies of a single product, then guidance should be provided as to how the "valuable metal" content of such gold containing bars should be determined.

Supplies to customs-controlled area enterprises

30. The Draft Regulations are conceptualised on the basis that the supply must be a supply chargeable with VAT at the standard rate.[1] Accordingly, the supplies of goods contemplated in section 11(1)(f) and section 11(1)(k) of the VAT Act are excluded from the definition of "valuable metal".

31. As stated above, it is proposed that "goods contemplated in section 11(1)(f)" are excluded from the definition of "valuable metal" and therefore excluded from the Draft Regulations. The "goods" referred to in section 11(1)(f) are "gold in the form of bars, blank coins, ingots, buttons, wire, plate or granules or in solution". Yet the definition of "valuable metal" includes, *inter alia*, any metallic good which is constituted in the form of a gold bearing bar or similar item. By excluding "goods contemplated in section 11(1)(f)" from the "valuable metal" definition, it appears that these forms of unwrought or semi-fabricated precious metals are excluded.

32. Submission: Clarity in this regard is required noting that VAT is levied on the supply of goods.

33. Further, section 11(1)(f) refers to gold in the eight forms listed in this section "which has not undergone any manufacturing process other than the refining thereof or the manufacture or production [thereof]". Differing views exist as to the type of gold to which the manufacturing limitation in section 11(1)(f) applies. Some interpret the gold to refer to the gold sourced (e.g. scrap jewellery) whilst others interpret it to refer to the gold supplied in one of the eight forms to one of the recipients listed in this section (i.e. SARB, Mintco or a bank).

34. Submission: Depending on a vendor's interpretation of the type of gold contemplated in section 11(1)(f), this could result in inconsistent interpretations as to the applicability of

[1] *Draft Explanatory Memorandum to the Draft Regulations* at p7

the Draft Regulations. Clarity on what interpretation National Treasury's is, should be provided.

35. Section 11(1)(m) provides for the application of the zero rate in terms of a sale to a Customs Controlled Area Enterprise ("CCAE"). Accordingly, supplies of "valuable metal" to a CCAE should also be excluded from the definition thereof.

36. Submission: The exclusion in subparagraph (ii) of the definition of "valuable metal" should therefore be expanded to include supplies made to a CCAE in terms of the provisions of section 11(1)(m) of the VAT Act.

Regulation 2 and 4 - Issue of tax invoice

Time period within which a tax invoice must be issued

37. The Draft EM stipulates that the supplying vendor must issue a tax invoice on the date of the supply. There is uncertainty regarding the meaning of "date of supply". For example, is it the date the supplier contacts the recipient to confirm a supply (being the contractual agreement to supply), the date on which the material is physically delivered to the recipient's premises, the date on which the initial invoice is issued, the date the first 95%-98% payment is made, the date the final assay results are obtained, the date the final payment/adjustment is made, etc.

38. Furthermore, Regulation 4(a) provides that the supplying vendor must issue a tax invoice at the time contemplated in Regulation 2(b). However, Regulation 2(b) of the Draft Regulations does not explicitly stipulate when the tax invoice must be issued. Further, the cross-referencing between Regulations 2(b) and 4 are circular and therefore ambiguous.

39. Submission: Clarity is needed on what is meant by "date of supply".

40. Regulation 2(b) should thus be amended to clarify when the supplying vendor is required to issue a tax invoice. If it is required to issue a tax invoice for the supply on the date of the supply as stipulated in the Draft EM, then it should be noted that it is not always possible to issue a tax invoice on that date for the following reasons:

41. Bullion supplies must be assayed to determine the content thereof, which means that the data regarding the quantity of metal will not be available for invoicing purposes at the date of the supply in all instances.

42. The price payable for the commodity concerned is determined as the spot price of the commodity at some point in time after the date of the supply. The consideration payable for the supply will therefore not be available at the time of the supply.

43. The requirement to issue a tax invoice on the date the supply is made, will result in tax invoices being issued for estimated quantities and values in these circumstances, and will require the issue of a debit or credit notes subsequently for each supply made.

44. Although it is generally the industry norm (gold industry) to issue invoices on estimated value and then to do an adjustment once the actual gold content of a delivery in known, such a requirement will place a substantial additional administrative burden on other vendors not in that industry and it will also increase the possibility of error and will complicate the audit trail as opposed to simplifying it.

45. Submission: We recommend that vendors be required to issue a tax invoice for each supply, but that the requirement that such tax invoice be issued on the same date as the supply be reconsidered.

46. If the tax invoices are issued in terms of the requirements of section 20(1) of the VAT Act, it will eliminate the need to issue a tax invoice for estimated quantities and consideration and will eliminate the need for a debit or credit note for each tax invoice, and it will ensure that quantities and payments match the tax invoices issued.

Self-invoicing

47. In certain instances, where the recipient vendor determines the quantity and/or the consideration payable for the goods supplied, the recipient issues a tax invoice in terms of section 20(2) of the VAT Act in accordance with Binding General Ruling 15 and Interpretation Note 56.

48. Submission: Regulation 2(b) and Regulation 3(c) should be amended to recognise that the recipient vendor may issue the tax invoice in relation to the supply in terms of section 20(2) of the VAT Act.

Validity of the tax invoice

49. The obligation to issue a tax invoice (if self-invoicing does not apply) is that of the supplier. When the supplying vendor issues an invalid tax invoice or a tax invoice that does not reflect the additional requirements as set out in Regulation 4, then the recipient vendor will not be able to account for the VAT in the tax period the supply is made, and the recipient vendor will also not be entitled to make any input tax deduction.

50. The Draft Regulations are silent on the remedies or obligations of the recipient vendor in instances where the tax invoice issued by the supplier does not comply with the requirements of section 20(4) read with Regulation 4.

51. Submission: The Draft Regulations should stipulate what the obligations of the parties are when the supplier fails to issue the required tax invoice with the additional requirements of Regulation 4.

Regulation 3(c) - Responsibilities of the recipient

52. Regulation 3(c) of the Draft Regulations stipulates that the recipient vendor must account for VAT in the tax period in which the tax invoice is issued by the vendor making the supply. The term “tax invoice” is not defined in the Draft Regulations, and therefore bears

the meaning as defined in section 1(1) read with section 20 of the VAT Act. However, it seems that the term "tax invoice" as referred to in the Draft Regulations should bear the meaning as set out in section 20 of the VAT Act and the additional requirements in Regulation 4 of the Draft Regulations.

53. Submission: A definition of "tax invoice" should be included in the Draft Regulations which stipulates that the term "tax invoice" referred to in the Draft Regulations is a document as contemplated in section 20 of the VAT Act read with Regulation 4 of the Draft Regulations.

54. In certain instances, the recipient vendor may make payment or part payment before a tax invoice is issued.

55. Submission: If it is the intention of the Draft Regulations to override the provisions of section 9(1) of the VAT Act, then we recommend that Regulation 3(c) be amended accordingly.

56. If the supplier vendor does not provide a document comprising a tax invoice as contemplated by section 20 but which contains the additional information required by Regulation 4, the recipient vendor should not have any obligation to account for VAT in accordance with Regulation 3(c).

57. The supplier vendor should then account for VAT on the supply in the normal course. However, the question then arises as to how the transaction should be accounted for by the parties if the supplier vendor subsequently issues a tax invoice that complies with section 20 read with Regulation 4 of the Draft Regulations. Clarity on this should be provided in the Draft Regulations.

Regulation 3(e) - Responsibilities of the recipient vendor

58. Regulation 3(c) stipulates that the recipient vendor must account for VAT in the tax period in which the tax invoice is issued by the vendor making the supply. Regulation 3(d) stipulates that the recipient vendor must deduct the input tax in relation to the supply in the tax period in which the tax invoice is issued in respect of the supply.

59. It seems therefore that the policy intent is that output tax and input tax must be accounted for in the tax period in which the supply is made. However, Regulation 3(e) stipulates that if the VAT has not been accounted for and paid to SARS in the tax period in which the tax invoice is issued in respect of the supply, then the input tax may be deducted in a subsequent tax period, but not later than 12-months after the tax period in which the tax invoice was issued. Regulation 3(e) seems to contradict both Regulation 3(c) and Regulation 3(d).

60. Submission: The purpose and operation of Regulation 3(e) should be clarified in view thereof that the intended operation of the DRC seems to be that output tax and input tax must be accounted for by the recipient vendor in the same tax period, being the tax period in which the supply was made.

61. The recipient vendor can only account for the output tax and the input tax in the tax period in which the supplying vendor issues a tax invoice as required by section 20 and Regulation 4. If the supplying vendor fails to issue a tax invoice for the supply for any reason, or if the tax invoice issued does not meet the requirements of section 20 and Regulation 4, the recipient vendor will not be able to account for VAT in accordance with the Draft Regulations.

62. Submission: If it is the purpose of Regulation 3(e) to allow the recipient vendor to account for VAT in relation to the supply in these circumstances in a later tax period, then the reference to the tax period during which the tax invoice for that supply was issued should be replaced with a reference to the tax period in which the goods were supplied.

Regulation 3(f) - Responsibilities of the recipient vendor

63. Regulation 3(f) requires that the recipient vendor supplies a statement to the supplying vendor within 21 days after the end of the month in which the tax invoice was issued, confirming that the VAT charged by the supplying vendor was accounted for and paid to SARS by reflecting the applicable tax period and payment under the payment reference number issued by SARS.

64. It is not clear as to what the purpose is of the statement which the recipient vendor should issue to the supplying vendor in terms of Regulation 3(f), or what the supplying vendor should do with the statement it receives, or what its obligations are if it does not receive the statement.

65. Submission: Clarity on the above should be provided.

66. Section 28(1)(b)(iii) of the VAT Act provides that a vendor registered to submit VAT returns electronically may submit its VAT return and make payment on the last business day of the month following the end of the tax period. All vendors fall into this category as VAT returns are required to be submitted electronically. If the recipient vendor submits its VAT return and pays its VAT on the last business day of the month following the end of each tax period in accordance with section 28(1)(b)(iii), the recipient vendor will not be able to issue a statement within prescribed 21 days as required by Regulation 3(f).

67. Where the recipient vendor deducts the VAT in the same tax period in which the VAT has been accounted for, or where the recipient vendor is in a net VAT refund position for the tax period concerned, the recipient vendor will not make any payment to SARS and will not be able to confirm that the VAT in relation to the relevant tax invoice was paid to SARS or to provide a payment reference number.

68. Submission: We recommend that, if a statement is indeed required, that Regulation 3(f) be amended to stipulate that the time period within which the recipient vendor must issue the statement is 21 days after the VAT return for a tax period is required to be submitted in accordance with section 28.

69. We further recommend that the requirement to confirm that the payment of the VAT was made and the requirement to provide a payment reference number be deleted.

Regulation 4(c) - Additional requirements for tax invoices

70. Regulation 4(c) stipulates, in relation to the tax invoice issued in relation to the supply, that the VAT charged on the supply of valuable metal under the Regulations should not be included in the amount shown as VAT due by the vendor making the supply.

71. If the amount is not reflected in the consideration payable for the supply, then the provisions of section 20(4)(g) will not be complied with, in which case the tax invoice will not be a valid document as contemplated by that section, which will also impact on the entitlement of the recipient vendor to deduct the input tax.

72. Submission: We recommend that Regulation 4(c) be clarified to stipulate that this requirement will not invalidate the tax invoice.

Regulation 6 - Reporting requirement and deduction of input tax

73. Regulation 6(a) requires that the supplying vendor accounts for the value of the supply subject to the DRC in Field 3 of the supplying vendor's VAT return.

74. The supply remains a taxable supply made by the supplying vendor which is subject to VAT under section 7(1)(a) of the VAT Act, albeit that the recipient vendor accounts for such VAT in terms of the Draft Regulations. The disclosure of the value of the supply in Field 3 of the VAT return should therefore not impact on the entitlement of the supplying vendor to deduct input tax as contemplated by section 17(1).

75. Submission: The VAT return should be amended to include a specific field to cater for these declarations. Until this is done, the SARS systems and risk profiling should be amended or adjusted to ensure that SARS verification reviewers and auditors do not seek to disallow a portion of the supplying vendor's input tax deductions merely on the basis that it discloses the supplies as "exempt and non-supplies".

Regulation 8 - Liability for VAT

76. Regulation 8(1) stipulates that failure to apply the domestic reverse charge will result in the supplier and recipient vendors being held jointly and severally liable for any VAT loss suffered by the fiscus elsewhere in the production and distribution supply chain.

77. In terms of Regulation 8(2) the supplier vendor will not be held liable if the supplier vendor satisfies the Commissioner that the vendor has taken reasonable steps to comply with its obligation under these Regulations, including verifying the recipient vendor's VAT registration status and issuing, obtaining and maintaining the required records and statements of compliance from the recipient vendor.

78. This means that the recipient vendor may be held solely liable for any VAT loss suffered by the fiscus elsewhere in the production and distribution supply chain.

79. The Draft Regulations seek to impose a liability for VAT which is contrary to the provisions of section 7(2) of the VAT Act which stipulates that the VAT payable in terms of section 7(1)(a) shall be paid by the vendor referred to in section 7(1)(a). The VAT Act does not and cannot impose any liability on a supply which a vendor has not made. By imposing a liability for VAT on transactions not made by or to the vendor concerned, the Draft Regulations overreach its permissible scope of operation under the VAT Act. Consequently, the imposing of a liability for VAT on a vendor for any loss suffered by SARS elsewhere in the supply chain is likely to be void.[2]

80. Where the vendors concerned are involved in a scheme for obtaining a tax benefit, including irregular VAT refunds, the Commissioner can rely on the provisions of section 73 of the VAT Act to recover such VAT. In addition, the Commissioner may also institute criminal proceedings in terms of section 235 of the Tax Administration Act, No 28 of 2011 where persons intend to evade or assist another person to evade or to obtain an undue VAT refund.

81. Where the recipient vendor has taken reasonable steps to comply with its obligations under the Regulations, the recipient vendor should, similarly to Regulation 8(2) not be held liable for any VAT loss suffered by the fiscus elsewhere in the production and distribution supply chain.

82. Submission: Regulation 8(1) should be amended to delete the joint and several liability for the supplier and recipient to the extent of any VAT loss suffered by the fiscus elsewhere in the production and distribution supply chain.

Regulation 9 - Transitional measures

83. Regulation 9 provides for the transitional measures with regard to the accounting for VAT on supplies made before and after the commencement date of the Regulations. Regulation 9 is silent on the VAT treatment of *adjustments* in respect of supplies made where the time of supply falls within a tax period before the commencement of the Regulations.

84. Submission: Regulation 9 should be amended to clarify that any debit notes or credit notes issued in respect of supplies made where the time of supply falls in a tax period before the commencement of the Regulations, such debit or credit notes must be accounted for by the supplying vendor under the provisions of section 21 and not in accordance with the Regulations.

[2] *Moodley v Minister of Education and Culture, House of Delegates* 1989 (3) SA 221 (A) at 233 E-G; *Rossouw v FirstRand Bank* 2010 (6) SA 459 SCA at par 24

Regulation 10 - Re-validation of VAT registration status

85. Regulation 10(1) stipulates that a vendor or representative vendor is required to update its VAT registration status, within 21 business days from the earlier of implementation of the domestic reverse charge or the date that a supply is made which is subject to the domestic reverse charge, to indicate that the vendor makes supplies that are subject to the domestic reverse charge.

86. Submission: SARS should provide guidance as soon as possible as to the manner in which a vendor should re-validate its VAT registration status and the process that should be followed by the vendor in this regard.

87. SARS should also provide guidance as to how the supplies made by vendors after the implementation date until their registration status is updated should be accounted for by the vendors concerned.

Regulation 11 - Exportation of valuable metal

88. Regulation 11(1) stipulates that a recipient of valuable metal, being a vendor that exports such valuable metal in accordance with paragraph (a) or (d) of the definition of "exported" in section 1(1) of the Act, must, in addition to the provisions of section 11(3) of the Act, export the valuable metal under supervision, as contemplated in the Customs and Excise Act.

89. If it is required that all exports be made under customs supervision, the Commissioner must ensure that SARS customs officials are readily available at all times to supervise such exports so as not to delay the exports. If customs officials are not available to supervise exports when the goods are ready for exportation, and exports are delayed as a result, it will have a substantial negative impact on the business operations of the exporter and may result in additional costs and security risks for the exporter.

90. Submission: SARS should provide a guideline regarding the process to be followed for exports to be supervised by Customs officials and the documents required to substantiate the supervised exports.

91. If refined metals are considered to comprise "valuable metal" as defined, then the exportation of such refined metals, including metals refined on behalf of mines, will need to be exported under customs supervision. It is unclear as to whether this is the intention of the Draft Regulations.

92. Submission: If it is the intention that all refined metals comprise "valuable metal" even if they are produced by mines, then SARS Customs must ensure that it has sufficient capacity to carry out such supervision.

Regulation 13 – Effective date

93. The proposed effective date is 1 January 2022 which is less than two months from now with many South African's going on leave during these two months.

94. Although we acknowledge that some vendors are eager to have the regulations implemented as this would mean that they no longer require VAT loan funding, due to the number of uncertainties that have been raised as well as certain practical challenges that might arise depending on how the regulations are to be interpreted (and when they will be finally issued), we suggest that the implementation date be deferred.

95. Submission: To strike a balance between the different parties and to allow SARS to do the necessary amendments to their systems, we suggest that the effective date should be moved to 1 April 2022.

Conclusion

96. We once again thank SARS for the ongoing opportunity to provide constructive comments in this regard. SAICA continues to believe that a collaborative approach is best suited in seeking solutions to complex challenges and should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

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The South African Institute of Chartered Accountants