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Date
6 September 2012



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Attention: Mr Nigel Walker

Dear Mr Walker

VALUE-ADDED TAX: EXHIBITION AND EVENTS ASSOCIATION OF SOUTH AFRICA – VAT REGISTRATION NUMBER: 4950148983 – RENTAL OF EXHIBITION GOODS AND SERVICES

I write with reference to your email dated 9 June 2012 and set out my response below.

1. BACKGROUND

Based on the information you provided, it is understood that the position as you see it, is as follows:

- 1.1 The Exhibition and Events Association of South Africa (EXSA) is an association not for gain.
- 1.2 Its members range from venue owners to event organisers and furniture hire companies.
- 1.3 EXSA and its members provide exhibition services to local and foreign enterprises who exhibit their goods or services at South African exhibitions.
- 1.4 The services supplied by EXSA and its members comprise the:
 - 1.4.1 Arranging for the rental of the exhibition space;
 - 1.4.2 Arranging for the rental of goods, décor, fixtures and fittings;
 - 1.4.3 Rental of exhibition space, décor and goods inclusive of furniture and fittings;
 - 1.4.4 Design of the layout of the exhibition area;
 - 1.4.5 Erecting the stall on site. Stalls are custom built for each client and are broken down completely after an exhibition; and
 - 1.4.6 Dressing and setting up the stall for exhibition.

- 1.5 The exhibitor either contracts directly with service providers for the supply of goods and services, or contracts with the EXSA member to provide the required goods and services. The EXSA member will then subcontract with the various service providers.
- 1.6 Although the lease for the exhibition space (area on which the stall is erected) may be directly between the exhibitor and the venue owner, it is common practice that the lessee is the EXSA member.

2. REQUEST

The Commissioner for the South African Revenue Service (the Commissioner) is requested to issue a value-added tax (VAT) ruling providing that -

- 2.1 services supplied to non-residents are subject to VAT at the zero rate provided the provisions of section 11(2)(f) of the Value-Added Tax Act No. 89 of 1991 (the VAT Act) are met;
- 2.2 goods supplied to non-resident enterprises under a rental agreement are subject to VAT at the zero rate, provided the requirements of section 11(1)(d) of the VAT Act are met; and
- 2.3 the supply of exhibition space to non-residents is subject to VAT at the zero rate in terms of section 72 of the VAT Act.

3. THE LAW

For ease of reference, the relevant sections of the VAT Act are quoted in the attached Annexure. All references made hereinafter to sections, are references to the sections of the VAT Act unless otherwise stated.

4. APPLICATION OF THE LAW

- 4.1 Every vendor making taxable supplies of goods or services in the course or furtherance of any enterprise is, in terms of section 7(1)(a), required to levy VAT at the rate of 14 per cent on these supplies. However, this levying of VAT is, amongst other exceptions, subject to the zero rating provisions in terms of section 11.
- 4.2 The zero rate is generally based on the fact that the goods or services are not consumed in the Republic of South Africa (the Republic), as VAT is a destination based consumption tax. However to qualify for the zero rate, a vendor must comply with the provisions of section 11.

Supply of services

- 4.3 In terms of section 11(2)(f), the supply of services are subject to VAT at the rate of zero per cent, where the services are supplied to a person who is not a resident of the Republic, provided certain conditions are met.
- 4.4 A "resident of the Republic" is defined in section 1 as any person who meets the definition in the Income Tax Act No. 58 of 1962, along with any person who carries on any enterprise or other activity in the Republic from a fixed or permanent place in the Republic relating to such enterprise or activity. A non-resident would thus be a person who has no fixed or permanent place, or carry on any activity or enterprise in the Republic.

- 4.5 The principle outlined in paragraph 4.2 is encapsulated in subsection 11(2)(d)(iii), which provides that VAT at the rate of zero per cent may be levied by the vendor provided the recipient of the services (defined as a person or any other person) is not in the Republic when the services are rendered.
- 4.6 A vendor is required to substantiate any zero rating of supplies with the relevant documentary proof in terms of section 11(3) read with Interpretation Note 31 (IN31). Paragraph M of Table B in IN31 sets out the documentary proof required. (One of the requirements is written confirmation from the foreign exhibitor that the foreign exhibitor is not a resident of the Republic.)
- 4.7 Where the services of arranging the rental of the goods and exhibition space, and of designing, erecting, dressing and setting up the stall are rendered when the foreign exhibitor is not in the Republic, the supply of such services may qualify for the zero rate under section 11(2)(d), subject to section 11(3) read with IN31.

Supply of movable goods

- 4.8 The VAT Act, in section 11(d), recognises that foreign enterprises might rent goods in the Republic for the benefit of their offshore enterprise. Therefore, despite the fact that the goods are physically located in the Republic, consumption of the good is taking place in the foreign exhibitor's home country where it is benefitting his offshore enterprise.
- 4.9 Although movable goods supplied under a rental agreement qualify for the zero-rating under section 11(1)(d), this provision has a narrow application. It is conditional on the rented movable goods firstly being used for purposes of the non-resident's commercial enterprise; secondly this foreign enterprise should be conducted exclusively offshore; thirdly payment of the rental should originate offshore from the country where the foreign enterprise trades; and finally, documentary proof should be obtained and retained in accordance with section 11(3) read with paragraph F of Table A in IN31.
- 4.10 Where EXSA and its members ensure that the requirements of section 11(1)(d) are met, movable goods supplied under rental agreements to foreign exhibitors may qualify for the zero rate.

Supply of exhibition space

- 4.11 Fixed property, an immovable good, is included in the definition of "goods" in section 1, together with movable goods. The term "services" on the other hand is defined in section 1 as anything done or to be done and includes the making available of any facility or advantage, and therefore includes rentals.
- 4.12 But for section 8(11) the rental of goods would be viewed as a service for VAT purposes because a rental is the supply of the use or the right to use a good. Section 8(11) however deems the supply of goods under, amongst others, rental agreements, to be the supply of goods.
- 4.13 The relevant zero rating provisions in the VAT Act which apply to goods supplied under rental agreements are sections 11(1)(c) and 11(1)(d). The former zero rates goods under a rental where the goods are used offshore and the latter zero rates goods under a rental where the goods are used onshore.
- 4.14 A well-established legal principal is that property accedes to the land upon which it is constructed. The consumption of fixed property under a rental can thus only take place onshore in the Republic where the land is situated.

Section 11(1)(d) has been written to conform to the principle of a destination based consumption tax and thus this section is specific to movable goods, thereby excluding immovable goods. Section 11(1)(d) can therefore not be applied to the supply of a rental of fixed property situated in the Republic.

- 4.15 The supply of the rental of the exhibition space is excluded from the zero-rating provisions in section 11(1)(d) since the exhibition space is not a movable good, and is also excluded from the exemption from tax under section 12(e), since the exhibition space is situated in the Republic where final consumption will take place.
- 4.16 Section 72 makes provision for the Commissioner to make an arrangement or give a direction to a vendor or class of vendors to overcome difficulties, anomalies or incongruities that have arisen or may arise in regard to the application of any of the provisions of the VAT Act. The Commissioner may therefore only invoke the provisions of section 72 where he is satisfied that there is a difficulty, anomaly or incongruity that exists. Furthermore, any arrangements made in terms of this section to overcome such difficulty, anomaly or incongruity must not have the effect of substantially reducing or increasing the ultimate liability for tax levied under the VAT Act.
- 4.17 The ruling sought by EXSA in terms of section 72 would result in the supply of goods or services which should be subject to VAT at the rate of 14 per cent being taxed at the rate of zero per cent. The effect thereof would be a reduction in the ultimate liability for tax levied and as such section 72 cannot be applied.

5. RULING

5.1 Supply of services:

5.1.1 The following services may be zero-rated insofar as the requirements of section 11(2)(d) are met :

- Arranging for the rental of the exhibition space.
- Arranging for the rental of goods, décor, fixtures and fittings.
- Designing the layout of the exhibition site.
- Erecting the stall.
- Dressing and setting up the stall.

5.1.2 This direction is conditional upon EXSA and its members retaining the documents as required by section 11(3) read with Interpretation Note 31.

5.2 Supply of goods:

5.2.1 The supply of the rental of goods, décor, fixtures and fittings by EXSA and its members for use by foreign enterprises may be zero-rated insofar as the supplies meet the requirements of section 11(1)(d).

5.2.2 This direction is conditional upon EXSA and its members retaining the documents as required by section 11(3) read with Interpretation Note 31.

5.3 Supply of exhibition space:

5.3.1 The supply of the exhibition space will be subject to VAT at the standard rate as there is no provision in the VAT Act which allows for it to be zero-rated or exempt from tax.

5.4 This ruling is effective from date of issue and is valid until –

5.4.1 withdrawn by the Commissioner;

5.4.2 the expiration of a period of three years from the effective date of this ruling; or

5.4.3 the VAT Act is amended,

whichever is the earlier.

5.5 This ruling is issued in terms of section 41B of the VAT Act and is subject to the standard conditions and assumptions as set out in Annexure C.

Yours faithfully



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FOR THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE

ANNEXURE A

The relevant sections of the VAT Act are quoted below.

Section 1 Definitions

“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;*

...

“resident of the Republic” means

a resident as defined in section 1 of the Income Tax Act: Provided that any other person or any other company shall be deemed to be a resident of the Republic to the extent that such person or company carries on in the Republic any enterprise or other activity and has a fixed or permanent place in the Republic relating to such enterprise or other activity;

“services” means

anything done or to be done, including the granting, assignment, cession or surrender of any right or the making available of any facility or advantage, but excluding a supply of goods, money or any stamp, form or card contemplated in paragraph (c) of the definition of “goods”

Section 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.

Section 11 – Zero Rating

- (1) *Where, but for this section, a supply of goods would be charged with tax at the rate referred to in section 7(1), such supply of goods shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero per cent where* ☐

...

- (d) *the goods (being moveable goods) are supplied to a lessee or other person under rental agreement, charter party or agreement for chartering, if those goods are used by that lessee or other person exclusively in any commercial, financial, industrial, mining, farming, fishing, or professional concern conducted in an export country and payment of rent or other consideration under that agreement is effected from such export country;*

...

- (2) (4) the services are supplied to a person who is not a resident of the Republic, not being services which are supplied directly ☐
- (i) in connection with land or any improvements thereto situated inside the Republic; or
 - (ii) in connection with moveable property (excluding debt securities, equity securities or participatory securities) situated inside the Republic at the time the services are rendered, except movable property which ☐
 - ...
 - (iii) to the said person or any other person, other than in circumstances contemplated in subparagraph (ii)(bb), if the said person or such other person is in the Republic at the time the services are rendered,
- ..
- (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 12 – Exempt Supplies

The supply of any of the following goods or services shall be exempt from the tax imposed under section 7(1)(a)

- ...
- (e) the supply of land (together with any improvements to such land existing on the date on which the supplier became contractually obliged to supply such land and such existing improvements to the recipient) where such land is situated outside the Republic and such supply is made by way of sale or by way of letting;
- ...

Section 41B – VAT class ruling and VAT ruling

- (1) The Commissioner may issue a VAT class ruling or a VAT ruling and in applying the provisions relating to Part IA of Chapter III of the Income Tax Act, a VAT class ruling or a VAT ruling must be dealt with as if it were a binding class ruling or a binding private ruling, respectively: Provided that —
- (i) the provisions of subsections (2) (k), (2) (l) and (5) of section 76E and section 76F of the Income Tax Act shall not apply to any VAT class ruling or VAT ruling;
 - (ii) an application for a VAT class ruling or a VAT ruling in terms of this section shall not be accepted by the Commissioner if the application —
 - (aa) is for an advance tax ruling that qualifies for acceptance in terms of section 41A; and
 - (bb) falls within a category of rulings prescribed by the Minister by regulation for which applications for rulings in terms of this section may not be accepted.
- (2) For the purposes of this section —

“VAT class ruling” means a written statement issued by the Commissioner to a class of vendors or persons regarding the interpretation or application of this Act;
“VAT ruling” means a written statement issued by the Commissioner to a person regarding the interpretation or application of this Act.

..

Section 72 – Arrangements and directions to overcome difficulties, anomalies or incongruities

If in any case the Commissioner is satisfied that in consequence of the manner in which any vendor or class of vendors conducts his or their business, trade or occupation, difficulties, anomalies or incongruities have arisen or may arise in regard to the application of any of the provisions of this Act, the Commissioner may make an arrangement or give a direction to –

- (a) the manner in which such provisions shall be applied;*
- or*
- (b) the calculation or payment of tax or the application of any rate of zero per cent or any exemption from tax provided in this Act,*

in the case of such vendor or class of vendors or any person transacting with such vendor or class of vendors as appears to overcome such difficulties, anomalies or incongruities: Provided that such direction or arrangement shall not have the effect of substantially reducing or increasing the ultimate liability for tax levied under this Act.

ANNEXURE B

The relevant sections of Interpretation Note 31 are quoted below.

5.1 - Supply of goods [section 11(1)]

Table A below provides an overview of the documentary proof to be obtained and retained by a vendor in respect of a supply of goods in terms of section 11(1), as well as references to the relevant sections of the Act .

Table A – Vendors making a *supply of goods* in terms of section 11(1)

ITEM	DESCRIPTION OF SUPPLY	DOCUMENTARY PROOF REQUIRED
F	Goods used exclusively in a business conducted in an export country [s 11(1)(d)]	a) The vendor's copy of the zero-rated tax invoice; b) A copy of the contract between the lessee or other person and the vendor. c) <u>Proof of payment</u> , which must also evidence that the rent or other consideration was effected from the export country where the business operates or trades.

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 in terms of section 11(2), as well as references to the relevant sections of the Act .

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

ITEM	DESCRIPTION OF SUPPLY	DOCUMENTARY PROOF REQUIRED
M	Certain services supplied to a person who is not a resident of the Republic [s 11(2)(l)] .	a) The vendor's copy of the zero-rated tax invoice; b) <u>The recipients order or the contract between the recipient and the vendor;</u> c) Written confirmation from the recipient that the recipient is not a resident of the Republic, where not stated in the recipients order or contract between the recipient and the vendor;....

ANNEXURE C

1. STANDARD CONDITIONS AND ASSUMPTIONS

1.1 *Basis of this VAT ruling and the rulings given in this letter*

This ruling letter and the rulings set forth herein are based solely upon the following:

- 1.1.1 the information, documents, representations, facts and assumptions that are included or referenced in this being true and accurate;
- 1.1.2 any legal agreements or contracts entered into (or proposed to be entered into) in connection with the transaction being legally valid and enforceable in accordance with their stated terms, the parties to those agreements timeously satisfying their obligations under those agreements, and those agreements otherwise being carried out in accordance with their terms; and
- 1.1.3 the tax laws, regulations, binding general rulings, and cases in effect as of the date of this VAT ruling. In particular, the rulings set forth in this VAT ruling are based solely upon the interpretation and application of the tax laws as amended and in effect as of the date of this VAT ruling, as well as any applicable regulations, general binding rulings or cases in effect, as of that date.

The ruling set forth in this ruling letter only applies to the provisions of the tax laws identified in this VAT ruling in connection with the transaction described herein.

1.2 *The Commissioner's understanding of the transaction*

This ruling letter and the rulings set forth herein are based upon the Commissioner's understanding of the transaction as described herein.

Please note that if you believe that this understanding is incorrect, inaccurate or incomplete, it is your obligation to notify the Commissioner immediately. The failure to rectify a misunderstanding of a material fact may result in the ruling being withdrawn or modified.

1.3 *Subsequent changes in the tax laws*

1.3.1 This VAT ruling will cease to be effective upon the occurrence of any of the following circumstances:

- The provisions of the tax laws that are the subject of this VAT ruling are repealed or amended; or
- A court overturns or modifies an interpretation of the provisions of the tax laws on which the rulings set forth herein are based unless:
 - the decision is under appeal;
 - the decision is fact-specific and the general interpretation upon which the rulings were based is unaffected; or
 - the reference in the decision to the interpretation upon which the rulings were based is obiter dicta.

1.3.2 In any of these situations, the ruling letter and any rulings set forth herein will cease to be effective immediately upon:

- the effective date of the repeal or amendment of the provisions in question; or
- the date of the judgment,

whichever is applicable. The Commissioner is not obligated to notify you or to otherwise publish a notice of withdrawal or modification.

1.4 Fraud, misrepresentation, or nondisclosure

1.4.1 This ruling letter and the rulings set forth herein are void *ab initio* if any of the following circumstances exist or occur:

- any facts stated in your application regarding the transaction are materially different from the transaction actually carried out;
- there is fraud, misrepresentation or nondisclosure of a material fact; or
- any condition or assumption stipulated by the Commissioner in this VAT ruling is not satisfied or carried out.

1.4.2 A fact is considered material if it would have resulted in a different ruling had the Commissioner been aware of it when issuing this VAT ruling.

1.5 Other requirements and limitations

This VAT ruling as set out in paragraph 5, is binding in terms of section 41B of the VAT Act, subject to any other requirements and limitations set forth in Part IA of the IT Act, as well as any requirements and limitations set forth in any binding general ruling issued by the Commissioner pursuant to section 76S of the IT Act.

THIS RULING LETTER AND THE RULINGS SET FORTH IN IT ONLY APPLY TO THE APPLICANT IDENTIFIED HEREIN. PURSUANT TO SECTION 76H(4) OF THE IT ACT, THIS RULING LETTER MAY NOT BE CITED IN ANY PROCEEDING BEFORE THE COMMISSIONER OR THE COURTS OTHER THAN A PROCEEDING INVOLVING THE APPLICANT IDENTIFIED HEREIN.