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Reference
2015/145 (28/8/3)

Date
23 October 2015

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By e-mail: exsa@exsa.co.za

Dear Ms Gannon

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

I write with reference to your letter dated 15 September 2015, the meeting held on 7 October 2015 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 members provide exhibition services to local and foreign (non-resident exhibitors) enterprises who exhibit their goods or services at South African exhibitions. The services supplied by EXSA members comprise the following:

1.3.1 Arranging for the rental of the exhibition space;

1.3.2 Arranging for the rental of goods, décor, fixtures and fittings;

1.3.3 Rental of exhibition space, décor and goods inclusive of furniture and fittings;

1.3.4 Design of the layout of the exhibition area;

1.3.5 Erecting the stall on site. Stalls are custom built for each exhibitor and are broken down completely after an exhibition; and

1.3.6 Dressing and setting up the stall for exhibition.

1.4 A non-resident exhibitor either contracts directly with service providers for the supply of goods or services, or contracts with EXSA members to provide the required goods or services. The EXSA members will then subcontract with the various service providers.

1.5 The area on which the stall is erected is let by the owner of the exhibition venue, either directly to the non-resident exhibitor or to the EXSA member

who, in turn, recovers the cost from the non-resident exhibitor. In this instance, the EXSA member, in its capacity as exhibition organiser, rents the venue from the owner and then makes an agreed space available to the non-resident exhibitor for a fee.

1.6 On 6 September 2012 the Commissioner for the South African Revenue Service (SARS) (the Commissioner) issued a ruling (the Ruling) to EXSA and its members stating the following:

1.6.1 The supply of the rental of goods, décor, fixtures and fittings to non-resident exhibitors may be zero rated in terms of section 11(1)(*d*) of the Value-Added Tax Act No. 89 of 1991 (the VAT Act);

1.6.2 The supply of the following services to non-resident exhibitors may be zero-rated in terms of section 11(2)(*ℓ*) of the VAT Act:

- 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; and
- Dressing and setting up the stall.

1.6.3 The supply of the exhibition space to non-resident exhibitors 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.

1.7 The Ruling was issued on the condition that EXSA and its members obtain and retain the documents as required by section 11(3) of the VAT Act read with Interpretation Note 31, i.e. a copy of the zero-rated tax invoice.

2. REQUEST

The Commissioner is requested to issue a value-added tax (VAT) ruling reconfirming the Ruling, that the supply by EXSA members of –

2.1 goods to non-resident exhibitors under a rental agreement may be zero-rated provided the requirements of section 11(1)(*d*) of the VAT Act are met;

2.2 services to non-resident exhibitors may be zero-rated provided the provisions of section 11(2)(*ℓ*) of the VAT Act are met; and

2.3 exhibition space to non-resident exhibitors is subject to VAT at the standard rate.

3. THE LAW

For ease of reference, the relevant sections of the VAT Act are quoted in Annexure A. All references to sections are sections of the VAT Act, unless indicated otherwise.

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 Section 11(2)(*ℓ*) provides for services supplied by a vendor to a non-resident to be zero-rated subject to certain conditions. This section has three subparagraphs directing the circumstances which specifically prohibit the zero-rating otherwise intended by section 11(2)(*ℓ*).

4.4 The supply of services to a non-resident must be tested against all the exclusions contained in section 11(2)(*ℓ*) in order to qualify to be zero-rated. Qualifying under one of the subparagraphs would therefore not shield a supply of services from being disqualified under another subparagraph. This was confirmed in the Master Currency court case[1] (Mater Currency) where the Supreme Court of Appeal (the SCA) held that subparagraphs (i) to (iii) are self-standing and can independently disqualify the zero-rating contained in section 11(2)(*ℓ*).

4.5 The principle outlined in paragraph 4.2 is encapsulated in subsection 11(2)(*ℓ*)(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 (Issue 3) dated 22 March 2013 (IN31). Paragraph M of Table B in IN31 sets out the documentary proof required. One of the requirements is written confirmation from the non-resident exhibitor that it is not a resident of the Republic.

4.7 Where the services of arranging the rental of the goods and exhibition space, designing, erecting, dressing and setting up the stall are rendered when the non-resident exhibitor is not in the Republic, the supply of such services may qualify for the zero rate under section 11(2)(*ℓ*), subject to section 11(3) read with IN31.

Supply of movable goods

4.8 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 –

4.8.1 firstly being used for purposes of the foreign enterprise's (i.e. the foreign exhibitor) commercial enterprise;

4.8.2 secondly this foreign enterprise should be conducted exclusively offshore;

4.8.3 thirdly payment of the rental should originate offshore from the country where the foreign enterprise trades; and

[1] Master Currency (Pty) Ltd v Commissioner for the South African Revenue Service [2013] 3 All SA 135 (SCA)

4.8.4 finally, documentary proof should be obtained and retained in accordance with section 11(3) read with paragraph F of Table A in IN31.

4.9 Where EXSA's members ensure that the requirements of section 11(1)*(d)* are met, movable goods supplied under rental agreements to non-resident exhibitors may qualify for the zero rate.

Supply of exhibition space

4.10 Fixed property, an immovable good, is included in the definition of "goods" in section 1(1), together with movable goods. The term "services" on the other hand is defined in section 1(1) as anything done or to be done and includes the making available of any facility or advantage, and therefore includes rentals.

4.11 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".

4.12 A well-established legal principle 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.

5. CLASS RULING

Supply of services

5.1 The following services supplied by the EXSA members to the non-resident exhibitor may be zero-rated insofar as the requirements of section 11(2)*(ℓ)* are met:

5.1.1 Arranging for the rental of the exhibition space.

5.1.2 Arranging for the rental of goods, décor, fixtures and fittings.

5.1.3 Designing the layout of the exhibition site.

5.1.4 Erecting the stall.

5.1.5 Dressing and setting up the stall.

Supply of exhibition space

5.2 The supply of the exhibition space by EXSA members to foreign exhibitors is subject to VAT at the standard rate in terms of section 7(1)(*a*) as there is no provision in the VAT Act which allows for it to be zero-rated.

5.3 The supply of the of the movable goods by EXSA members under a rental agreement to a non-resident exhibitor may be zero-rated insofar as the requirements of section 11(1)(*d*) are met.

5.4 This class ruling is conditional upon the following:

5.4.1 EXSA members must obtain and retain the documents as required by section 11(3) read with IN 31 when the zero-rate is applied.

5.4.2 EXSA providing the Legal Advisor at SARS Johannesburg with a list of all the EXSA members (refer to Annexure C) together with the VAT numbers of the EXSA members who are registered for VAT. Should the names and the VAT registration numbers of the members change, EXSA must provide SARS with an updated list every six months from the date of the said change.

The contact details are as follows:

Name: Coretta Nanto

Email: CNanto@sars.gov.za

Telephone number: 011 602 4245

5.5 This class ruling is effective from 6 September 2015 and is valid until –

5.5.1 withdrawn by the Commissioner;

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

5.5.3 the VAT Act is amended.

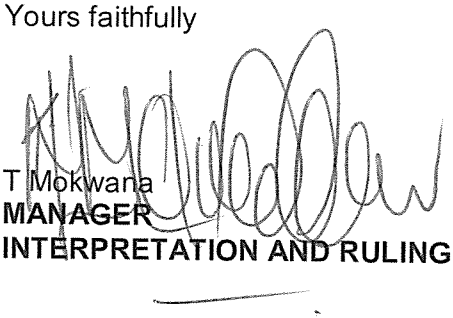
5.6 This class ruling –

5.6.1 applies to the Class as set out in Annexure C;

5.6.2 issued in terms of section 41B of the VAT Act; and

5.6.3 is subject to the standard conditions and assumptions as set out in Annexure B.

Yours faithfully



T Mokwana
MANAGER
INTERPRETATION AND RULINGS

ANNEXURE A

For ease of reference, the relevant sections of the VAT Act are quoted below.

Section 7(1) – Imposition of value-added tax

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

(b) on the importation of any goods into the Republic by any person on or after the commencement date; and

calculated at the rate of 14 per cent on the value of the supply concerned or the importation, as the case may be of the said month will exceed the abovementioned amount;

...

Section 8(11) – Deemed supplies

(11) For the purposes of this Act, a supply of the use or right to use or the grant of permission to use any goods (whether with or without a driver, pilot, crew or operator) under any rental agreement, instalment credit agreement, charter party, agreement for charter or any other agreement under which such use or permission to use is granted, shall be deemed to be a supply of goods.

Section 11(1)(*d*) – 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 movable goods) are supplied to a lessee or other person under a 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; or

Section 11(2)(*ℓ*) – Zero-rating

*(2) Where, but for this section, a supply of services, other than services contemplated in section 11(2)(*k*) that are electronic services, would be charged with tax at the rate referred to in section 7(1), such supply of services shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero per cent where—*

(l) 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 improvement thereto situated inside the Republic; or

(ii) *in connection with movable property (excluding debt securities, equity securities or participatory securities) situated inside the Republic at the time the services are rendered, except movable property which—*

(aa) *is exported to the said person subsequent to the supply of such services; or*

(bb) *forms part of a supply by the said person to a registered vendor and such services are supplied to the said person for purposes of such supply to the registered vendor; or*

(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,*

and not being services which are the acceptance by any person of an obligation to refrain from carrying on any enterprise, to the extent that the carrying on of that enterprise would have occurred within the Republic;

...

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 of Chapter 7 of the Tax Administration 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 section 79(4)(f) and (k) and (6) of the Tax Administration 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 Chapter 7 of the Tax Administration Act; 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.*

ANNEXURE B

STANDARD CONDITIONS AND ASSUMPTIONS

Basis of this VAT class ruling and the rulings given in this letter

1. This class ruling letter and the rulings set forth herein are based solely upon the following –

   1.1 the information, documents, representations, facts and assumptions that are included or referenced in this ruling being true and accurate;

   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

   1.3 the tax laws, regulations, binding general rulings, and cases in effect as of the date of this VAT class ruling. In particular, the rulings set forth in this VAT class 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 class ruling, as well as any applicable regulations, general binding rulings or cases in effect, as of that date.

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

The Commissioner's understanding of the transaction

3. This class 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.

Subsequent changes in the tax laws

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

   4.1 The provisions of the tax laws that are the subject of this VAT class ruling are repealed or amended; or

   4.2 A court overturns or modifies an interpretation of the provisions of the tax laws on which the rulings set forth herein are based unless –

      4.2.1 the decision is under appeal;

      4.2.2 the decision is fact-specific and the general interpretation upon which the rulings were based is unaffected; or

      4.2.3 the reference in the decision to the interpretation upon which the class rulings were based is *obiter dicta*.

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

   5.1 the effective date of the repeal or amendment of the provisions in question; or

   5.2 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.

Fraud, misrepresentation, or non-disclosure

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

   6.1 any facts stated in your application regarding the transaction are materially different from the transaction actually carried out;

   6.2 there is fraud, misrepresentation or non-disclosure of a material fact; or

   6.3 any condition or assumption stipulated by the Commissioner in this VAT ruling is not satisfied or carried out.

7. 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 class ruling.

Other requirements and limitations

8. This VAT class 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 Chapter 7 of the Tax Administration Act, No. 28 of 2011 (the TA Act), as well as any requirements and limitations set forth in any binding general ruling issued by the Commissioner pursuant to section 90 of the TA Act.

THIS RULING LETTER AND THE RULINGS SET FORTH IN IT ONLY APPLY TO THE APPLICANT IDENTIFIED HEREIN. PURSUANT TO SECTION 82(4) OF THE TA 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.