South African Institute of Taxation

SAIT | Summit Place Business Park | Building 3, Ground Floor
221 Garsfontein Road | Menlyn | South Africa | 0081

www.thesait.org.za

25 November 2024

To: The National Treasury
240 Madiba Street
PRETORIA
0001

The South African Revenue Service
Lehae La SARS,
299 Bronkhorst Street
PRETORIA
0181

Via email:	National Treasury	(2025AnnexCProp@treasury.gov.za); and
	SARS	(acollins@sars.gov.za)

RE: ANNEXURE C PROPOSALS: SAIT VAT TECHNICAL WORK GROUP

Dear Colleagues,

We attach the Annexure C proposals from the SAIT VAT Technical Work Group (the WG), as it pertains to technical proposals for possible inclusion in Annexure C of the 2025 Budget Review.

We value the opportunity to participate in the legislative process and would welcome further engagement where appropriate. Please do not hesitate to contact us should you need further information.

Yours sincerely

SAIT VAT Technical Work Group

Unless otherwise indicated, all references to sections of the Value-Added Tax, No. 89 of 1991 (the VAT Act)

1. Definition of "insurance"

1.1. Background

1.1.1. The word "insurance" is defined in section 1(1) of the VAT Act as meaning, *inter alia*, insurance or guarantee against loss, damage, injury or risk of any kind whatever, whether pursuant to any contract or law, and includes reinsurance. It is common cause that taxable supplies of goods or services are taxed based on the "consideration" paid in respect of, in response to or for the inducement of the supply of the said goods or services. It is also common cause that section 10(4) of the VAT Act functions as an anti-avoidance provision in that it provides that where a taxable supply of goods or services is made to a connected person for no consideration or for a consideration which is less than the open market value, and the recipient will not be able to claim full input tax had at least an open market consideration been charged, the consideration is deemed to be the open market value.

1.1.2. Further, section 10(23) of the VAT Act effectively provides that where a taxable supply is made for no consideration, the value of the supply shall be deemed to be nil. In this regard, it is generally important, and sometimes challenging, to determine whether or not a supply made for no consideration is indeed a taxable supply (i.e. whether or not the supply is indeed made in the course or furtherance of the vendor's enterprise).

1.2. The legal nature of the problem

1.2.1. The Capitec case heard by the Constitutional Court, is perhaps the most surprising judgement which held that the supply of insurance for no consideration by Capitec is indeed a taxable supply, or at least partly a taxable supply, due to the fact that Capitec provided the insurance free of charge when it granted a loan to a customer. In this regard the Court accepted the evidence provided by the taxpayer namely, that the provision of free credit cover gives Capitec a competitive advantage over other lenders who generally require that the customer takes out credit insurance, even though Capitec indirectly recovers the cost of the premium paid by it from its customers. This has the obscure effect that Capitec could claim a deduction, in terms of section 16(3)(c) of the VAT Act, on indemnities paid/credited to the customer's account upon a successful claim by the customer. Of equal importance is the fact that Capitec took out credit insurance on its debtors, which is also common in the market. Hence, Capitec was covered whether or not it provided credit insurance to the borrower. In addition, although the case does not state whether or not the credit insurance obtained by Capitec was life or non-life insurance, it appears from the background that it was life insurance. Where one assumes that this is the case, it actually implies that any vendor can acquire credit insurance from a life insurer and where such vendor states in the credit agreement that it on-supplies same at no charge, it will be entitled to claim the said deduction on insurance "payouts" made to its customer, with the result that it unduly profits from the VAT system at the expense of the fiscus. This creates an undue advantage to conventional life insurers which are obligated to charge premium in exchange for life cover and are not permitted to claim the said deduction on claims paid.

1.2.2. Similar obscurities will result for example, where a vendor (e.g. a holding company) provides a financial guarantee at no charge, against a potential tax risk of a subsidiary sold.

1.2.3. The said obscurities are a direct result of the fact that the current definition of “insurance” does not require premium to be paid, which contradicts the ancient principle of insurance.

1.3. Proposal

1.3.1. It is proposed that the definition of “insurance” be amended to include the requirement for a consideration to be charged. Such an amendment will accord with the general principle associated with insurance namely, that it is the assumption of risk against payment of a premium. Further, it will not negatively impact on section 10(4) and at the same time counter the above mentioned obscurities.

2. Interpretation Note No.31 (issue 4) - requirement to obtain proof of payment in respect of zero-rated supplies

2.1. Background

2.1.1. Section 11(1) and section 11(2) of the VAT Act provide for the zero rate of certain goods and services. In order to substantiate the application of the zero rate, section 11(3) of the VAT Act requires a vendor to obtain and retain certain documentation as is acceptable to the Commissioner.

2.1.2. The Commissioner exercised the discretion afforded to it in section 11(3) by issuing two Interpretation Notes namely IN 30 and IN 31.

2.1.3. Item A of Table A in Interpretation Note No.31 (issue 4) (**IN31(4)**) which refers to the documentation required for the application of the zero rate under a “direct export” of goods requires compliance with paragraph 6 and 8 of Interpretation Note No.30 (issue 3) (**IN30(3)**).

2.1.4. IN30(3), similar to IN31(4), includes specific time periods within which the supporting documentation to substantiate the zero rate is required to be obtained.

2.1.5. The importance of these time periods is that failure to obtain the documentation within the required time period requires a vendor to make an output tax adjustment.

2.1.6. IN30(3) was amended in 2014 and introduced, amongst others, certain exceptions to the requirement to obtain proof of payment in respect of the applicable zero-rated supply (paragraph 7(d) of IN30(3)). These exceptions include, for example, where extended payment terms are in place between the vendor and recipient, where there is a shortage of foreign currency to effect payment and where specific approval from the Reserve Bank has been obtained not to have the funds remitted to the supplying vendor.

2.1.7. What it means is that despite the vendor not complying with the requirement to obtain proof of payment, a VAT adjustment would not be required provided the vendor complied with all other documentary requirements within the required time period.

2.2. The legal nature of the problem

2.2.1. Although IN30(3) was amended to include the exceptions to the requirement to obtain proof of payment, IN31(4) does not include these exceptions. This creates disparity between the proof of payment requirement for direct exports of goods (reflected in IN30(3)) and other types of zero-rated supplies of goods and services.

2.2.2. It is submitted that many of the circumstances listed in paragraph 7(d) of IN30(3) find application to other zero rated supplies of goods and services since the payment in respect of the supplies could follow similar arrangements and face similar limitations.

2.2.3. The result is that vendors are required to apply for VAT rulings from SARS specifically in relation to proof of payment which exhausts the resources of both the taxpayer and SARS without any benefit.

2.3. Proposal

2.3.1. It is proposed that the that similar exceptions found in paragraph 7(d) of IN31(3) be introduced in IN31(4) to ensure consistency between the proof of payment requirements for direct export of goods and other zero-rated goods and services.

3. Vouchers distributed in SA but for use only outside SA

3.1. Background

3.1.1. Various entities in the Republic supply airtime vouchers initially issued by a non-resident Telecommunications provider (Telecom) that can only be used outside the Republic, whether as data, voice etc. The distributors of the airtime vouchers earn a fee/commission for the distribution services provided.

3.1.2. Generally, the business model is one whereby a non-resident distributor of airtime vouchers will acquire same from the non-resident Telecom. The non-resident distributor provides the airtime vouchers to a local distributor, who often appoint other resident distributors to sell the airtime to customers in the Republic. These customers forward the vouchers to family/friends in the relevant country where the airtime vouchers can be used. Typically, the non-resident Telecom will supply the airtime voucher at a discount of face value (i.e. 20% discount) and each of the distributors will also supply the vouchers at a discount of face value sufficient to make a profit e.g. between 15% and 5%) until the final sale is made to the individual at full face value.

3.2. The legal nature of the problem

3.2.1. Historically, SARS issued rulings (in terms of section 72) whereby only the fee earned by the distributors for the distribution of the airtime vouchers in the Republic were subjected to standard rate VAT and the remainder value attributed to the airtime were zero-rated. However, with the amendment to section 72, SARS did not renew these rulings, stating that:

- allowing the zero-rate to be applied to the airtime vouchers that can only be used outside the Republic, is not supported by an existing zero-rating provision;
- therefore granting such a request will result in a change in the rate of tax from standard rated to zero rated, thus resulting in a reduction in the liability for VAT;
- consequently the Commissioner cannot accede to a request to zero-rate the airtime vouchers.

3.2.2. It is evident that the supply of airtime vouchers through the distribution chain comprise two components, namely:
— telecommunication services to be provided outside of the Republic; and
— distribution services of the airtime vouchers in the Republic.

3.2.3. Given that the infrastructure to make and receive calls/use data for which the airtime vouchers are sold is situated outside the Republic it is evident that the telecommunication services can only be consumed outside of the Republic. It follows that, based on the consumption principle, the supply of the airtime should be subject to zero rate VAT. Similarly, the supply of the distribution services are not telecommunication services, and these services are supplied and consumed in the Republic and should consequently be subject to standard rate VAT, as provided for in section 7(1)(a) of the VAT Act.

3.2.4. These telecommunication airtime vouchers are a medium through which the customer can buy telecommunication services to be provided outside of the Republic. Hence the supply of the vouchers constitutes "services" as defined in section 1(1) of the VAT Act. This view was previously accepted by the Commissioner when historical rulings were granted.

3.2.5. Further, since these vouchers can only be redeemed to access telecommunication services in a country outside the Republic, the airtime will typically be subject to VAT/GST in that country where the telecommunication services are consumed. Subjecting these vouchers to standard rate VAT in the Republic results in double taxation of the telecommunications services.

3.3. Proposal

3.3.1. It is proposed that a section 8 deeming provision be inserted into the legislation which essentially provides that the supply of any telecommunication airtime vouchers, to the extent that the services can only be accessed outside the Republic shall be deemed to be a supply of telecommunication services physically rendered elsewhere than the Republic for the purposes of section 11(2)(k).

4. Section 54(2C) inclusion of silver

4.1. Background

4.1.1. Rand Refinery and its depositors successfully requested various class rulings from SARS in terms of section 72 and 41B of the VAT Act in terms of which Rand Refinery, as opposed to the depositors, is permitted to obtain, and retain documentary support in respect of gold exported by depositors. In order to avoid the continuous issuing of such rulings by SARS to overcome the practical difficulties, National Treasury proposed an amendment to introduce a new section 54(2C) in the VAT Act in the 2023 Draft Taxation Laws Amendment Bill (TLAB) published for comment on 31 July 2023Following the TLAB, we made a submission in which we proposed that the amendment also be made applicable to silver. However, this proposal was not accepted, based on the Draft Response Document on the TLAB dated 25 October 2023, which is based on hearings by the Standing Committee of Finance in Parliament. In particular it was stated in paragraph 14.3 that our proposal is not accepted on the basis that "*The checks and balances present with the refinery of gold and the export thereof are not the same as those relating to silver and other metals*.".

4.1.2. Effective 1 April 2024, section 54(2C) was introduced into the legislation insofar as it relates to gold.

4.1.3. We note however that this concession only applies to a principal who is a resident of the Republic and is registered for VAT.

4.2. The legal nature of the problem

4.2.1. As submitted in the said previous ruling requests, silver exports by depositors/principals poses identical difficulties with documentary support as gold exports. It is for this reason that a further submission is hereby made to also include silver in section 54(2C) of the legislation.

4.2.2. It is also envisaged that certain foreign banks may enter the South African Metals market which means entering into transactions concerning gold and silver destined for export.

4.2.3. As is the case with gold:

- the silver extracted comingles in the refining process with the result that it is not possible for the refiner to identify the silver deposited by any given depositor. Instead, the refiner is only able to determine what quantum of silver was deposited by a depositor and allocate a percentage of the total silver stock to a depositor;
- the refiner issues a silver certificate to the depositor which details, amongst others, the ounces of silver contained in the metal deposited for refining; and
- the quantity of silver specified on the silver certificate is credited to the unallocated account of the depositor/principal.

4.2.4. The silver included in the deposits by depositors is exported, which export is facilitated by the refiner on behalf of the depositor/principal, albeit that silver is generally accumulated over a longer period of time until it is viable to be exported, given the small quantum extracted from gold deposits through the refining process. A small portion of the silver is sold locally by the refiner which silver is obtained out of its retention. These supplies are subject to VAT at the standard rate in the ordinary course.

4.2.5. As far as silver deposits and sales are concerned, the following reporting obligations are made by the refiner, compared to reporting of gold:

Silver reporting	**Gold reporting**
SARS // Monthly report • incl. total silver deposit list (local and international)	SARS // Monthly report • incl. total gold deposit list (local and international)
STATS SA // Monthly report • total silver sales per local depositor, incl settlement value	STATS SA // Monthly report • total gold sales per local depositor, incl settlement value
Department of Minerals and Energy // Monthly report • total silver sold to local jewelry market sourced from local metal • silver deposit list for local mines	Department of Minerals and Energy // Monthly report • total gold sold to local jewelry market sourced from local metal • gold deposit list for local mines

• silver exported from locally sourced metal	• gold exported from locally sourced metal
SADPMR // Quarterly report *PMR 2* • silver intake (local and international) • silver sales and settlement/payment thereof (ounces and ZAR value) for local and international *PMR 8* • all exports and country of origin for each export	SADPMR // Quarterly reports *PMR 2* • gold intake (local and international) • gold sales and settlement/payment thereof (ounces and ZAR value) for local and international *PMR 7* • international mines intake *PMR 8* • all exports and country of origin for each export *PMR 9 (bi-annual report)* • minted bars manufactured (quantity, ounces and serial number) • minted bars sold (product, name of customer, quantity and bar number)
Chamber of mines // Bi-annual report • All local intake	Chamber of mines // Bi-annual report · All local intake
	SARB // Monthly report • sales and settlement on behalf of local and international mines to local and international markets

4.2.6. The instances where there is additional reporting for gold when compared to silver relates to:

- PMR 7 – international mined intake of gold. International intake of silver is reported under PMR 2
- PMR 9 – manufacture and sale of minted bars of gold. There is no reporting in this regard as silver minted bars are not regulated.
- SARB – sales and settlement, these are also reported for silver under PMR 2.

4.2.7. It is evident the reporting requirements for silver is similar to those required for gold. Where there are additional reports required for gold (i.e. PMR 7 and SARB), these are similar to other reports (i.e. PMR 2). PMR 9 is the only report that is required only for gold and which does not have a silver equivalent and that is due to silver bars not being regulated. Having said that, silver is refined to a 99,99% purity in grain form and generally exported in this form Hence the fact that the same information is not given under these particular reports does not have the effect that the checks and balances for silver are not the same as that of gold.

4.2.8. We therefore submit that the so-called checks and balances for the refinery and export of silver are as sufficient as those applicable to gold.

4.3. Proposal

4.3.1. As previously requested, the proposed section 54(2C) should also include silver extracted in the refining process in as far as it relates to exports.

4.3.2. In addition, we request that the proposed section 54(2C) also be made available to non-resident principals, who will export gold and silver through agents. This can be done by removing the requirement that the principal should be a "resident of the Republic".

5. Precious metals time to export by sea

5.1. Background

5.1.1. Interpretation note 30 (IN 30), paragraph 5.2(b) and Regulation 316, paragraph 15(2)(b) provides that:

- The supply of precious metals which are to be exported from the Republic **via air** must be exported within a period of 30 days from the date of the export release as per the "Release Instruction" received from the recipient/ qualifying purchaser acquiring the precious metal. (own emphasis).

5.2. The legal nature of the problem

5.2.1. Precious metals are stockpiled in South Africa for various reasons prior to being exported and the general time rules to export do not apply to precious metal exports. This matter has previously been considered and amendments were introduced whereby the time period in which to export precious metals was amended to be 30 days from date of the Release Instruction. However, as noted the said rule only applies in respect of exports by air.

5.2.2. Precious metals, particularly those of a lower value, are stockpiled until larger quantities may be exported. Also, where these precious metals are a by-product of other mined precious metals (e.g. silver that is contained in the primary gold ore), it takes longer before a sufficient quantity to export has been stockpiled. In these instances the exports may be by sea and not air. Given that the current wording only applies to exports by air, whenever an export is by sea the general timing provisions must be considered which provisions do not make sufficient allowance for the time required to export.

5.3. Proposal

5.3.1. It is proposed that IN 30, paragraph 5.2(b) and Regulation 316, paragraph 15(2)(b) be amended to also include exports by sea.

6. Definition of "enterprise", flash title supplies & direct exports

6.1. Background

6.1.1. Effective 1 January 2023, proviso (xiv) was introduced to the definition of 'enterprise' in section 1(1) of the VAT Act.

6.1.2. This proviso excludes from the definition of 'enterprise' any qualifying purchaser that acquires and on-supplies goods on a 'flash title' basis in respect of goods that are exported under the so-called indirect export provisions, unless the qualifying purchaser requests to be VAT registered.

6.2. The legal nature of the problem

6.2.1. The noted exclusion from the definition of 'enterprise' is limited to persons that engage in goods that are exported under the so-called indirect export provisions.

6.2.2. Where a non-resident person continuously or regularly acquires goods in South Africa and supplies same under flash title supplies for export and the goods are exported by the South African vendor (or its cartage contractor) under the so-called direct export provisions to the non-resident's customer, the non-resident has to register for VAT as it carries on an enterprise.

6.2.3. It is evident that there is a disparity between whether or not a non-resident person that acquires and supplies goods on flash title basis for export has a VAT registration liability. This disparity is purely based on whether the export is a direct or indirect export.

6.3. Proposal

6.3.1. It is proposed that proviso (xiv) be amended to make the exclusion also applicable to direct exports.

7. The revised and proposed amendment to the intermediaries' provision in section 54 of the VAT Act

7.1. The legal nature of the problem

7.1.1. In the context of electronic services, intermediaries act as marketplace operators, not only for non-resident electronic service providers but also local suppliers. In addition, intermediaries make supplies (as principal) in their own right.

7.1.2. Limiting the application of the intermediary provisions to only apply to non-residents create added complexities for intermediaries and will not achieve the purpose of the amendment, which is to ease the administrative burden.

7.2. A detailed factual description

7.2.1. In terms of the current proposed amendment intermediaries will be required to account for the VAT where the parties agree in writing that the intermediary is responsible to account for the VAT on supplies made by a foreign electronic services supplier who is not a 'resident of the Republic'. It is envisaged that these requirements will be addressed in a written agreement between the parties. Failure to conclude such written agreement means that the principal remains liable to register and account for the VAT on its taxable supplies.

7.2.2. In terms of section 54(1) and (2) of the VAT Act, although an agent may issue or receive tax invoices, debit notes and credit notes, the supply is still deemed to be made by the principal. Therefore, a similar problem arises for persons acting as auctioneers. However, having regard to the practical implications of the basic rule regarding agents, legislation was passed making an exception to the normal agent-principal rules for auctioneers.

7.2.3. Intermediaries generally market and sell electronic services on behalf of foreign and local (South African) suppliers. The current proposed amendment allows the intermediary, as an agent, to account for the VAT where the principal is a non-resident.

7.2.4. Intermediaries who run large marketplace platforms invoice South African customers for supplies made by both local and foreign suppliers on one consolidated invoice. This means the customer receives one invoice from the intermediary for the supplies by the various foreign and local suppliers.

7.2.5. Invoicing and collecting the VAT inclusive amounts as agent on behalf of local suppliers means that the intermediary will not account for the VAT, and will be required to issue statement to those suppliers in terms of s 54(3) detailing those transactions concluded on their behalf. This will require very sophisticated and expensive system capabilities that can isolate these transactions and "turn certain supplies on and off". This also creates significant room for error where only some transactions are accounted for, whilst others need to be excluded.

7.3. **Recommended solution/proposal**

7.3.1. We recommend that the proposed intermediary provisions be widened to also include electronic services supplies facilitated on behalf of local suppliers. This means the intermediary will issue one consolidated invoice on behalf of local and non-resident suppliers and may enter into a written agreement with **local and non-resident suppliers.** The intermediary will be liable to account for the VAT as if it is the supplier of the electronic services irrespective of whether the supplier is non-resident or not.

End.