

DRAFT INTERPRETATION NOTE

DATE:

ACT : VALUE-ADDED TAX ACT NO. 89 OF 1991
SECTION : SECTIONS 20(4), (5),(7), 21(1) AND (5)
SUBJECT : APPLICATION OF SECTIONS 20(7) AND 21(5)

Preamble

In this Note unless the context indicates otherwise –

- “**section**” means a section of the VAT Act;
- “**VAT Act**” means the Value-Added Tax Act No. 89 of 1991; and
- any word or expression bears the meaning ascribed to it in the VAT Act.

1. Purpose

This Note serves to set out –

- the conditions that must be met in order for the Commissioner to apply the provisions of sections 20(7) or 21(5); and
- the person who may submit the request to the Commissioner.

2. The law

The relevant sections of the VAT Act are quoted in the **Annexure**.

3. Application of the law

Tax invoices

A vendor making a taxable supply of goods or services must, under section 20(1), issue a tax invoice to the recipient within 21 days of the date of that supply.

Under section 20(2), a recipient of a supply may, on approval by the Commissioner,¹ issue a tax invoice for supplies made to the recipient by a supplier. The document issued by the recipient shall, subject to certain conditions, be deemed to be a tax invoice provided by the supplier under section 20(1).

A document must contain certain information prescribed in section 20 in order to be a valid “tax invoice”. Depending on the consideration for the supply, different particulars must be contained on a tax invoice. For example, a vendor making a standard-rated supply for which the consideration exceeds R5 000 or a zero rated supply, must issue a “full tax invoice” as contemplated in section 20(4). If the consideration for the

¹ Interpretation Note No. 56 (Issue 2) dated 31 March 2014 “Recipient-Created Tax Invoices; Credit and Debit Notes” and Binding General Ruling (VAT) No. 15, also dated 31 March 2014, set out the requirements that must be satisfied in order for a vendor to issue recipient-created tax invoices.

supply is less than R5 000, the vendor may issue an “abridged tax invoice” as contemplated in section 20(5), or a full tax invoice.

Section 20(7) allows the Commissioner, subject to such conditions considered necessary, to direct in instances where there would be sufficient records available to establish the particulars of a supply and the Commissioner is satisfied that it is impractical to issue a full tax invoice, that –

- any one or more of the particulars specified in subsection (4) or (5) shall not be contained in a tax invoice; or
- a tax invoice is not required to be issued; or
- the particulars specified in subsection (4) or (5) be furnished in any other manner.

Credit and debit notes

A vendor that has issued a tax invoice in relation to a supply, and the amount shown as tax charged in the tax invoice differs from the actual tax charged for the supply, is required to issue a credit note (if the tax shown on the tax invoice exceeds the actual tax charged) or a debit note (if the actual tax charged exceeds the tax shown on tax invoice).²

A recipient of a supply may, on approval by the Commissioner, issue a debit or credit note. The document issued by the recipient shall, subject to certain conditions, be deemed to be a credit or debit note, as the case may be, provided by the supplier in terms of section 21(3).³

Section 21(5) allows the Commissioner to direct, in instances where there would be sufficient records available to establish the particulars of a supply and the Commissioner is satisfied that it is impractical to issue a full credit or debit note, that –

- any one or more of the particulars specified in section 21(3) shall not be contained in a credit or debit note; or
- a credit or debit note, as the case may be, is not required to be issued.

3.1 Sufficient records

The first requirement to be considered in the application of sections 20(7) and 21(5) is that the Commissioner needs to be satisfied that there are **sufficient records** available to establish the particulars of a supply or category of supplies. Within the context of the intention of these sections, the phrase “sufficient records” is limited to the records available to establish the particulars the vendor seeks to omit from the tax invoice, credit or debit note. These records may include but are not limited to –

- information stored on a database;
- a document setting out the particulars of the supply (for example, bordereau, delivery note etc); or
- a contract that specifies the nature of the supplies.

² Section 21(3).

³ Section 21(4).

Depending on the particulars that are to be omitted, it might be necessary that these records must be accessible by both the supplier and the recipient to determine, for example, the amount of output tax to be declared by the supplier or the entitlement to deduct input tax by the recipient.

3.2 Impractical

The second requirement to be considered in the application of sections 20(7) and 21(5) is that the vendor has to satisfy the Commissioner that it is **impractical** to require a full tax invoice, credit or debit note to be issued. The term “impractical” is defined as “not adapted for use or action; not sensible or realistic”.⁴ It is submitted that the phrase “not adapted for use or action” is not applicable in these circumstances. However, “not sensible or realistic” is appropriate in this context. As a result, the circumstances of the vendor must demonstrate why it is not sensible or realistic to require that a full tax invoice, credit or debit note be issued. These circumstances will generally be evidenced in, but not limited to –

- the manner in which a vendor conducts its business;
- confidential agreements that require recipients’ details to be disclosed in a code form; or
- accepted industry practice.

A vendor that meets the requirements of maintaining “sufficient records” in relation to instances where it is impractical to issue the requisite document, must ensure that the records and the tax invoice, credit or debit note, when viewed together, demonstrate compliance with the provisions of section 20(4) and (5) or 21(3).

3.3 Applicant

The phrase “impractical to issue” implies that the provisions of sections 20(7) and 21(5) are only applicable to the vendor responsible to issue the tax invoice, credit or debit note under sections 20(1), (2) or 21(3) and (4). As a result, only the vendor making the supply or, in the case of recipient-created tax invoices, credit and debit notes, the recipient authorised to issue recipient-created tax invoices, credit and debit notes may request for the application of section 20(7) or 21(5).

Based on the above, the Commissioner will not consider any request made by the recipient of the supply to apply (excluding recipients issuing recipient-created tax invoices, credit and debit notes as approved in Interpretation Note No. 56 and Binding General Ruling No. 15) section 20(7) or 21(5) if the document held by the recipient (for example, the document issued by the supplier) does not comply with the requirements of section 20(4), (5) or 21(3).

3.4 Conditions

The approval granted by the Commissioner that –

- one or more of the particulars required under section 20(4) or (5) need not be contained in a tax invoice; or
- a tax invoice is not required to be issued; or
- certain particulars be furnished in any other manner,

⁴ <http://oxforddictionaries.com/> [Accessed 31 March 2013].

will only apply to tax invoices issued or required to be issued on or after the date of approval.

The approval granted by the Commissioner that –

- one or more of the particulars required under section 21(3)(a) or (b) need not be contained; or
- a credit or debit note, as the case may be, is not required to be issued,

will only apply to credit or debit notes issued on or after the date of approval.

The Commissioner will only approve applications if the vendor can confirm that there will be a statement included on the document to be issued confirming the Commissioner's approval under section 20(7) or 21(5), as the case may be. The statement will satisfy the recipient of the tax invoice, credit or debit note that the document is valid to the extent that the information that was excluded was done so with the approval of the Commissioner.

4. Conclusion

This Note sets out the criteria that have to be met in order for the Commissioner's discretion to be exercised under section 20(7) or 21(5) to the effect that –

- certain information need not be contained on a tax invoice, credit or debit note,
- certain information may be furnished in another manner (in the case of tax invoices), or
- a tax invoice, credit or debit note is not required to be issued.

A vendor that complies with all the requirements contained in this Note may apply to the Commissioner for approval contemplated in section 20(7) or 21(5) by submitting an application, together with the VAT301 form via email to **VATRulings@sars.gov.za** or by facsimile to 086 540 9390. The application must clearly demonstrate that the vendor complies with all the requirements contained in this Note.

Annexure – The law

Section 1(1) – Definitions

“tax invoice” means a document provided as required by section 20;

Section 20 – Tax invoices

(1) Except as otherwise provided in this section, a supplier, being a registered vendor, making a taxable supply (other than a supply contemplated in section 8(10)) to a recipient, must within 21 days of the date of that supply issue a tax invoice containing such particulars as are specified in this section: Provided that—

- (i) it shall not be lawful to issue more than one tax invoice for each taxable supply;
- (ii) if a vendor claims to have lost the original tax invoice, the supplier or the recipient, as the case may be, may provide a copy clearly marked "copy".

(2) Where a recipient, being a registered vendor, creates a document containing the particulars specified in this section and purporting to be a tax invoice in respect of a taxable supply of goods or services made to the recipient by a supplier, being a registered vendor, that document shall be deemed to be a tax invoice provided by the supplier under subsection (1) of this section where—

- (a) the Commissioner has granted prior approval for the issue of such documents by a recipient or recipients of a specified class in relation to the taxable supplies or taxable supplies of a specified category to which the documents relate; and
- (b) the supplier and the recipient agree that the supplier shall not issue a tax invoice in respect of any taxable supply to which this subsection applies; and
- (c) such document is provided to the supplier and a copy thereof is retained by the recipient:

Provided that where a tax invoice is issued in accordance with this subsection, any tax invoice issued by the supplier in respect of that taxable supply shall be deemed not to be a tax invoice for the purposes of this Act

...

(4) Except as the Commissioner may otherwise allow, and subject to this section, a tax invoice (full tax invoice) shall be in the currency of the Republic and shall contain the following particulars:

- (a) The words "tax invoice" in a prominent place;
- (b) the name, address and VAT registration number of the supplier;
- (c) the name, address and where the recipient is a registered vendor, the VAT registration number of the recipient;
- (d) an individual serialized number and the date upon which the tax invoice is issued;
- (e) full and proper description of the goods (indicating, where applicable, that the goods are second-hand goods) or services supplied;
- (f) the quantity or volume of the goods or services supplied;
- (g) either—
 - (i) the value of the supply, the amount of tax charged and the consideration for the supply; or
 - (ii) where the amount of tax charged is calculated by applying the tax fraction to the consideration, the consideration for the supply and either the amount of the tax charged, or a statement that it includes a charge in respect of the tax and the rate at which the tax was charged:

Provided that the requirement that the consideration or the value of the supply, as the case may be, shall be in the currency of the Republic shall not apply to a supply that is charged with tax under section 11.

(5) Notwithstanding anything in subsection (4), where the consideration in money for a supply does not exceed R5 000, a tax invoice (abridged tax invoice) shall be in the currency of the Republic and shall contain the particulars specified in that subsection or the following particulars:

- (a) The words "tax invoice" in a prominent place;
- (b) the name, address and VAT registration number of the supplier;
- (c) an individual serialized number and the date upon which the tax invoice is issued;
- (d) a description of the goods (indicating, where applicable, that the goods are second-hand goods) or services supplied;
- (e) either—
 - (i) the value of the supply, the amount of tax charged and the consideration for the supply; or
 - (ii) where the amount of tax charged is calculated by applying the tax fraction to the consideration, the consideration for the supply and either the amount of the tax charged, or a statement that it includes a charge in respect of the tax and the rate at which the tax was charged:

Provided that this subsection shall not apply to a supply that is charged with tax under section 11.

...

(7) Where the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of any supply or category of supplies, and that it would be impractical to require that a full tax invoice be issued in terms of this section, the Commissioner may, subject to such conditions as the Commissioner may consider necessary, direct—

- (a) that any one or more of the particulars specified in subsection (4) or (5) shall not be contained in a tax invoice; or
- (b) that a tax invoice is not required to be issued; or
- (c) that the particulars specified in subsection (4) or (5) be furnished in any other manner.

Section 21 – Credit and debit notes

(1) This section shall apply where, in relation to the supply of goods or services by any registered vendor—

- (a) that supply has been cancelled; or
- (b) the nature of that supply has been fundamentally varied or altered; or
- (c) the previously agreed consideration for that supply has been altered by agreement with the recipient, whether due to the offer of a discount or for any other reason; or
- (d) the goods or services or part of the goods or services supplied have been returned to the supplier, including the return to a vendor of a returnable container, the vendor in such case being deemed for the purposes of this Act to have made the supply of the container in respect of which the deposit was charged, whether the supply was made by him or any other person; or
- (e) an error has occurred in stipulating the amount of consideration agreed upon for that supply,

and the supplier has—

- (i) provided a tax invoice in relation to that supply and the amount shown therein as tax charged on that supply is incorrect in relation to the amount properly chargeable on that supply as a result of the occurrence of any one or more of the above-mentioned events; or
- (ii) furnished a return in relation to the tax period in respect of which output tax on that supply is attributable, and has accounted for an incorrect amount of output tax on that supply in relation to the amount properly chargeable on that supply as a result of the occurrence of any one or more of the abovementioned events.

...

(3) Subject to this section, where a tax invoice has been provided as contemplated in subsection (1)(i), and—

- (a) the amount shown as tax charged in that tax invoice exceeds the actual tax charged in respect of the supply concerned, the supplier shall provide the recipient with a credit note, containing the following particulars:
 - (i) The words "credit note" in a prominent place;
 - (ii) the name, address and VAT registration number of the vendor;
 - (iii) the name, address and, where the recipient is a registered vendor, the VAT registration number of the recipient, except where the credit note relates to a supply in respect of which a tax invoice contemplated in section 20(5) was issued;
 - (iv) the date on which the credit note was issued;
 - (v) either—
 - (aa) the amount by which the value of the said supply shown on the tax invoice has been reduced and the amount of the excess tax; or
 - (bb) where the tax charged in respect of the supply is calculated by applying the tax fraction to the consideration, the amount by which the consideration has been reduced and either the amount of the excess tax or a statement that the reduction includes an amount of tax and the rate of the tax included;
 - (vi) a brief explanation of the circumstances giving rise to the issuing of the credit note;
 - (vii) information sufficient to identify the transaction to which the credit note refers;
- (b) the actual tax charged in respect of the supply concerned exceeds the tax shown in the tax invoice as charged, the supplier shall provide the recipient with a debit note, containing the following particulars:
 - (i) The words "debit note" in a prominent place;
 - (ii) the name, address and VAT registration number of the vendor;
 - (iii) the name, address and, where the recipient is a registered vendor, the VAT registration number of the recipient, except where the debit note relates to a supply of goods in respect of which a tax invoice contemplated in section 20(5) was issued;
 - (iv) the date on which the debit note was issued;
 - (v) either—
 - (aa) the amount by which the value of the said supply shown on the tax invoice has been increased and the amount of the additional tax; or

(bb) where the tax charged in respect of the supply is calculated by applying the tax fraction to the consideration, the amount by which the consideration has been increased and either the amount of the additional tax or a statement that the increase includes an amount of tax and the rate of the tax included;

(vi) a brief explanation of the circumstances giving rise to the issuing of the debit note;

(vii) information sufficient to identify the transaction to which the debit note refers:

Provided that—

- (A) it shall not be lawful to issue more than one credit note or debit note for the amount of the excess;
- (B) if any registered vendor claims to have lost the original credit note or debit note, the supplier or recipient, as the case may be, may provide a copy clearly marked "copy";
- (C) a supplier shall not be required to provide a recipient with a credit note contemplated in paragraph (a) of this subsection in any case where and to the extent that the amount of the excess referred to in that paragraph arises as a result of the recipient taking up a prompt payment discount offered by the supplier, if the terms of the prompt payment discount offer are clearly stated on the face of the tax invoice.

...

(5) Where the Commissioner is satisfied that there are or will be sufficient records available to establish the particulars of any supply or category of supplies and that it would be impractical to require that a full credit note or debit note be issued in terms of this section, the Commissioner may, subject to any conditions that the Commissioner may consider necessary, direct—

- (a) that any one or more of the particulars specified in paragraph (a) or, as the case may be, paragraph (b) of subsection (3) shall not be contained in a credit note or, as the case may be, a debit note; or
- (b) that a credit note or, as the case may be, a debit note is not required to be issued.