SARS Compliance & Procurement

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Key areas for discussion

Tax clearance certificates – Relevance to the education sector

Value – Added Tax (VAT) compliance and procurement

VAT on electronically supplied services from abroad – impact of new regulation

1

Tax clearance certificates

Importance of tax clearance certificates

- Proof that tax affairs are in order
- Sector place high regard on tax clearance certificates (TCC)
- Many instances a prerequisite for:
    - Final approval of business contracts
    - Government tenders
    - Funding applications
    - Applications for research awards
    - Property leases
    - Confirmation of compliance culture

Practical considerations

- Tax Administration Act stipulate conditions for the issuance of TTC's
- Conditions to be met before a TCC is issued:
    - the taxpayer must have registered for income tax prior to applying for a TCC;
    - the taxpayer should have no outstanding debt for any taxes (including income tax, Value Added Tax (VAT), dividend tax, administrative penalties and employees' tax);
    - any deferred arrangements made are being adhered to;
    - all returns and/or declarations are up to date and in the process of being assessed by SARS;
    - all tax reference numbers must be active and correct, e.g. the tax reference number must not be deregistered or suspended on the SARS system; and
    - the registration details on the application form (TCC-001) must correspond with the information on the SARS system.
- TCC's can now be requested and access via efiling
- The compliance status is updated in real time

Delays caused by non-compliance due to payments and returns not reflecting in real time

2

VAT compliance & Procurement

VAT in the education sector

- The supply of educational services are exempt from VAT
- As a result institutions have to restrict input tax recovery on expenses to the extent it relates or partly relates to exempt educational supplies
- Members of USAF have a special VAT apportionment ruling from SARS to calculate input tax incurred by:
    - Cost centres making taxable and non-taxable/exempt supplies; and
    - Research cost centres/projects
- Input tax restrictions – important consideration for costing and budgets
- Where institutions are entitled to VAT recovery, it should ensure it is in possession of valid tax invoices regardless of the rate of recovery (i.e. 12.5% or 50%)

VAT compliance and SARS landscape

SARS landscape

- Difficult in any dealings, and takes long in making any decision
- Aggressive approach in levying penalties, specifically understatement penalties
- Takes the view that large businesses should have adequate controls in place and applies a '*no margin for error'* approach
- Understatement penalties of up to 200% if repeat case, i.e. where incorrect tax invoices provided when a VAT return was identified for a second verification

VAT compliance and SARS landscape

Due to the current economic climate and SARS tax collections under immense pressure – very aggressive in its approach, specifically around valid documentation in support of VAT disclosures

In order to limit the risk

- Input tax restrictions to be considered in costing and budgets
- New suppliers should be vetted adequately
- TCC be requested from suppliers
- AP staff trained to ensure valid tax invoices before payment is processed
- Retention of VAT invoices crucial for input tax recovery

SARS immediately disallow input tax recovery without supporting documentation – understatement penalties will be levied on the basis of 'reasonable care not taken' or 'repeat case'.

Tax invoices & credit notes

Tax invoicing requirements

a) The words "tax invoice" , "VAT invoice" or "invoice";

b) The name, address and VAT registration number of 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 or services supplied;

f) The quantity or the volume of the goods or services supplied; and

g) The value of the supply, the amount of tax charged and the consideration of the supply or a statement that it includes a charge in respect of the tax and the rate at which the tax was charged.

Credit notes

a) The words "credit note''

b) The name, address and VAT registration number of the vendor

c) The name, address and, where the recipient is a registered vendor, the VAT registration number of the recipient

d) The date upon which the credit note was issued

e) The amount by which the value of the supply on the tax invoice is said to be reduced and the associated VAT or a statement that the reduced amount includes the VAT;

f) Explanation of the circumstances giving rise to the credit note; and

g) Sufficient information to identify the original tax invoice the credit not relates to.

Tax invoices & credit notes *('cont.)*

A supplier must issue a credit or debit note to rectify the VAT incorrectly charged (as shown on a tax invoice) where –

- the supply has been cancelled;
- the nature of the supply has been fundamentally varied;
- the consideration for the supply has been fundamentally altered or varied;
- the goods or services supplied have been returned to the supplier; or
- an error has occurred in stipulating the amount of the agreed consideration; and

as a result thereof, a tax invoice has been issued reflecting an incorrect amount of tax charged on the supply.

3

VAT Regulation on electronically supplied services (ESS)

ESS: 2014 Regulation

- First ESS regulations introduced in 2014
- Prior to 2014, VAT on imported services needed to be accounted for by businesses with restricted input tax recovery, i.e. universities
- Specific electronic services included in the scope, i.e. subscriptions to journals and magazines
- Mostly effected the libraries
- Online education provided by regulated providers (i,.e. a foreign university) excluded
- When the ESS regulation was introduced, institutions identified its historic non-compliance to account for VAT on imported services
- The ESS regulation prompted institutions to voluntary disclose its non –compliance and account for VAT on imported services going forward

ESS: new rules with effect from 1 April 2019

- New ESS regulation came into effect on 1 April 2019
- Broadened the scope of electronically supplied services and now includes all electronic services:
  - software licenses,
  - cloud computing; and
  - advertising
- No financial impact for sector - Imported services by intuition ***vs*** accounting for output tax by registered suppliers
- VAT status of ESS suppliers from abroad be reviewed regularly
- Valid VAT invoices (abridged tax invoice) required where input tax recoverable
- Payments to foreign suppliers reviewed to identify recoverable input tax

Note: Foreign suppliers may attempt to recover historic VAT liability from institutions, in such circumstances we advise that you contact your tax advisor

4

Q&A discussion session

Thank you

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