

Contradictory Legislation: VAT Zero-rating of Supplies to Custom Controlled Areas / IDZ Operators

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Generally speaking, the export of movable goods qualifies for VAT zero-rating. The term 'export' is defined in the Value Added Tax Act, 1991 ("VAT Act) as inter alia that which is consigned or delivered by the vendor to the recipient at an address in an export country.

An exception to the above zero-rating can be found in section 11(1)(m) of the VAT Act, where movable goods are supplied to a customs controlled area enterprise or an Industrial Development Zone (IDZ) operator in South Africa. According to this section of the Act, the VAT zero rating would be applicable if the goods are physically delivered to the enterprise or operator either by:

- The supplier, or
- By a VAT registered cartage contractor, whose main activity is that of transporting goods and who is engaged by the supplier to deliver the goods and that supplier is liable for the full cost relating to that delivery.

Problem arise, however, when one refers to SARS' Interpretation Note No. 30 (Issue 3), as it contradicts section 11(1)(m) of the VAT Act. SARS' Interpretation Note No. 30 (Issue 3) prescribes the documentary proof that must be obtained and retained by a vendor in order to levy VAT at zero rate. According to the Interpretation Note, the term '*cartage contractor*' is defined as "*a person whose activities **include** the transportation of goods.*" This has a wider application than the VAT Act's current requirement. In addition, the VAT Act requires that a cartage contractor be registered for VAT, but the Interpretation Note does not carry this requirement.

In terms of the Taxation Laws Amendment Bill, 2015, (expected to be promulgated soon), section 11(1)(m) of the VAT Act is to be amended. Based on the proposed amendment, the cartage contractor would no longer have to be a VAT registered vendor and the transportation of goods need not be the cartage contractor 's main activity (in line with SARS' Interpretation Note No. 30 (Issue 3)).

This relaxation of section 11(1)(m) of the VAT Act is only set to come into operation on 1 April 2016.

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