BINDING GENERAL RULING (VAT) 12 (Issue 3)

DATE: 16 March 2020

ACT : VALUE-ADDED TAX ACT 89 OF 1991
SECTION : SECTION 1(1), DEFINITION OF "INPUT TAX"
SUBJECT : INPUT TAX ON THE ACQUISITION OF A NON-TAXABLE SUPPLY OF SECOND-HAND MOTOR VEHICLES BY MOTOR DEALERS

Preamble

For the purpose of this ruling –

- **"BGR**" means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- **"section"** means a section of the VAT Act;
- **"standard rate"** means the current rate of VAT which is payable on a taxable supply or taxable importation of goods or services under section 7(1);
- **"VAT"** means value-added tax;
- **"VAT Act"** means the Value-Added Tax Act 89 of 1991; and
- any other word or expression bears the meaning ascribed to it in the VAT Act.

This BGR is updated as a result of the amendments to section 72 made in terms of section 73 of the Taxation Laws Amendment Act 34 of 2019, which came into effect on 21 July 2019, and is based on the wording of section 72 as it read before 21 July 2019.

1. Purpose

The purpose of this BGR is to make an arrangement relating to the amount motor dealers may deduct as "input tax" with regard to a second-hand vehicle traded-in under a non-taxable supply.

2. Background

Motor dealers may in certain instances pay an amount to a customer for a second-hand motor vehicle in excess of the generally accepted trade-in market value reflected in the Auto Dealers' Guide.[1] The difference between this value and the amount actually credited or paid to the customer is referred to as an "over-allowance". The effect of paying an "over-allowance" is that the open market value is less than the consideration paid to the customer. In terms of paragraph (*b*) of the definition of "input tax", input tax is limited to an amount equal to the tax fraction of the lesser of the consideration in money given or the open market value of the supply. As a result, the notional input tax

[1] Motor dealers usually determine the market value of second-hand vehicles according to a publication known as the "Auto Dealers' Guide".

to which the dealer is entitled is limited to the tax fraction of the open market value of the vehicle traded-in.

An over-allowance is generally paid when the trade-in of a second-hand motor vehicle is an integral part of the supply of another vehicle to the same customer by the same motor dealer. In these circumstances, the overall position for the motor dealer is the same with regard to the VAT payable if –

- the generally accepted trade-in value (that is, the open market value) of the second-hand motor vehicle is paid and a discount is granted to the customer on the new vehicle; or
- a smaller or no discount is granted on the sale of a vehicle, and instead an over-allowance is paid to the customer on the second-hand motor vehicle traded in (in other words, the amount of the discount given on the new vehicle is reduced or not given so that a higher value can be given for the vehicle traded in). In both instances, the value of the smaller discount combined with the over-allowance given for the traded in vehicle would equal the value of the discount given on the new vehicle.

3. Ruling

An arrangement is made under section 72, allowing motor dealers to deduct input tax under section 16(3)(*a*)(ii)(*aa*) or 16(3)(*b*)(i) read with paragraph (*b*) of the definition of "input tax" as defined in section 1(1), on the full consideration (including any over-allowance amount) paid or credited to the supplier for a second-hand vehicle traded-in under a non-taxable supply.

This section 72 arrangement is made under the following conditions:

(a) The trade-in of the second-hand motor vehicle transaction is dependent on the supply of another motor vehicle by that same motor dealer to the same customer.

(b) The parties are trading at arm's-length and are not "connected persons" as defined in section 1(1).

(c) The over-allowance given by the vendor does not exceed the total discount that is permissible on the motor vehicle being sold.

(d) The required records as prescribed in section 20(8) must be retained, as well as –

  (i) a detailed list of the second-hand vehicles traded in, and the subsequent sale thereof (where applicable);

  (ii) the details of the over-allowance; and

  (iii) the net accounting effect of the combined transactions involved (that is, the trade-in and sale).

The above arrangement may not be applied by any motor dealer who fails to comply with any of the aforementioned conditions. As a result, it will be withdrawn in relation to any non-compliant transactions by such motor dealer with effect from the date of such non-compliance. Furthermore, SARS reserves the right to withdraw this arrangement, should it be found that such dispensation is being misused or causing verification problems for SARS.

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act 28 of 2011.

4. Period for which this ruling is valid

This BGR applies with effect from 21 July 2019 to 31 December 2021.

Group Executive: Interpretation and Rulings
SOUTH AFRICAN REVENUE SERVICE
Date of 1st issue : 1 April 2013
Date of 2nd issue : 25 February 2016