

## **BINDING GENERAL RULING (VAT) 66**

DATE: 27 November 2023

**ACT: VALUE-ADDED TAX ACT 89 OF 1991**  
**SECTION: SECTION 1(1) DEFINITION OF “INPUT TAX” AND SECTIONS 16(2)(d), (dA), 16(3)(a)(iii) AND (b)(ii)**  
**SUBJECT: VALUE-ADDED TAX IMPLICATIONS OF OVERPAYMENTS ON THE IMPORTATION OF GOODS**

### ***Preamble***

For the purposes of this ruling –

- **“assessment”** refers to “assessment” as defined in the Tax Administration Act, 2011 as a determination of the amount of a tax liability or refund, by way of self-assessment by the taxpayer or assessment by the South African Revenue Service;
- **“BGR”** means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- **“clearing agent”** means a person that lodges a Customs Clearance Declaration for reward on behalf of a principal;
- **“Customs Act”** means the Customs and Excise Act 91 of 1964;
- **“CCD”** means Customs Clearance Declaration such as a bill of entry;
- **“principal”** means the person deemed to have made an importation of goods as contemplated in section 54(2A)(a), and a vendor;
- **“section”** means a section of the VAT Act;
- **“VAT”** means value-added tax;
- **“VAT Act”** means the Value-Added Tax Act 89 of 1991;
- **“VOC”** means voucher of correction, being a document to correct any incorrect particulars declared on a bill of entry; and
- any word or expression bears the meaning ascribed to it in the VAT Act.

### **1. Purpose**

This BGR clarifies the VAT consequences for a clearing agent and a principal in the event of an overpayment of VAT on the importation of goods due to an erroneous CCD made by the clearing agent, on behalf of the principal.

## 2. Background

Due to the volumes of transactions processed by clearing agents on behalf of multiple principals, it sometimes happens that an incorrect CCD is made by the clearing agent, resulting in the amount of VAT calculated, declared, and paid on the importation of goods being incorrect. Examples are the application of an incorrect exchange rate or incorrect currency, principals giving duplicate clearing instructions etc. In the case of an underpayment, a VOC is submitted to remedy the declaration, and payment. However, in the case of an overpayment of VAT, VOCs are processed by SARS only in certain specific circumstances for the purposes of a refund as set out in the Customs Refund Policy contained in the *SC-DT-C-13 Refunds and Drawbacks – External Guide*.

If SARS does not allow a VOC to be processed for the VAT overpaid on the importation of goods, and refund such VAT overpaid, uncertainty arises as to whether the clearing agent or the principal is entitled to an input tax deduction in this regard.

## 3. Discussion

VAT is levied under section 7(1)(b) on the importation of goods, by any person, into the Republic (subject to any exemptions or exceptions that may apply). The value on which VAT is payable on importation is based on the value determined under the Customs Act (see section 13(2) of the VAT Act). Under section 7(2), the person liable for the payment of the VAT so levied, is the person that imports the goods (the principal or importer). The fact that a clearing agent lodges a CCD on behalf of a principal, does not alter the position that the principal is the importer and is the person liable for the payment of VAT on importation.

Only a vendor that acquires goods for the purpose of consumption, use or supply in the course of making taxable supplies, may deduct the VAT paid on the importation as “input tax” as defined in section 1(1), during the tax period that the requirements under sections 16(3)(a)(iii) or (b)(ii) and 16(2)(d) or (dA) are met. The clearing agent merely facilitates the payment of the VAT in question to SARS on behalf of the principal in terms of a contractual agreement for services between the principal and the clearing agent. Therefore, it is only the principal that can meet these aforementioned requirements, and only the principal is entitled to deduct the VAT paid on importation as “input tax”, and not the clearing agent.

Since SARS will not, in the case of a vendor, process a VOC in respect of the VAT overpaid because of an incorrect CCD on the importation of goods, there is no need to make any adjustments from a VAT perspective.

## 4. Ruling

In the event that SARS does not allow a VOC to be processed for VAT purposes, when the clearing agent has made an error on the CCD, the principal is entitled to deduct the VAT incurred on the full amount declared on the importation of the goods, including the overpayment, to the extent that it qualifies as “input tax” as defined in section 1(1), and subject to sections 16(3)(a)(iii) or (b)(ii) and 16(2)(d) or (dA).

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

**5. Period for which this ruling is valid**

This BGR applies from date of issue, and is valid until it is withdrawn, amended or the relevant legislation is amended.

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