

BINDING GENERAL RULING (VAT) 57

DATE: 20 October 2021

ACT : VALUE-ADDED TAX ACT 89 OF 1991
SECTION : SECTION 1(1) DEFINITION OF “CONSIDERATION” AND PARAGRAPH (b) OF THE DEFINITION OF “INPUT TAX”
SECTION 16(3)(a)(ii)(aa) and (bb) AND 16(3)(b)(i)
SUBJECT : WHETHER THE TERM “CONSIDERATION” INCLUDES AN AMOUNT OF TRANSFER DUTY FOR THE PURPOSES OF CALCULATING A NOTIONAL INPUT TAX DEDUCTION ON THE ACQUISITION OF SECOND-HAND FIXED PROPERTY

Preamble

For purposes of this ruling –

- “**BGR**” means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- “**notional input tax deduction**” means an amount of input tax calculated under paragraph (b) of the definition of “input tax”, which may be available to a vendor on the acquisition of second-hand goods (including second-hand fixed property) under section 16(3)
- “**section**” means a section of the VAT Act;
- “**tax fraction**” means the fraction calculated in accordance with the formula:

$$\frac{r}{100 + r}$$

in which formula “r”¹ is the rate of tax applicable under section 7(1);

- “**Transfer Duty Act**” means the Transfer Duty Act 40 of 1949;
- “**VAT**” means value-added tax;
- “**VAT Act**” means the Value-Added Tax Act 89 of 1991;
- “**TA Act**” means the Tax Administration Act 28 of 2011; and
- any other word or expression bears the meaning ascribed to it in the VAT Act or the TA Act, respectively.

1. Purpose

This BGR clarifies whether the term “consideration” includes an amount of transfer duty paid or payable on the acquisition of second-hand fixed property for the purposes of calculating a notional input tax deduction.

¹ The current rate of tax is 15%, therefore the current tax fraction is 15/115.

2. Background

When second-hand fixed property is supplied by a person that is not a VAT vendor, transfer duty will usually be payable on that transaction, subject to any exemptions or exceptions that may apply under the Transfer Duty Act. Transfer duty is only applicable if the supply of fixed property is not a taxable supply under the VAT Act.

If the person acquiring the fixed property is a registered VAT vendor and is using that property for taxable purposes in an enterprise, that vendor will, in principle (and subject to certain requirements), be entitled to a notional input tax deduction. The deduction is made under section 16(3)(a)(ii)(aa) and (bb) if the vendor is registered on the invoice basis of accounting or section 16(3)(b)(i) if the vendor is registered on the payments (or cash) basis of accounting.

The issue that arises in this regard is whether the transfer duty on the transaction is included in the meaning of the term “consideration” as defined in section 1(1) of the VAT Act, for the purposes of claiming a notional input tax deduction.

3. Discussion

3.1 Consideration

The definition of the term “consideration” is explained in Interpretation Note 70 “Supplies Made for no Consideration” (IN 70). In particular, paragraph 5.1.2 of IN 70 explains the characteristics as follows:

- That it can include any payment which is “in respect of, in response to, or for the inducement of” a supply of goods or services.
- There must be a sufficient nexus between the supply and any payment of consideration.
- The payment of consideration can be made in money or in kind, and can be made by any person.

Whilst the term suggests a broader scope to encompass any payment, in simple terms, the consideration refers to the **purchase price** that must be paid to the supplier of goods or services by the recipient.

3.2 Notional input tax deduction

As provided for in paragraph (b) of the definition of “input tax”, a notional input tax deduction on the acquisition of second-hand goods is calculated by applying the tax fraction at the time of acquisition to the lesser of –

- any consideration in money given by the vendor; or
- the open market value of the goods.

Other requirements, for example, that the goods must be acquired by the recipient in the course or furtherance of carrying on an enterprise and that the requisite documentary proof must be held in accordance with section 20(8) must also be met before a notional input tax deduction may be allowed.

3.3 Extent to which consideration has been paid

Paragraph (b) of the definition of "input tax" must be read together with section 16(3)(a)(ii)(aa) and (bb) or 16(3)(b)(i) when calculating the deductible amount of notional input tax. Under these provisions, the payment in money is recognised to the extent that it has the effect of reducing or discharging any obligation **relating to the purchase price for the supply** during the tax period concerned.

Having regard to **3.1** and **3.2**, if payment of the consideration (purchase price) for the property is made in terms of the contract by the recipient or any other person to –

- the supplier; or
- any other person at the request of the supplier,

such payment towards the purchase price is recognised for the purposes of calculating the notional input tax deduction.

3.4 Transfer duty

Transfer duty is levied under section 2 of the Transfer Duty Act for the benefit of the National Revenue Fund on the value of any "property" acquired by any person. Under section 3 of that Act, transfer duty is a charge levied against the person acquiring the property and is payable to SARS by that person. As such, transfer duty does not form part of the purchase price of the property. Consequently, the payment of transfer duty cannot be regarded as an amount which reduces or discharges any obligation of the recipient **relating to the purchase price** of the property

4. Ruling

The term "consideration" as defined in section 1(1) does not include any transfer duty imposed under section 2 of the Transfer Duty Act. As a result, the amount of transfer duty paid or payable by a vendor to acquire second-hand fixed property for taxable purposes cannot be included in the calculation of any notional input tax deduction which may be available to that vendor under section 16(3)(a)(ii)(aa) and (bb) or 16(3)(b)(i).

This ruling constitutes a BGR issued under section 89 of the TA Act.

5. Period for which this ruling is valid

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