

BINDING GENERAL RULING (VAT): NO. 17

DATE: 27 March 2013

ACT : VALUE-ADDED TAX ACT NO. 89 OF 1991 (the VAT Act)
SECTIONS : SECTIONS 1(1), 8(2) AND 50
SUBJECT : CANCELLATION OF REGISTRATION OF SEPARATE ENTERPRISES,
BRANCHES AND DIVISIONS

Preamble

For the purposes of this ruling –

- “BGR” means a binding general ruling issued under section 89 of the Tax Administration Act No. 28 of 2011; and
- any word or expression bears the meaning ascribed to it in the VAT Act..

1. Purpose

This BGR sets out the application of section 50(3) regarding the cancellation of the registration of a separate enterprise, branch or division of the main enterprise (hereinafter collectively referred to as the branch enterprise) and whether such cancellation constitutes a deemed supply in terms of section 8(2).

2. The law and its application

For purposes of the VAT Act, a vendor conducting a branch enterprise may apply in writing to the Commissioner to have such branch enterprise registered separately for VAT in terms of section 50(1).

The Commissioner may, in terms of section 50(2), register any branch enterprise as a separate vendor provided that each branch enterprise maintains an independent system of accounting and can be separately identified either by the nature of its activities carried on or the location of the branch enterprise.

The separate registration of the branch enterprise results in its activities being deemed to be carried on separately from the vendor (hereinafter referred to as the main enterprise). Although section 50(1) separates the main enterprise from its branch enterprise, it does not result in a supply of goods or services between the two enterprises at the time when such branch enterprise is separately registered.

The Commissioner may, for reasons set out in section 50(3)(b), cancel the registration of the branch enterprise and the cancellation of such registration will be with effect from a date determined by the Commissioner. In addition, section 50(3) provides that from the effective date of cancellation of the abovementioned registration, any activity that was carried on by that branch enterprise shall be deemed to be carried on by the main enterprise.

Section 50(3) acknowledges that the cancellation of registration of the branch enterprise would give rise to a deemed supply envisaged in section 8(2) and, therefore, provides that on cancellation of the registration of the branch enterprise, any activities of that branch enterprise shall be deemed to be carried on by the main enterprise. As a result, the provisions of section 8(2) are not applicable at this stage. This only applies to the remaining activities of the branch enterprise.

The effect of the aforementioned provisions of section 50, is that any supplies made in the course or furtherance of the registration of the branch enterprise and the subsequent cancellation of such branch enterprise will not have any VAT implication, that is, the transfer of the activity to the main enterprise will not be subject to VAT.

After cancellation of the registration of the branch enterprise, the main enterprise must account for VAT and be responsible for all the activities of that branch enterprise.

In terms of section 50(5), the main enterprise will remain responsible and be liable when any branch enterprise which is separately registered does not comply with the requirements of the VAT Act.

The cancellation of the registration of the branch enterprise discussed in this BGR does not apply to –

- any branch enterprise, of a main enterprise permanently situated outside the Republic, as contemplated in proviso (ii) of the definition of “enterprise”; or
- a cancellation of the registration of the branch enterprise as a result of the main enterprise’s registration being cancelled [see section 50(4)].

3. Ruling

The cancellation of the registration of the branch enterprise, as contemplated in section 50(2), will as a result of section 50(3) not constitute a deemed supply as contemplated in section 8(2). On cancellation of the registration of the branch enterprise, the activities of the branch enterprise will be deemed to be carried on by the main enterprise.

4. Period for which this ruling is valid

This BGR is effective from 1 April 2013 and is valid for an indefinite period.

Any ruling issued to vendors stating anything to the contrary of this BGR is hereby withdrawn from the date of publication of this BGR.