

BINDING GENERAL RULING (VAT) 26 (Issue 2)

DATE: 9 March 2020

ACT : VALUE-ADDED TAX ACT 89 OF 1991
SECTION : SECTIONS 11(1)(j) AND 13(3), PARAGRAPH 7(a) OF SCHEDULE 1 AND ITEM 12 IN PART B OF SCHEDULE 2
SUBJECT : THE VALUE-ADDED TAX TREATMENT OF THE SUPPLY AND IMPORTATION OF HERBS

Preamble

For purposes of this ruling –

- “**BGR**” means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011; and
- “**Item 12**” means Item 12 in Part B of Schedule 2 to the VAT Act.
- “**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 increase in the VAT rate which came into effect on 1 April 2018.

1. Purpose

This BGR sets out the VAT treatment applicable to the supply and importation of herbs.

2. Background

Vegetables that are not cooked or treated except for purposes of preservation fall within the ambit of Item 12. Although the term “vegetable” is not defined in the VAT Act, the Agricultural Product Standards Act 119 of 1990 (the Agricultural Product Standards Act) which, amongst others, regulates the sale of fresh vegetables is of assistance in determining the meaning that must be attributed to this term for purposes of Item 12.

The term “fresh vegetables” is defined in section 1 of the regulation¹ issued under the Agricultural Product Standards Act, to mean those vegetables and herbs specifically mentioned in the definition as well as “unspecified vegetables”. The term “unspecified

¹ GNR. 364 of 24 May 2013: Regulations relating to the grading, packing and marking of fresh vegetables intended for sale in the Republic of South Africa (*Government Gazette* 36480).

vegetables” is defined in section 1 of the regulation to mean any other kind of vegetables that are not mentioned under “fresh vegetables”.

Furthermore, the Customs and Excise Act 91 of 1964 (the Customs Act) specifically lists culinary herbs as being a vegetable.²

The Customs Act distinguishes between herbs that can be used for culinary purposes and herbs to be used for other medicinal or perfumery purposes. Herbs used for culinary purposes are classified under Chapter 7³ whereas herbs imported to be used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes are classified under Chapter 12.⁴ Any herb that may be suitable for human consumption (for example, fresh basil), if imported for purposes other than for culinary purposes is not classified as a vegetable under Chapter 7 of the Schedule to the Customs Act.

In light of the above, the importation of a herb may be subject to a different rate of customs duty depending on the use to which it is put (that is, culinary or other). A herb is, however, for VAT purposes, regarded as a vegetable as contemplated in Item 12 even if the recipient uses it for purposes other than human consumption (the VAT treatment of the importation of herbs is dealt with under **3.3**).

Taking the above into account, it is accepted that the term “vegetables” mentioned in Item 12 includes herbs.

3. Ruling

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act 28 of 2011 insofar as it relates to the items listed in **3.1** to **3.3**

Any ruling that would, but for this BGR, allow vendors to supply or import herbs at a rate that is different from the rate prescribed in this BGR was withdrawn with effect from 12 March 2015.

3.1 Zero-rated supplies

The supply of herbs that have not been cooked or treated in any manner except for the purpose of preserving such herbs in their natural state, is zero-rated under section 11(1)(j) read with Item 12. Section 11(3) requires a vendor to obtain and retain documentary proof substantiating the vendor’s entitlement to apply the zero rate.⁵

² Note 2 to Part 1 of Schedule 1 in Section II of Chapter 7: EDIBLE VEGETABLES AND CERTAIN ROOTS AND TUBERS of the Schedule to the Customs Act.

³ Part 1 of Schedule 1 in Section II of Chapter 7: EDIBLE VEGETABLES AND CERTAIN ROOTS AND TUBERS of the Schedule to the Customs Act.

⁴ Part 1 of Schedule 1 in Section II of Chapter 12: OIL SEEDS AND OLEAGINOUS FRUITS; MISCELLANEOUS GRAINS, SEEDS AND FRUIT; INDUSTRIAL OR MEDICINAL PLANTS; STRAW AND FODDER of the Schedule to the Customs Act.

⁵ Interpretation Note 31 sets out the documentary proof that is acceptable to the Commissioner for the purposes of section 11(3). A copy of the supplier’s zero-rated tax invoice setting out a proper description of the goods supplied is acceptable for the application of the zero rate contemplated in section 11(1)(j).

Fresh and frozen herbs sold in the following forms qualify for zero-rating:

- Cut
- Diced
- Shredded

Subject to **3.2**, the zero-rating applies regardless of whether the herbs are sold individually (for example, a packet of curry leaves or a packet of angelica) or mixed with other vegetables (for example, mixed cucumber and parsley or mixed lettuce and fresh dill) provided all other vegetables are subject to VAT at the zero rate.

3.2 Standard-rated supplies

The supply of herbs in the following instances is specifically excluded from Item 12 and is therefore subject to VAT at the standard rate under section 7(1)(a):

- (a) Cut, diced or shredded herbs, to which any other substance has been added (other than for the purpose of preserving such herbs in their natural state).
- (b) Minced or pureed herbs.
- (c) Fresh or frozen herbs that have been treated with an additive for the purpose of adding colour or flavour (for example, glucose, dextrose, sugar or salt).
- (d) Herbs supplied in the course of the furnishing or serving of any meal, refreshment, cooked or prepared food or any drink, so as to be ready for immediate consumption when supplied.

3.3 The importation of herbs

Any importation of the herbs referred to in **3.1** is, under section 13(3) read with paragraph 7(a) of Schedule 1 to the VAT Act, exempt from the VAT levied under section 7(1)(b).

Any importation of the herbs referred to in **3.2** is subject to VAT at the standard rate under section 7(1)(b).

4. Period for which this ruling is valid

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

To the extent that this BGR does not provide for a specific scenario on the supply or importation of herbs, vendors may apply for a VAT ruling or VAT class ruling in writing by sending an e-mail to **VATRulings@sars.gov.za** or by facsimile to 086 540 9390. The application should consist of a completed VAT301 form and must comply with the provisions of section 79 of the Tax Administration Act 28 of 2011, excluding section 79(4)(f), (k) and (6).