

BINDING GENERAL RULING (VAT): NO. 36

DATE: 24 October 2016

ACT : VALUE-ADDED TAX ACT NO. 89 OF 1991
SECTION : SECTION 16(2)(g)
SUBJECT : CIRCUMSTANCES PRESCRIBED BY THE COMMISSIONER FOR THE APPLICATION OF SECTION 16(2)(g)

Preamble

For the purposes of this ruling –

- “**alternative documentary proof**” means documentary proof other than the documents listed in section 16(2)(a) to (f) that contains the information acceptable to the Commissioner;
- “**BGR**” means a binding general ruling issued under section 89 of the Tax Administration Act No. 28 of 2011;
- “**section**” means a section of the VAT Act;
- “**VAT**” means value-added tax;
- “**VAT Act**” means the Value-Added Tax Act No. 89 of 1991; and
- any other word or expression bears the meaning ascribed to it in the VAT Act.

1. Purpose

This BGR prescribes the circumstances under which the Commissioner will allow a vendor to use alternative documentary proof to substantiate the vendor’s entitlement to a deduction under section 16(3).

2. Ruling

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act No. 28 of 2011.

2.1 The circumstances prescribed by the Commissioner where the vendor is unable to obtain the requisite documentation

A vendor may only apply for approval under section 16(2)(g) to rely on documentary proof, other than the documents prescribed under section 16(2)(a) to (f) if the vendor –

- has sufficient proof that it made reasonable attempts to obtain the documentary proof required by the Commissioner under section 16(2)(a) to (f);
- was unable to obtain and maintain the documentation prescribed under section 16(2)(a) to (f) due to circumstances beyond the vendor’s control (see **2.2**); and

- no other provision of the VAT Act allows for a deduction based on the particular document in the vendor's possession.

2.2 Circumstances beyond the vendor's control

The circumstances beyond the vendor's control may include, but are not limited to the following:

- (a) The supplier fails to issue a tax invoice, debit note or credit note;
- (b) The supplier was contacted but failed to respond to the vendor's request(s) to be furnished with a complete tax invoice or correct document;
- (c) The supplier or vendor's place of business has suffered damage as a result of, for example, a natural disaster, *vis major*, criminal activity or fire, causing damage to its accounting records, with no possibility of the said records being retrieved or re-issued; or
- (d) The supplier has been deregistered as a vendor.

2.3 Alternative documentary proof in respect of a deduction as contemplated in section 16(3)(c) to (n)

A vendor seeking to rely on the use of alternative documentary proof for these deductions, must demonstrate and substantiate the circumstances beyond the vendor's control, giving rise to, the vendor's difficulty in obtaining the documentary proof prescribed by the Commissioner as set out in Interpretation Note No. 92 dated 24 October 2016 "Documentary Proof Prescribed by the Commissioner".

2.4 The vendor's application for a VAT ruling

In order to obtain the Commissioner's approval to use alternative documentary proof in substantiating a deduction under section 16(2)(g), a vendor must apply for a VAT ruling or VAT class ruling under section 41B. In this regard, an application must be sent in writing by e-mail to VATRulings@sars.gov.za or by facsimile to 086 540 9390. The application must demonstrate that the vendor falls under the circumstances prescribed under **2.1**, together with the relevant proof and the details of the alternative documentary proof the vendor seeks to rely on in order to support the vendor's entitlement to make the deduction. In this regard, a clearly motivated application complying with the provisions of section 79 of the Tax Administration Act, 2011 excluding section 79(4)(f) and (k) and (6), must be submitted.

A deduction under section 16(2)(g) may only be made where the vendor is in possession of the relevant approval granted by the Commissioner as well as the relevant documents at the time the return is submitted in which the deduction is made.

3. Period for which this ruling is valid

This BGR applies in respect of tax periods commencing on or after 1 April 2016 until it is withdrawn, amended or the relevant legislation is amended.

Executive

Legal Counsel: Indirect Taxes

SOUTH AFRICAN REVENUE SERVICE