

BINDING GENERAL RULING (VAT): NO. 14 (Issue 2)

DATE: 18 March 2016

ACT : VALUE-ADDED TAX ACT NO. 89 OF 1991
SECTION : SECTIONS 1(1), 7, 8, 9, 11, 16, 20, 21, 54 AND 72
SUBJECT : VAT TREATMENT OF SPECIFIC SUPPLIES IN THE SHORT-TERM INSURANCE INDUSTRY

Preamble

For the purposes of this ruling, unless the context indicates otherwise –

- “**BGR**” means a binding general ruling issued under section 89 of the Tax Administration Act No. 28 of 2011 (TA Act);
- “**bordereau**” means a document issued by an insurer or intermediary in the form of a memorandum, statement or invoice which contains detailed information such as –
 - insurance premiums collected;
 - commission and fees payable in respect of intermediary services supplied; and
 - claims paid.
- “**inbound policy**” means a transport policy which provides insurance cover in respect of goods transported from an export country to South Africa as part of an international voyage;
- “**indemnity payment**” means a cash payment made by the insurer under an insurance policy to indemnify the insured on the occurrence of the insured event;
- “**insurer**” means any vendor supplying “insurance” as defined in section 1(1);
- “**intermediary**” means any broker or agent supplying intermediary services to an insurer or insured;
- “**intermediary services**” has the meaning assigned thereto in section 1 of the Financial Advisory and Intermediary Service Act No. 37 of 2002 and includes the management and administration of a policy as well as the collection of premiums and processing of claims;
- “**international voyage**” means the transportation of goods from the insured’s premises (or other named location) in South Africa to a destination in another country (and *vice versa*) or between two places outside the Republic. The international voyage includes transit to packers, forwarders, consolidators, hauliers, warehouses and other places of storage until the goods are safely delivered at the final destination as specified in the insurance contract;

- **“outbound policy”** means a transport policy which provides insurance cover in respect of goods transported from South Africa to a destination in an export country or from a place outside South Africa to another destination outside South Africa as part of an international voyage;
- **“policy document”** means a document which is evidence of a contract of insurance, including any renewal notice, premium notification or endorsement in respect thereof;
- **“section”** means a section of the VAT Act;
- **“temporary presence”** means a period of six months or less;
- **“third party supplier”** means a supplier of goods or services receiving trade payments from insurers;
- **“trade payment”** means a payment made under a contract of insurance by an insurer to a third party supplier to replace or repair the insured’s goods which were lost, damaged or destroyed;
- **“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 sets out the VAT treatment of the issues listed below:

- The time of supply in relation to the supply of insurance and related intermediary services
- International transport insurance including stock throughput, goods in transit and marine insurance policies
- Hull and associated liability insurance
- Insurance cover provided in respect of fixed property and movable property located in an export country
- Excess payments
- Indemnity payments
- Third party payments
- Recoveries
- Group accident claims
- Intermediary services
- Documents accepted as alternatives to tax invoices in respect of the supply of insurance and related intermediary services
- Approval to issue recipient-created tax invoices, debit and credit notes

This BGR replaces and withdraws BGR 14 dated 22 March 2013 “VAT treatment of specific supplies in the short-term insurance industry” with effect from the dates specified in **3**.

It is recommended that this BGR is read in conjunction with the *VAT 421 – Guide for Short-Term Insurance*.

2. Ruling

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

2.1 Time of supply – Insurance

An insurance policy, renewal notice or endorsement that does not notify the insured of an obligation to make payment is not regarded as an invoice and will therefore not trigger the time of supply. In instances where the insurer (or its intermediary) does not issue an “invoice”, the supply of insurance is deemed to be on the date the insurer (or the insurer’s intermediary) receives the insurance premium in respect of that supply.

2.2 International transport insurance

The supply of insurance under inbound and outbound policies, including insurance cover during periods in which “ancillary transport services”¹ are supplied, may be zero-rated under section 11(2)(d).

2.3 Stock throughput insurance

The supply of stock throughput insurance is regarded as international transport insurance (see **2.2**) to the extent that insurance cover is provided in respect of goods transported from an export country to South Africa (and *vice versa*) as part of an international voyage.

2.3.1 Insured goods transported or stored in South Africa

The supply of insurance under a stock throughput policy which provides cover for insured goods whilst the goods are transported between places in South Africa (including periods during which “ancillary transport services” are supplied in respect of those goods) is subject to VAT at the zero rate under section 11(2)(d). The zero rating is only applicable if the transport service (including any “ancillary transport services”) is supplied by the same supplier providing the international transport services as envisaged by section 11(2)(c).

2.3.2 Insured goods in South Africa but not transported or stored

Insurance cover provided while insured goods are in South Africa and not being transported (or stored) as part of an international voyage does not qualify for zero rating under section 11(2)(d). Such supplies are therefore subject to VAT at the standard rate under section 7(1)(a).

2.3.3 Single insurance premium

Insurers that levy a single premium in respect of the single supply of stock throughput insurance relating to both standard and zero-rated supplies are, under section 8(15), required to allocate the premium to the various risk components which were used to determine the premium and to apply the

¹ “Ancillary transport services” include storage of the insured goods while being (or to be) transported.

applicable VAT rate to each component. The same ratio must be used in respect of subsequent adjustments to the premium, unless the insurer can determine the allocation more accurately. The insurer is required to notify the insured and, where applicable, the intermediary of the original allocation of the premium between the standard and zero-rated portions as well as any subsequent adjustments in respect thereof. The insurer is required to retain proof of such notification.

2.4 Hull insurance

The supply of hull insurance is regarded as a service provided in connection with the operation or management of a “foreign-going aircraft” or “foreign-going ship”, and may therefore be zero-rated under section 11(2)(h)(ii) if supplied directly (that is, not through an agent or other person) to a non-resident that is not a vendor.

The temporary presence of the underlying insured foreign-going ship or aircraft in South Africa will not disqualify the supply from being zero-rated.

2.5 Insurance cover for fixed property situated in an export country

Insurance is regarded as being supplied directly in connection with the insured land, or any improvement to it, situated in an export country and is therefore subject to VAT at the zero rate under section 11(2)(f).

2.6 Insurance cover for movable property situated in an export country

Insurance is regarded as being supplied directly in respect of the insured movable property and is subject to VAT at the zero rate under section 11(2)(g)(i), provided that the insurer obtains and retains proof that the movable property is situated outside South Africa during the period for which the insurance cover is provided. Such proof may be reflected in the insurance contract or a declaration provided by the insured.

The temporary presence of the movable property in South Africa will not disqualify the supply of insurance relating to the property from being zero-rated.

2.7 Excess payments

2.7.1 Insured pays excess directly to third party supplier

The third party supplier must issue two tax invoices, that is, one to the insured to the extent of the excess payment and one to the insurer to the extent of the trade payment.

2.7.2 Insurer pays full amount to third party service provider and recovers excess from insured

An excess payment received by an insurer from the insured does not constitute “consideration” as the payment is not received in respect of any taxable supply made by the insurer. The insurer is, however, required to issue documentation to the insured in respect of the receipt of the excess payment which must include the following minimum information:

- (a) The insurer’s name, VAT registration number and address.

- (b) The insured's name, VAT registration number (where applicable) and address.
- (c) The third party supplier's name and VAT registration number (where applicable).
- (d) A full description of the goods or services supplied by the third party service provider.
- (e) The date on which the supply was made by the third party service provider.
- (f) The amount of the excess paid or payable by the insured reflecting either the VAT amount separately or a statement that the amount payable includes VAT and the rate at which VAT was charged.

The insurer is, under section 16(3)(a), entitled to deduct input tax on the goods or services acquired from the third party supplier. The deduction must be calculated as follows:

(Total VAT inclusive amount paid to the third party supplier less excess received from insured) x tax fraction.

The insured may deduct the VAT incurred in relation to the excess payment made to the insurer. The deduction is calculated as follows:

Excess payment x tax fraction.

An arrangement is made under section 72 to regard the document issued by the insurer to the insured in respect of excess received or due to be a "tax invoice" for the purposes of section 16(2)(a). This arrangement is only applicable if –

- (i) the insured is a registered vendor;
- (ii) the third party supplier is a registered vendor; and
- (iii) the insured and insurer obtains and retains the document issued by the insurer in respect of the excess payment.

2.8 Indemnity payments

The input tax deduction allowed under section 16(3)(c) applies not only to indemnity payments made in respect of "indemnity insurance" cover, but also in respect of "non-indemnity insurance" such as personal accident and third party liability cover that may be included in an insurance policy.

An insurer making an indemnity payment which gives rise to a deduction under section 16(3)(c) must issue a document to the insured informing the insured of a potential output tax liability that may arise under section 7(1)(a) read with section 8(8). This requirement applies irrespective of whether the insured is a vendor or not.

2.9 Recoveries

An insurer is not liable to account for output tax on amounts recovered from a third party or the third party's insurer under a subrogation claim, irrespective of whether the whole or only a portion of the claim is recovered.

2.10 Group personal accident insurance

2.10.1 Insurer

An insurer may deduct VAT under section 16(3)(c) in respect of indemnity payments made to the insured under group personal accident insurance.

2.10.2 Employer acting as principal

An employer, being a vendor, may deduct input tax in respect of the taxable supply of group personal insurance acquired to the extent it is acquired for the purpose of making taxable supplies.

Any indemnity payments received by the employer (as principal) under a contract of insurance will result in the employer being liable to account for output tax under section 8(8). The employer will not be entitled to deduct any VAT in respect of amounts subsequently paid to the employee.

2.10.3 Employer acting as agent on behalf of employees

The employer, when acting as the agent of its employees in entering into a group personal accident insurance contract with an insurer, will not be entitled to deduct input tax in respect of that contract. The employer will not be required to account for output tax under section 8(8) if the employee receives an indemnity payment from the insurer, irrespective of whether the payment is made through the employer or directly to the employee.

2.11 Intermediary services

The zero rate may be applied to services consisting of the arranging of –

- the insurance of goods or passengers transported internationally² under section 11(2)(d); or
- hull³ insurance in respect of a foreign-going aircraft or ship under section 11(2)(i)(ii) if the arranging service is supplied to a non-resident who is not a vendor (Refer to **2.4**).

An intermediary arranging stock throughput insurance may however only zero rate the supply of intermediary services to the extent that the underlying stock throughput insurance qualifies for zero rating under section 11(2)(d). (Refer to **2.3.3**.)

² Refer to **2.2**, **2.3** and **2.5**.

³ Refer to paragraph **2.4**.

2.12 Tax invoices, credit and debit notes

2.12.1 Supply of insurance

The Commissioner directs, under section 20(7)(a) and 21(5)(a), that the policy document, although not an invoice, is regarded as a tax invoice, debit note and credit note which need not contain the words “tax invoice”, “VAT invoice”, “invoice”, “debit note” and “credit note” provided –

- the insurer retains proof that the insured paid premiums in accordance with the policy document; and
- the policy document reflects all the other information as required by section 20(4); and
- the policy document contains the following statement (or substantially similar wording):

“In terms of Binding General Ruling No. 14 this document constitutes a tax invoice, debit note and credit note as contemplated in sections 20(7)(a) and 21(5)(a) of the VAT Act.”

2.12.2 Supply of intermediary services

The Commissioner directs, under sections 20(7)(a) and 21(5)(a), that the document (generally known as a bordereau) issued by the intermediary to the insurer in respect of the supply of intermediary services does not have to contain the words “tax invoice”, “VAT invoice”, “invoice”, “credit note” or “debit note”, as the case may be, provided the bordereau reflects the other information required by sections 20(4) and 21(3) respectively.

2.13 Recipient-created tax invoices, credit and debit notes

An insurer that is required to determine the consideration payable in respect of intermediary services may, under sections 20(2) and 21(4), issue recipient-created tax invoices, credit or debit notes in respect of the supply of intermediary services.

This approval is subject to –

- the recipient-created tax invoice, credit or debit note complying with sections 20(4), (5), 21(3) or the special approval set out in **2.12**, as applicable; and
- the insurer complying with all other requirements listed in Interpretation Note No. 56 “Recipient-created tax invoices, credit and debit notes”.

In addition, permission is granted under sections 20(7)(a) and 21(5)(a) that the bordereau issued by the insurer to the intermediary in respect of the supply of intermediary services does not have to contain the words “tax invoice”, “VAT invoice”, “invoice”, “credit note” or “debit note” (as the case may be).

2.14 Conditions

2.14.1 Zero rating

The zero rating of supplies contained in this BGR is conditional upon the insurer and intermediary (as applicable) obtaining and retaining the

documentary proof as provided for under section 11(3) read with Interpretation Note No. 31 “Documentary Proof Required for the Zero Rating of Goods and Services” (Interpretation Note No. 31). Failure to obtain and retain the required documentary proof within the required time period will result in the vendor being required to make the relevant adjustments as stipulated in Interpretation Note No. 31.

2.14.2 Input tax and other deductions

The statements contained in this BGR regarding input tax and other deductions are conditional upon the vendor obtaining and retaining the documentary proof contemplated in section 16(2) (including the bordereau referred to in **2.12**) by the time the relevant VAT return is submitted. The deductions are subject to section 16 and 17. Failure to obtain and retain the required documentary proof will result in the vendor not being entitled to make the deduction.

3. Period for which this BGR is valid

This BGR is effective in respect of policy documents entered into on or after 1 June 2016. The following paragraphs will however only apply from 1 September 2016:

- **2.3.**
- **2.6** to the extent that the required proof must be obtained from an insured.
- **2.7.2** to the extent of information to be reflected on the notification.
- **2.8.1** to the extent of the requirement that the insurer must notify the insured of the potential output tax liability in relation to indemnity payments.

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

To the extent that this BGR does not provide for a specific scenario in respect of the supply of short-term insurance, 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. In this regard a clearly motivated application complying with the provisions of section 79 of the Tax Administration Act, excluding section 79(4)(f) and (k) and (6), must be submitted.

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 Date of 1st issue : 26 March 2013