

## **BINDING GENERAL RULING (VAT) 45**

DATE: 1 November 2017

**ACT : VALUE-ADDED TAX ACT 89 OF 1991**  
**SECTION : SECTION 11(1)(g) and 11(1)(j) TOGETHER WITH PART A AND PART B OF SCHEDULE 2**  
**SUBJECT : SUPPLY OF POTATOES**

### ***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 28 of 2011;
- “**Part A**” means Item 6 of Part A of Schedule 2 to the VAT Act;
- “**Part B**” means Item 12 of Part B of Schedule 2 to the VAT Act;
- “**section**” means a section of the VAT Act;
- “**seed potatoes**” means potatoes which have been certified as seed potatoes under the South African Seed Potato Certification Scheme;<sup>1</sup>
- “**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.

### **1. Purpose**

This BGR sets out –

- the factors that will be considered by the Commissioner in determining whether potatoes are being supplied –
  - as seed under Part A, to be used or consumed for agricultural, pastoral or other farming purposes, or
  - as vegetables under Part B, that is, the supply consisting of foodstuffs; and;
- the general VAT treatment of the supply of potatoes under Part A and Part B.

### **2. 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 **2.1** to **2.4**.

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<sup>1</sup> Published in Government Notice R. 664 in *Government Gazette* 11245 of 15 May 1998 under the Plant Improvement Act 53 of 1976.

## **2.1 Factors to consider when distinguishing between potatoes supplied under Part A or Part B**

In order to distinguish between potatoes supplied as seed under Part A and potatoes supplied as foodstuffs under Part B, the intention of the vendor supplying the potatoes must be determined at the time of supply. In determining the stated intention of the supplier, the Commissioner may consider, amongst others, the following objective factors:

- The description of the potatoes as contained in the tax invoice issued by the supplier.
- The status of the recipient of the potatoes. For example, is the recipient a VAT-registered vendor carrying on agricultural, pastoral or other farming operations and authorised under Clause 7 on the Notice of Registration to acquire the goods concerned at the zero rate?
- The consideration paid for the potatoes. For example, the price paid for seed potatoes may be significantly higher than potatoes supplied as foodstuffs.
- The labelling or packaging in which the potatoes are supplied. For example, seed potatoes are required, under the South African Seed Potatoes Certification Scheme, to be supplied in containers which are labelled in a specific manner.

## **2.2 Potatoes supplied under Part A**

These are potatoes supplied as seed for cultivation under Item 6 of paragraph 1 of Part A. The supply of these potatoes is zero-rated under section 11(1)(g) subject to the provisions of paragraph 2 of Part A.

In the event that the vendor does not comply with the statutory requirements set out in paragraph 2 of Part A, the supply of the potatoes must be subject to VAT at the rate of 14% under section 7(1)(a). This includes the supply of potatoes to a trader for on-sale as seed potatoes. Furthermore, the vendor supplying the potatoes may not zero-rate the supply under Part B if the vendor's intention (as determined using the factors in 2.1) is to supply the potatoes in question as seed but failed to comply with the requirements of paragraph 2 of Part A.

## **2.3 Potatoes supplied under Part B**

These are potatoes supplied as foodstuffs (that is, vegetables) under Item 12 of paragraph 1 of Part B. The supply of these potatoes is zero-rated under section 11(1)(j).

## **2.4 Documentary proof**

The vendor must, under section 11(3), obtain and retain documentary proof substantiating the vendor's entitlement to apply the zero rate<sup>2</sup> under section 11(1)(g) or (j).

Specifically with regard to section 11(1)(g), paragraph 2 of Part A requires the recipient to have been issued with a Notice of Registration in which authorisation is granted for goods to be acquired at the zero rate. The recipient must be in possession of a valid copy of such a Notice of Registration at the time of supply, a

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<sup>2</sup> Interpretation Note 31 sets out the documentary proof that is acceptable for the purposes of section 11(3).

tax invoice must be issued containing the particulars required under section 20(4) and the supply of the goods must not be prohibited under section 7*bis* of the Fertilizers, Farm Feed, Agricultural Remedies and Stock Remedies Act 36 of 1947.

**3. Period for which this ruling is valid**

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

Any ruling that would, but for this BGR, continue to be effective on or after the effective date of this BGR is withdrawn from the effective date of this BGR.

To the extent that this BGR does not provide for a specific scenario in respect of the supply of potatoes, 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, excluding section 79(4)(f), (k) and (6).

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