

## **BINDING GENERAL RULING (VAT) 46**

DATE: 27 November 2017

**ACT : VALUE-ADDED TAX ACT 89 OF 1991**  
**SECTION : SECTION 11(1)(j) TOGETHER WITH PART B OF SCHEDULE 2**  
**SUBJECT : SUPPLY OF BROWN BREAD**

### ***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;
- “**Item 1**” means Item 1 of Part B of Schedule 2 to the VAT Act;
- “**Practice Note**” means VAT Practice Note 12 issued on 24 November 1993;
- “**relevant regulations**” or “**regulations**” refers to the 1991 Regulation, the 2008 Regulation and/or the 2017 Regulation;
- “**section**” means a section of the VAT Act;
- “**VAT**” means value-added tax;
- “**VAT Act**” means the Value-Added Tax Act 89 of 1991;
- “**1991 Regulation**” means regulations in terms of Government Notice R.577 published in *Government Gazette* 13074 of 15 March 1991;
- any other word or expression bears the meaning ascribed to it in the VAT Act.

### **1. Purpose**

The purpose of this BGR is to make an arrangement under section 72 relating to the VAT treatment of the supply of brown bread.

### **2. Background**

Section 11(1)(j) zero-rates the supply of certain foodstuffs set forth in Part B of Schedule 2 to the VAT Act, subject to certain conditions. Item 1 refers to “brown bread”. The term “brown bread” is defined with reference to relevant regulations. Since inception of the VAT Act, the said item made reference to the 1991 Regulation.

A Practice Note was issued in 1993 to clarify the interpretation in relation to the provisions of section 11(1)(j) read with Item 1. It provided the following guidelines:

- (a) The supply of any type of brown bread shall be zero-rated provided –
  - (i) it is marketed and sold under the description “brown bread”;
  - (ii) the meal content of the dough consists of at least 50% brown bread meal; and

- (iii) the mass of the loaf exceeds 100 grams.

Under the Practice Note, products such as “whole-wheat brown bread”, “high fibre brown bread”, “high protein brown bread” and “brown health bread” that satisfy the above requirements, were subject to the zero rate.

The requirements above were based on those contained in the 1991 Regulation, which Regulation was subsequently repealed and replaced by the 2008 Regulation.<sup>1</sup> Under section 12(1) of the Interpretation Act 33 of 1957, where a law repeals and re-enacts any provision of a former law, any references in another law to the provision so repealed, shall be construed as references to the provision so re-enacted. Therefore, even though Item 1 was not amended in the past to refer to the updated regulation, references to the 1991 Regulation in Item 1, are therefore (in law) interpreted to be references to the subsequent regulations which replaced the 1991 Regulation.

The Practice Note was withdrawn on 1 April 2016 on the basis that “brown bread” is defined in the relevant regulation, and the 1991 Regulation had been repealed and replaced by the 2008 Regulation.

Following the withdrawal of the Practice Note, and the introduction of the 2017 Regulation,<sup>2</sup> it transpired that the industry viewed the requirements in the Practice Note as being less onerous as those in the relevant regulations. There was also uncertainty in understanding how to apply the relevant regulations in zero-rating the supply of brown bread for VAT purposes. Industry therefore continued to rely on the Practice Note as a policy statement, in determining which supplies of brown bread qualify to be supplied at the zero rate under section 11(1)(j), despite the amendments in the relevant regulations, and the withdrawal of the Practice Note.

Based on the above, and the changes to the definitions and classes of “brown bread” in the relevant regulations, Industry had experienced and continues to experience difficulties in determining when a supply of “brown bread” qualifies for the zero rate.

### 3. Ruling

Following from the discussion in 2, an arrangement is hereby made under section 72 that, in addition to “brown bread” as defined in the relevant regulations, the following types of bread, including the breads referred to in the Practice Note that was withdrawn, may be supplied at the zero rate under section 11(1)(j):

- Whole-wheat brown bread
- High fibre brown bread
- High protein brown bread
- Brown health bread

The arrangement above applies provided **all** the following conditions are met:

- The bread is marketed and sold under the description “brown bread”, which includes the designations above.

<sup>1</sup> Government Notice R. 186 published in *Government Gazette* 30782 of 22 February 2008.

<sup>2</sup> Government Notice R. 405 published in *Government Gazette* 40828 of 5 May 2017.

- The meal content of the dough consists of at least 50% brown bread wheat flour.
- The mass of the loaf exceeds 100 grams.
- The supply of the bread is not supplied in the course of carrying out any agreement for the furnishing or serving of any meal, refreshment, cooked or prepared food, so to be ready for immediate consumption when so supplied.
- The documentary requirements under section 11(3) are met.<sup>3</sup>

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act 28 of 2011.

#### **4. Period for which this ruling is valid**

This BGR applies from 1 April 2016 until 31 March 2018.

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 brown bread, 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).

**Executive: Legal Advisory  
Legal Counsel  
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<sup>3</sup> Interpretation Note 31 (Issue 4) dated 9 March 2016, or as updated, sets out the documentary proof that is acceptable for purposes of section 11(3).