

## **BINDING GENERAL RULING (VAT) 14 (Issue 4)**

DATE: 22 May 2024

**ACT : VALUE-ADDED TAX ACT 89 OF 1991**  
**SECTION : SECTIONS 1(1), 7, 8(8), 8(8A), 9, 11, 16, 20, 21 AND 54**  
**SUBJECT : VAT TREATMENT OF SPECIFIC SUPPLIES IN THE SHORT-TERM (NON-LIFE) 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 28 of 2011;
- **“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 insurance policy”** means a travel policy that provides insurance cover in respect of a passenger transported from an export country into the Republic or between two places in the Republic as part of an international journey;
- **“indemnity payment”** means a 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 37 of 2002 and includes the management and administration of a policy as well as the collection of premiums and processing of claims;
- **“international journey”** means a journey commencing from the “point of departure” in the Republic to a destination outside the Republic (and *vice versa*), including (where applicable) stopovers en route to the destination, time spent in the destination country and the return journey;

- **“outbound insurance policy”** means a travel policy that provides insurance cover in respect of a passenger transported from the Republic to a destination in an export country or from a place outside the Republic to another destination outside the Republic as part of an international journey;
- **“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;
- **“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);
- **“temporary presence”** means a period of six months or less;
- **“third-party supplier”** means a supplier of goods or services that receives a trade payment from an insurer;
- **“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 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

## 2. Background

This BGR is updated because of the amendments to section 8(8) and the introduction of a new provision being section 8(8A) which came into effect from 1 January 2024. The amendments were necessary because of earlier amendments to section 72 made in terms of section 73 of the Taxation Laws Amendment Act 34 of 2019.

## 3. Ruling

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act 28 of 2011 insofar as it relates to rulings under **3.1** to **3.14**.

### 3.1 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.

### 3.2 International transport insurance

The supply of insurance under any inbound or outbound insurance policy, including insurance cover during periods in which “ancillary transport services”<sup>1</sup> are supplied, may be zero-rated under section 11(2)(d).

### 3.3 Stock throughput insurance

The supply of stock throughput insurance is regarded as international transport insurance (see **3.2**) 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 journey.

#### 3.3.1 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).

#### 3.3.2 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 journey does not qualify for zero-rating under section 11(2)(d).

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

### **3.3.3 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 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.

### **3.4 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.

### **3.5 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).

### **3.6 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.

### **3.7 Indemnity payments**

#### **3.7.1 General**

Historically there has been some uncertainty on the application of section 8(8) regarding the VAT treatment of indemnity payments made by insurers and the payment of excess by the insured. Although the term “indemnity payment” refers to a payment made by the insurer under an insurance policy to indemnify the insured on the occurrence of the insured event, it is a general term used in the insurance industry. It can therefore refer to a so-called trade payment that is paid to a third-party supplier to reinstate goods or services lost, stolen or damaged that are covered under a contract of insurance, or it can refer to a monetary settlement payment made either to the insured, or to another person on behalf of the insured to cover that loss. Another issue was that in the case of reinstated goods or services, it was not clear whether the third-party supplier made a supply to the insurer or the insured, or to both parties. This aspect, in turn, led to uncertainty regarding the issuing of tax invoices and the deduction of input tax.

Section 8(8) was therefore amended with effect from 1 January 2024 to clarify the application of the law, and section 8(8A) was introduced to specifically deal with reinstatements. As a result, from 1 January 2024 it has been clarified that section 8(8) does not deal with the reinstatement of goods or services (except to provide an exclusion) as this is now covered by section 8(8A). The VAT implications in this regard are explained further in **3.7.2** to **3.8.3** below.

### **3.7.2 Payment and receipt of indemnity payments (monetary settlements) – sections 8(8) and 16(3)(c)**

#### *The insurer*

If an insurer makes an indemnity payment in the form of a monetary settlement as a result of a claim under a taxable contract of insurance, the implication for the insurer is that a deduction may be claimed under section 16(3)(c)<sup>2</sup> by applying the tax fraction to the amount paid. The deduction may be made in the tax period in which the payment was made to the insured, or to another person on behalf of the insured.

The insurer in this case must issue a document to the insured informing that person 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.

#### *The insured*

If the insured (being a vendor) receives an indemnity payment in the form of a monetary settlement as a result of a loss incurred in the course or furtherance of an enterprise, section 8(8) will deem the insured to make a taxable supply and output tax must be declared on the supply at the standard rate. The output tax must be declared in the tax period in which the payment<sup>3</sup> was received. However, no output tax is declared by the insured on an indemnity payment received (or part of it) in the following cases:

- If the indemnity payment is made in consequence of a claim made under a contract of insurance that is not subject to tax under section 7(1)(a).
- To the extent that the payment is made to a third-party supplier as consideration for the supply of goods or services being reinstated under the contract of insurance as contemplated in section 8(8A).
- To the extent that the payment relates to a loss of goods or services on which the insured (being a vendor) was denied an input tax deduction section 17(2) when those goods or services were acquired.

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<sup>2</sup> The deduction 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 a short-term (non-life) insurance policy.

<sup>3</sup> Output tax must be declared on the actual (net) amount received by the insured after any deductibles (excess) have been considered by the insurer.

### **3.7.3 Payment and receipt of indemnity payments (trade payments) – sections 8(8A) and 16(3)(a)**

#### *The insurer*

When a third-party supplier is contracted to reinstate goods or services to the insured as a result of a claim under a taxable contract of insurance, the third-party supplier is deemed to make a supply to each person that is liable to pay any part of the consideration in respect of said consideration. (That is, both the insurer and the insured.) The insurer will make an indemnity payment in the form of a trade payment to the third-party supplier to cover its part of the obligation. If the supply is taxable, the insurer will be entitled to a tax invoice reflecting that part of the consideration paid to supply the reinstated goods or services and a deduction may be claimed as a normal input tax deduction (subject to the usual documentary requirements and limitations in respect of the claiming of input tax).<sup>4</sup>

#### *The insured*

Following from what has been stated above, no deemed supply arises under section 8(8) in the hands of the insured whose goods or services are being reinstated. Therefore, no output tax is payable by the insured when a trade payment is made to the third-party supplier by the insurer on behalf of the insured.<sup>5</sup>

#### *The third-party supplier*

The third-party supplier is deemed to make a supply to both the insured and the insurer to the extent that each party has an obligation to make a payment towards the total consideration for the reinstated goods or services. As such, if the supply is taxable, a separate tax invoice must be issued to both the insurer and the insured reflecting the consideration paid or payable by each person. Output tax must be declared at the standard rate on each part of the consideration paid or payable.

## **3.8 Excess payments**

### **3.8.1 Monetary settlements – section 8(8)**

If the insured pays an amount of excess to the insurer as a result of a claim under a taxable contract of insurance (or the excess is deducted by the insurer from the amount of the claim) and a monetary payment is made by the insurer to settle the claim as contemplated in section 8(8), there is no input tax deduction for the insured.<sup>6</sup> No output tax is declared by the insurer in respect of the excess amount as it does not constitute consideration for any taxable supply and merely forms part of the calculation of the net monetary settlement to be paid.

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<sup>4</sup> Section 16(3)(a) will apply for insurers registered for VAT on the invoice basis of accounting which is usually the case.

<sup>5</sup> See proviso (ii) to section 8(8).

<sup>6</sup> This rule applies whether the monetary settlement is paid to the insured, or to another person on behalf of the insured.

### **3.8.2 Reinstatements – Insured pays the excess directly to the third-party supplier – section 8(8A)**

Under section 8(8A), if the third-party supplier of goods or services is a vendor and those goods or services are supplied to reinstate the insured under a contract of insurance, that vendor (the third-party supplier) is deemed to make a supply to each person that is liable to pay any part of the consideration in respect of said consideration. The third-party supplier must therefore 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. The insurer and the insured (being vendors) may each deduct their respective portions of input tax based on the tax invoices concerned.<sup>7</sup>

### **3.8.3 Reinstatements – Insurer acting on behalf of the insured pays the full consideration to the third-party supplier and recovers the excess from the insured – sections 8(8A), 54(2) and 54(3)**

Under section 8(8A), if the insurer acts on behalf of the insured as contemplated in section 54(2) by acquiring the reinstated goods and services, paying the excess amount to the third-party supplier and recovering the amount later from the insured, the same outcome as explained in **3.8.2** applies. However, the insurer is required to issue a statement to the insured containing the information specified in section 54(3) regarding the deemed supply made to the insured.

## **3.9 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.

## **3.10 Group personal accident insurance**

### **3.10.1 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.

### **3.10.2 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.

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<sup>7</sup> The insurer may make a normal input tax deduction under section 16(3)(a) as the special deduction under section 16(3)(c) does not apply in this case. Both the insurer and the insured may only deduct input tax to the extent that there is an obligation to pay part of the consideration for the supply made by the third-party. In either case, the deduction is only allowed to the extent that the input tax is incurred in the course or furtherance of carrying on an enterprise, is not input tax that is specifically denied, and is subject to the normal documentary requirements for deducting input tax. See for example, sections 16(2), 16(3), 17(1), 17(2) and 20.

### 3.10.3 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.

### 3.11 Intermediary services

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

- the insurance of goods or passengers transported internationally<sup>8</sup> under section 11(2)(d); or
- hull<sup>9</sup> 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 that is not a vendor (see 3.4).

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). (See 3.3.)

### 3.12 Tax invoices, credit and debit notes

#### 3.12.1 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” (as the case may be) 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 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.”

#### 3.12.2 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). However, the bordereau must reflect the other information as prescribed in sections 20(4) and 21(3) respectively.

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<sup>8</sup> See 3.2, 3.3, and 3.5.

<sup>9</sup> See 3.4.



### 3.13 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 (as the case may be) complying with sections 20(4), (5), 21(3) or the special approval set out in **3.12**, as applicable; and
- the insurer complying with all other requirements listed in Interpretation Note 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).

### 3.14 Conditions

#### 3.14.1 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 31 “Documentary Proof Required for the Zero-Rating of Goods and Services” (Interpretation Note 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 31.

#### 3.14.2 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 **3.12**) by the time the relevant VAT return is submitted. The deductions are subject to sections 16 and 17. Failure to obtain and retain the required documentary proof will result in the vendor not being entitled to make the deduction.

### 4. 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. However, paragraphs **3.7** and **3.8** are effective from 1 January 2024.

#### Senior Manager: Leveraged Legal Products SOUTH AFRICAN REVENUE SERVICE

Date of 1st issue : 26 March 2013  
Date of 2nd issue : 18 March 2016  
Date of 3rd issue : 24 March 2020