BINDING GENERAL RULING (VAT) 62 (Issue 2)

DATE: 25 October 2023

ACT: **VALUE-ADDED TAX ACT 89 OF 1991**
SECTION: **SECTIONS 2(1)(*f*) and 12(*a*)**
SUBJECT: **VALUE-ADDED TAX IMPLICATIONS OF SECURITIES LENDING ARRANGEMENTS**

Preamble

For the purposes of this ruling –

- **"BGR"** means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- **"instrument"** means "instrument", as defined in section 24J(1) of the Income Tax Act 58 of 1962;
- **"manufactured payment"** means any distribution in respect of a security which that lender would have been entitled to receive during the lending period had the securities lending arrangement not been entered into, for example, manufactured dividends and manufactured interest;
- **"scrip-lending fee"** means any amount paid by the borrower to the lender under a securities lending arrangement and includes a manufactured payment;
- **"security"** means a "security" as defined in section 1 of the Securities Transfer Tax Act 25 of 2007;
- **"securities lending arrangement"** means an arrangement under which a person lends any security or an instrument to another person and the borrower in return undertakes to return a security or an instrument of the same kind and of the same quality to the lender, whether or not such arrangement qualifies as a "lending arrangement" as defined in the STT Act;
- **"section"** means a section of the VAT Act;
- **"STT Act"** means the Securities Transfer Tax Act 25 of 2007;
- **"VAT"** means value-added tax;
- **"VAT Act"** means the Value-Added Tax Act 89 of 1991; and
- any word or expression bears the meaning ascribed to it in the VAT Act.

1. Purpose

This BGR clarifies the VAT consequences for the lender in respect of the consideration that the lender charges in terms of a securities lending arrangement.

2. Background

Practice Note 5/1999 “Tax Implications for Lending Arrangements in respect of Marketable Securities”, deals, in brief with, amongst others, the VAT consequences for a lender in respect of these arrangements. This BGR replaces the VAT content of said Practice Note. The VAT content of the Practice Note is withdrawn with effect from 1 April 2023.

3. Discussion

Section 2(1)(*f*) deems the activity of the provision of credit by any person under an agreement whereby money or money’s worth is provided to another person that agrees to repay in future, a sum or sums exceeding in total, the amount of such money or money’s worth, to be “financial services”.

Under a securities lending arrangement, the borrower is required to pay to the lender, a “scrip-lending fee” as *quid pro quo* for the use of the security or instrument during the period, in addition to returning a security or instrument of the same kind and of the same quality.

The proviso to section 2(1) states that the activity under section 2(1)(*f*) is not deemed to be a financial service to the extent that the consideration payable in respect of the financial service is any fee, commission, merchant’s discount or similar charge. However, in the case of a securities lending arrangement, the “scrip-lending fee” does not relate to any other service forming part of the activity of the securities lending arrangement. The fee is only a charge for the use of the security or instrument during the period and therefore represents the amount exceeding the money’s worth that was borrowed, much like interest. It does not relate to any other service, and therefore, the proviso to section 2(1) does not apply to the scrip-lending fee.

The transfer of ownership of the security or instrument is not an independently cognisable supply of goods in the form of the security or the instrument. It is rather considered necessary to give effect to the provision of money’s worth to be part of the activity envisaged under section 2(1)(*f*). This also applies to the return of the security or instrument at the end of the lending period.

Based on the above, the securities lending arrangement whereby the security or instrument, being monies worth, is provided to another person who further agrees to pay a scrip-lending fee in respect of the securities lending arrangement, falls within the ambit of section 2(1)(*f*). Therefore, the scrip-lending fee constitutes consideration in respect of an exempt supply, and is not subject to VAT.

Vendors that continue to charge VAT on any scrip-lending fee on or after 1 April 2023 as a result of existing contractual arrangements, are required to account for the VAT accordingly [refer to section 31(1)(*e*)]. However, should the provisions of section 21 be met, credit notes may be issued, and adjustments made under section 21(2), read with section 16(3)(*a*)(v), (*b*)(iii) and 16(2)(*a*).

The issuing of credit notes in respect of securities lending arrangements made before 1 April 2023 would be contrary to the “practice generally prevailing” contemplated in sections 1 and 5 of the Tax Administration Act 28 of 2011, read with the definition of “official publication” in section 1 of that Act.

4. Ruling

Securities lending arrangements constitute “financial services” envisaged in section 2(1)(*f*), the supply of which is exempt under section 12(*a*). The scrip-lending fee due by the borrower constitutes consideration for an exempt supply, and is therefore not subject to VAT.

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

5. Period for which this ruling is valid

This BGR applies with effect from 1 April 2023, and is valid until it is withdrawn, amended or the relevant legislation is amended.

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