South African Revenue Service

BINDING GENERAL RULING (VAT) 68

DATE: 1 December 2023

ACT: **VALUE-ADDED TAX ACT 89 OF 1991**

SECTION: **SECTIONS 16(2)(*g*) and 72**

SUBJECT: **ACCEPTABLE DOCUMENTATION FOR INPUT TAX ON UPWARD ADJUSTMENTS ON IMPORTS**

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;
- **"CEB01"** means a Customs and Excise Billing Declaration;
- **"Customs and Excise Act"** means Customs and Excise Act 91 of 1964;
- **"SAD 500"** means the Single Administration document 500 form;
- **"SARS"** means the South African Revenue Service;
- **"VAT Act"** means the Value-Added Tax Act 89 of 1991;
- **"VOC"** means voucher of correction;
- any other word or expression bears the meaning ascribed to it in the VAT Act.

1. Purpose

This BGR sets out the documentation acceptable to the Commissioner to substantiate an input tax deduction on an upward pricing adjustment in respect of goods previously imported into the Republic.

2. Background

SARS is often asked to make a retrospective adjustment of a vendor's customs duty values for a prior period to rectify the customs duty values incorrectly declared and bring the additional import VAT and customs duties to account. Importers that realise that they have submitted an invalid entry or an entry that does not in every respect comply with section 39 of the Customs and Excise Act, have an obligation under section 40(3) of the said Act to correct any incorrect particulars declared on the entry by means of a VOC. In this regard some vendors submit a CEB01 form to effect the amendment to the original declaration.

3. Discussion

Under section 16(3)(*a*)(iii), a vendor may deduct the VAT incurred on the upward pricing adjustments in relation to the goods acquired by it from a supplier and imported into the Republic during a prior period, provided –

- the VAT incurred falls within the ambit of paragraph (*a*)(ii) of the definition of "input tax" in section 1(1) in relation to the vendor;
- the goods have been released under the Customs and Excise Act; and
- the said deduction complies with all other requirements for the deduction of "input tax" set out under sections 16, 17 and 20.

At the time of making the deduction, referred to above, the vendor must be in possession of a customs release notification[1] to prove that the goods have been released for customs purposes and, under section 16(2)(*d*), hold a bill of entry or other prescribed documents (such as a VOC) under the Customs and Excise Act together with the receipt of payment for the VAT, in order to substantiate the deduction.

The CEB01 in the vendor's possession does not fall within the ambit of the customs documentary proof and therefore the vendor cannot substantiate the deduction based on the said documentation for purposes of section 16(2)(*d*).

Acceptable documentary proof

Having regard to the above, the Commissioner is satisfied that –

- a vendor has, under section 16(2)(*g*)(ii)(*aa*), taken reasonable steps to account for the VAT with SARS Customs where it obtained the prescribed documentary proof required under section 16(2)(*d*) when the goods were originally imported but was unable to obtain the required documentation for the upward pricing adjustments due to the utilisation of a CEB01 form; and
- no other provision of the VAT Act can be applied to satisfy the Commissioner that the documentation in the vendor's possession is acceptable for purposes of making a deduction.

Decisions under section 72

Section 72 makes provision for the Commissioner to make a decision to a vendor or class of vendors to overcome difficulties, anomalies or incongruities that have arisen or may arise in regard to the application of any of the provisions of the VAT Act. The Commissioner may therefore only invoke the provisions of section 72 where he is satisfied that there is a difficulty, anomaly, or incongruity that exists. Furthermore, a decision made under this section to overcome such difficulty, anomaly, or incongruity must not –

- have the effect of reducing, or increasing the liability for tax levied under the VAT Act; or
- be contrary to the construct and policy intent of the VAT Act as a whole or any specific provision in the VAT Act.

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[1] That is, the 'EDI Customs Status 1 Release Message'.

It is evident, given the construct of the VAT Act, that the legislator intended to allow the vendor a deduction of the "input tax" on VAT declared under section 7(1)(*b*) at the time goods are imported and on any subsequent adjustments based on the wording of section 16(2)(*d*).

The legislator did not, however, envisage that vendors may experience difficulties regarding the required documentation and be rendered unable to obtain the necessary documentary proof to substantiate the input tax deduction for purposes of section 16(2)(*d*).

The Commissioner generally accepts the documentation under section 16(2)(*g*) which, however, necessitates that the vendor requests a ruling from the Commissioner to confirm the acceptance of the alternative documentation acceptable to the Commissioner. Therefore, waiving the requirement for each vendor to request a ruling from the Commissioner where the vendor is in possession of the acceptable documentation as set out below to substantiate the input tax deduction will not have the effect of –

- reducing or increasing the liability for tax levied under the VAT Act; or
- be contrary to the construct and policy intent of the VAT Act as a whole or any specific provision in the VAT Act.

Prescription in respect of the deduction of input tax

Section 13(6) provides that the provisions of the Customs and Excise Act relating to, amongst others, the importation and clearance of goods and the payment of duty, apply *mutatis mutandis* as if enacted in the VAT Act. This applies regardless of whether any customs duty is levied.

The term "entry for home consumption" is defined in section 1 of the Customs and Excise Act to include an entry under any item in Schedule 3, 4 or 6 to the Customs and Excise Act. The Customs and Excise Act further defines "home consumption" to mean the consumption or use in the Republic.

Based on the above, in the case of the importation of the goods in question, proviso (i)(*bb*) to section 16(3) provides that any vendor that is entitled under section 16(3)(*a*)(iii) to deduct any input tax in respect of any tax period, may deduct that amount from the amount of output tax attributable to a later tax period that ends no later than five years after the end of the tax period during which the goods were entered for home consumption under the Customs and Excise Act.

4. 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 **4.1** and **4.2**.

4.1 Section 72

An arrangement is made under section 72 that a vendor is not required to apply for a specific ruling as required under section 16(2)(*g*) in relation to transactions to which this BGR applies.

4.2 Section 16(2)(*g*)

The Commissioner hereby exercises his discretion under section 16(2)(*g*) to allow a vendor a deduction of the "input tax" in respect of the upward pricing adjustments of goods acquired by it from a supplier and imported into the Republic based on the vendor being in possession of the following documentation when the VAT return containing such a deduction is submitted to SARS:

- SAD 500
- Electronic Data Interchange form
- Invoices received by the vendor in respect of the adjustment
- Letter disclosing the upward pricing adjustment to SARS and application to bring VAT and duties to account
- Letter of demand and permission letter to make adjustments, issued by SARS
- CEB01 form
- Proof of payment of the import VAT in respect of the upward pricing adjustment paid to SARS

The deduction referred to above –

- must be within the five-year prescription period provided for in proviso (i)(*bb*) to section 16(3); and
- may only be made in the tax period during which this ruling was issued or any subsequent tax period thereafter.

5. Period for which this ruling is valid

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

Senior Manager: Leveraged Legal Products
SOUTH AFRICAN REVENUE SERVICE