

BINDING GENERAL RULING (VAT) 63

DATE: 20 January 2023

ACT : VALUE-ADDED TAX ACT 89 OF 1991

SECTIONS : SECTION 20(8A)(c)

SUBJECT : FURTHER PARTICULARS PRESCRIBED BY THE COMMISSIONER UNDER SECTION 20(8A)(c)

Preamble

For the purposes of this ruling –

- “**BGR**” means binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- “**debtor**” means a lessee or purchaser of goods under an ICA;
- “**creditor**” means a lessor or seller of goods under an ICA that is a registered vendor;
- “**ICA**” means an “instalment credit agreement” as defined under section 1(1);
- “**NC Act**” means the National Credit Act 34 of 2005;
- “**section**” means a section of the VAT Act;
- “**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 further particulars prescribed by the Commissioner under section 20(8A)(c) that the creditor must obtain to deduct input tax in instances in which a debtor makes a deemed supply to the creditor (not being a taxable supply) of goods repossessed or surrendered under section 8(10).

2. Background

Section 8(10) deems a repossession or surrender of goods that were initially supplied by a creditor to a debtor under an ICA, to be a supply by the debtor to the creditor at the time prescribed under section 9(8)¹ and for a consideration in money as set out under section 10(16).²

¹ The time of supply is deemed to be the day on which the goods are repossessed or surrendered or, in the case that the debtor may under any law be reinstated in the debtor’s rights and obligations under such agreement, the day after the last day of any period during which the debtor may under such law be so reinstated.

² The balance of the “cash value” of the goods outstanding on the date the supply is deemed to be made by the debtor to the creditor, subject to certain conditions.

In the event that the repossessed or surrendered goods were not used by the debtor in the course or furtherance of an enterprise before such repossession or surrender of such goods, or the debtor is not a vendor, the creditor is entitled to a “notional input tax” deduction under section 16(3)(a)(i) or (b)(iii), respectively, read with paragraph (c) of the definition of “input tax” in section 1(1). The purpose of this deduction is to enable the creditor to recoup some of the output tax declared at the time the goods were initially supplied under the ICA and is subject to compliance with the documentary requirements under section 16(2)(c).

3. Discussion

Section 16(2)(c) provides that the creditor may not make the abovementioned input tax deduction unless certain records are maintained by that creditor as required under section 20(8A).

Section 20(8A) requires the creditor to maintain sufficient records to enable the following particulars to be ascertained where a deemed supply (not being a taxable supply) is made to the creditor by the debtor under section 8(10):

- The particulars prescribed under section 20(8A)(a) and (b).
- Any further particulars in the form and manner to be prescribed by the Commissioner under section 20(8A)(c).

The creditor must maintain and retain the relevant records in accordance with section 55, read with Part A of Chapter 4 of the Tax Administration Act 28 of 2011.

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**, **4.2**, and **4.3**.

4.1 Particulars relating to the debtor and the cash value

The following further particulars prescribed by the Commissioner under section 20(8A)(c) apply to instances in which a debtor is deemed to make a supply to a creditor in the case of a surrender or repossession of goods, and are as follows:

4.1.1 Debtor is not a vendor

- Proof that, at the time that the repossession or surrender takes place, the debtor is not a vendor. This confirmation can be contained in any written correspondence obtained during the repossession or surrender process; **or**
- Written confirmation from the debtor that the debtor is not a registered vendor at the time of entering into the ICA as contained in either the debtor's application, the ICA agreement or any other correspondence; and
- Written communication from the creditor informing the debtor of the latter's obligation to disclose any change of that debtor's VAT registration status. This must be contained in the debtor's application, the ICA or any other correspondence.

4.1.2 Debtor is a vendor

- Proof that, at the time of repossession or surrender, the debtor is a vendor that used the goods other than for purposes of making taxable supplies. This confirmation can be obtained in any written correspondence obtained during the repossession or surrender process; **or**
- Written confirmation that the debtor (being a vendor) acquired the goods other than for purposes of making taxable supplies, at the time of entering into the ICA, as contained in either the debtor's application, the ICA or any other correspondence; and
- Written communication from the creditor informing the debtor of the latter's obligation to disclose to the creditor if the goods are subsequently applied for the purposes of making taxable supplies. This must be contained in the debtor's application, the ICA or any other correspondence.

4.1.3 Outstanding cash value

Proof of the outstanding "cash value"³ amount deemed under section 10(16) to be the consideration for the supply made under section 8(10) at the time of supply under section 9(8). The outstanding cash value must be contained in a system generated statement setting out the "cash value" at the time of the supply, being –

- the day on which the goods are repossessed or surrendered; or
- in the case that the debtor's rights and obligations under the ICA may be reinstated under any law, the day following the last day of any period during which the debtor may be legally reinstated.

4.2 Surrender

In the case of a surrender, the following particulars are required, in addition to those in 4.1.1 or 4.1.2 (as the case may be) and 4.1.3:

- A copy of the written notice to terminate the agreement required to be issued by the debtor to the creditor under section 127(1)(a) of the NC Act or any other applicable statute; or
- The relevant terms and conditions as agreed upon in the ICA.

4.3 Repossession

In the case of a repossession, the following particulars are required, in addition to those in 4.1.1 or 4.1.2 (as the case may be) and 4.1.3:

- A copy of the written notice required to be issued by the creditor to the debtor under sections 86(10) or 129(1)(a) of the NC Act, or any other applicable statute, or the relevant terms and conditions as agreed upon in the ICA, and
- A copy of the relevant court order for the attachment of the goods.

³ See the definition of "cash value" under section 1(1).

5. Period for which this ruling is valid

This BGR applies from 1 January 2023 until it is withdrawn, amended or the relevant legislation is amended.

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