



SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 053

DATE: 16 October 2009

ACT : VALUE-ADDED TAX ACT, NO. 89 OF 1991 (the VAT Act)
SECTION : SECTION 1, DEFINITION OF “ENTERPRISE” AND “INPUT TAX” AND SECTIONS 10(4) AND (23), 16(3) AND 18(1)
SUBJECT : VALUE-ADDED TAX IMPLICATIONS ARISING FROM THE CONSTRUCTION OF BUILDINGS BY AN ENTITY AND THE SUBSEQUENT DONATION OF SUCH BUILDINGS TO ANOTHER ENTITY

1. Summary

This ruling deals with the value-added tax (VAT) implications arising from the construction of buildings by an entity and the subsequent donation thereof to an entity referred to in section 18A(1)(c) of the Income Tax Act, No. 58 of 1962 (the Income Tax Act).

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 41A of the VAT Act, read with section 76Q of the Income Tax Act.

In this ruling legislative references to sections are to sections of the VAT Act applicable as at 15 October 2008 and, unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the relevant Act.

This ruling has been requested under the provisions of –

- section 1, definition of “enterprise” and “input tax”; and
- sections 10(4), and (23), 16(3) and 18(1).

3. Parties to the proposed transaction

The Applicant: Company A

The Recipient: An entity that is exempt from the payment of VAT

4. Description of the proposed transaction

The Applicant made a commitment to the Recipient to construct specific buildings and, subsequent thereto, to donate these buildings to the Recipient. The commitment is recorded in the “Draft Deed of Donation”.

To fulfil this commitment, the Applicant will appoint an independent property development company, DevCo, to act either as the project manager or as the main contractor for the construction of these buildings.

If DevCo is appointed as project manager, the Applicant will pay a fee to DevCo for its services and will also pay the contractors with whom DevCo will contract on behalf of the Applicant.

If DevCo is appointed as main contractor, the Applicant will only pay a fee to DevCo for its services. DevCo will be required to contract with subcontractors in its own name and pay the relevant subcontractors.

It is a requirement, as stipulated in the Draft Deed of Donation, that the buildings are to be constructed following the construction method and using building materials as specified in the deed.

The Applicant will not only pay the service providers for the construction of these buildings, but will also donate certain building materials required for the construction of these buildings.

The Draft Deed of Donation provides for, amongst others, the following –

- that no consideration will be payable by the Recipient, in respect of the donation to be made by the Applicant;
- that the donation to be made by the Applicant will fall within the ambit of section 18A(1)(c) of the Income Tax Act;
- that the Recipient shall acknowledge the donation made by the Applicant in its financial statements and annual report; and
- that the Recipient shall acknowledge the donation by prominently displaying a sign at the entrance to each building and will allow the Applicant to display a permanent plaque on each building.

The Recipient is neither registered as a vendor as defined in section 1, nor has the Minister of Finance made a determination that the Recipient is required to register as a vendor.

5. Conditions and assumptions

This ruling is made subject to the following conditions and assumptions –

- that the Recipient is not a vendor for VAT purposes; and

- that the degree of acknowledgement by the Recipient, with regard to the donation to be made by the Applicant, will be limited to that mentioned in the respective clauses in the Draft Deed of Donation.

6. Ruling

The ruling made in connection with the proposed transaction is as follows:

- The Recipient will not be required to account for VAT on the receipt of the donation of the buildings, because the Recipient is not a vendor and will not make any taxable supply to the Applicant in respect of which it will receive the donation as consideration.
- The Applicant will not be required to levy and account for VAT on the donation to be made to the Recipient, as the supply of the buildings by way of a donation is to be made for no consideration, and the value of the supply is deemed to be nil in terms of section 10(23).
- The Applicant will be entitled to claim the VAT once incurred on the construction costs of the buildings as input tax in terms of section 16(3)(a), read with the definition of “input tax” in section 1 and subject to sections 16(2), 17 and 20.
- The Applicant will not be required to make an adjustment with regard to the building materials to be donated for the construction of these buildings in terms of section 18(1).

7. Period for which this ruling is valid

This binding private ruling is valid for the period as from 15 October 2008 until the proposed transaction, if put in place, has been completed and all the buildings as envisaged in the Draft Deed of Donation, have been delivered to the Recipient.

Issued by:

Legal and Policy Division: Advance Tax Rulings
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