South African Revenue Service

BINDING GENERAL RULING (VAT) 55

DATE: 10 September 2020

ACT : VALUE-ADDED TAX ACT 89 OF 1991
SECTION : SECTIONS 18(1) AND 18B(3)
SUBJECT : SALE OF DWELLINGS BY FIXED PROPERTY DEVELOPERS FOLLOWING A CHANGE IN USE ADJUSTMENT UNDER SECTION 18(1) or 18B(3)

Preamble

For purposes of this ruling –

- **"BGR"** means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011; and
- **"BGR 48"** means Binding General Ruling (VAT) 48 "The Temporary Letting of Dwellings by Developers and the expiry of section 18B";
- **"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 clarifies the VAT consequences of the sale of fixed property consisting of dwellings, by a developer, pursuant to such dwellings being deemed to have been supplied by the developer under section 18(1) or 18B(3).

2. Background

Under section 18(1), a vendor that changes the use or application of goods or services from a wholly or partly taxable purpose to a wholly non-taxable purpose, is deemed to have made a taxable supply in the course or furtherance of the vendor's enterprise. As a consequence, developers that applied their fixed property for letting as a result of adverse economic factors, became liable to make an output tax adjustment under section 18(1).

Section 18B came into operation on 10 January 2012 in order to provide temporary relief to developers that –

- constructed, extended or improved dwellings for the purpose of sale; and
- subsequently applied such dwellings for exempt supplies under section 12(*c*)(i), namely, supplying accommodation in a dwelling under an agreement for the letting and hiring thereof, on a temporary basis.

The temporary relief was initially intended to expire on 1 January 2015. However, the relief period was extended until 31 December 2017.

BGR 48 clarified the circumstances in which section 18B applies, the period in which a developer is required to make a change in use adjustment, as well as the effect of the cessation of section 18B on dwellings let temporarily for the first time on or after 1 January 2018. Developers were alerted to the following VAT implications in BGR 48:

- A developer, that developed dwellings for sale but subsequently applied one or more of such dwellings for temporarily letting during the relief period, must account for the output tax adjustment based on the open market value of each dwelling concerned in the tax period during which the 36-month period ends. The 36-month period is calculated from the date that any agreement for the temporary letting of the dwelling concerned was entered into for the first time from 10 January 2012 until 31 December 2017.
- Where the 36-month period expires after 31 December 2017 and the property was not permanently applied for non-taxable purposes, the developer must account for the output tax in the tax period falling on the date when the 36-month period expires. For example, a developer that applied a dwelling for temporarily letting for the first time on 31 December 2017, must account for the output tax adjustment in the tax period within which the 31st of December 2020 falls.
- Should any of the dwellings be applied permanently for non-taxable purposes during the relief period, the developer is required to account for the output tax adjustment in the tax period in which the specific dwelling is applied permanently for non-taxable purposes.
- As section 18B expired on 31 December 2017, any dwelling that is temporarily let for the first time from 1 January 2018 will not qualify for the relief under section 18B. Developers that let dwellings for the first time, in terms of an agreement entered into on or after 1 January 2018, are required to account for the output tax adjustment under section 18(1).

On the basis that section 18B ceased on 1 January 2018, developers that let dwellings that were held for sale, in terms of an agreement entered into for the first time, on or after 1 January 2018, are required to account for the output tax adjustment under section 18(1).

Developers that have not accounted for the aforementioned output tax adjustments in the relevant tax periods, are liable to be assessed for the VAT, penalties and interest levied under the VAT Act and the Tax Administration Act 28 of 2011, respectively. In order to ensure compliance, developers are encouraged to remedy their tax affairs by means of voluntary disclosure, where they have failed to make the required VAT adjustment in past tax periods.

3. Ruling

The subsequent sale of a dwelling in respect of which the developer was required to have declared the deemed supply under section 18(1) or 18B(3), is not subject to VAT. The purchaser will be liable for transfer duty on the acquisition of such dwelling.

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

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.

Head: Leveraged Legal Products
SOUTH AFRICAN REVENUE SERVICE