

BINDING GENERAL RULING (VAT): NO. 32

DATE: 18 March 2016

ACT : VALUE-ADDED TAX ACT NO. 89 OF 1991
SECTION : SECTIONS 1(1), 7, 8, 9, 11, 16, 20 AND 21
SUBJECT : VAT TREATMENT OF SPECIFIC SUPPLIES IN THE SHORT-TERM REINSURANCE INDUSTRY

Preamble

For the purposes of this ruling, unless the context indicates otherwise –

- **“BGR”** means a binding general ruling issued under section 89 of the Tax Administration Act No. 28 of 2011;
- **“bordereau”** means a document issued by a cedent, intermediary or reinsurer in the form of a memorandum, statement or invoice which contains detailed information such as –
 - reinsurance premiums collected;
 - claims paid; and
 - fees and commission payable in respect of intermediary services supplied;
- **“cedent”** means the short-term insurer that reinsures part, or all, of its claims risk associated with insurance policies held;
- **“cedent commission”** means the amount paid or payable by a reinsurer to the cedent in terms of a reinsurance contract;
- **“claims risk”** means the risk of the cedent incurring a loss as a result of paying a claim submitted by its client under a policy of insurance;
- **“facultative reinsurance”** means the reinsurance of a single risk or a defined package of risks which are individually underwritten by the reinsurer;
- **“indemnity payment”** means a cash payment made under a contract of reinsurance by the reinsurer to the cedent to indemnify the cedent in respect of a reinsured claims risk;
- **“intermediary”** means the reinsurance broker who serves as agent of the reinsurer to facilitate reinsurance contracts;
- **“intermediary services”** has the meaning assigned thereto in section 1 of the Financial Advisory and Intermediary Service Act No. 37 of 2002 and includes the management and administration of a policy as well as the collection of premiums and processing of claims on behalf of the cedent or reinsurer;
- **“inward reinsurance”** means the acceptance of any reinsurance risk by a South African reinsurer under a contract with a non-resident cedent;

- “**local reinsurance**” means reinsurance services supplied by a South African reinsurer to a South African cedent;
- “**non-proportional treaty reinsurance**” is also known as excess reinsurance and involves the reinsurer bearing risk once the cedent’s loss exceeds an agreed threshold;¹
- “**proportional treaty reinsurance**” is treaty reinsurance which involves the proportional sharing of risk;
- “**recoveries**” means any amount paid or payable by a cedent to a reinsurer, in accordance with a reinsurance contract, through the exercising of the cedent’s right of subrogation or the sale of salvaged insured goods;
- “**reinsurance**” means short-term insurance in terms of which the cedent reinsures part, or all, of its claims risk associated with insurance policy documents with a reinsurer. For purposes of this BGR, reinsurance includes retrocession, facultative and treaty reinsurance;
- “**reinsurance contract**” means a document which is evidence of a contract of reinsurance, including any renewal notice, premium notification, slip, certificate or endorsement in respect thereof;
- “**reinsurance premium**” means the consideration paid or payable by the cedent to the reinsurer in respect of a supply of reinsurance service;
- “**reinsurer**” means the person that supplies short-term reinsurance to a cedent under a reinsurance contract;
- “**retrocession**” means an agreement in terms of which a reinsurer transfers reinsured risks to another reinsurer;
- “**section**” means a section of the VAT Act;
- “**treaty reinsurance**” means reinsurance provided under a pre-negotiated agreement between the cedent and the reinsurer in terms of which the cedent agrees to cede all risks within a defined class or classes to the reinsurer and, in return, the reinsurer agrees to provide reinsurance on all risks ceded without individual underwriting.
- “**VAT**” means value-added tax;
- “**VAT Act**” means the Value-Added Tax Act No. 89 of 1991; and
- any other word or expression bears the meaning ascribed to it in the VAT Act.

1. Purpose

This BGR deals with the following:

- Taxable supplies made by reinsurers, cedents and intermediaries.
- Reinsurance claims and recoveries.
- The time of supply in relation to the supply of short-term reinsurance, intermediary services and cedent services.

¹ Reinecke MFB et al *General Principles of Insurance Law* (2002) LexisNexis in paragraph 526.

- Information to be reflected on a tax invoice, debit and credit note as contemplated in sections 20(7) and 21(5) respectively, in respect of the supply of short-term reinsurance, cedent services and the related intermediary services.
- Approval to issue recipient-created tax invoices, debit and credit notes.

It is recommended that this BGR is read in conjunction with the *VAT 421 – Guide for Short-Term Insurance*.

2. Ruling

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act No. 28 of 2011.

2.1 Reinsurance premiums

The taxable supply of reinsurance by a local reinsurer to a non-resident cedent is subject to VAT at the zero rate under section 11(2)(l).

2.2 Cedent commission

The supply of cedent services to a non-resident reinsurer may be zero-rated under section 11(2)(l), provided the requirements of that section are met.

2.3 Indemnity payments

A reinsurer's deduction in respect of indemnity payments under section 16(3)(c), must be reduced by the tax fraction of any recoveries received from the South African cedent during that tax period.

A cedent's output tax liability in respect of indemnity payments received during a tax period is determined by applying the tax fraction to the total value of indemnity payments received during the tax period less any recoveries paid to a VAT-registered reinsurer during that tax period.

2.4 Recoveries

A reinsurer is not liable to account for output tax on recoveries received to the extent the amount is offset against indemnity payments made by the reinsurer as contemplated in **2.3**.

The cedent may not deduct the tax fraction of recovered amounts paid to a reinsurer to the extent this amount is offset against indemnity payments received.

2.5 Time of supply

2.5.1 Supply of short-term reinsurance

The reinsurance contract or any other document disclosing the premium amount without imposing an obligation to make payment is not regarded as an invoice.

Facultative and non-proportional treaty reinsurance

Facultative and non-proportional treaty reinsurance are deemed, under section 9(1), to be supplied at the earlier of the time a bordereau is issued or consideration is received in respect of that supply, unless the reinsurance contract requires the premiums to be paid periodically. In this instance, the reinsurance services are,

under section 9(3)(a), deemed to be successively supplied when (and to the extent) that the premiums become due or are received, whichever is earlier.

Proportional treaty reinsurance

The time of supply in respect of the supply of proportional treaty reinsurance is, under section 9(4)(b), when and to the extent that any payment in terms of the reinsurance contract is due or is received, or the bordereau relating to that supply is issued by the supplier or the recipient, whichever is earliest.

2.5.2 Supply of intermediary or cedent services

The supply of intermediary and cedent services is deemed to take place, under section 9(1), at the earlier of the time payment is received or an invoice (including a bordereau referred to in **2.6**) is issued in respect of that service.

2.6 Tax invoices, credit and debit notes

The Commissioner directs under sections 20(7)(a) and 21(5)(a), that the document (generally known as a bordereau) issued by the reinsurer, cedent or intermediary in respect of the supply of reinsurance, intermediary and cedent services does not have to contain the words “tax invoice”, “VAT invoice”, “invoice”, “credit note” or “debit note”, as the case may be, provided the document reflects all the other information as required by section 20(4) or 21(3).

In the case of local reinsurance, the bordereau must contain the following statement (or substantially similar wording) confirming the Commissioner’s direction under section 20(7) and 21(5), as the case may be:

“In terms of Binding General Ruling No. 32 this document constitutes a tax invoice, debit note or credit note as contemplated in sections 20(7)(a) and 21(5)(a) of the VAT Act respectively.”

Intermediaries are, under section 20(1), required to issue tax invoices in respect of any other taxable supplies made to their clients, unless these supplies are reflected in the relevant bordereau.

2.7 Recipient-created tax invoices, credit and debit notes

Reinsurers, intermediaries, reinsurance brokers and cedents that are required to determine the consideration payable in respect of reinsurance, intermediary or cedent services may, under sections 20(2) and, where applicable, 21(4), issue recipient-created tax invoices, credit and debit notes. This decision is on condition that the recipient of the services complies with the requirements of Interpretation Note No. 56 “Recipient-Created Tax Invoices, Credit and Debit Notes” and that the bordereau contains the information stipulated in **2.6**.

2.8 Conditions

2.8.1 Zero rating

The zero rating of supplies contained in this BGR is conditional upon the reinsurer, cedent or intermediary (as applicable) obtaining and retaining the documentary proof as provided for under section 11(3) read with Interpretation Note No. 31 “Documentary Proof Required for the Zero-Rating of Goods and Services” (Interpretation Note No.31). Failure to obtain and retain the required documentary

proof within the required time period will result in the vendor being required to make the relevant adjustments as stipulated in Interpretation Note No.31.

2.8.2 Input tax and other deductions

The statements contained in this BGR regarding input tax and other deductions are conditional upon the vendor obtaining and retaining the documentary proof contemplated in section 16(2) (including the bordereau referred to in **2.6**) by the time the relevant VAT return is submitted. Failure to obtain and retain the required documentary proof will result in the vendor not being entitled to the deduction.

3. Period for which this ruling and decision are valid

This BGR is effective in respect of policy documents entered into on or after 1 June 2016. The following paragraphs will however only apply from 1 September 2016:

- **2.6** to the extent of the statement to be reflected on the bordereau.
- **2.7** to the extent of the written agreement regarding recipient-created tax invoices, debit and credit notes to be reflected on the bordereau as are required by Interpretation Note No.56.

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

To the extent that this BGR does not provide for a specific scenario in respect of the supply of short-term reinsurance, vendors may apply for a VAT ruling or VAT class ruling in writing by sending an e-mail to **VATRulings@sars.gov.za** or by facsimile to 086 540 9390. In this regard a clearly motivated application complying with the provisions of section 79 of the Tax Administration Act No. 28 of 2011 excluding section 79(4)(f) and (k) and (6), must be submitted.

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