

BINDING GENERAL RULING (VAT) 48

DATE: 25 July 2018

ACT : VALUE-ADDED TAX ACT 89 OF 1991
SECTION : SECTION 18B
SUBJECT : THE TEMPORARY LETTING OF DWELLINGS BY DEVELOPERS AND THE EXPIRY OF SECTION 18B

Preamble

For the purpose of this ruling –

- “**BGR**” means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- “**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 provides clarity on the VAT treatment of residential fixed properties consisting of dwellings (the dwellings) which were developed for the purpose of sale, but were subsequently temporarily let by the residential fixed property developers (the developers). Clarity is also provided in respect of the cessation of section 18B. This BGR applies to all dwellings that were let temporarily by the developer for the first time during the period falling on or after 10 January 2012 until 31 December 2017 (the relief period).

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. The time of supply under section 9(6) is deemed to be the time that the change in application occurs. The consideration for the supply under section 10(7) is deemed to be equal to the open market value of the goods or services. The effect of this is that the vendor is required to make an output tax adjustment calculated by applying the tax fraction of the open market value when the change in application occurs. In this regard, the developers that applied their residential property stock for letting as a result of adverse economic factors became liable to make an output tax adjustment under section 18(1).

3. Application of the law

Section 18B – Temporary relief

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

- developed new dwellings for the purpose of sale; and
- subsequently applied such dwellings for exempt supplies under section 12(c)(i) (supplying accommodation in a dwelling under an agreement for the letting and hiring thereof).

At commencement, the application of section 18B was to cease on 1 January 2015 but was, with effect from 10 January 2012, extended for an additional period of three years and ceased to apply on 1 January 2018. The effect of this is that the application of section 18B was extended to apply to the change in use of the dwellings which occurred for the first time during the period falling on or after 1 January 2015 until 31 December 2017.

Section 18B(2) – Suspends the application of section 18(1) during the relief period

Under section 18B(2), the developer is deemed not to have made a taxable supply, when the property is applied under an agreement for letting as contemplated in section 12(c)(i). The effect of section 18B(2) is that the output tax adjustment that would otherwise have arisen under section 18(1) is suspended during the relief period. As a result, during the relief period, the developer is not required to make an output tax adjustment at the time that the actual change in application occurs.

Section 18B(3) – Value of the supply and new time of supply

Section 18B(3) deems the developer to have supplied the dwelling concerned by way of a taxable supply for a consideration equal to the open market value thereof as contemplated in section 10(7) at the earlier of –

- the expiry of the 36-month period after concluding the letting agreement which resulted in the change in application (the 36-month period); or
- the date on which the developer permanently applies the property for a non-taxable purpose.

The 36-month period applies per property, from the date it is first let out, and not per rental agreement. It is also a maximum period during which the particular dwelling may be subject to a temporary letting arrangement without invoking the adjustment contemplated in section 18B(3). The effect of this is that the developer is required to make an output tax adjustment calculated by applying the tax fraction of the open market value of the property at the time that the supply is deemed to be made, being the earlier of the end of the prescribed period of 36 months or the time that the dwelling is applied permanently for non-taxable purposes.

4. Ruling

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 31 December 2020 falls.

Should any of the such 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 such dwelling that is temporarily let from 1 January 2018 no longer qualifies for the relief previously provided under that provision.

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

5. Period for which this ruling is valid

This BGR is effective from date of issue and applies to all properties temporarily let for the first time during the period falling on or after 10 January 2012 until 31 December 2017.

Any ruling that would, but for this BGR, continue to be effective on or after the effective date of this BGR, is withdrawn from the effective date of this BGR.

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