BINDING GENERAL RULING (VAT): NO. 12

DATE: 22 March 2013

ACT : VALUE-ADDED TAX ACT, NO. 89 OF 1991 (the VAT Act)

SECTION : SECTION 1(1), DEFINITION OF "INPUT TAX"

SUBJECT : INPUT TAX ON THE ACQUISITION OF A NON-TAXABLE SUPPLY OF SECOND-HAND MOTOR VEHICLES BY MOTOR DEALERS

Preamble

For the purposes of this ruling –

- **"BGR"** means a binding general ruling issued under section 89 of the TA Act;
- **"section"** means a section of the VAT Act unless otherwise stated;
- **"TA Act"** means the Tax Administration Act No. 28 of 2011; and
- **"the Guide"** means *Value-Added Tax Guide for Motor Dealers (VAT 420)*.

1. Purpose

This BGR reproduces the statement in paragraph 7.3 of the *Value Added Guide for Motor Dealers (VAT 420)* under the heading "Over-allowances: Notional Input Tax and Open Market Value", which comprises a BGR under section 89 of the TA Act.

2. Background

The Guide, issued during March 2009, deals with the VAT implications arising from the supply by motor dealers being vendors, of motor cars and other vehicles. This BGR updates references to section 76P of the Income Tax Act No. 58 of 1962 with references to the TA Act and incorporates subsequent amendments to sections of the VAT Act.

3. Ruling

Where a motor dealer pays an amount to a customer in excess of the generally accepted trade-in market value reflected in the Auto Dealer's Guide of a second-hand motor vehicle, the difference between this value and the amount credited or paid to the customer is referred to as an "over-allowance". The effect of paying an "over-allowance" is that in terms of paragraph (*b*) of "*input tax*" and "*open market value*" as defined in section 1(1), the open market value is less than the consideration paid to the customer. Consequently, the notional input tax to which the dealer is entitled is limited to the tax fraction of the open market value of the vehicle traded-in.

In cases where the trade-in is an integral part of another transaction involving the supply of a new vehicle to the same customer by the same motor dealer, the overall position for the motor dealer is the same with regard to the VAT payable if –

- the generally accepted trade-in value (i.e. open market value) of the second-hand motor vehicle is paid and a discount is granted to the customer on the new vehicle; or
- a so-called "over-allowance" is paid to the customer on the second-hand motor vehicle traded-in, and no discount (or a very small discount) is granted to the customer on the new vehicle purchased.

Having regard to the manner in which motor dealers conduct their business, an arrangement is hereby made in terms of section 72, to allow motor dealers to deduct input tax in terms of paragraph (*b*) of "*input tax*" as defined in section 1(1), read with section 16(3)(*a*)(ii)(*aa*) and 16(3)(*b*)(i) on the full consideration (including any over-allowance amount) paid or credited to the supplier for a second-hand vehicle traded-in under a non-taxable supply.

This BGR is made under the following conditions:

(a) The trade-in transaction is dependent on the conclusion of a transaction for the purchase of another motor vehicle by that customer from the same motor dealer.

(b) The parties to the transaction are trading at arm's-length and are not "connected persons" as defined in section 1(1).

(c) The consideration paid shall be regarded as the value of the trade-in plus the over-allowance given by the vendor. However, this allowance given by the vendor shall not exceed the discount that is permissible on the vehicle being sold.

(d) The required records as prescribed in section 20(8) must be retained, as well as the following:

- A detailed list of the second-hand vehicles traded in, and the subsequent sale thereof.
- A statement containing the details of the allowance/discount allowable on the vehicles to be sold.
- A statement showing the net accounting effect of the combined transactions involved (that is, the trade-in and sale).

(e) Failure on the part of the motor dealer to comply with the aforementioned conditions and the provisions of the VAT Act will result in the arrangement not being allowed or withdrawn. Furthermore, SARS reserves the right to withdraw this arrangement, should it be found that such dispensation is being misused or causing verification problems for SARS. In these instances the normal rules as set out in the VAT Act will apply.

4. Period for which this ruling is valid

This BGR applies with effect from 1 April 2013 and will apply for an indefinite period.

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