



SOUTH AFRICAN REVENUE SERVICE

BINDING PRIVATE RULING: BPR 004

DATE : 3 September 2007

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

SECTION : **SECTION 1, DEFINITION OF ENTERPRISE, INPUT TAX AND VENDOR, SECTIONS 7(1)(b), 13(3), 23(1) AND SCHEDULE 1, ITEM 470.01**

SUBJECT : **DEFINITION OF ENTERPRISE, EXEMPTION OF GOODS ON IMPORTATION**

1. Summary

The issues considered in this ruling are –

- Whether a non-resident is regarded as carrying on an enterprise in the Republic in respect of the sale of goods where ownership in the goods passes while the goods are situated outside the Republic; and
- Whether the importation for processing of raw materials into the Republic is exempt from VAT.

2. Relevant tax laws

This ruling is a binding private ruling issued in accordance with section 41A of the VAT Act read with section 76Q of the Income Tax Act, No 58 of 1962.

All legislative references are to sections of the VAT Act applicable at 31 July 2007 and unless the context otherwise indicates, any word or expression in this ruling bears the meaning ascribed to them in the VAT Act.

Relevant provisions of the VAT Act –

- Section 1, definition of "enterprise";
- Section 7(1)(b);
- Section 13(3);
- Section 23(1); and
- Schedule 1, item 470.01

3. Parties to the transaction

The Applicant: A company incorporated outside the Republic who is not registered for VAT purposes in the Republic and who will supply raw materials to Company A.

Company A: A resident company incorporated in the Republic who is registered for VAT purposes in the Republic and who will acquire raw materials from the Applicant.

4. Description of the proposed transaction

Company A acquires raw materials from the Applicant and imports the raw materials into the Republic.

Company A processes the raw materials in the Republic, after which the final goods are packaged and sold.

The packaged goods are either sold and exported to the Applicant or sold to recipients in the Republic.

In future Company A envisages having two methods of conducting its business of processing, packaging and selling:

- For the market in the Republic, Company A will continue to acquire and import the raw materials. The materials will be processed and the finished goods will be sold to recipients in the Republic.
- For the markets outside the Republic, Company A will import the raw materials for and on behalf of the Applicant, who will remain the

owner thereof. The raw materials will be processed in the Republic by Company A and the finished goods will be either exported back to the Applicant or exported directly to another person in an export country as defined in section 1. As Company A will not take ownership of the goods, all sales are effected by the Applicant.

5. Specific conditions and assumptions

Transfer of ownership of the finished goods from the Applicant to another person will take place outside the Republic.

The general conditions set out in Schedule 1 to the VAT Act and the specific conditions set out under rebate item 470.01 to Schedule 1 to the VAT Act are complied with.

6. Specific ruling

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

- As regards the sale of raw materials by the Applicant to Company A as well as the sale of finished products by the Applicant to persons in export countries, the Applicant will not be conducting an enterprise, as defined in section 1. Consequently, the Applicant will not be required to register as a vendor, as envisaged by section 23(1).
- The importation of the raw materials by Company A on behalf of the Applicant, will, in terms of section 13(3), read with item 470.01/00.00/01.00 of Schedule 1 to the VAT Act, be exempt from VAT imposed under section 7(1)(b), provided Company A does not become the owner of the raw materials. The exemption from VAT in terms of section 13(3) is subject to Company A complying with the conditions stipulated under rebate item 470.01 of Schedule 1 to the VAT Act.
- A determination that the provisional payment or bond that may be required by the Controller, in respect of the importation of the raw

materials under item 470.01/00.00/01.00 of Schedule 1 to the VAT Act, be reduced or abolished cannot be made. The reason being the amount of security is determined in terms of a process of risk assessment, which is a factual determination.

7. Period for which this ruling letter is valid

This binding private ruling will remain valid until 31 December 2010.

Issued by:

Legal and Policy Division: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE