

BINDING PRIVATE RULING: BPR 100

DATE: 15 April 2011

ACT : **INCOME TAX ACT, NO. 58 OF 1962 (the Act)**
: **VALUE-ADDED TAX ACT, NO. 89 OF 1991 (the VAT Act)**

SECTION : **SECTION 1 OF THE ACT, DEFINITION OF “GROSS INCOME”**
: **SECTION 1 OF THE VAT ACT, DEFINITION OF “INVOICE” AND SECTION 9 OF THE VAT ACT**

SUBJECT : **DATE OF ACCRUAL OF SHORT-TERM INSURANCE PREMIUMS PAYABLE IN TERMS OF A GUARANTEE POLICY, SURETYSHIP PROVIDED TO THE MASTER OF THE HIGH COURT AND THE TIME OF SUPPLY OF THE GUARANTEE POLICY**

1. Summary

This ruling deals with –

- the date on which the premiums, in terms of a guarantee policy issued to a trustee by a short-term insurer, will accrue to the short term insurer;
- the question as to whether the “Confirmation of Bond of Security Details” notice constitutes an “invoice” as defined in the VAT Act; and
- the time of supply of the guarantee policy being a service for purposes of the VAT Act.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 76Q of the Act.

In this ruling legislative references to sections are to sections of the relevant Acts applicable as at 1 January 2010 and unless the context indicates otherwise, any word or expression in this ruling bears the meaning ascribed to it in the relevant Acts.

This ruling has been requested under the provisions of –

- section 1 of the Act, definition of “gross income”;

- section 1 of the VAT Act, definition of “invoice”; and
- section 9 of the VAT Act.

3. Parties to the proposed transaction

The Applicant: A short-term insurer duly registered with the Financial Services Board

Liquidator/Trustee: Liquidators or Trustees in insolvent estates as well as Executors of deceased estates and Curators

The Master: The various Masters of the High Court

4. Description of the proposed transaction

The Applicant provides guarantee insurance to all the offices of Liquidators and Trustees, but the offices of Trustees are the focus of this ruling for the sake of simplicity.

The Applicant is authorised to provide security in the form of suretyship to the satisfaction of the Master on behalf of the Executor or Master’s representative, by issuing guarantee policies for the proper performance of his/her duties as envisaged in section 56(2) of the Insolvency Act, No. 24 of 1936 (the Insolvency Act). For the sake of simplicity the focus of this ruling is on the Trustee of an insolvent estate.

The terms on which the suretyship is provided are contained in a document known as an Undertaking and Bond of Security on the prescribed Form J468 which is duly signed by the Trustee. Should the Trustee fail to perform his/her duties properly according to law as required and the said failure results in a loss or damage to the estate, a certificate under the hand of the Master stating the amount of such loss or damage shall then be accepted as *prima facie* proof of such failure and/or of the extent of such loss or damage.

The document known as Security Bond on the prescribed Form 475 makes no reference to any premium. The Applicant provides the Trustee with a “Confirmation of Bond of Surety Details” notice. This notice confirms the policy as well as the manner in which any premium is to be calculated. The Applicant is at risk from the date on which the Surety Bond is issued. The period for which the Applicant will be at risk is unknown as it takes an indefinite period to finalise the estate. Only once the estate has funds and has made payment to the Applicant, or when the estate has been finalised and funds have become available,

whichever is the earlier, a tax invoice will be issued to the Trustee by the Applicant.

The Applicant provides the Trustee with a “Confirmation of Bond of Security Details” notice on an annual basis, as the Master may have amended the amount of the Security Bond required.

The Applicant will reinsure its risks with a third party, but no premiums will become payable or will accrue to the reinsurer until such time a conclusion is reached, as to the assets and liquidity within the estate. Once a conclusion is reached a tax invoice will be issued and payment will be made in the normal course.

The “Confirmation of Bond of Security Details” notice provides for the manner in which any premium is calculated for each period that the Applicant is at risk. It is addressed to the Trustee as the Agent of the insolvent estate.

5. Conditions and assumptions

This ruling is not subject to any conditions and assumptions.

6. Ruling

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

- The premiums in relation to the guarantee policy will accrue to the Applicant under the provisions of “gross income” as defined in section 1 of the Act on the date as specified below:
 - In relation to the free residue – the date on which there are sufficient funds in the estate to pay these costs.
 - In relation to the sale of property subject to security (a special mortgage, landlord’s legal hypothec, pledge, or right of retention) – the date on which the proceeds on the sale of that secured assets is received in terms of section 89(1) of the Insolvency Act and that proceeds is sufficient to cover these costs.
- The “Confirmation of Bond of Security Details” notice is not an “invoice” as defined in section 1 of the VAT Act.
- For purposes of the VAT Act, the supply shall take place at the time an invoice is issued or any payment or consideration is received, whichever time is earlier.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five (5) years as from January 2010.

Issued by:

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