

BINDING PRIVATE RULING: BPR 245

DATE: 8 August 2016

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)
: VALUE-ADDED TAX ACT NO. 89 OF 1991 (VAT Act)
SECTION : SECTION 1(1) OF THE ACT – DEFINITION OF “GROSS INCOME”
SECTIONS 1(1) OF THE VAT ACT – DEFINITION OF “INVOICE”, 9,
AND 20
SUBJECT : TIME OF ACCRUAL OF SHORT-TERM INSURANCE PREMIUMS AND
TIME OF SUPPLY OF SECURITY PROVIDED TO THE MASTER OF
THE HIGH COURT

1. Summary

This ruling determines the time of accrual of gross income and time of supply of any service in relation to a guarantee policy for security issued to the Master of the High Court by a liquidator.

2. Relevant tax laws

This is a binding private ruling issued in accordance with section 78(1) and published in accordance with section 87(2) of the Tax Administration Act No. 28 of 2011.

In this ruling references to sections are to sections of the relevant Act applicable as at 15 June 2016. Unless the context indicates otherwise any word or expression in this ruling bears the meaning ascribed to it in the relevant Act.

This is a ruling on the interpretation and application of the provisions of –

- the Act -
 - section 1(1) – definition of “gross income”.
- the VAT Act -
 - section 1(1) – definition of “invoice”;
 - section 9; and
 - section 20.

3. Parties to the proposed transaction

The Applicant: A company incorporated in and a resident of South Africa

The Liquidators: Liquidators and Trustees of insolvent estates, Executors of deceased estates and Curators

The Master: The Masters of the various divisions of the High Court

4. Description of the proposed transaction

The Applicant is a short-term insurer registered with the Financial Services Board under the Short-Term Insurance Act No. 53 of 1998. It specialises in the field of providing security to the Master for the due compliance with their statutory obligations by Liquidators in terms of, amongst others, sections 56 and 57 of the Insolvency Act, No. 24 of 1936 ("Insolvency Act") and section 23 of the Administration of Estates Act, No. 66 of 1965.

The Applicant provides security in the form of security bonds to the satisfaction of the Master on behalf of the Liquidators by issuing a security bond on behalf of the Liquidators for the proper performance of their duties.

The terms on which the security bond is provided are contained in prescribed form J468 (known as an undertaking and bond of security) which is duly signed by the Liquidator read with the security details provided by the Applicant. Should the Liquidator fail to perform his or her obligations as required, a certificate under the hand of the Master stating the amount of resulting loss or damage shall then be accepted as *prima facie* proof of that failure and of the extent of the loss or damage.

The security bond makes no reference to any premium in respect thereof. The Applicant provides the Liquidator with a confirmation of bond of security details notice. This notice confirms the existence of the guarantee policy as well as the manner in which any premium is to be calculated.

The Applicant and the Liquidator agree as follows with regards to payment of any premium that might become due and payable:

"The Insurer shall remain fully on risk with regard to the provision of the security bond and shall only become unconditionally entitled to raise any premium(s) in respect of the full duration that the security bond remains in place as is required by the Master, as and when the Liquidator has ascertained that there are sufficient funds in the estate to make payment thereof and the Liquidator is in a position to provide satisfactory proof to the Insurer that the duties of the appointment for which the court bond is required, has been completed."

The Applicant is at risk from the date on which the bond of security is issued for an indefinite period until the liquidation of the estate is finalised. 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, will a tax invoice be issued by the Applicant to the Liquidator.

The Applicant provides the Liquidator 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 as 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.

5. Conditions and assumptions

This binding private ruling is not subject to any additional conditions and assumptions.

6. Ruling

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

- a) The premiums will accrue to the Applicant as “gross income”, as defined in section 1(1) of the Act, as follows –
 - i) in relation to the free residue of an estate – when it is ascertained that there are sufficient funds in the estate to pay the applicant’s costs; and
 - ii) in relation to a sale of property subject to security (a special mortgage, landlord’s legal hypothec, pledge, or right of retention) – the date that the proceeds on the sale of secured assets are received, as provided for by section 89(1) of the Insolvency Act, and if the proceeds are sufficient to cover the costs of security.
- b) The confirmation of bond of security details notice will not constitute an “invoice” as defined in section 1(1) of the VAT Act.
- c) For purposes of the VAT Act the time of supply of the service will be the time any payment or consideration is received in accordance with Binding General Ruling (VAT): No. 14 (Issue 2) dated 18 March 2016.

7. Period for which this ruling is valid

This binding private ruling is valid for a period of five years from 15 June 2016.

**Legal Counsel: Advance Tax Rulings
SOUTH AFRICAN REVENUE SERVICE**