

## DRAFT BINDING GENERAL RULING (VAT)

DATE:

**ACT: VALUE-ADDED TAX ACT NO. 89 OF 1991**

**SECTION: SECTIONS 16(2)(d), 16(3)(a)(iii), 16(3)(b)(ii), 54(2A) AND 54(3)**

**SUBJECT: DOCUMENTARY PROOF IN RELATION TO THE DEDUCTION OF INPUT TAX ON IMPORTATION**

### *Preamble*

For the purpose of this ruling –

- “**BGR**” means a binding general ruling issued under section 89 of the Tax Administration Act No. 28 of 2011;
- “**Customs and Excise Act**” means the Customs and Excise Act No. 91 of 1964;
- “**section**” means a section of the VAT Act;
- “**VAT**” means value-added tax;
- “**VAT Act**” means the Value-Added Tax Act No. 89 of 1991; and
- any other word or expression bears the meaning ascribed to it in the VAT Act.

### **1. Purpose**

This BGR explains in which instance a statement must be issued by an agent to a principal, and what information must be contained in such statement. It further lists the documentary proof that a vendor must be in possession of for purposes of deducting input tax for the importation of goods into the Republic.

### **2. Background**

A vendor acquiring and importing goods into the Republic is, subject to any exemptions, liable to pay VAT on importation. The VAT payable in this instance may be deducted as “input tax” if the goods are acquired by the vendor for purposes of making taxable supplies and the vendor is in possession of the required documentation.

Section 16(2)(d) requires a vendor to be in possession of a bill of entry or other documentation prescribed by the Customs and Excise Act together with the receipt for the payment of the VAT in relation to the importation of the goods. Section 16(2)(dA) on the other hand requires a vendor to be in possession of a statement issued under section 54(3)(b). This subsection applies when an agent imports goods on behalf of a vendor (the principal) and the agent is in possession of the bill of entry or other documentation prescribed by the Customs and Excise Act (including the receipt for the payment of the VAT on importation).

Section 54(3) was amended to deal with situations where the bill of entry or other document prescribed by the Customs and Excise Act is issued in the name of the agent<sup>1</sup> and not the principal. In these circumstances, the required documents would not reflect the details of the principal and would therefore not suffice to substantiate the principal's entitlement to deduct input tax. The requirement was thus inserted in section 54(3)(b) for the agent to issue a statement to the principal to satisfy the requirements of section 16(2)(dA) (see **2.2**). This subsection does not apply if the bill of entry or other customs documents reflect the name of both the principal and the clearing agent,<sup>2</sup> and the principal is in possession of these documents.

## **2.1 The bill of entry or other customs documents reflect the vendor as the importer [section 16(2)(d)]**

It follows that a vendor in possession of the bill of entry or other documentation prescribed by the Customs and Excise Act for goods imported into the Republic (irrespective of whether the goods are imported through a clearing agent or not), must also be in possession of the following documentation in order to deduct the VAT paid on importation as input tax:

- EDI Customs Status 1 Release Message.
- The receipt for the payment of the tax, that is, the receipt number issued on eFiling.

## **2.2 The bill of entry or other customs documents reflect the agent as the importer [section 16(2)(dA)]**

Should the bill of entry or other customs documents however reflect the agent as the importer, section 54(3)(b)(ii) read with section 54(2A) requires the agent who imports goods on behalf of a vendor to provide the vendor with a statement within 21 days from the end of the calendar month during which the goods were imported<sup>3</sup> **that** must contain the following information:

- (a) A full and proper description of the goods imported.
- (b) The quantity or volume of the goods imported.
- (c) The value of the goods imported.
- (d) The amount of tax paid on importation.
- (e) The receipt number for the payment of the VAT on importation issued on eFiling.

A vendor deducting input tax under section 16(2)(dA), must be able to prove the existence of an agent-principal relationship (for example an agreement evidencing such relationship).

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<sup>1</sup> An agent acting as representative of another person (concluding a contract on behalf of another person).

<sup>2</sup> The clearing agent for customs purposes is, under section 64B(1) of the Customs and Excise Act, any person who for purposes of that Act makes an entry or delivers a bill of entry relating to any goods on behalf of a principal for reward and who is licensed as such under section 64B(2) of the Customs and Excise Act.

<sup>3</sup> In this instance, the bill of entry or other customs documents are held by the agent.

### **3. Ruling**

Section 16(2)(dA) requires a vendor to be in possession of a statement issued by the agent under section 54(3)(b)(ii) read with section 54(2A) when deducting input tax under section 16(3)(a)(iii) or (b)(ii) (see **2.2**).

The information set out in **2.2(a)** and (b) above may be omitted from the statement issued by the agent if the vendor is in possession of a packing list containing such information.

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

### **4. Period for which this ruling is valid**

It is intended that this BGR will apply from 1 April 2015 until it is withdrawn, amended or the relevant legislation is amended.

To the extent that this BGR does not provide for a specific scenario regarding the documentary proof which a vendor must be in possession of in respect of the deduction of input tax on the importation of goods or the documentation to be issued by an agent in this regard, the vendor may apply for a VAT ruling or VAT class ruling in writing by sending an e-mail to **VATRulings@sars.gov.za** or by facsimile to 086 540 9390. The application should consist of a completed VAT301 form, a clearly motivated application and must comply with the provisions of section 79 of the Tax Administration Act, 2011 excluding section 79(4)(f), (k) and (6).

**Senior Manager: Indirect Taxes**  
**Legal and Policy Division**  
**SOUTH AFRICAN REVENUE SERVICE**