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**RE: DRAFT BINDING GENERAL RULING (VAT) – THE CIRCUMSTANCES PRESCRIBED BY THE COMMISSIONER FOR THE APPLICATION OF SECTION 16(2)(g)**

## 1. Introduction

We appreciate the opportunity to comment on the draft binding general ruling that sets out the circumstances prescribed by the Commissioner for the application of section 16(2)(g) of the Value-Added Tax Act (VAT Act). We have also made submissions in our letter dated 8 August 2016 regarding the proposed amendment of section 16(2)(g) of the VAT Act and we have noted the draft response from National Treasury and SARS to the Standing Committee on Finance as discussed at a public workshop held on 27 September 2016.

Based on the experience of our members, we are concerned that the requirement to obtain a formal ruling could be burdensome and cause unnecessary delays as discussed under point 2. We understand from the National Treasury and SARS response that it is intended that SARS will put in place a simplified ruling application process with a short turn-around for the purpose of these formal rulings. We make some suggestions in this regard under point 3.

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## 2. Practical difficulties experienced in obtaining formal rulings

The application of section 16(2)(g) will result in the taxpayer having to apply for a formal ruling in terms of section 79 of the Tax Administration Act (TAA). Section 79(o) of the TAA requires a statement confirming that all returns and taxes which the taxpayer is registered for are up to date. Although section 80 of the TAA does not include a provision for SARS to reject an application for a ruling due to tax returns and payments not being up to date, in practice SARS rejects any ruling application for which a return or moneys are outstanding on any of the taxes which a taxpayer is registered for. There are various examples where such "non-compliance" arises as a result of SARS system errors and accounts maintenance issues which then negatively impacts on the taxpayer as it makes it impossible to receive a ruling. In addition, even if all taxes are paid and returns submitted, SARS' turnaround time in issuing VAT rulings can be anywhere from 3 months to 3 years. In the interim, the taxpayer bears the burden of financing the fiscus as it is unable to obtain its input tax deduction. These matters should be addressed to stream-line the ruling application process.

## 3. Alternative suggestions

### 3.1 *Use of audit/document verification function in VAT201*

VAT is a self-assessment system and the taxpayer should be able to submit a claim for input tax in its normal VAT201 under the provisions of section 16(2)(g). We recommend an additional field on the VAT201 or a statement when completing the VAT201 that a section 16(2)(g) claim was submitted which automatically opens the audit/document verification function for the taxpayer to upload the documents for review by SARS. This will result in a stream-lined process to ensure that the input tax deductions and cash flow of the taxpayer is not unreasonably impacted as it would be with a VAT ruling application. The proposed wording of section 16(2)(g) would have to be amended to provide for this alternative.

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### 3.2 *Common scenarios to be listed in the binding general ruling*

Should the proposed amendment to section 16(2)(g) be passed into law, a formal ruling will be required to confirm that the document in the vendor's possession is acceptable for the purposes of making an input tax deduction. The Commissioner may only issue a ruling if he is satisfied that the vendor has taken reasonable steps to obtain the standard documentation (listed in section 16(2)(a)-(f)) and is unable to obtain such documentation due to circumstances beyond the vendor's control.

A formal ruling, as envisaged in section 41B of the VAT Act and Chapter 7 of the TAA, could include a binding private ruling, a binding class ruling or a binding general ruling. Therefore, the current draft binding general ruling could potentially qualify as a ruling as envisaged in the proposed section 16(2)(g) provided that the wording of the draft binding general ruling is amended to meet the requirements of that section. Essentially, the binding general ruling will have to describe the various scenarios, stipulate what alternative documentary proof must be in the vendor's possession and what would satisfy the Commissioner as having been reasonable steps taken by the vendor to obtain the required document. If the vendor establishes that its scenario falls into the scope as set out in the binding general ruling, the binding general ruling would then serve as a ruling for purposes of the proposed section 16(2)(g) and the vendor would not have to apply for a specific ruling. On the other hand, if the vendor's scenario falls outside the scope as set out in the binding general ruling, the vendor would have to apply for a binding private ruling or binding class ruling for purposes of the proposed section 16(2)(g). This approach would be in line with the approach followed in BGR 15 (issue 2) dealing with recipient-created tax invoices, credit and debit notes.

Examples of common scenarios which could be dealt with in the binding general ruling include where the vendor has a change of name (for example following merger and acquisition

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activity) and advises its suppliers of its change of name but certain of its suppliers continue to issue the invoices in the old name and does not respond to requests to re-issue invoices in the vendor's new name (for example in the case of municipalities). There would be a similar scenario in the case of the change of address of the vendor. In these instances, it should be sufficient if the vendor has the invoice from the supplier as well as the proof of change of name/address as well as evidence of its request to the supplier to provide a new invoice on record. The vendor should then be able to rely on the binding general ruling (as amended). Another similar scenario would arise where a separately registered branch/division amalgamates with the main business or another branch and requests its suppliers to use its new details but continues to receive invoices with its old details in spite of such requests. Similarly, where a business is acquired, the new owner can only rely on the six-month grace period to change over to its new tax invoices in section 20(5A) if the seller immediately ceases to be a vendor.

Another scenario which often results in the vendor's VAT registration number not being reflected on the tax invoice is delays in obtaining VAT registrations or backdated VAT registrations.

These and other common scenarios which are triggered by every day commercial transactions could be dealt with in the binding general ruling, so that the vendors can determine whether or not their scenario falls within the common scenarios or whether it has to apply for a specific ruling.

### 3.3 *Simplified ruling application process*

If a specific ruling is inevitable, we recommend that a simplified ruling application process be implemented which is not subject to tax clearance and in respect of which dedicated SARS staff will be able to turn around these applications swiftly.

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We also request confirmation that only one application will be necessary for a particular supplier. This is important since some suppliers may continue indefinitely to not issue tax invoices as prescribed.

We thank SARS for continuing the process of dialogue and welcome the next opportunity to engage.

Yours sincerely

**Victor Terblanche**

**Chair of the Value-Added Tax Work Group**