

*SOUTH AFRICAN REVENUE SERVICE*

**BINDING PRIVATE RULING: BPR 001**

**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 11, 17 AND 23**

**SUBJECT** : **DEFINITION OF ENTERPRISE, ZERO-RATING OF SALVAGE SERVICES, INPUT TAX DEDUCTION IN RESPECT OF PERSONAL SUBSISTENCE OF EMPLOYEES**

**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 salvage services performed in the Republic;
- Whether such salvage services may be zero-rated and the documentary requirements in this regard; and
- Whether the supplier of the salvage services is entitled to deduct VAT incurred on personal subsistence of its employees while performing the salvage services.

**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 as 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”, “input tax” and “vendor”;
- Section 11(2)(h)(i);
- Section 11(3);
- Section 17(2)(a)(ii); and
- Section 23(1).

### **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 salvage services.

The Recipient: A non-resident company incorporated outside the Republic who is not registered for VAT purposes in the Republic and who will be the recipient of salvage services.

### **4. Description of the proposed transaction**

The Applicant was contracted by the Recipient to supply salvage services to it in relation to a ship that ran ashore and is stranded in the Republic.

The ship was engaged in the transport for reward of goods wholly or mainly on voyages between ports in the Republic and ports in export countries.

The Applicant will supply the salvage services in the Republic, that is where the ship is physically located and the salvage operation is expected to take approximately seven to eight months to complete.

The Applicant will –

- acquire and import certain specialised salvage equipment from outside the Republic;
- send employees to the Republic for the duration of the salvage project; and
- hire equipment, personnel and other goods and/or services from suppliers situated in the Republic for purposes of supplying the salvage services.

The salvage project will be funded from an export country.

## **5. Specific conditions and assumptions**

It is the intention that the employees of the Applicant who will be involved in the salvage project will, upon completion of the salvage project, resume their duties at the Applicant's business premises situated outside the Republic.

## **6. Specific ruling**

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

- Due to the continuous and regular nature of the salvage services to be physically supplied in the Republic, the Applicant will be regarded as carrying on an enterprise partly in the Republic. Accordingly, the Applicant will be required to register as a vendor, in terms of section 23(1).
- VAT at the rate of zero percent will be applicable in respect of the supply of the salvage services by the Applicant to the Recipient, in terms of section 11(2)(h)(i). Accordingly, the fee charged to the Recipient for the salvage services will be inclusive of VAT at the rate of zero percent.

- The Applicant need not obtain and retain forms DA1 or DA3 to substantiate the application of the zero rate as required in terms of section 11(3) read with Interpretation Note No 31.
- The Applicant will be entitled to deduct input tax incurred in respect of a meals, refreshments and accommodation of its employees while performing their duties in terms of the salvage project, as envisaged by section 17(2)(a)(ii) .
- In addition, the Applicant will be entitled to deduct any VAT incurred on the acquisition of goods and/or services, for purposes of supplying the salvage services, as input tax, in terms of and subject to section 1, the definition of "input tax", read with sections 16(2), 16(3), 17 and 20.

#### **7. Period for which this ruling letter is valid**

The binding private ruling, issued in December 2006, will remain valid for the entire period of the salvage project up to a maximum period of 18 months from the date of this ruling. Once the salvage project is completed, the Applicant will be required to cancel its registration as a VAT vendor.

Issued by:

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