

BINDING GENERAL RULING (VAT): NO. 5

DATE: 25 March 2011

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

SECTIONS : SECTIONS 1, 20 and 21

SUBJECT : DISCOUNTS, REBATES AND INCENTIVES IN THE MOTOR INDUSTRY

1. Purpose

This ruling serves to provide –

- a legal framework for the treatment of discounts, rebates and incentives granted by motor car manufacturers (manufacturers), and
- guidelines in determining whether the manufacturer is required to issue a credit note, or receive a tax invoice for discounts, rebates and incentives granted.

2. Background

It is common in the motor industry for manufacturers to grant allowances in the form of discounts, rebates and incentives to motor car dealers (dealers) and finance companies. These allowances may either result in the previously agreed consideration for a supply being altered, or may represent payment for a supply of services by the dealer or finance company.

Manufacturers are currently experiencing difficulties in classifying which discounts, rebates or incentives alter the previously agreed consideration for a supply or represent payment for a supply of services.

3. Types of rebates¹ granted in the motor industry

Manufacturers supply motor cars in the following three scenarios:

- The manufacturer sells the motor car to the finance company and delivers it to the dealer.
- The manufacturer sells the motor car directly to the dealer.
- The manufacturer sells the motor car directly to the customer.

Rebates are volume driven and are determined based on various factors including model, value, unit and brand. In most instances, rebates are provided per motor car and are only granted once a dealer sells the motor car.

Rebates are granted to the dealer and finance companies depending on the circumstances.

¹ For purposes of this document, the term “rebate” will include discounts, rebates and incentives.

3.1 Rebates granted to dealers

The rebates that are granted to dealers can be categorized into three categories, namely, qualitative, quantitative and other rebates.

3.1.1 Qualitative rebates

These rebates are granted based on specific criteria and include, but are not limited to, the following:

- Dealer Standard Rebate may be item-specific and is determined by the profitability of the dealer, stock evaluations, ratings as per scorecards and franchise agreements. These are standards required in relation to the running of the business. The rebate will be granted once the required standards are met.
- Customer Service Index (CSI) is where the customer service levels for sales and after sales are measured and reported by the dealer. The amount is determined by reference to the relative position to competitors and the need to improve or retain the dealer's position in external customer satisfaction surveys.

3.1.2 Quantitative rebates

The purpose of these rebates is to move stock and increase sales and include, but are not limited to, fleet rebates, volume rebates, campaigns to move motor cars, new launches and run-outs and promotional rebates.

3.1.3 Other rebates

Storage and advertising rebates fall under the category of "other rebates". Storage and advertising rebates are granted to place emphasis on the dealer's showroom in order to shift the focus to a specific motor car.²

3.2 Rebates granted to finance companies

The motor industry often makes use of finance companies and pays rebates to these companies. These rebates include, but are not limited to, volume rebates and rebates for the penetration of the market. The purpose of these rebates is to assist the finance company to provide competitive financing, in order to retain customers and to increase the manufacturer's sales.

4. Issues

The issues under consideration are whether a rebate is regarded as a –

- reduction in the purchase price in which case a credit note must be issued; or
- consideration for a supply of a service in which case a tax invoice must be issued.

5. The law and its application

A vendor making a taxable supply must issue a tax invoice for goods or services supplied to a recipient within 21 days of making that supply. The recipient must retain the tax invoice to substantiate any input tax deduction for the goods or services acquired. Tax invoices form part of the records that vendors (that is, suppliers and

² The examples provided are not an exhaustive list and may include various other payments to the dealer.

recipients) are required to keep under section 55, and are used to create a paper trail for audit purposes.

The details shown on a tax invoice may, in certain circumstances, be incorrect due to various reasons, for example, due to the granting of discount. Section 21 therefore makes provision for a credit or a debit note to be issued in these instances.

5.1 Instances in which credit notes must be issued (Section 21)

A supplier (or the recipient³) is required to issue a credit note for a rebate granted if the rebate—

- alters the original purchase price of a supply of goods or services in terms of an agreement with the recipient; and
- results in the tax charged on the tax invoice in relation to that supply being incorrect (that is, the amount of tax charged shown on the tax invoice exceeds the actual tax charged).

A credit note must contain the particulars specified in section 21(3).

5.2 Instances in which a tax invoice must be issued

A credit note cannot be issued in instances where a rebate does not adjust the price at which goods and services were originally supplied.

A rebate granted to a dealer or finance company for having performed a specific function or tasks (for example, providing specific advertising services), is considered to be a supply of services from the dealer or finance company to the manufacturer.

Rebates granted to compensate, subsidise, reward or reimburse a dealer or finance company for expenses incurred for, or activities undertaken on behalf of the manufacturer constitutes consideration for a separate supply of a service by the dealer or finance company to the manufacturer.

The dealer or finance company, as supplier of these services, must issue a tax invoice within 21 days from the date of these services in accordance with section 20.

5.3 Recipient-created tax invoices, debit and credit notes

To the extent that circumstances exist where a supplier is unable to issue a tax invoice, debit or credit note due to circumstances beyond the supplier's control, provision is made for the Commissioner to allow the recipient of a supply to issue a tax invoice for a supply made by a supplier.

The circumstances considered to be beyond the supplier's control are where the recipient of the supply is –

- in control of determining the quantity or quality of the supply; or
- responsible for measuring or testing the goods sold by the supplier.

³ The Commissioner, under section 21(5), may in certain circumstances direct that the recipient, as opposed to the supplier, may issue a credit note.

Interpretation Note No. 56 deals with recipient-created tax invoices, credit notes and debit notes and states which conditions must be met to allow the recipient to issue these documents.

6. Ruling

The Commissioner, with regard to rebates granted in the motor industry, issues the following binding general ruling (BGR).

The manufacturer must issue a tax invoice, except if the provisions of section 20(2) apply, where the rebate is regarded as consideration for the supply of a service. A credit note must be issued by the manufacturer, except if the provisions of section 21(5) apply, where a rebate is regarded as a reduction in the original purchase price. The credit note must satisfy the requirements of section 21(3).

This BGR is conditional upon the vendor maintaining a list of all rebates granted or received at the beginning of each calendar year, as and when the agreement is amended which indicates whether the rebate results in a tax invoice, credit note or debit note being issued. Such list as well as agreements or statements substantiating this classification must be retained as part of record-keeping requirements contemplated in section 55.

To the extent that this BGR does not provide for a specific scenario in respect of rebates granted or received, a VAT ruling must be applied for from SARS.

This BGR is issued in accordance with section 76P of the Income Tax Act, No. 58 of 1962, as made applicable to the VAT Act by section 41A. This ruling is effective from the date of issue until it is withdrawn, amended, the relevant legislation is amended or a decision of the courts differ materially from this ruling.

Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE