

BINDING GENERAL RULING (VAT): NO. 34

DATE: 14 April 2016

ACT : VALUE-ADDED TAX ACT NO. 89 OF 1991
SECTION : SECTIONS 2(1)(l), 10(22A) AND 72
SUBJECT : MANAGEMENT OF SUPERANNUATION SCHEMES: LONG-TERM INSURERS

Preamble

For purposes of this ruling –

- “**ASISA**” means the Association of Savings and Investment South Africa;
- “**BGR**” means a binding general ruling issued under section 89 of the Tax Administration Act No. 28 of 2011;
- “**direct costs**” means costs incurred on independent third party suppliers by the long-term insurer which are ultimately borne by the superannuation scheme. Generally these costs are incurred for purposes of compliance with regulatory obligations imposed by various regulatory bodies and include, but are not limited to, external audit fees, levies paid to the FSB and Independent Trustees fees;
- “**FSB**” means the Financial Services Board, being a public entity listed in Part A of Schedule 3 to the Public Finance Management Act No. 1 of 1999;
- “**indirect costs**” means both taxable and non-taxable overhead costs incurred by the long-term insurer which may consist of employee costs, office costs and general overhead expenses;
- “**long-term insurer**” means a person that supplies an insurance service under a “long-term insurance policy” as defined in section 2(2) of the VAT Act;
- “**long-term insurance policy**” includes an assistance policy, a disability policy, fund policy, health policy, life policy, sinking fund policy (also referred to as an investment policy) as well as any re-insurance policy relating to long-term insurance;
- “**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 and scope

The Commissioner hereby grants long-term insurers permission to use the method set out in **3** in determining the consideration for the supply of management services to a superannuation scheme where the consideration for such supply is not

separately reflected but is embedded in the premium payable in terms of a long-term insurance policy.

2. Difficulties experienced by long-term insurers

Under section 12(a), read with section 2(1)(i), the provision or transfer of ownership of a long-term insurance policy is exempt from VAT as it constitutes the supply of financial services. However, the proviso to section 2(1)(i) specifically excludes the activity of managing a superannuation scheme from qualifying as financial services. The value to be placed on the supply comprising the management of a superannuation scheme is determined by applying section 10(22A), which deems the consideration in money for that supply to be the greater of the cost of making that supply or any consideration for that supply.

Due to the fact that the consideration for the management of a superannuation scheme is not separately reflected from the premium payable to the long-term insurer, the provision in section 10(22A) pertaining to the consideration for the supply cannot be met. The long-term insurer is therefore required to determine the cost of making the said supply. A difficulty however exists relating to the identification of specific expenses incurred for the management of a superannuation scheme, other than direct costs, as this activity is not distinct from the activities conducted in the course or furtherance of providing long-term insurance policies.

All costs incurred in the course or furtherance of the administration activities fall within the scope of the provision of a long-term insurance policy, that is, an exempt supply, whereas the costs incurred in the course or furtherance of the management activities fall within the scope of managing a superannuation scheme, that is, a taxable supply. The different activities associated with each supply are set out in the **Annexure**.

3. Ruling

In light of the fact that the consideration for the management services supplied to superannuation schemes included in the premium payable is not determinable as no specific consideration is charged for the said management services, the consideration for the supply made must be determined with reference to the cost of making that supply.

Direct costs relating to the management of a superannuation scheme are incurred by the long-term insurer on behalf of the superannuation scheme and therefore do not form part of the cost of supplying management services to a superannuation scheme. As a result, these costs are excluded from the scope of this ruling. The calculation set out below therefore only applies to the indirect costs incurred by the long-term insurer.

3.1 Calculation of the long-term insurer's output tax liability relating to the management of a superannuation scheme

Having regard to the difficulties experienced by long-term insurers in applying section 10(22A), long-term insurers may, under section 72, apply the formula below in calculating the cost attributable to the supply of superannuation scheme management services where the consideration for such services is not separately identifiable.

Indirect costs must be allocated to the superannuation scheme management services using an appropriate method based on assumptions with regard to estimated time spent or cost incurred (using the structure of the long-term insurer's operations and accounting or reporting systems).

The sum of the indirect costs allocated to the management of superannuation schemes must then be used to determine the cost per policy for which the management activities (refer to the **Annexure**) were performed. In this regard, the following formula must be applied:

$$Y = A / B$$

Where –

Y = Cost of supplying management services to a superannuation scheme per policy

A = The total annual indirect costs attributable to the management activities set out in the **Annexure** for the –

- previous financial year using the actual financial results; or
- the budgeted figures of the current year.

B = The number of long-term insurance policies managed under a superannuation scheme –

- in force for the previous financial year; or
- budgeted for the current year.

With regard to the amounts included in the formula set out above, the –

- (a) actual results of the previous financial year may not be used should the business model of the current year differ from that of the previous year;
- (b) budgeted figures of the current year may only be used if the budgeted figures of the previous year differ no more than 5% with the actual results of the previous year; and
- (c) long-term insurer may only use either the actual results of the previous year or the budgeted figures for the current year and may not use a combination of both during a specific financial year.

In determining the amount that must be declared for the current year as consideration for the supply of the superannuation scheme management services, the cost per policy calculated above must be used in the following formula:

$$Z = (Y \times C) \times 14 / 114$$

Where –

Z = Output tax liability for the supply of management services to superannuation schemes

Y = Cost of supplying management services to a superannuation scheme per policy

C = Number of long-term insurance policies managed under a superannuation scheme during the specific tax period

This arrangement is conditional upon –

- (i) there being no separate charge for the supply of services comprising the management of a superannuation scheme and the only consideration received by the long-term insurer in relation thereto is embedded in the premium payable for the supply of a long term insurance policy;
- (ii) the long-term insurer allocating expenditure incurred according to the categories set out in the **Annexure**; and
- (iii) an adjustment being made for any shortfall or over-declaration of output tax for the current year (based on the cost per policy value using the actual figures of the current year) within six months after year-end.

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act No. 28 of 2011.

4. Period for which this ruling is valid

This BGR applies from date of issue until it is withdrawn, amended or the relevant legislation is amended.

To the extent that this BGR does not provide for a specific scenario in respect of the calculation of the consideration of management services supplied to a superannuation scheme, vendors 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. In this regard a clearly motivated application complying with the provisions of section 79 of the Tax Administration Act, excluding section 79(4)(f) and (k) and (6), must be submitted.

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Annexure – Activities relating to the management and administration of superannuation schemes funded exclusively by individual long-term insurance policies

In order to clarify the scope of section 10(22A), SARS together with ASISA classified the activities of a long-term insurer into management or administration of a superannuation scheme. These activities are set out in the table below:

Summary of management and administration activities related to superannuation schemes funded exclusively by individual long-term insurance policies	Management (Taxable)	Administration (Exempt)
Legal services rendered to the superannuation scheme		
Drafting of rules and rule amendments.	X	
Legal consultation, documentation and communication (only to the extent that it relates to fund governance and not the underlying policy products).	X	
Reporting in respect of the superannuation scheme		
Administration and management reports (only to the extent that it is in addition to standard information produced per policy).	X	
Preparing financial statements for the superannuation scheme.	X	
South African Reserve Bank reporting (only to the extent that it is in addition to standard information produced per policy).	X	
Determining and payment of FSB levies (only to the extent that it is not a direct cost).	X	
Member communication		
Produce superannuation scheme rule booklets and information (often only available on the internet).	X	
Produce benefit and investment statements, incorporating regulatory requirements specific to a superannuation scheme (only to the extent that it is in addition to the standard information provided per policy).	X	
Trustee meetings (limited to cost of provision of the venue and independent trustees)	X	
Secretarial services	X	

POLICY ADMINISTRATION		
Financial Control – Investments		
Bank reconciliations in respect of premiums.		X
Asset and liability reconciliations performed by actuaries.		X
Administration and risk reconciliations.		X
<i>Ad-hoc</i> payments.		X
Attend to transfers in and unallocated deposits.		X
Updating and reconciling contribution payments from funds.		X
Updating, reconciling and allocation of contributions to individual policies.		X
Day-to-day policy administration		
Recordal of claims.		X
Apply for tax directives.		X
Dealing with queries regarding claims.		X
Make payments		X
Submit payment advice, IT3B and IRP5.		X
Unclaimed benefits administration.		X
Maintenance of member/policyholder data.		X
Compliance/Internal audits of internal processes.		X
Processing of individual applications and policy issue.		X
Processing of individual policy servicing requests, e.g. contribution changes, beneficiary nominations, recording divorce orders, etc.		X
Internal Processes		
Risk assessments		
For example, medical underwriting, assessment of risk and rider benefits.		X

INVESTMENT ADMINISTRATION		
Determine investment policy and strategy.		X
Set investment instructions and mandates.		X
Analyse and review investment manager reports.		X
Monitor investment performance.		X
Reconciliations in respect of investments and the return thereon.		X
Review calculations of and make payment of investment fees to third party asset managers.		X
Prepare member statements and returns and reflect investment cost allocation.		X
Action investment switches timeously.		X
Request disinvestment of funds for payment of claims.		X
Asset Manager	Third Party Asset Manager	Insurer Performs Asset Management
Financial Control		
Bank reconciliations in respect of cash transferred to, invested and withdrawn.	X	X
Enter into safe custody agreement with bank and make payments.	X	X
Registration of investments in name of insurer.	X	X
Open a bank account for investments in name of the insurer.	X	X
Deposit all investment amounts in bank account.	X	X
Liquidate/purchase investments as directed by the insurer.	X	X
Conclude the relevant electronic banking functions.	X	X
Reporting		
Monthly reports on all receipts and payments on bank account.	X	X

Reports on changes in investments held as well as cash.	X	X
Month-end portfolio valuation of all investments.	X	X
Consultation with management.	X	X
Record keeping of investments etc.	X	X
Assistance during audit and verification of investments.	X	X