# KPMG: VAT on Non-Life Insurance Manual

**5th Edition**

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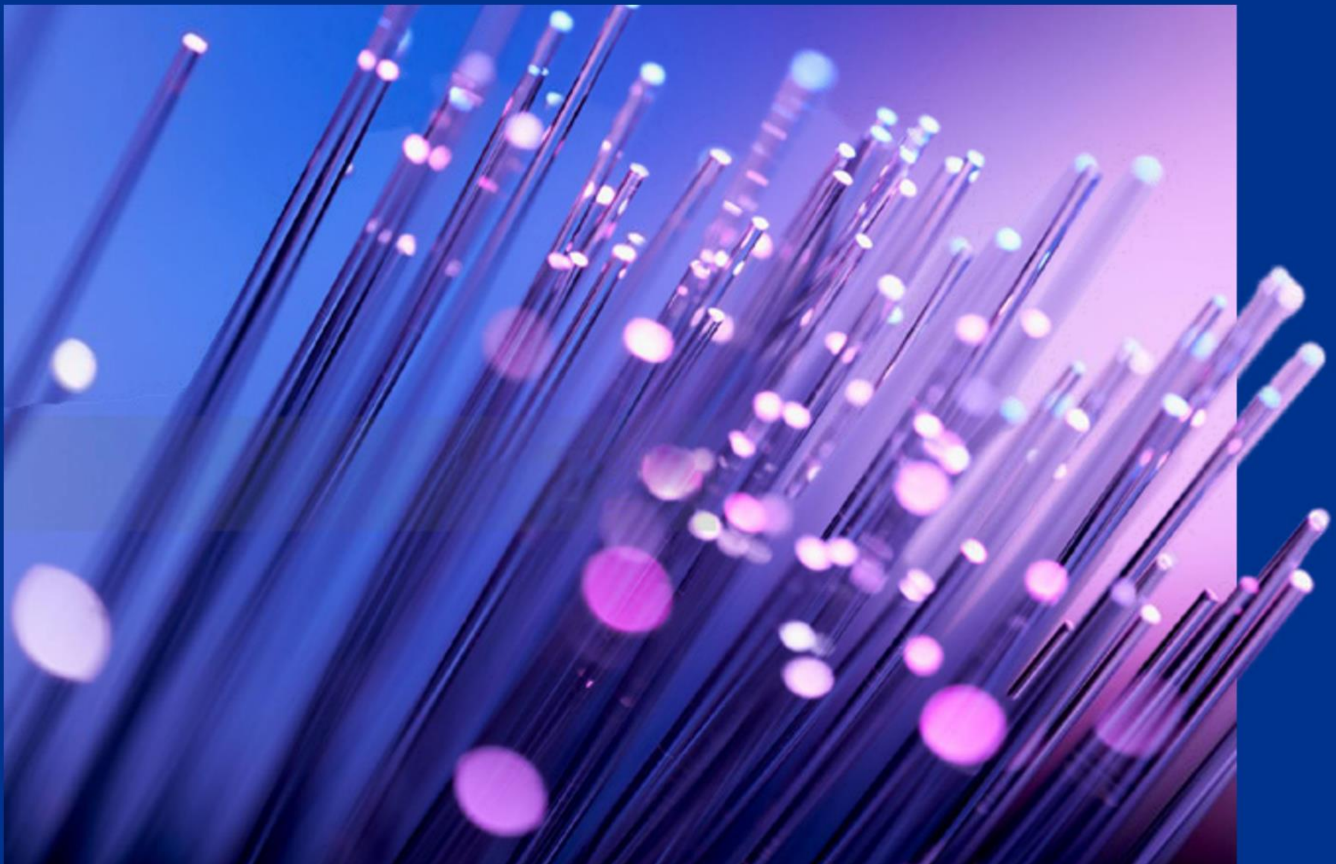

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# Preface

Through KPMG's longstanding involvement in and understanding of the non-life insurance industry, we developed indirect tax specific expertise in the field and regularly provide insurance specific Value-Added Tax (VAT) training, VAT reviews and VAT consulting services to non-life Insurers, Intermediaries and Reinsurers (hereinafter referred to collectively as "the Industry").

As an employee of KPMG, I have been actively involved in dealing with VAT in the Industry since 1990, prior to VAT being introduced on 30 September 1991. I was also privileged to have represented KPMG in its appointment, by the South African Insurance Association (SAIA), to act on behalf of the Industry in liaising with various members of the Industry and with other industry bodies such as the South African Financial Services Intermediaries Association (SAFSIA), the Marine Underwriters Agency (AMUA), as well as the Financial Services Board (FSB), National Treasury and the South African Revenue Service (SARS). I was also part of the team who represented the Industry to facilitate the issuing of various Binding General Rulings. Since the information shared with me by the said parties was instrumental in creating this publication, KPMG wishes to extend our sincere appreciation to them all.

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# Preamble

This Manual is intended as a guide on the VAT treatment of non-life insurance and reinsurance. Although the Manual mainly focuses on the VAT implications relevant to the Industry, the basic VAT principles pertaining to life insurance are also addressed.

The Manual endeavours to present the reader with a basic, yet practical understanding on how to apply the mechanics of VAT in the Industry.

This Manual is based on the provisions of the Value-Added Tax Act No. 89 of 1991 (the Act) as at 30 June 2023; Binding General Ruling (BGR) 14 (Issue 3) dated 24 March 2020; BGR 32 dated 18 March 2016 and the relevant Interpretation Notes issued by SARS, which remained in force as at 30 June 2022. Since legislation, Interpretation Notes and other publications issued by SARS, National Treasury and the Minister of Finance change from time-to-time, readers are cautioned that such changes may impact on the content of the Manual.

We also note that following the amendments to section 72 of the VAT Act, SAIA applied for reconfirmation of the section 72 ruling included in paragraphs 2.7.2 and 2.7.3 of BGR 14 (Issue 3) during December 2021, which application was not successful. During discussions, SARS noted certain reservations with regards to the legal nature where goods are replaced or repaired by Insurers. Following various communications between SAIA and SARS, SAIA made a submission to National Treasury to request certain amendments to the VAT Act to address both the VAT treatment of repairs or replacement by Insurers, and to effectively incorporate the former provisions contained in the said paragraphs of BGR 14 (Issue 3). SAIA also submitted additional information to SARS for consideration which SARS, and presumably National Treasury, are in the process of considering. As a result, the content of this Manual relating to the said aspects may need to be amended once these matters have been finalised by SARS and National Treasury.

This Manual shall not be construed as a formal opinion by KPMG on any aspect covered herein, nor shall it be construed as an extension or replacement of any ruling, BGR, Interpretation Note or other document issued by SARS, National Treasury or the Minister of Finance.

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# 1 The mechanics of VAT

## 1.1 What is VAT?

VAT is an indirect tax which is primarily charged by vendors on the supply of goods or services in the course or furtherance of an enterprise carried on in, or partly in the Republic of South Africa (the RSA).

As the RSA VAT system is mainly a consumption-based tax, VAT is charged on virtually all types of transactions where the supply is made by a vendor.

The Act also provides for VAT to be payable on goods imported and certain services imported into the RSA (refer par 1.2.5.2).

**Vendor**

A vendor means any person who is registered for VAT or who is required to be registered for VAT. [section 1(1) – definition of “vendor”]

**Supply**

Supply is broadly defined in the Act and includes all forms of supply, including supplies in the form of a sale, rental agreement, barter transaction and includes deemed supplies. [section 1(1) – definition of “supply”]

**Goods**

Goods include corporeal movable things, fixed property and any real right in such things or fixed property but excludes money. [section 1(1) – definition of “goods”]

**Services**

A service is defined as meaning anything done or to be done, including, the making available of any facility or advantage, but excludes the supply of goods or money. [section 1(1) – definition of “services”]

## 1.2 Types of supplies

Any supply made in the RSA can be measured against the provisions of the Act and can, in broad terms, be categorised as being taxable, at either standard or zero-rate [sections 7(1) and 11], non-taxable such as exempt supplies [sections 12 and 2] or non-supplies.

### 1.2.1 Taxable supplies

Essentially, any supply of goods or services made (or deemed to be made) by a vendor in the course of the vendor’s enterprise, which is chargeable with VAT under the provisions of the Act, is called a taxable supply.

The supply of non-life insurance/reinsurance is a taxable supply of a service if supplied by a vendor. Equally, the supply of intermediary services constitutes a taxable supply of services, if the Intermediary is a vendor.

### Standard rate

The Act provides for the supply of goods or services to be taxed at the standard rate which is currently 15%. [section 7 – imposition of VAT]

### Zero-rate

The Act contains special provisions whereby certain taxable supplies of goods or services are to be taxed at the zero-rate (0%). [section 11 – zero rating]

### 1.2.2 Registering as a vendor for VAT

Any person who carries on an enterprise is, in terms of section 23 of the Act, liable to be registered as a VAT vendor if the value of the taxable supplies made in the carrying on of such enterprise exceeds, or will exceed in terms of a contractual obligation in writing, the VAT registration threshold of R1 million (excluding VAT) in any twelve-month period. Section 23 of the Act also provides for voluntary VAT registration where a minimum taxable turnover of R50 000 (excluding VAT) is achieved by any enterprise in a twelve-month period.

An enterprise includes any enterprise (i.e., business) or activity, which is carried on continuously or regularly by any person in the RSA or partly in the RSA, in the course or furtherance of which goods or services are supplied for a consideration to any other person.

In terms of the Act, certain specified activities do not constitute enterprise activities, including, a hobby or recreational pursuit of a natural person, any activity of a vendor which relates to the making of exempt supplies and the supply of insurance by Underwriters of Lloyd's of London to the extent that the contracts are concluded outside the RSA. [section 1(1) – definition of “enterprise”; section 12 – exempt supplies]

### 1.2.3 Non-taxable supplies

Supplies made by persons who are not vendors do not attract VAT and are commonly referred to as non-taxable supplies. To illustrate, the supply of non-life insurance by a foreign Insurer who is not a vendor is a non-taxable supply. However, certain supplies made by vendors, being supplies which are not made in the course or furtherance of an enterprise, are also non-taxable and do not attract VAT.

Furthermore, section 12 of the Act specifically provides for certain supplies to be exempt from VAT (not subject to VAT). Exempt supplies include the supply of financial services (e.g., supply of life insurance), certain educational services, bus, train and taxi transport services, rental of property used for residential purposes, services supplied by body corporates and similar associations, certain supplies by employee organisations and bargaining councils and certain supplies by political parties.

Although no VAT is chargeable on exempt, non-taxable and zero-rated supplies, the latter constitute “taxable supplies” with the result that any VAT incurred (subject to certain exceptions) by a vendor in respect of goods or services acquired or imported for purposes of consumption, use or supply in the course of making zero-rated supplies, is claimable as input tax, whereas the VAT incurred in the course of making exempt and/or non-taxable supplies cannot be claimed as input tax.

The provision of life insurance by a life insurance company to a person in the RSA comprises a financial service which is an exempt supply (refer par 19.2). Businesses which only make exempt supplies cannot register as vendors. However, although life insurance companies make exempt supplies, such companies may be registered for VAT by virtue of certain taxable supplies, for example, the letting of fixed property.

For the purposes of this Manual, non-taxable supplies and exempt supplies shall collectively be referred to as non-taxable supplies.

### 1.2.4 Deemed supplies

The Act contains special provisions which deem certain activities to either constitute the supply of "services" as opposed to “goods”, or the supply of "goods" as opposed to “services”, or which deem certain supplies to constitute taxable supplies and other supplies to be non-taxable supplies.

To illustrate, the settling of an insurance claim by an Insurer by virtue of an indemnity payment would fall outside the scope of the Act on the basis that such a payment would generally not constitute consideration for the supply of goods or services by the Insured. However, section 8(8) of the Act deems a taxable supply to take place in certain circumstances where an indemnity payment is received by an Insured under a contract of insurance (refer par 14.1).

### 1.2.5 Goods and services imported

#### *1.2.5.1 Goods imported*

Section 7(1)(b) of the Act imposes VAT on the importation of any goods into the RSA at the time the goods are cleared for home consumption. This VAT is collected from the importer by SARS.

Section 13(2) of the Act provides that the value to be placed on the importation of goods into the RSA is the value thereof for customs duty purposes, plus any duty levied in terms of the Customs and Excise Act in respect of the importation of the goods, plus 10% of the customs value. The 10% upliftment does not apply where the goods have their origin in and are imported from Botswana, Lesotho, Eswatini or Namibia.

Consequently, where the underlying subject matter of an insurance risk involves the replacement of goods which must be imported, the VAT and duties payable on the importation of such goods must be taken into account when determining the value of the sum insured (refer par 15 and par 15.4).

#### *1.2.5.2 Imported services*

Section 7(1)(c) of the Act imposes VAT on the supply of imported services to any person in the RSA. This VAT is payable to SARS by the recipient of the imported services.

The term “imported services” is defined in section 1(1) of the Act to mean a supply of services that is made by a supplier (who is resident or carries on business outside the RSA) to a recipient who is a resident of the RSA, to the extent that such services are utilised or consumed in the RSA for the purpose of making non-taxable supplies.

The value placed on the supply of an imported service is the greater of the value of the consideration for the supply or the open market value of the supply. However, where an imported service consists of a supply which, if made in the RSA, would be charged with VAT at the zero-rate (for example the supply of an international travel policy (refer par 4.2)) or would be exempt (for example a life insurance policy (refer par 19.2)) no VAT is payable by the recipient on such service.

Where the underlying subject matter of an insurance risk involves an imported service, the VAT consequences of such imported service need to be considered in determining the value of the sum insured (refer par 15).

Imported services most often arise within the Industry when a non-vendor Insured in the RSA has cover placed on the foreign market (including Lloyd's open market business).

**Example**

The South African Department of Education, a public authority that is not registered as a VAT vendor, pays an annual premium of R100 000 in respect of insurance of certain of its assets under a Lloyd's open market placement.

Consequently, the Department of Education utilises the insurance for the purpose of making non-taxable supplies (as the Department of Education is not registered for VAT). The insurance service in respect of which the premium is paid comprises an imported service, as defined, and the Department must account for VAT as follows:

Consideration paid x standard rate VAT x percentage use for non-taxable activities = R100 000 x 15% x 100% = R15 000 (refer to par 15.4).

## 1.3 Payment of VAT to SARS

### 1.3.1 Output tax

As stated above, a vendor must account for VAT on all taxable supplies made (or deemed to be made) to other persons. The VAT so payable by a supplier (vendor) is known as output tax. A vendor must record the total amount of output tax charged on a VAT return (the VAT 201 form) to be submitted to SARS for every tax period (refer par 1.5).

### 1.3.2 Input tax/input credits

Vendors are permitted to recover the VAT paid or deemed to have been paid in respect of goods or services acquired in the course of making taxable supplies subject to certain rules, including, *inter alia*, the retention of valid supporting documentation (refer par 6.2). This VAT is generally known as input tax. [section 1(1) – definition of "input tax"]

Furthermore, the Act allows a vendor to make certain deductions which have the same effect as the claiming of input tax. An Insurer may, in terms of section 16(3)(c) of the Act, reduce its output tax liability with an amount equal to the tax fraction (i.e., 15/115) of indemnity payments made to Insureds (refer par 10.1.2).

For purposes of this Manual, input tax as defined in section 1(1) and the deduction in section 16(3)(c) are collectively referred to as "input credits".

A vendor's liability for VAT is calculated by deducting input credits from output tax payable. Where the input credits exceed the output tax amount in a tax period, a vendor is entitled to claim a VAT refund from SARS.

### 1.3.3 Input credits disallowed

#### *1.3.3.1 Non-permissible input credits – section 17(2)*

Subject to exceptions, section 17(2) of the Act provides that vendors are generally not permitted to claim input credits in respect of the following:

- expenses incurred for purposes of entertainment;
- membership fees to any sporting or recreational club;
- the acquisition or rental of passenger motor cars by persons who are not motor dealers or financiers of motor cars (input credits relating to the insurance of, or repairs and maintenance of motor cars, may however be claimed); or

- any goods or services acquired by a benefit fund for the purpose of the supply by such fund of any medical or dental goods or services.

#### *1.3.3.2 Expenses incurred for non-taxable purposes*

A vendor is not permitted to claim input credits on expenditure incurred wholly for purposes of consumption, use or supply in the course of making non-taxable supplies (refer par 16.2.1).

#### *1.3.3.3 Documentary evidence*

Most input credits can be claimed, provided the vendor is in possession of certain prescribed documentation such as tax invoices, debit notes, credit notes and bills of entry (refer par 6).

### 1.3.4 Apportionment of VAT

Where goods or services are acquired by a vendor partly for the purpose of consumption, use or supply in the course of making taxable supplies and partly for another purpose (i.e. for a dual purpose), input credits may be claimed only to the extent to which such goods or services are acquired for purposes of consumption, use or supply in the course of making taxable supplies (i.e. input credits need to be apportioned). Section 17(1) of the Act provides that vendors are required to calculate the percentage intended application, use or supply for taxable purposes by using an apportionment method approved by the Commissioner in terms of a binding ruling. In this regard, SARS issued BGR 16 which provides that the only pre-approved apportionment method which may be used is the standard turnover-based method. This method essentially calculates the total value of taxable supplies as a percentage of total income. Where this method does not yield an equitable result, a vendor may apply to SARS for a ruling to use a method which yields an equitable result. SARS may however only approve such ruling with retrospective effect from the first day of the financial year in which the application for a ruling is made.

Where the intended use relating to taxable supplies is 95% or more of the total intended use, input credits on expenses incurred for a dual purpose may be claimed in full.

**Example**

Where an Insurer (vendor) earns both taxable revenue (e.g. premium and commission income) and non-taxable revenue (e.g. exempt income such as profits/losses on investments, interest or dividends) the Insurer is required to determine the percentage claimable in respect of so-called “dual expenses” (e.g. overhead costs, furniture and equipment etc.), by applying the standard turnover-based method (e.g. total taxable income of say R100 million divided by total income of say R120 million = 83.33%). This means that the Insurer will, in this example, only be entitled to claim 83.33% of VAT incurred on dual expenses.

## 1.4 Accounting bases

Section 15 of the Act provides for two bases of accounting for VAT to SARS, namely the invoice basis (i.e., an accrual basis) and the payments basis (i.e., a cash basis).

### 1.4.1 Invoice basis

Most vendors are, in terms of section 15 of the Act, required to account for VAT on the invoice basis. In general terms, the invoice basis requires vendors to account for output tax in the tax period in which an invoice is issued or any payment is received, whichever is the earlier. An invoice is defined in section 1(1) of the Act as any document notifying an obligation to make payment. The invoice basis generally takes account of invoices issued and therefore output tax may have to be accounted for on uncollected income.

Similarly, input credits can generally be claimed in the tax period in which a tax invoice is received by the vendor.

Although RSA Insurers are required to account for VAT on the invoice basis, SARS has confirmed in BGR 14 (Issue 3) that Insurers, and Intermediaries (excluding Reinsurers and reinsurance Brokers) are liable to account for output tax on premiums and commissions in the tax period in which payment is received, by either the Insurer or the Intermediary, on the basis that insurance cover is only provided upon receipt of the insurance premium (refer par 9.1.2). Equally, commissions only become payable upon receipt of the premium (refer par's 9.2.2, 9.3 and 18.6).

### 1.4.2 Payments basis

Generally, only public authorities, local authorities, associations not for gain and non-residents who supply electronic services may account for VAT on the payments basis. Further, natural persons who do not make taxable supplies in excess of R2.5 million a year, may apply to SARS to account for VAT on the payments basis.

Vendors who are permitted to apply the payments basis must generally account for output tax in the tax period in which payment is received in respect of taxable supplies made. Further, input credits may only be set off against the output tax payable in the tax period in which a tax invoice is received and payment has been made.

## 1.5 Tax periods

The Act contains specific rules on when a vendor becomes liable to account for output tax. These rules are generally known as time of supply rules and are contained in section 9 of the Act.

Furthermore, section 27 of the Act provides for specific periods, called tax periods, in which vendors are required to account for output tax and input credits considering the time of supply rules.

The Act provides for five categories of tax periods, namely:

**Category A or B**

These are bi-monthly tax periods. Category A is a two-monthly period which ends on the last day of the months January, March, etc. whereas Category B ends on the last day of the months February, April, etc.

### Category C

This is a monthly tax period which ends on the last day of every calendar month. This tax period is compulsory where the value of a vendor's taxable supplies in a twelve-month period exceeds R30 million but is optional where the value of a business' annual taxable supplies does not exceed R30 million.

### Category D

This is a six-monthly period which applies only to farmers or farming enterprises with a total annual taxable turnover not exceeding R1.5 million.

### Category E

This is an annual tax period which applies only to companies or trust funds that comply with specific requirements of the Act in the course of making certain supplies within a group structure.

All the above tax periods end on the last day of a particular calendar month. However, section 27(6) of the Act provides, *inter alia*, that vendors may end their tax periods on a day other than on the last day of a calendar month (within 10 days before or after the last day of the month). Vendors are required to submit written applications to their local SARS office to obtain approval to do so unless BGR 19 (Issue 2) of 10 March 2014 applies, which grants up-front approval to vendors for the use of certain categories of cut-off dates.

Insurers are generally registered under Category C as their annual taxable turnover normally exceeds R30 million.

Intermediaries are generally registered under either Category A, B or C depending on their annual turnover.

# 2 Categories of insurance per the Insurance Act, 2017

The below is an extract of the classes of non-life insurance business that are listed in Table 2 of Schedule 2 to the Insurance Act, no 18 of 2017 (the Insurance Act). The classes are only applicable to the extent to which non-life Insurers, Reinsurers and Microinsurers are permitted/licenced. Microinsurers in particular, can supply both non-life insurance and life insurance, limited to the extent envisaged in the Insurance Act (refer to definition in the Glossary).

### CLASSES AND SUB-CLASSES OF INSURANCE BUSINESS NON-LIFE INSURANCE

| CLASS | | SUB-CLASS | | DESCRIPTION |
|---|---|---|---|---|
| *1* | **MOTOR** | *(a)* | *Personal lines* | *Covers damage or loss resulting from the possession, use or ownership of motor vehicles and other vehicles operating on land, excluding railway rolling stock and warranty business* |
| | | *(b)* | *Commercial lines* | |
| *2* | **PROPERTY** | *(a)* | *Personal lines* | *Covers damage to or loss resulting from the possession, use or ownership of property (other than classes 1 above and 3 to 8 below* |
| | | *(b)* | *Commercial line* | |
| *3* | **AGRICULTURE** | *(a)* | *Personal lines* | *Covers damage or loss to crop, forestry, agricultural equipment, other agricultural activities and livestock* |
| | | *(b)* | *Commercial lines* | |
| *4* | **ENGINEERING** | | | *Covers damage to or loss resulting from the possession, use or ownership of machinery or equipment; the erection of buildings or other structure; the undertaking of other works; or the installation of machinery or equipment, and includes loss of revenue* |
| *5* | **MARINE** | *(a)* | *Personal lines* | *Covers damage or loss resulting from the possession, use or ownership of vessels used on or in a river, canal, dam, lake or sea* |
| | | *(b)* | *Commercial lines* | |
| *6* | **AVIATION** | *(a)* | *Personal lines* | *Covers damage or loss resulting from the possession, use or ownership of aircraft or spacecraft* |
| | | *(b)* | *Commercial lines* | |
| *7* | **TRANSPORT** | *(a)* | *Personal lines* | *Covers damage or loss resulting from the conveyance, storage, treatment and handling of goods in transit, irrespective of the form of transport* |
| | | *(b)* | *Commercial lines* | |
| *8* | **RAIL** | | | *Covers damage or loss resulting from the possession, use or ownership of railway rolling stock or related infrastructure* |
| *9* | **LEGAL EXPENSE** | *(a)* | *Personal lines* | *Covers any legal expenses and costs of litigation* |
| | | *(b)* | *Commercial lines* | |
| *10* | **LIABILITY** | *(a)* | *Directors and officers* | *Covers liability to another person including liability provided for under the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993)* |
| | | *(b)* | *Employer liability* | |
| | | *(c)* | *Product liability (including product guarantee and* | |

| CLASS | | SUB-CLASS | | DESCRIPTION |
|---|---|---|---|---|
| | | | *product recall)* | |
| | | *(d)* | *Profession al indemnity* | |
| | | *(e)* | *Public liability* | |
| | | *(f)* | *Aviation* | |
| | | | *Engineerin g (including* | |
| | | *(g)* | *environmental impairment liability)* | |
| | | *(h)* | *Marine* | |
| | | *(i)* | *Motor* | |
| | | *(j)* | *Rail* | |
| | | *(k)* | *Transport* | |
| | | *(l)* | *Personal* | |
| | | *(m)* | *Other* | |
| *11* | **CONSUMER CREDIT** | *(a)* | *Personal lines* | *Lump sum payable to satisfy all or part of a financial liability to a credit provider in the event of loss resulting from the possession, use, ownership or benefits of the goods or services supplied in terms of the credit agreement* |
| | | *(b)* | *Commercial lines* | |
| *12* | **TRADE CREDIT** | | | *Covers loss resulting from the provision of export credit or agricultural credit or any other trade credit as a result of insolvency or any other event* |
| *13* | **GUARANTEE** | | | *Covers loss resulting from—* |
| | | | | * *insolvency;* |
| | | | | * *the direct and indirect failure of a person to discharge an obligation;* |
| | | | | * *suretyship offered as part of normal business activities, other than a guarantee issued by a Bank registered under the Banks Act, 1990* |
| *14* | **ACCIDENT AND HEALTH** | *(a)* | *Individual—Personal lines* | *Covers costs or loss of income resulting from—* |
| | | | | * *a disability or death event caused by an accident; or* |
| | | | | * *a health event, other than costs or services regulated under the Medical Schemes Act, 1998, but includes any kind, type or category of contract identified by the Minister in regulations as an insurance policy that may be entered into under this class* |
| | | *(b)* | *Individual—Commercial lines* | *Covers costs or loss of income resulting from—* |
| | | | | * *a disability or death event caused by an accident; or* |
| | | | | * *a health event, other than costs or services* |

| CLASS | | SUB-CLASS | | DESCRIPTION |
|---|---|---|---|---|
| | | | | *regulated under the Medical Schemes Act, 1998, but includes any —* |
| | | | | *— kind, type or category of contract identified by the Minister in regulations as a policy that may be entered into under this class;* |
| | | | | *— an event covered under the Compensation for* |
| | | | | *Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993)* |
| | | *(c)* | *Group* | *Covers costs or loss of income of a beneficiary resulting from —* |
| | | | | * *a disability or death event caused by an accident; or* |
| | | | | * *a health event, other than costs or services regulated under the Medical Schemes Act, 1998, but includes any kind, type or category of contract identified by the Minister in regulations as a policy that may be entered into under this class* |
| *15* | **TRAVEL** | *(a)* | *Individual— Personal lines* | *Covers damage or loss resulting from—* |
| | | *(b)* | *Individual— Commercial lines* | * *cancellation, interruption, loss of property (including baggage), or other unforeseen events before, while and after travelling;* |
| | | *(c)* | *Group* | * *a death, disability or health event while travelling in a country in which the insured person is not ordinarily resident* |
| *16* | **MISCELLANEOUS** | *(a)* | *Personal lines* | *Covers damage to or loss resulting from a risk not addressed under any other class or sub-class referred to in this Table, which risk is approved by the Prudential Authority* |
| | | *(b)* | *Commercial lines* | |
| *17* | **REINSURANCE** | *(a)* | *Proportional in respect of a class or sub-class referred to above.* | |
| | | *(b)* | *Non-proportional in respect of a class or sub-class referred to above.* | |

# 3 Non-registered Insurers

Under certain circumstances, a company can register its branches/divisions under separate VAT registrations. The separately registered branches/divisions are deemed to be separate persons for VAT purposes. One of the separately registered branches/divisions may supply insurance, for VAT purposes, to other separately VAT registered branches/divisions, albeit that it is not a registered Insurer. In these circumstances, the branch/division which supplies the insurance will generally insure the risks of the company with a registered Insurer. In these instances, the said branch/division will claim input tax on the premiums paid to the Insurer and will account for output tax on the premiums on-charged to the other branches/divisions. Similarly, the recipient branches/divisions will be entitled to claim input credits on the premiums paid to the supplying branch/division subject to the normal requirements for claiming input credits.

As far as claims are concerned, the Insurer branch/division will be liable for section 8(8) VAT on indemnities received from the registered Insurer and will be entitled to claim input credits in respect of indemnities paid to insured branches/division. Equally, the insured branches/divisions are liable to account for section 8(8) VAT on indemnity payments received from the Insurer branch/division.

Refer to paragraph 17 for a discussion on insurance cover for groups of companies (i.e. separate legal entities).

# 4 Non-life insurance (excluding reinsurance)

## 4.1 Standard rated policies

The issuing of an insurance policy for any category of non-life insurance (refer par 2) in the RSA by an Insurer who is a vendor comprises a taxable supply (refer par 1.2.1) and is subject to VAT. This includes Coverholder business written by Lloyd's Coverholders. Insurers must therefore account for VAT on the insurance premiums payable by policyholders (Insureds).

All taxable policies will be subject to standard rate VAT, unless one of the zero-rating provisions of section 11(2) of the Act applies.

It should be noted that the subject matter (i.e., the insured risk) of an insurance policy does not determine whether the policy is subject to VAT, neither does it determine the VAT rate applicable to such policy. Where, for example, a VAT vendor insures a non-taxable commodity (e.g., money) the policy will remain taxable at the standard rate.

## 4.2 Zero-rated policies

As noted, the VAT rate applicable to the underlying commodities to be insured has no bearing on the VAT rate applicable to the insurance premium. For example, where a zero-rated commodity (e.g., fuel) is insured, the premium will be subject to standard rate VAT where the Insurer is a vendor and the fuel is located in the RSA. Further, the class of insurance, for example marine policies, does not by implication determine the VAT rate applicable to the premium. Instead, insurance premiums are subject to zero-rate VAT only where the insurance policy concerned satisfies the specific criteria envisaged in section 11(2) of the Act.

Further, for an Insurer to apply the zero-rate to insurance premiums, the Insurer is, in terms of section 11(3) of the Act, read with BGR 14 (Issue 3), required to obtain and retain certain prescribed documentation to substantiate the application of the zero-rate. Also refer to par 14 for section 8(8) application.

Given various ambiguities and anomalies in applying the zero-rate provisions with regard to inbound and outbound marine policies; inbound and outbound travel policies; policies in respect of movable property located outside the RSA (including hull insurance in respect of vessels/craft located outside the RSA) and insurance in respect of foreign-going ships and foreign-going aircraft owned by non-residents, the Industry has requested a ruling from SARS to clarify the ambiguities and to overcome the anomalies. To this end SARS has issued BGR 14 (Issue 3) which deals, *inter alia*, with marine policies, to direct when and to what extent the zero-rating provisions will apply to the said policies. Accordingly, both the legislative provisions and the relevant provisions in the BGR's are dealt with below.

The following is a summary of the most common provisions in section 11(2) of the Act in terms of which policies are zero-rated:

- section 11(2)(d) – insurance of international transport of goods or passengers;
- section 11(2)(f) – insurance of land/improvements thereto situated outside the RSA;
- section 11(2)(g) – insurance of movable property situated outside the RSA; or
- section 11(2)(h) – insurance of "foreign-going ships" or "foreign-going aircraft", as defined in section 1(1) of the Act, if the insurance is supplied to a non-resident who is not a VAT vendor.

### 4.2.1 Inbound and outbound marine insurance – section 11(2)(d)

#### *4.2.1.1 Legislative provisions*

The supply of insurance or the arranging of insurance by Intermediaries is, in terms of section 11(2)(d), subject to zero-rate VAT (i.e., premiums and commissions are zero-rated) where the insurance is in respect of:

- the transport (excluding ancillary transport services) of goods from a place outside the RSA to another place outside the RSA (section 11(2)(a)(i));
- the transport (excluding ancillary transport services) of goods from a place in the RSA to a place in an export country (section 11(2)(a)(ii));
- the transport (excluding ancillary transport services) of goods from a place in an export country to a place in the RSA (section 11(2)(a)(iii)); or
- the transportation, including ancillary transport services such as storage, of goods from one place in the RSA to another place in the RSA, to the extent that the supply of the domestic transport and ancillary services are made by the same supplier as part of the international transportation of the goods (section 11(2)(c)).

#### *4.2.1.2 BGR 14 (Issue 3) - inbound and outbound marine, including inbound and outbound stock throughput policies*

BGR 14 (Issue 3) describes inbound and outbound marine policies (including stock throughput policies) as meaning a transport policy which provides insurance cover in respect of goods transported from an export country to the RSA and *vice versa* if the transport is part of an “international voyage”. In this regard BGR 14 (Issue 3) defines the term “international voyage” as meaning the transportation of goods from the Insured’s premises (or other named location) in the RSA to a destination in another country (and *vice versa*) and includes transit to packers, forwarders, consolidators, hauliers, warehouses and other places of storage (i.e., so-called “incidental storage”) until the goods are safely delivered at the final destination specified in the insurance contract.

**Inbound and outbound marine policies**

BGR 14 (Issue 3) provides that the zero-rate of VAT applies to premiums and commissions on:

- inbound and outbound marine policies, provided the insured goods are on an “international voyage”. It thus follows that only incidental static cover is zero-rated whilst elected static cover in respect of inbound and outbound marine policies is standard rated (section 11(2)(d) and section 7(1)(a)); or
- insurance provided while the insured goods are transported between places in the RSA or stored in the RSA, if the transport services and storage services are supplied by the same supplier who provides the international transport services (section 11(2)(c)). This will typically apply where an exporter contracts with a freight forwarder to transport goods from say Johannesburg to London. In this instance the zero-rate applies to the insurance, provided the freight forwarder contracts in the capacity as principal supplier of the transport and storage, albeit that the freight forwarder will in all probability outsource most of the transport and storage services to third parties including, for example, the road transport from Johannesburg to Durban, any storage required, the voyage by sea, the offshore inland transport as well as the storage in the United Kingdom (the UK).

### Stock throughput policies

BGR 14 (Issue 3) considers that although a single premium is generally quoted in respect of a stock throughput policy, Insurers take the domestic and foreign transit risks as well as incidental, nominated and elected static risks into account in determining a single premium for the individual risk components.

As is the case with other inbound and outbound marine policies, BGR 14 (Issue 3) provides that the zero-rate of VAT applies to premiums and commissions in respect of stock throughput policies:

- provided the goods are transported or stored as part of an "international voyage" (section 11(2)(d)); or
- to the extent to which elected static cover is provided for goods to be stored in the RSA, if the goods so stored are supplied directly in connection with the goods being imported or exported from the Republic, provided the transport services and/or storage services in the RSA are supplied by the same supplier who supplies the international transport service (section 11(2)(c)).

Of particular importance is that the insurance cover provided while the insured goods are not transported as part of an international voyage, for example elected static cover, does not qualify for zero-rating under section 11(2)(d) and is therefore subject to VAT at the standard rate.

Further, where Insurers levy a single stock throughput premium which relates to both standard and zero-rated supplies, the standard and zero-rated supplies are deemed to be separate supplies in terms of section 8(15). Insurers are therefore required to allocate the single stock throughput premium to the various risk components, to determine the premium and apply the applicable VAT rate to each component. To illustrate, the portion of the premium relating to the period when the goods are stored in terms of elected static cover would be subject to VAT at the standard rate, whereas cover provided during transport and incidental storage periods will be zero-rated. Since Intermediaries do not necessarily have the breakdown of the various component parts of the single premium charged in respect of stock throughput policies, BGR 14 (Issue 3) requires that Insurers notify the Intermediaries of the appropriate percentage used to calculate the respective standard rated and zero-rated portions of the single stock throughput premium and that the Insurer retains proof of such notifications.

Further, any subsequent adjustment to the premium must be attributed to the respective standard rated and zero-rated portions using the same ratio calculated in respect of the initial premium unless the Insurer is able to make a more accurate calculation based on specific information relating to that adjustment.

### 4.2.2 Inbound and outbound travel policies

#### *4.2.2.1 Legislative provisions*

The supply of insurance or the arranging of insurance by Intermediaries is, in terms of section 11(2)(d)(i) subject to zero-rate VAT (i.e., premiums and commissions are zero-rated) where the services comprise the insuring or arranging of the insurance in respect of the transportation of goods or passengers:

- from a place outside the RSA to another place outside the RSA (section 11(2)(a)(i));
- from a place in the RSA to a place in an export country (section 11(2)(a)(ii));
- from a place in an export country to a place in the RSA (section 11(2)(a)(iii)); or

- where the transport is of passengers by air within the RSA, to the extent that the transport constitutes international carriage as defined in Article 1 of the Convention set out in the Schedule to Carriage by Air Act, 1964 (section 11(2)(b)).

Further, section 11(2)(d)(ii) zero-rates the insuring or arranging of insurance (i.e., premiums and commissions) of passengers on an international journey, where the insurance of those passengers is provided under a single inbound or outbound insurance policy in respect of which a single premium is levied. This section was amended in 2018 to remove the ambiguity that existed with regards to the cover provided whilst the passengers who are covered under the travel policy are travelling in the RSA, before they return from their foreign destination of departure to the RSA.

Section 1(1) of the Act defines 'international journey' as meaning a journey commencing from the "point of departure" in the Republic to a destination outside the Republic (and *vice versa*), including (where applicable) stopovers *en route* to the destination, time spent in the destination country and the return journey.

Section 1(1) of the Act defines 'inbound insurance policy' as meaning a travel policy which provides insurance cover in respect of a passenger transported from an export country into the Republic or between two places in the Republic as part of an international journey.

Section 1(1) defines 'outbound insurance policy' as meaning a travel policy which provides insurance cover in respect of passenger transported from the Republic to a destination in an export country or from a place outside the Republic to another destination outside the Republic as part of an international journey.

#### *4.2.2.2 Implications*

**International travel**

From the provisions in the Act, it follows that the zero-rate applies to inbound and outbound policies as part of the international journey only. Since 'international journey' includes stopovers *en route* and the time spent in the destination country, whether an inbound or outbound policy, it follows that the entire premium or commission in these circumstances is zero-rated. The zero-rate applies provided the Insurer retains the documents listed in IN 31 (Issue 4) (refer par 8).

If the local and international travel are covered by separate policies, only the supply of the international travel insurance will qualify for zero-rating whereas the local travel insurance is subject to VAT at the standard rate.

**Domestic air travel as part of international air travel**

Section 11(2)(b) provides for zero-rate VAT to be charged on premiums and commissions in respect of insurance supplied relating to the transportation of passengers in the RSA by air if the domestic flight constitutes "international carriage" as defined in Article 1 of the Convention set out in the Schedule to the Carriage by Air Act, 1946, provided the supporting documents listed in IN 31 (Issue 4) are obtained and retained (refer par 8).

The term "international carriage" is currently defined in the said Act as meaning "any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party".

### 4.2.3 Hull insurance for foreign-going ships and foreign-going aircraft

#### *4.2.3.1 Legislative provisions*

Section 11(2)(h) of the Act provides for zero-rate VAT to be charged in respect of services provided in connection with the operation or management of any foreign-going ship or foreign-going aircraft provided the services are supplied directly to a person who is not a resident of the RSA and not a vendor, otherwise than through an agent or other person.

In this regard it is of utmost importance to consider the technical meanings of the terms "foreign-going ship"; "foreign-going aircraft" and "resident of the Republic" as defined in section 1(1) of the Act.

#### *4.2.3.2 BGR 14 (Issue 3) – hull insurance*

BGR 14 (Issue 3) confirms that the supply of hull insurance is regarded as a service provided in connection with the operation or management of a foreign-going ship or foreign-going aircraft. Accordingly, the supply of hull insurance in respect of foreign-going ships and foreign-going aircraft is zero-rated in terms of section 11(2)(h) of the Act, provided all the following conditions are met:

- the policy is issued directly (i.e., not through an agent or other person) to a person who:
  - is not a Resident of the RSA; and
  - is not a vendor; and
- the Insurer meets the documentary requirements of section 11(3) and IN 31 (Issue 4) (refer par 8).

BGR 14 (Issue 3) further directs that the temporary presence (e.g., docking landing, temporary import for repairs and maintenance etc.) of the foreign-going aircraft or foreign-going ship in the RSA will not impact the zero-rating of the supply. For purposes of BGR 14 (Issue 3), the term "temporary presence" means a period of 6 months or less.

### 4.2.4 Other hull insurance and insurance on other movable property located outside the RSA

#### *4.2.4.1 Legislative provisions*

Section 11(2)(g) zero-rates services, including insurance, supplied by a vendor directly in respect of:

- movable property situated in any export country at the time the services are rendered;
- goods temporarily admitted into the RSA from an export country which are exempt from tax on importation under Items 470 and 480 of paragraph 8 of Schedule 1 (i.e., goods temporarily imported for processing, repair, cleaning, reconditioning or for the manufacture of goods exclusively for export); or
- goods in respect of which the provisions of paragraph (b) or (c) of the definition of "exported" in section 1(1) apply (i.e., goods delivered to the owner or charterer of any foreign-going ship or foreign-going aircraft for use in such ship or aircraft).

#### *4.2.4.2 BGR 14 (Issue 3) – other hull and movable property outside the RSA*

BGR 14 (Issue 3) confirms that the zero-rate applies to hull insurance and insurance in respect of other movable property, if the vessel, craft or other movable property is situated in an export country during the period for which the insurance cover is provided.

However, to zero-rate the supply of such insurance, the Insurer must satisfy all the following conditions:

- the insurance contract must stipulate the geographical scope of the insurance cover provided in respect of the vessel, craft or movable property located outside the RSA, or the Insurer must obtain and retain a declaration from the Insured confirming that the vessel, craft or movable property is situated outside the RSA; and
- the Insurer must, in accordance with section 11(3) retain the documents specified in IN 31 (Issue 4) (refer par 8).

BGR 14 (Issue 3) further confirms that the temporary presence of the vessel, craft or other movable property in the RSA will not disqualify the application of the zero-rate in respect of the supply of the insurance relating to those goods. As is the case with hull insurance in respect of foreign-going ships and aircraft, BGR 14 (Issue 3) provides that the term "temporary presence" means a period of 6 months or less.

### 4.2.5 Insurance of fixed property located outside the RSA

#### *4.2.5.1 Legislative provisions*

Section 11(2)(f) of the Act zero-rates services, including insurance, supplied by a vendor directly in connection with land, or any improvement thereto, situated in any export country.

#### *4.2.5.2 BGR 14 (Issue 3) – fixed property outside RSA*

BGR 14 (Issue 3) confirms that insurance supplied directly in connection with land, or any improvement thereto, situated in an export country, is subject to VAT at the zero-rate under section 11(2)(f).

However, the zero-rate will only apply if the Insurer obtains and retains the documentary proof as provided for under section 11(3) read with IN 31 (Issue 4) (refer par 8). Failure to obtain and retain the required documentary proof will result in the vendor having to make the relevant adjustments as stipulated in IN 31 (Issue 4).

### 4.2.6 Insurance supplied to non-residents

Section 11(2)(ℓ) of the Act provides that the supply of insurance to a non-resident of the RSA is zero-rated, provided:

- the non-resident Insured is physically outside the RSA at the time when the service is rendered; and
- the insurance is not directly in in connection with land or any improvement thereto situated in the RSA; or
- the insurance is not supplied directly in in connection with movable property situated in the RSA.

No other specific zero-rating provisions, except those mentioned above, apply to insurance supplied to non-residents.

## 4.3 Non-taxable policies

Where the supply of insurance falls outside the ambit of section 7(1)(a) of the Act (refer par 1.2.3), such supplies are not subject to VAT, unless the supply constitutes an imported service (refer par 1.2.5.2) which is subject to VAT.

A typical scenario of where a policy is not subject to VAT, is the supply of insurance by a non-RSA Insurer who is not a vendor (e.g., Lloyd's open market business) to a vendor making wholly taxable supplies.

As mentioned above, although VAT cannot be charged by non-resident Insurers who are not vendors (e.g., Lloyd's open market business), the Insured may nevertheless in certain circumstances be liable to account for VAT on a so-called "imported service" (refer par 1.2.5.2).

## 4.4 Insurance of employee-related risks

In the main, insurance of employee related risks can be divided into four main categories namely:

- insurance taken out by the employer in respect of employee related risks in which the employer has an insurable interest;
- insurance supplied by the employer to his employees in respect of assets of the employees;
- insurance taken out by the employees where the employer pays the premiums; or
- insurance taken out by employees where the employer pays the premiums as agent on behalf of the employees and is reimbursed by the employee.

Below, we discuss insurance of employee related risks in more detail.

### 4.4.1 Employer takes insurance on employees' assets/risks

Perhaps the most common forms of employee risks in which employers have an insurable interest are personal accident risks and risks in respect of employee motor vehicles used partly for business purposes (e.g., vehicles in respect of which employees are paid a travel allowance). Where the employer takes out insurance cover on employee related risks, the employer will be the Insured in terms of the contract, whereas the employee will often be referred to as the insured person.

Of particular importance is to note that PAYE is required to be deducted by the employer to the extent to which the insurance taken out by the employer constitutes a fringe benefit as envisaged in the Seventh Schedule to the Income Tax Act. Simplistically stated, a fringe benefit will exist in circumstances where the employee can be said to enjoy a private or domestic benefit. In the case of insurance cover, the nature of the fringe benefit will be one of a free service supplied by the employer. Apart from the Income Tax implications, this type of fringe benefit is, in terms of section 18(3) of the Act, subject to VAT. The VAT payable on the fringe benefit is calculated based on the value of the fringe benefit (as determined in the Seventh Schedule to the Income Tax Act, i.e., the cost to the employer) and is payable by the employer.

Any VAT payable on the premiums will be claimable as an input credit by the employer, subject to the normal requirements. Similarly, the employer will be liable to account for section 8(8) VAT, subject to the normal requirements, on all indemnities received from Insurers (refer par 14.5). However, there would be no input credit relief for the employer in relation to any indemnities paid by the employer to the employee.

**Example**

An employer, who is registered for VAT, pays the insurance in respect of a motor vehicle owned and used by the employee. The monthly insurance premium relating to the motor vehicle of the employee amounts to R1 150 (inclusive of VAT).

The employer supplies a fringe benefit to its employee consisting of free insurance and has a monthly output tax obligation of R150 calculated on the value of the fringe benefit (R1 150 x 15/115). The employer is also entitled to claim the input credit in respect of the premiums paid thus leaving the employer in a VAT neutral position.

### 4.4.2 Employer self-insures employee assets/risks

Where an employer maintains a self-insurance fund, which fund is used, *inter alia,* to provide insurance cover to employees in respect of their assets, the employer effectively operates as an Insurer. Should any premiums be charged to the employees, such premiums will be subject to VAT in the ordinary course. However, where no premiums are charged to the employee, the employer effectively grants a free service to the employee, which constitutes a fringe benefit that is subject to PAYE and VAT. Since the VAT on the fringe benefit is payable on the cost to the employer of supplying the insurance and since the employee will in these circumstances not incur any costs in respect of premium, the cost would generally constitute the costs incurred by the employer in the event of a claim. This has the result that the employer will be liable to account for output tax on the fringe benefit, equal to the tax fraction of all claims paid. Further, the employer, acting as Insurer will be entitled to claim input credits on claims settled, whether by virtue of trade or claims payments (refer par 10.1).

We point out that should the employer in this scenario not be a registered Insurer, such employer will most probably be in contravention of the Insurance Act. However, such contravention of the Insurance Act does not affect the VAT treatment.

### 4.4.3 Employer pays premium for the benefit of his employee

Where an employee takes out insurance as the Insured and the employer pays the premiums due by the employee without recovering such premiums from his employee, the employer is considered to supply the employee with a fringe benefit consisting of the settling of an employee’s debt. Although this type of fringe benefit is subject to PAYE, no VAT is payable on the basis that payment of a debt is not a taxable supply. Consequently, in this scenario the employer (vendor) cannot claim any input credit in respect of premiums paid and will equally not be liable for any section 8(8) VAT on indemnity payments received by the employee.

### 4.4.4 Employer pays premium as agent for employee

Where the employee takes out insurance as the Insured, but the employer pays the premiums on behalf of its employee and recovers such premiums from his employee without any mark-up, the employer effectively acts as agent of the employee. In this instance the employer cannot claim any VAT paid on premiums as input credits. Similarly, when the employer is reimbursed by the employee for premiums paid, no output tax is payable by the employer on such reimbursement, albeit that the amount reimbursed may be inclusive of VAT.

# 5 Brokers and other Intermediaries

## 5.1 Statutory provisions of agents

Section 54(1) of the Act deems a supply made by an agent for and on behalf of a principal, to be a supply made by the principal. An agent may, if a registered VAT vendor, issue a tax invoice in his name on behalf of the principal.

For example, where a Broker issues a standard rated insurance policy on behalf of an Insurer, or a UMA contracts with a Broker to issue an insurance policy on behalf of the Insurer, the supply of such insurance is deemed to be made by the Insurer and not the Broker or UMA. The Insurer must therefore account for output tax on any premiums paid by the Insured.

Similarly, section 54(2) of the Act provides that where any vendor makes a taxable supply of goods or services to an agent who is acting for and on behalf of a principal, such supply shall be deemed to be made to the principal and not to the agent, albeit that the supplier may nevertheless issue a tax invoice in the name of the agent.

**Example**

A panel beater issues a tax invoice to a broker or UMA for repair services supplied under a contract of insurance. Although the broker or UMA may effect payment for the services on behalf of the Insurer, only the Insurer is entitled to recover the VAT paid as an input credit.

The broker or UMA is obliged in terms of section 54(3) (refer par 6.4.2) to notify the Insurer in writing within 21 days after month end of the details of the supplies made.

## 5.2 Categories of Intermediaries

A significant amount of insurance business is conducted through independent Intermediaries (i.e., insurance Brokers and UMA's) and representatives, all of whom act as agents on behalf of Insurers.

A person (individual or corporate) requiring insurance will generally contact an insurance Broker requesting insurance cover for a specific risk. The Broker will liaise directly with one or more Insurers or UMA's and will advise the client of the various quotes obtained. Once the person accepts any given quotation, the Broker will communicate the client's acceptance of the cover offered to the selected Insurer/s or UMA's and place the Insurer/s on risk. Brokers and UMA's often collect premiums on behalf of Insurers. This premium handling process is regulated by the Insurance Act. Brokers and UMA's further often play a role in the reporting and management of claims made under insurance policies and may even manage self-insurance funds.

Furthermore, certain Brokers make use of, or act, as sub-agents – e.g., Insurers act as agents for Sasria with the result that if the policy was issued by the Broker, it effectively acted as a sub-agent for such Insurers.

### 5.2.1 Independent Intermediaries

An insurance Broker is an independent Intermediary who acts as an agent on behalf of an Insurer (principal) in the creation and maintenance of a contract of insurance which is entered into between the Insured and the Insurer. Such a Broker earns commission (otherwise known as brokerage) from the Insurer as consideration for services rendered to Insurers. However, Brokers also supply services to Insured's for which they may charge additional fees (e.g., policy charges or brokerage fees).

A Broker with an annual taxable turnover (i.e., commissions and other income) of less than R1 million is not liable to register for VAT. However, such Brokers may register for VAT on a voluntary basis (refer par 1.2.2).

Brokers, in their capacity as agents, are often required to collect premiums and to pay claims on behalf of Insurers. In certain instances, Brokers and Insurers enter into binding authority agreements in terms of which the Insurer grants pre-approval to the Broker to conclude contracts of insurance, normally with specified terms, on behalf of the Insurer and to accept or reject a risk.

### 5.2.2 Sub-agents

Brokers (as agents for Insurers) often utilise the services of sub-agents who receive sub-agents commission for services rendered. The VAT principles which apply to independent Intermediaries, apply equally to sub-agents.

### 5.2.3 Representatives

Where an insurance agent is employed by an Insurer, the remuneration paid to such agent (i.e., employee) whether by way of salary or commission, will not be subject to VAT, unless the amount payable to such employee is not subject to PAYE.

## 5.3 Commissions/fees payable to non-life insurance Intermediaries (excluding reinsurance brokerage and commissions)

### 5.3.1 General principles

An independent Intermediary receives commission from Insurers for services rendered as Intermediary, which could include, *inter alia*, the effecting, maintaining and servicing of non-life insurance policies. The commission is normally determined as a percentage (as determined under the provisions of the Insurance Act) of premium payable.

To ensure equity, where a VAT registered Intermediary applies the prescribed percentage commission to the VAT exclusive premium, VAT, at either the standard rate or the zero-rate, is to be added to the amount. Alternatively, where the Intermediary calculates the percentage commission with reference to the premium value which includes standard rate VAT, the value so derived will constitute the VAT inclusive commission payable. Where the premium includes zero-rate VAT and the commission concerned is subject to standard rate VAT, standard rate VAT is to be added to the calculated commission value (section 67(3)).

VAT cannot be added to the commission where an Intermediary is not a vendor. As a result, non-vendor Intermediaries cannot calculate their commissions as a percentage of a premium which includes standard rate VAT.

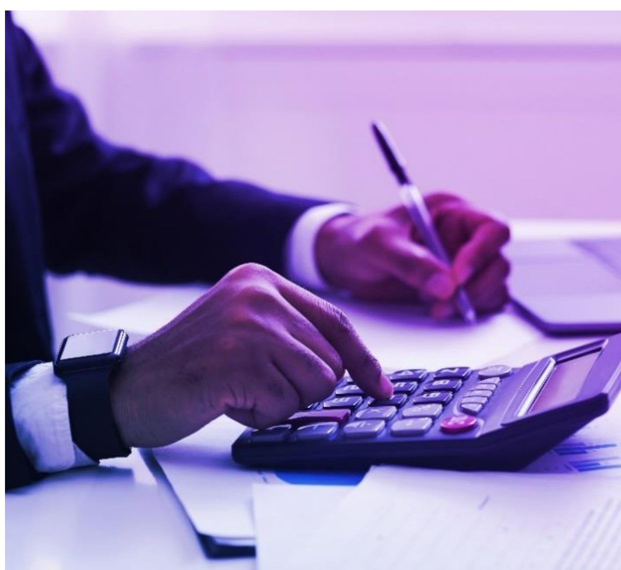
### 5.3.2 Standard rated commission

VAT registered Intermediaries must account for standard rate VAT (15%) on commissions payable by Insurers, unless the services supplied by the Intermediaries are specifically zero-rated in terms of section 11(2) of the Act as discussed below. In all other cases, commissions payable to VAT registered Intermediaries are subject to VAT at the standard rate, although the underlying insurance premium may be subject to zero-rate VAT (for instance hull insurance in respect of foreign-going aircraft or insurance of fixed property situated outside the RSA).

### 5.3.3 Zero-rated commission

Services supplied by VAT registered Intermediaries, including commissions payable to sub-agents, will only be subject to zero-rate VAT where the services comprise the arranging of insurance in respect of:

- inbound and outbound marine insurance, including stock throughput, where the premium is subject to zero-rate VAT (refer par 4.2.1); and
- inbound and outbound travel insurance (including domestic air travel which constitutes "international carriage"), where the premium is subject to zero-rate VAT -refer par 4.2.2).



The view is held that where Intermediaries pay referral fees, to persons who are VAT registered, in respect of any of the above zero-rated policies, such referral fees are subject to standard rate VAT on the basis that the referral services cannot be said to constitute the arranging of the insurance policy.

In certain instances, VAT can be charged at the zero-rate where Intermediary services are supplied to a non-resident provided the requirements of section 11(2)(ℓ) of the Act are met.

The zero-rate should further be supported by the required documentary proof (refer par 8).

# 6 Documentary requirements for claiming input credits on non-life insurance (excluding reinsurance) premiums and commissions paid

## 6.1 Documents conventionally used for premiums

Premiums are normally payable based on policy documents which generally consist of an insurance policy, a renewal notice, a coupon/certificate, a Broker's premium notification notice etc. The Industry differentiates between three general types of premiums, namely:

- new premium, which is the first premium payable when a policy is issued;
- renewal premium, which is payable when a policy is renewed; and
- adjustment/endorsement premium, which becomes payable when mid-term adjustments are made to policies (e.g. adding/deleting items on an all risk policy or vehicles to a motor fleet policy) or declarations are made against a policy for which an indicative deposit is paid up front, subject to declarations of actual values insured which are made from time to time (e.g. on an open marine policy where the value of shipments is determined on an as-and-when-shipped basis).

### 6.1.1 New policies

At the commencement of a new policy of insurance, an Insurer, or an Intermediary on behalf of an Insurer, generally issues a policy document/schedule to the Insured, which is the formal contract of insurance. In some circumstances a cover note may be issued first, which briefly sets out the terms and conditions of the cover which has been agreed, including the premium to be paid.

Often a policy schedule may also be issued either before or together with the policy document, which details items insured, cover and premium values. All these documents may generically be referred to as policy documentation and play a part in the premium collection process and in the construction of a tax invoice.

### 6.1.2 Premiums collected through Brokers

Premiums for monthly policies are generally paid by debit order and may be paid directly to the Broker. From the Insured's point of view, the policy, together with proof of payment will constitute a tax invoice, if the policy contains the relevant reference (refer par 6.2). The Broker, in turn, will inform the Insurer of the premiums received and commissions due by issuing a bordereau to the Insurer.

When annual (non-monthly debit order type) business is contracted through a Broker, the Broker forwards the policy and cover note, together with the Broker's premium notification which, in addition to the premium, may include a policy charge or brokerage fee and/or an inducement fee, to the Insured for payment.

### 6.1.3 Renewals

When an annual insurance contract is due to terminate, but is subject to renewal, an Insurer may issue a renewal notice to remind the policyholder that the period of cover will shortly expire and to invite the Insured to renew the policy for a further period. There is no obligation on the Insured to pay the amount reflected on the renewal notice. The renewal of the insurance cover comes into force if, and when, the Insured pays the premium. Should the Insured fail to pay, the insurance cover automatically terminates, and no credit note is issued.

### 6.1.4 Endorsements

A procedure similar to the issue of new policies is generally followed when an Insured seeks additional or reduced cover. Generally, the policy is not re-issued but is endorsed by means of a document setting out the amended terms, which is sent to the Insured together with a premium notification, if through a Broker, and sometimes a revised policy schedule.

### 6.1.5 Coupons/certificates

Certain suppliers issue coupons (also known as certificates) to an Insured which indicate the insurance cover purchased in terms of a master policy with a particular Insurer. For example, with motor and furniture hire purchase sales, the motor or furniture dealer undertakes to issue the coupons and to collect the premiums.

## 6.2 BGR 14 (Issue 3) – Documentation required for claiming input credits on non-life insurance (excluding reinsurance) premiums paid

Section 20(1) of the Act provides that a vendor is required to issue a tax invoice in respect of taxable supplies made by it.

Furthermore, section 16(2) of the Act requires vendors to be in possession of tax invoices to substantiate the claiming of input credits. However, as is evident from the conventional documents used for premiums (refer par 6.1) the Industry generally does not issue tax invoices, debit notes or credit notes in respect of premiums.

To bring the documentary requirements, as prescribed by the Act, in line with the practice prevailing in the Industry, SARS has, by virtue of BGR 14 (Issue 3), issued a direction in terms of sections 20(7) and 21(5) of the Act, which allows Insurers and Intermediaries not to issue tax invoices, debit or credit notes. In terms of the direction, the conventional policy documentation in respect of premiums can serve as alternatives to a tax invoice, debit note or credit note (without these documents containing the words “tax invoice”/”VAT invoice”/”invoice” or “debit note” or “credit note”) provided that such documentation satisfies all the below criteria:

- it must contain the Insurer’s and Insured’s names, addresses and VAT registration numbers (the Insured’s VAT registration number only if applicable);
- it must reflect the policy number;
- it must stipulate the premium amount, either as the VAT exclusive amount, the VAT amount and the VAT inclusive amount, or where only the VAT inclusive amount of the premium is stated, a statement that it includes VAT at either the standard rate of 15% or the zero-rate; and

- it must contain the following statement (or substantially similar wording) confirming the Commissioner's direction under section 20(7) and 21(5), as the case may be:

  *"In terms of Binding General Ruling No. 14 issued by a senior SARS official under section 89 of the Tax Administration Act No. 28 of 2011, this document together with proof of payment of the premium constitute an alternative to a tax invoice, debit note or credit note as contemplated in sections 20(7) and 21(5) of the Act respectively."*

Since section 54(1) of the Act permits agents (i.e., Intermediaries) who are vendors, to issue tax invoices, debit or credit notes on behalf of their principals (i.e., Insurers) it follows that where an Intermediary issues any policy documents on behalf of an Insurer, the Intermediary's particulars (including its name, address and VAT registration number) must be reflected on the document instead of that of the principal Insurer.

## 6.3 Documents conventionally used for commissions

Insurers are entitled to an input credit deduction in respect of the consideration (i.e., commission) payable to VAT registered Intermediaries (e.g., Brokers) for services supplied. Such VAT registered Brokers are, like any other vendors, required to issue tax invoices, debit and credit notes in respect of commissions. Commissions are calculated as a percentage of premiums paid and therefore become payable to Intermediaries only once the premiums are paid.

Where the policies were facilitated by Intermediaries, premiums are in many instances collected by the Intermediaries, although premiums may be collected by Insurers.

Where premiums are collected by Intermediaries, they generally prepare and issue a bordereau to the Insurer, which indicates the premiums collected and the commission payable thereon. In these instances, the Intermediaries generally retain the commission and only pays the net premium to the Insurer.

Where the Insurer collects the premiums on policies facilitated by Intermediaries, the Insurer generally prepares a bordereau which is issued to the Intermediary, reflecting the premiums and commissions, together with payment of the commissions.

Based on the above, it follows that Intermediaries generally do not issue tax invoices, debit or credit notes in respect of commissions. It is further evident that where the Insurer collects the premiums, on which commissions are due to Intermediaries, the Insurer, as opposed to the Intermediary, issues the bordereau (i.e., the bordereau functions effectively as a recipient-created invoice in respect of the commission).

## 6.4 BGR 14 (Issue 3) - Documentation required by Insurers (excluding Reinsurers) for claiming input credits on commissions paid

### 6.4.1 Premium bordereau issued by Intermediaries to serve as tax invoices for commissions

As is the case with premiums, section 20(1) of the Act provides that a vendor is required to issue a tax invoice in respect of taxable supplies made by it.

Furthermore, section 16(2) of the Act requires vendors to retain tax invoices to substantiate the claiming of input credits.

However, as is evident from the conventional documents used for commissions (refer par 6.3), the Industry generally does not issue tax invoices, debit notes and credit notes in respect of commissions.

As noted above, SARS has, by virtue of BGR 14 (Issue 3), issued a directive in terms of sections 20(7) and 21(5) of the Act which allows Intermediaries not to issue tax invoices, debit or credit notes. Instead, the conventional bordereau could serve as an alternative to a tax invoice, debit note or credit note (without containing the words "tax invoice"/"VAT invoice"/"invoice" or "debit note" or "credit note") provided that the bordereau includes all the following information:

- the date of issue and the period (i.e., the month and year) to which it relates;
- the name, address and VAT registration number of the Intermediary;
- the name, address and VAT registration number of the Insurer;
- the value of the zero-rated supplies for which consideration is received in the form of commissions, fees and premiums and an indication that these amounts are subject to VAT at the zero-rate; or
- in the case of a standard rated supply, either–
  - the VAT inclusive standard rated commissions, fees and premiums and the amount of tax charged or a statement that it includes VAT at 15%; or
  - the VAT exclusive commissions, fees and premiums, the VAT amount and the total VAT inclusive consideration.

### 6.4.2 Premium bordereaux issued by Intermediaries to serve as a section 54(3) notification of VAT on premiums to Insurer

Since section 54(1) of the Act permits an agent (i.e., Intermediary) to issue tax invoices, debit or credit notes on behalf of the principal (i.e., the Insurer), it is necessary for the Intermediary to inform the Insurer of the supplies made on the Insurer's behalf, in order for the Insurer to correctly account for the VAT on such supplies. In this regard section 54(3) of the Act provides that where an agent made supplies on behalf of its principal, such agent shall, within 21 days after month end, notify the principal in writing of the following:

- the nature of the supplies made on behalf of the principal;
- the quantum of the supplies made on behalf of the principal; and
- either the VAT exclusive amounts, the VAT amounts and the VAT inclusive amounts, or the VAT inclusive amounts with a statement to indicate the rate of VAT included in such amounts.

Since the premium bordereau issued by the Intermediary contains information of both the premiums and commissions, SARS directed in BGR 14 (Issue 3) that such bordereau will, if it contains all the information envisaged in par 6.4.1 above, constitute a section 54(3) notification, provided the Intermediary issues same within 21 days after month end to the Insurer.

### 6.4.3 Premium bordereau issued by Insurers to serve as a recipient-created tax invoice for commission

Sections 20(2) and 21(4) of the Act make provision for so-called "recipient-created invoices, debit or credit notes". SARS has, by virtue of BGR 14 (Issue 3), issued a directive in terms of sections 20(2) and 21(4) of the Act, to permit Insurers, who collect premiums on which commissions are payable to Intermediaries to use the bordereaux (without these documents containing the words "tax invoice"/"VAT invoice"/"invoice" or "debit note" or "credit note") as recipient-created tax invoices, credit or debit notes in respect of the supply of Intermediary services, provided that the Insurers comply with the requirements of Interpretation Note 56 (Issue 2) (IN 56) and provided the bordereau contains all of the following information:

- the date of issue and the period (i.e., the month and year) to which it relates;
- the name, address and VAT registration number of the Insurer;
- the name, address and VAT registration number of the Intermediary;
- the value of the zero-rated supplies for which the consideration is payable in the form of commissions, fees and premiums or a statement that these amounts are subject to VAT at the zero-rate; or
- in the case of a standard rated supply, either –
  - the VAT inclusive standard rated commissions/fees with a statement that it includes VAT at 15%; or
  - the VAT exclusive commissions/fees, the VAT amount and the VAT inclusive amount.

# 7 Documentary proof for claiming input credits on insurance (excluding reinsurance) claims paid

## 7.1 Documentation required to be obtained in terms of the Act

As is evident from the two methods of claims settlement (i.e., trade payments and claims payments (refer par 10.1), the documentary evidence required for claiming input credits in respect of each will be different.

For claims payments, the Insurer is in terms of Interpretation Note 92 (IN 92), issued on 24 October 2016, required to be in possession of the policy document and proof of payment of the claim to substantiate its entitlement to input credits. For trade payments, the Insurer is, in terms of section 16(2) of the Act, required to obtain and retain the tax invoices, debit or credit notes issued by the suppliers of goods or services to substantiate its input credits. We note that this last-mentioned aspect is under consideration by SARS and National Treasury and once confirmed, the content of this Manual will be amended/updated if required (refer to Preamble).

Further, where an Insurer made a trade payment to a third party (e.g., a panel beater) for the full amount, including the excess, and the Insurer subsequently recovers such excess from the Insured, BGR 14 (Issue 3) provides that the Insurer is required to issue a document to the Insured, which must contain the following minimum information:

- the Insurer's name, VAT registration number and address;
- the Insured's name, VAT registration number (where applicable) and address;
- the third-party supplier's name, VAT registration number (where applicable) and address;
- a full description of the goods or services supplied by the third-party service provider;
- the date on which the supply was made by the third-party service provider; and
- the amount of the excess paid or payable by the Insured, reflecting either the VAT amount separately or a statement that the amount payable includes VAT and the rate of VAT so included.

Where Intermediaries administer claims on behalf of Insurers, the Intermediaries generally issue bordereaux to the Insurers, which reflect the relevant claims settled and distinguish between claims and trade payments.

Section 54(3) provides that the agent (i.e., the Intermediary) must provide the principal with a document, within 21 days after the end of the calendar month in which the supplies are made to the agent, containing a full and proper description of the goods or services acquired, the volume or quantum of the goods or services acquired, as well as either the VAT inclusive consideration with a statement of the rate of VAT included, or the VAT exclusive amount, the VAT amount and the VAT inclusive amount.

In addition, Intermediaries are, in terms of section 54(3), required to retain proof of payment for claims payments made and are required to obtain and retain tax invoices, debit or credit notes from suppliers in respect of trade payments made on behalf of Insurers (we again note that the latter is under consideration by SARS and National Treasury and the Manual will be amended/updated if required).

Based on the said provisions in the Act, it follows that only claims settled by virtue of trade payments can be said to constitute goods or services supplied to the Intermediary on behalf of the Insurer. As a result, a section 54(3) notification is only required to be issued by the Intermediary in respect of trade payments made on behalf of the Insurer. This means that the Act does not prescribe any specific documentation to be issued by an Intermediary to an Insurer in respect of claims payments made on behalf of the Insurer.

BGR 14 (Issue 3) further provides that where a claims payment is made, the Insurer must issue a document to the Insured which notifies the Insured of its potential section 8(8) VAT liability, whether or not the Insured is a vendor.

## 7.2 Claims bordereaux prepared by Intermediaries

BGR 14 (Issue 3) does not specifically deal with claims bordereaux. Instead, it merely directs that a bordereau, including a claims bordereau will, in terms of section 20(7)(a) and 21(5)(a) of the Act, constitute a tax invoice, debit or credit note, without having to contain the words “tax invoice”, “VAT invoice” or “invoice”, but provided the bordereau contains all the other information required to be reflected on tax invoices. Thus, since claims paid, whether by virtue of trade or claims payments, do not constitute goods or services supplied by the Intermediary to the Insurer, it appears as if BGR 14 (Issue 3) does not prescribe specific documentation or information to be provided by the Intermediary to the Insured in respect of claims settled by the Intermediary on the Insurer’s behalf. However, to be compliant with section 54(3) and in order for the Insurer to obtain sufficient information to claim input credits on claims settled by Intermediaries, it is suggested that the claims bordereaux contain the following information:

- the date of issue and the period (i.e., the month and year) to which it relates;
- the name, address and VAT registration number of the Intermediary;
- the name address, and VAT registration number of the Insurer;
- for trade payments:
  - a description of the goods or services;
  - the VAT inclusive amount together with a statement of the rate of VAT included or the VAT exclusive amount, the VAT amount and the VAT inclusive amount;
- for claims payments:
  - a description of the nature of the indemnity payment made;
  - the total amount of indemnity payments made together with a statement/indication as to the rate of VAT included or the VAT exclusive amount, the VAT amount and the VAT inclusive amount.

# 8 Documentary requirements for zero-rated supplies of insurance (excluding reinsurance)

Section 11(3) of the Act provides that where a vendor has applied the zero-rate of VAT in terms of any provision in section 11 of the Act, such vendor is required to obtain and retain documentary proof, satisfactory to the Commissioner, to support the application of the zero-rate of VAT. In this regard, SARS has issued IN 31 (Issue 4) dealing with the documentary requirements to apply the zero-rate on the supply of goods or services, including insurance. IN 31 (Issue 4) also mandates output tax adjustments where the relevant documentation is not obtained within a prescribed period.

## 8.1 Zero-rated premiums

The following is a list of zero-rated policies per section 11(2) of the Act read with BGR 14 (Issue 3), together with the relevant documentary proof required in terms of BGR 14 (Issue 3) read with IN 31(Issue 4), to substantiate the Insurer's application of the zero–rate to the premiums:

| Insurance type | Copy of zero-rated tax invoice (i.e., copy of insurance policy | Specific provisions to be contained in policy document | Proof of payment of premium | Declaration by Insured that not a " resident of the Republic" | Declaration by Insured that not a VAT vendor |
|---|---|---|---|---|---|
| Inward and outbound marine, including inbound and outbound stock throughput policies (refer par 4.2.1) | Yes | No | Yes | No | No |
| Inbound and outbound travel policies (refer par 4.2.2) | Yes | Yes | Yes | No | No |
| Domestic air travel which constitutes "international carriage" (refer par 4.2.2) | Yes | Yes | Yes | No | No |
| Hull insurance for "foreign-going ships" and "foreign-going aircraft" supplied directly to a person who is not a resident of the Republic and not a vendor (refer par 4.2.3) | Yes | Yes | Yes | Yes | Yes |
| Other hull insurance where vessel/craft located outside RSA for the duration of the cover (refer par 4.2.4) | Yes | Yes | Yes | No | No |
| Insurance of movable property which is located outside the RSA for the duration of the cover (refer par 4.2.4) | Yes | Yes | Yes | No | No |
| Insurance of fixed property located outside the | Yes | Yes | Yes | No | No |

| Insurance type | Copy of zero-rated tax invoice (i.e., copy of insurance policy | Specific provisions to be contained in policy document | Proof of payment of premium | Declaration by Insured that not a " resident of the Republic" | Declaration by Insured that not a VAT vendor |
|---|---|---|---|---|---|
| RSA (refer par 4.2.5) | | | | | |

## 8.2 Zero-rated commission

The following list the circumstances where commissions can be zero-rated per section 11(2) of the Act read with BGR 14 (Issue 3), together with the relevant documentary proof required to substantiate the Intermediary's entitlement to apply the zero-rate to commission:

| Commission on type of insurance | Copy of zero-rated tax invoice (i.e., copy of Insurance policy | Specific provisions to be contained in policy document | Proof of payment of commission | Declaration by Insured that not a " resident of the Republic" | Declaration by Insured that not a VAT vendor |
|---|---|---|---|---|---|
| Arranging inbound and outbound marine, including inbound and outbound stock throughput policies (refer par 4.2.1) | Yes | No | Yes | No | No |
| Arranging inbound and outbound travel policies (refer par 4.2.2) | Yes | No | Yes | No | No |
| Arranging of domestic air travel which constitutes "international carriage" (refer par 4.2.2) | Yes | Yes | Yes | No | No |

# 9 Time of supply

## 9.1 Time of supply – premiums (Insurers/Insureds)

### 9.1.1 General principles in the Act

The Act provides for general and specific timing rules in respect of all supplies. These rules trigger the VAT liability of supplies made by vendors in any given tax period (refer par 1.5).

Section 9(1) of the Act provides for the general time-of-supply rule which is the date on which an "invoice" is issued or the date on which any payment is received, whichever date is the earlier. The word "invoice" is defined in section 1(1) of the Act as meaning "*a document notifying an obligation to make payment*".

It is trite that non-life insurance cover, with the exception of certain guarantee policies, is granted only to the extent to which payment of premiums has been made. Certain guarantee policies provide cover although no premium has been paid yet. Further, an insurance policy, other than certain guarantee policies, does not place any obligation on the Insured to pay the premium and equally does not entitle the Insurer to any premium. An insurance policy (excluding certain guarantee policies) is, at best, an agreement where the Insurer agrees with the Insured to provide the specified cover to the Insured at a specified premium, should the Insured pay the premium. As a result, the insurance policy or renewal notice cannot constitute an "invoice" as defined, since none of these documents constitutes a notification of an "obligation" to make payment of the premium.

One of the specific time-of-supply rules in section 9(3)(a) of the Act provides that where services are supplied under any agreement which provides for periodic payments, the services shall be deemed to be successively supplied for successive parts of the agreement and each successive supply shall be deemed to take place when payment becomes due or is received, whichever is the earlier.

The question is whether an insurance premium "becomes due" where the insurance policy provides, for say, monthly premiums payable on the first day of every calendar month. If the Insured in this instance does not effect payment, the Insured will not have cover for that month and the Insurer may cancel the policy. Alternatively, the Insurer may allow payment at some later date in which case the Insurer will only provide the cover once premium is received. It thus follows that non-life insurance premiums, excluding certain guarantee policies, cannot be said to "become due" on a particular date, even though the policy provides for premiums to be payable on a certain date.

### 9.1.2 BGR 14 (Issue 3) - ruling on timing of VAT on premiums

BGR 14 (Issue 3) refers to the provisions of section 9(1) which essentially provides that a vendor is required to account for output tax in respect of the supply of non-life insurance in the tax period during which the premium is received or an invoice is issued, whichever is earlier. SARS acknowledges though, that neither the insurance policy nor any other document disclosing the premium amount without imposing an obligation to make payment can be regarded as an "invoice" as defined. As a result, SARS ruled that the time of supply in respect of policies where no cover is granted unless premium is paid effectively occurs in the month in which the premium is received by either the Insurer or its Intermediaries. It is also for this reason that the policy document will, in these instances, constitute an alternative tax invoice, provided it also contains a quote which states that the policy document together with proof of payment will constitute an alternative tax invoice, to ensure

that the Insured becomes entitled to claim input credits in the same month in which the Insurer is liable to account for output tax (refer par 6.2).

In terms of the Insurance Act, premiums collected by an Intermediary must be paid to the Insurer/s within 15 days of the end of the month in which the Intermediary collects the premiums. This means that where, for example, an Intermediary collects premium in February, such premium need to be paid to the Insurer on or before the 15th of March. The Insurer is however required to include the VAT on such premiums in its February VAT return to be submitted to SARS by the end of March.

It is important to note that the ruling further provides that where an invoice (as defined) is issued at an earlier date (i.e., prior to payment), such invoice will trigger the time of supply. As Insurers generally do not issue invoices since they cannot demand payment of premium, this proviso will most likely find limited application.

### 9.1.3 Annual premiums financed by Intermediary

Where an Intermediary issues a policy in terms of which premiums are payable annually in advance but provides finance to the Insured, the Intermediary pays the full premium to the Insurer on loan to the Insured, and collects the debt in say, monthly instalments, from the Insured. Since the time of supply is when the premium is received, the Insurer will be liable to account for output tax on receipt of the full premium. Similarly, a vendor Insured will become entitled to claim an input credit in the month in which the Intermediary paid the premium to the Insurer.

## 9.2 Time of supply – commission (Intermediaries/Insurers)

### 9.2.1 General principles in the Act

As is the case with premiums, the general time of supply rule in section 9(1) of the Act namely, the earlier of “invoice” or payment, needs to be considered with regards to commissions payable to Intermediaries. The Insurance Act provides that an Intermediary is only entitled to receive commission once the premium has been paid. It thus follows that Intermediaries cannot demand payment of commissions until the underlying premiums have been paid.

As stated in par 6.4, the Industry makes use of a premium bordereau issued either by the Intermediary, in the event where the Intermediary collects the premium, or by the Insurer, in the event where the premiums are collected by the Insurer. In relation to commissions due to the Intermediary, these bordereaux constitute alternative tax invoices if prepared by the Intermediary or recipient-created tax invoices if prepared by the Insurer, provided the bordereaux contain the relevant information prescribed by BGR 14 (Issue 3) (refer par 6.2). As a result, Intermediaries generally do not issue any invoices for commissions, but rely on the bordereaux as invoices. In these instances, Intermediaries account for VAT in the month in which the premiums are received either by the Intermediary or the Insurer. An Intermediary, who collects premiums on behalf of an Insurer, deducts the commission payable by the Insurer and pays the net amount (premiums less commission) to the Insurer.

### 9.2.2 BGR 14 (Issue 3) – ruling on timing of VAT on commissions

As is the case with the timing of premiums, BGR 14 (Issue 3) refers to the provisions of section 9(1) which provides that a vendor is required to account for output tax in respect of the supply of a service (i.e., the arranging of an insurance policy by an Intermediary) in the tax period in which the payment of the commission is received or an invoice is issued, whichever is earlier. However, unlike the ruling on timing in respect of premiums, SARS does not explicitly acknowledge that commissions are only due and payable, at the time the premium is paid and that no document issued by the Intermediary prior to the premium being received can conceivably constitute an "invoice" as defined (i.e., a document notifying an obligation to make payment of the commission). In practice Intermediaries do not issue any documents to call for the payment of commission from Insurers, unless and until the underlying premiums are received. SARS therefore seems to tacitly agree that the timing for VAT in respect of Intermediary commissions is when the premium is paid.

Again, it is important to note that, BGR 14 (Issue 3) specifically provides that where an "invoice" or tax invoice is issued prior to the payment of premium by either the Insurer or the Intermediary in respect of commissions, the timing for VAT will be triggered by the issuing of such documents.

## 9.3 Time of supply – other Intermediary services

### 9.3.1 General principles in the Act

The provisions in section 9 of the Act find application to other services supplied either by Intermediaries to Insureds or Insurers, or by Insurers or Insureds to Intermediaries. These services include services for which inducement fees, binder fees, claims handling fees, etc. are charged.

An example of inducement fees is where the Intermediary discounts its commission to the Insured in exchange for an administration fee. In essence, the payment of the whole, or part of the commission by the Intermediary to the Insured comprises consideration for a "service" rendered by the Insured. The service in question is that the Insured makes available an advantage to the Intermediary (i.e., the Insured will be prepared to pay a policy fee to the Intermediary in exchange for receiving the commission which the Intermediary earned) for which the Intermediary makes an inducement payment. Such payments are thus subject to VAT where the Insured is a vendor.

Further, Intermediaries provide other services for which fees are charged such as claims handling services, binding authority services (i.e., binder fees), etc. In most instances the timing for VAT in respect of these services will be triggered by the general time of supply rule in section 9(1) namely, earlier of invoice or payment.

### 9.3.2 Sub-agents commission

Where a Broker pays commission to a sub-agent for services rendered to the Broker, the time of supply is the date on which the Broker issues the payment statement to the sub-agent on a self-invoice basis.

## 9.4 Examples of timing of VAT on premiums and commission

The following assumptions are made for purposes of the two examples below:

- the Insurer is registered for VAT under Category C;
- the Insured is registered for VAT under Category C and makes fully taxable supplies;
- the Insured's monthly premium of R1 150 includes standard rate VAT (15/115 x R1 150 = R150);
- the Insurer has an agreement with an independent Intermediary, Premium Collection Agency, which provides for commission of 5% (inclusive of VAT) to be payable on all premiums paid by Insured; and
- the Premium Collection Agency is registered for VAT under Category A.

**Example 1**

Insured pays its monthly insurance premium directly to Insurer on 28 March.

Insurer is liable to account for output tax of R150 in its March VAT return, to be submitted on or before 25 April. Similarly, Insured is entitled to claim an input credit of R150 in its March VAT return.

Insurer is liable to pay commission (5% x R1 150 = R57,50) to Premium Collection Agency. Insurer issues a bordereau to Premium Collection Agency on 15 April.

Premium Collection Agency is liable to account for output tax (15/115 x R57,50 = R7.50) in its Feb/March VAT return. Similarly, Insurer is entitled to claim an input credit of R7,50 in its March VAT return.

**Example 2**

Insured pays its monthly insurance premium to Premium Collection Agency on 28 March. Premium Collection Agency issues a bordereau, together with the payment of the net premium, to Insurer on 15 April.

Insurer is liable to account for output tax of R150 in its March VAT return. Similarly, Insured is entitled to claim an input credit of R150 in its March VAT return.

Premium Collection Agency is liable to account for output tax (15/115 x R57,50 = R7,50) in its Feb/March VAT return. Insurer is entitled to claim an input credit of R7,50 in its March VAT return.

# 10 Claims settlement by Insurers (excluding Reinsurers)

## 10.1 Trade payments and claims payments

Where an Insured incurs a loss in respect of an insured risk and submits a claim to an Insurer under an insurance policy, the terms of indemnification contained in the policy will determine the way the Insurer may settle the claim. The method of settling the claim has a bearing on the VAT treatment to be applied by both the Insurer and the Insured and it is therefore necessary to make a distinction between so-called “trade payments” and “claims payments”:

- trade payments are payments made by Insurers to suppliers who have been contracted by the Insurer to supply goods and/or services, for example where an Insurer replaces or repairs goods which are damaged/destroyed;
- claims payments, also commonly referred to as indemnity payments, are payments of money made to indemnify an Insured against a loss suffered, whether the payment is made to the Insured, a third party who suffered damages or to the Insurer of the third party.

### 10.1.1 Trade payments

#### *10.1.1.1 Local insurers*

Where an Insurer indemnifies an Insured by way of a trade payment, section 16(3)(a) of the Act provides that the Insurer is entitled to claim the VAT paid on the goods and services acquired, as an input credit, provided the Insurer is in possession of a valid tax invoice.

It follows that where an Insurer acquires goods or services from non-vendors, in the course of making trade payments, no input credits can be claimed. Equally, where the goods or services concerned are exempt from VAT or subject to VAT at the zero-rate, no input credits can be claimed.

An Insurer may opt to provide an Insured that suffered a loss with a reinstatement voucher. Such vouchers allow the Insured to purchase specified goods from specified suppliers, in settlement of a claim. The payment made by an Insurer to the supplier of the reinstatement voucher comprises a payment for the supply of goods and therefore comprises a trade payment. The Insurer must obtain a tax invoice from the supplier to recover the VAT paid on the acquisition of the voucher, provided the supplier of the voucher is registered for VAT.

#### *10.1.1.2 Foreign insurers*

Section 11(2)(ℓ) of the Act provides, *inter alia,* for services rendered by a vendor to non-residents to be subject to zero-rate VAT, provided that the services are not supplied directly in connection with movable property or land (including improvements thereto) situated in the RSA at the time the services are rendered.

Where the services are in fact supplied directly in connection with movable property situated in the RSA, such services will be zero-rated only if the movable property concerned forms part of the supply by the non-resident to a registered vendor in the RSA.

The term "directly in connection with" means that there must be a direct connection between the services and the goods concerned, for example the repair of goods.

Thus, where services are supplied by vendors to a foreign Insurer, who is not a VAT vendor, it is necessary to determine whether the services concerned can be said to be supplied directly in respect of movable property or immovable property. Since no specific case law exists in the RSA which deal specifically with the concept of "directly in connection with" movable or immovable property, regard is taken to various New Zealand cases which deal with the concept as well as a Goods and Services Tax Ruling (GSTR 2003/7) issued by the Australian Taxation Office on a similar concept namely, services which are "directly connected with" movable and immovable property. The aforementioned provides the following principles to consider in order for a service to be said to be directly connected with movable or immovable property:

- the supply changes or affects the movable or immovable property in a physical way (e.g., repair, demolish, build, install, alter, restore, etc.); or
- there is a physical interaction with the movable or immovable property but without changing the movable or immovable property (e.g., removal of goods, security services storage of goods, etc.); or
- the supply establishes the quantity, size, other physical attributes or the value of the movable or immovable property (e.g., testing and analysing goods, surveying services physically carried out on land, examination of movable or immovable property); or
- the supply affects (or its purpose is to affect) or protects the nature or value (including indemnity against loss) of the movable or immovable property (e.g., design or engineering of specific property, insurance of any movable or immovable property, etc.); or
- the supply affects, or is proposed to affect, the ownership of the movable or immovable property including any interest or right in, or over the movable or immovable property (e.g., conveyancing in respect of land, legal services to prepare a contract for sale, legal services to enforce a contract of sale, etc.).

Further, section 11(1)(q) of the Act provides for zero-rate VAT to be levied by a vendor to a non-resident (who is not a vendor) in circumstances where the non-resident has contracted with the vendor to deliver the goods to a recipient in the RSA who is a vendor, provided that the goods to be delivered to the recipient forms part of the supply to him by the non-resident and provided the goods concerned are used by the recipient wholly for purposes of consumption, use or supply in the course of making taxable supplies.

Based on the above, it follows that the services supplied by vendors, such as panel beaters or building contractors, to a non-resident Insurer (e.g., a foreign Insurer such as Lloyd's open market business) in order to repair damaged vehicles or buildings, constitute services supplied directly in connection with movable or immovable property. Panel beaters and building contractors may also supply component parts (goods), to affect the repairs.

Thus, where the vendor supplies such services contractually to the non-resident Insurer, but effectively delivers same to the Insured, as part of the supply by the non-resident Insurer to the Insured, the services as well as the component parts supplied by the panel beater or building contractor to the foreign Insurer will be subject to zero-rate VAT, provided the Insured is a registered vendor and provided the panel beater or building contractor obtains and retains the documentary proof required in IN 31 (Issue 4). These documents are a copy of the zero-rated tax invoice; written confirmation from the recipient that it is not a resident of the RSA; a statement from the non-resident containing the name, address and VAT registration number of that non-resident's local recipient (and where the supply is a supply of goods confirmation that the goods are to be used wholly for the purpose of consumption, use or supply in the course of making taxable supplies)and proof of payment.

If the Insured is not a registered vendor, the supplier must charge VAT at the standard rate, with the result that the VAT will remain an irrecoverable cost to the foreign Insurer.

### 10.1.2 Claims payments

Insurers are, in terms of section 16(3)(c) of the Act, entitled to claim a deduction equal to the tax fraction of insurance indemnity payments made, hereafter referred to as 'input credits'. This will only apply where the supply of the contract of insurance is a taxable supply made by a vendor Insurer (i.e., the premium was subject to VAT at either the standard rate or the zero-rate).

However, section 16(3)(c)(iii) of the Act provides that Insurers are only entitled to claim an input credit on a claims payment which relates to a zero-rated policy where the person indemnified is a vendor or a resident of the RSA at the time of payment. In other words, no input credit can be claimed on a zero-rated marine policy where the Insured is a non-resident who insured goods transported to the RSA. However, where the Insured is a resident of the RSA and insured goods imported or exported by him, the Insurer is entitled to claim an input credit on the indemnity payment made in respect of such zero-rated policy.

Further, section 16(3)(c)(iv) of the Act provides that an Insurer is not entitled to claim an input credit where a claims payment results from a supply of goods located outside the RSA or of services performed outside the RSA (e.g., the payment of medical costs incurred abroad by an Insured or the payment for the replacement abroad of lost luggage in terms of an outbound travel policy).

An Insurer is required to retain a copy of the policy and proof of payment of the indemnity, to support input credits claimed in respect of claims payments. Such input credits can be claimed in the tax period in which the claims are paid (refer par 7.2).

BGR 14 (Issue 3) further provides that the Insurer must issue a document to the Insured which notifies the Insured of its potential section 8(8) VAT liability, whether or not the Insured is a vendor.

#### *10.1.2.1 Claims payments made to third parties*

Third party insurance generally covers liability due to losses inflicted on others. A third party is typically a person who is not a party to a contract of insurance, who has a right of action for injury or damage against the person insured under the third-party insurance policy.

Where an Insurer makes a claims payment to a third party, in the course of indemnifying an Insured, and such third party is a vendor, consideration should be given to the nature of the loss, and the VAT status of the third party, in order to determine the actual value of loss (i.e., whether the VAT inclusive or VAT exclusive amount should be paid).

The following salient aspects need to be considered in determining whether payments made to third parties are to be inclusive or exclusive of VAT:

- where the nature of the loss is such that the third party (vendor) is entitled to claim full input credits if or when he/she/it replaces or repairs the goods damaged or destroyed, the claims payment should be made for a VAT exclusive value since the value of loss is effectively VAT exclusive;
- where the goods or services, in respect of which the claim relates, are exempt or subject to zero-rate VAT, the value of loss is clearly exclusive of 15% VAT with the result that no VAT should be added to the payment made to the third party;
- where the third party is not a vendor or a vendor who is not entitled to claim full input credits if or when he/she/it replaces the goods damaged or destroyed, the claims

payment should be made for a VAT inclusive value to the extent to which the third party will not be entitled to claim input credits.

It is pointed out that an Insurer will be entitled to an input credit on the amount paid, irrespective of whether the claim is VAT inclusive or exclusive, on the basis that any potential output tax liability will vest with the Insured (e.g., R15 on R115 payment or R13.04 on R100 payment) (refer par 14).

#### *10.1.2.2 Claims payments made to third party's Insurer*

Motor vehicle Insurers may elect to participate in the so-called "knock-for-knock" arrangement. In terms of this arrangement, Insurers may agree to accept liability for indemnifying their Insureds for own damage only, albeit that their Insureds may be insured against third party risks. This implies that participants to the knock-for-knock arrangements may agree to forego recovery action against the other in respect of third-party claims. However, the knock-for-knock arrangement generally does not apply to excess payments. Where Insurers recover the excess from a third party or the third party's Insurer in order to refund the excess to its Insured, neither the recovery of the excess nor the refunding thereof to the Insured has any VAT implications. However, where a recovery is made from the third party's Insurer, the third-party Insurer will have claimed such claim in terms of the third party cover it provided to its Insured, with the result that the third party's Insurer is entitled to an input credit on such claim paid (refer 10.1.2).

An Insurer may not claim an input credit where a payment is made to another insurance company and where such payment is not made under a contract of insurance with its Insured (e.g., where an Insurer recovers an excess payment from its Insured and pays the amount to another Insurer) (refer par 13).

Where the third party's excess exceeds the excess payable by the Insured and the Insurer has to pay the third party an amount as an indemnity payment in terms of the contract of insurance with the Insured, the Insurer is entitled to claim an input credit on such indemnity payment.

## 10.2 Payments to third parties

Where an Insurer indemnifies the Insured by virtue of a payment made to a third party, it is necessary to determine the actual value of loss suffered by the third party (refer par 10.1.2.1). It must further be determined whether the Insured has a section 8(8) VAT liability, in order to ensure that the Insured is fully indemnified.

Where the third party is a vendor, who can claim input credits on the losses suffered, or the third party is not a vendor but the indemnity relates to a loss which is not subject to VAT at 15%, the value of loss to the third party is VAT exclusive. In these instances, the Insurer is only liable to pay the VAT exclusive amount to the third party. Where the Insured is a vendor in these instances, the Insurer is also liable to pay 15% of the amount paid to the third party to the Insured to indemnify the Insured for the section 8(8) VAT liability. The Insurer will claim an input credit equal to the tax fraction of the total amount paid to the third party and the Insured.

Alternatively, where the Insurer contracts with and pays the third party's supplier of goods or services, the Insurer is still liable to pay 15% of the VAT inclusive amount paid to the service provider to the Insured to indemnify the Insured for the section 8(8) VAT. This treatment is required since section 8(8) provides for a deemed supply by the Insured in respect of all payments made by the Insurer under the contract of insurance with the Insured, regardless of the fact that the Insurer made such payment directly to the third

party's service provider.

A further alternative is that the Insurer settles the third-party claim by paying an indemnity payment to the Insured, who is then liable to make good the losses suffered by the third party. Where the Insured is a vendor, the Insurer is liable to pay the Insured the VAT inclusive value of the loss suffered by the third party. The Insured will then have a section 8(8) VAT liability but will, if the Insured contracts with and pays the third party's service provider directly, be entitled to claim the VAT as an input credit, provided the Insured obtains a tax invoice from such service provider. The Insurer will equally be entitled to claim an input credit equal to the tax fraction of the amount paid to the Insured.

Where the third party is a vendor but cannot claim an input credit on the loss suffered (e.g., replacement of a motor car), or the third party is not a vendor, the value of loss to the third party is VAT inclusive, with the result that the Insurer is liable to pay the VAT inclusive amount to the third party. If the Insured is also a VAT vendor who has a section 8(8) VAT liability, the Insurer is further liable to pay 15% of the VAT inclusive amount paid to the third party, to the Insured, in order to also indemnify the Insured against the section 8(8) VAT liability. In this instance the Insurer is entitled to claim an input credit equal to the tax fraction of the total amounts payable to the third party and the Insured.

## 10.3 *Ex gratia* payments

The term "*ex gratia*" means "an act of grace". An *ex-gratia* payment comprises the payment by an Insurer without admission of liability and without waiver of any rights (i.e., the Insurer does not admit any pre-existing liability on its part). Thus, since an *ex-gratia* payment is not made to indemnify the Insured in terms of a contract of insurance, an Insurer is not entitled to claim an input credit in relation to such payments made.

Similarly, a VAT registered Insured is not liable to account for output tax in terms of section 8(8) of the Act in respect of an *ex-gratia* payment received, on the basis that such payment is not an indemnity payment received under a contract of insurance.

## 10.4 Interest payable on damages payments

Interest on damages may form an integral part of an indemnity payment. In such circumstance, Insurers will be entitled to make an input credit deduction on such indemnity payments.

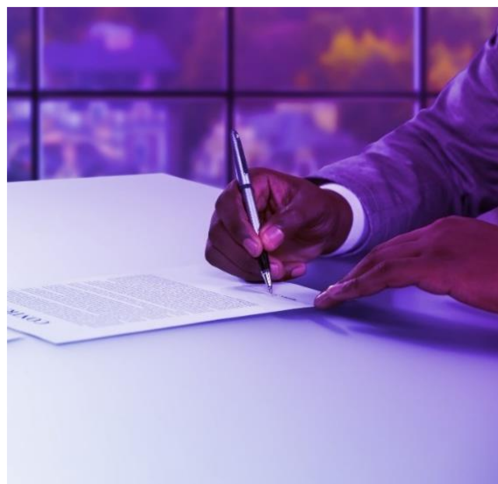
Alternatively, an Insurer may agree to pay interest on top of the indemnity payment, given the delay in settlement of a claim. In this scenario the interest is not part of the indemnity payment made under the policy of insurance, with the result that no input credit may be claimed thereon by the Insurer and no output tax is payable thereon by the Insured.

However, the facts of each case will dictate whether such interest forms part of an indemnity payment.

## 10.5 Claims payments received by third parties

Where a third party receives a payment for damages suffered from another person, or from such other person's Insurer as a third-party payment, such third party does not have a VAT liability (even if such third party is a VAT vendor), as such payment is not received under a contract of insurance with such third party. An Insurer making an indemnity payment to such a third party will have an input credit claim and the Insured (i.e., the person under whose insurance policy the third-party claim is paid) may nevertheless have a section 8(8) liability for VAT in respect of such payment (refer par 10.2 and par 14).

## 10.6 Claims handling costs



The VAT on claims handling costs incurred in order to verify the validity of a claim or to quantify the value of loss (e.g. payment for police reports, loss adjuster fees, assessors fees, forensic investigator costs, etc.), is to be treated in the same way as trade payments, i.e. input credits can only be claimed if the supplier is a vendor and the Insurer receives a valid tax invoice from the supplier.

# 11 Excess payments/aggregate excess

## 11.1 General considerations

Since excess is the uninsured portion of a claim, premiums are generally directly affected by the value of excess (i.e., the higher the excess the lower the premium).

Nevertheless, since the excess has a direct impact on the claims amount payable by an Insurer and on the method of settling the claim (refer par 10.1), the policy should preferably state whether the excess amount is to be deducted from the VAT inclusive or VAT exclusive claims amount and should stipulate that the excess is not subject to VAT.

Being the uninsured portion which influences premium, excesses take different forms. These include general excesses, so-called “inner excesses” and aggregate excesses.

## 11.2 VAT treatment of excesses

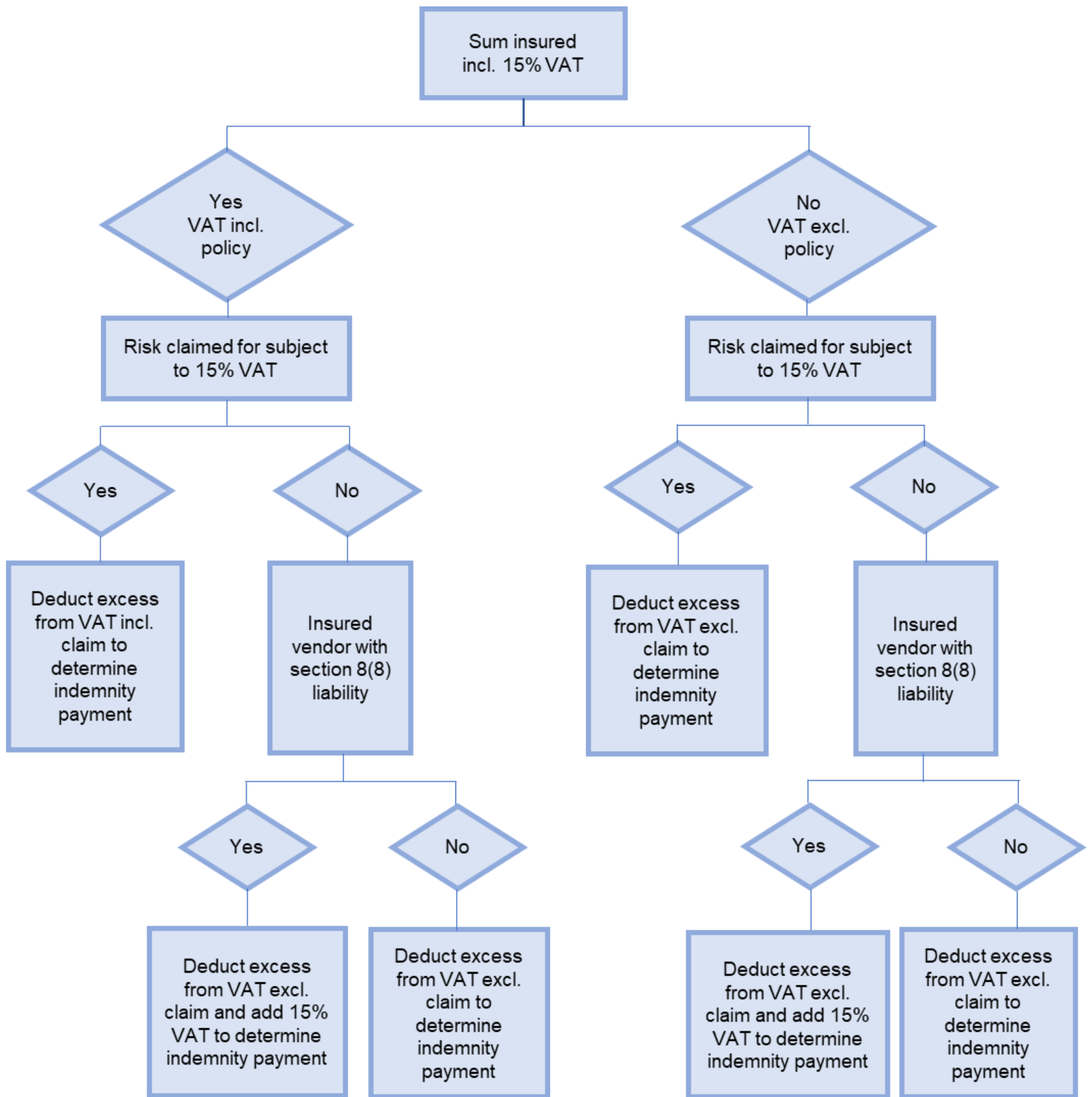
Given the fact that excess is the uninsured portion of the claim, it follows that an excess *per se,* is not consideration for the supply of any goods or services. Therefore, where an Insurer recovers excess in respect of, for example, a third-party claim, the excess is not subject to VAT with the result that the Insurer has no output tax liability on the excess received and the Insured cannot claim an input credit on the excess paid.

However, where the excess is applied as part payment by the Insured or Insurer for goods or services (e.g., payment of the excess to a panel beater for repairs), the excess functions as consideration for the supply of goods or services. As a result, the Insured, being a vendor, is entitled to claim the VAT included in such consideration. It thus follows that although excess *per se,* is not subject to VAT, the payment thereof in respect of the supply of goods or services to the Insured (i.e., trade payments) may have VAT consequences for the Insured.

However, since claims may also be settled by virtue of claims payments (which are not in respect of the supply of any goods or services), it is still necessary to treat the excess *VAT sensitive* to ensure equity. In other words, the net amount of the claim should be the same for the Insured, whether the claim is settled by a trade payment or claims payment.

Further, since some policies are written on a so-called “VAT exclusive basis” (i.e., the value of sum insured is exclusive) and some are written on a VAT inclusive basis, it is necessary to determine whether the excess stipulated in the contract is to be deducted from the VAT inclusive or VAT exclusive claims amount.

The below decision tree can assist in determining the correct treatment to be applied in respect of excesses.


Sum insured
incl. 15% VAT
Yes
VAT incl.
policy
No
VAT excl.
policy
Risk claimed for subject
to 15% VAT
Risk claimed for subject
to 15% VAT
Yes
No
Yes
No
Deduct excess
from VAT incl.
claim to
determine
indemnity
payment
Insured
vendor with
section 8(8)
liability
Deduct excess
from VAT excl.
claim to
determine
indemnity
payment
Insured
vendor with
section 8(8)
liability
Yes
No
Yes
No
Deduct excess
from VAT excl.
claim and add 15%
VAT to determine
indemnity payment
Deduct excess
from VAT excl.
claim to
determine
indemnity
payment
Deduct excess
from VAT excl.
claim and add 15%
VAT to determine
indemnity payment
Deduct excess
from VAT excl.
claim to
determine
indemnity
payment

### Example 1

An amateur musician (non-vendor) or a merchant selling musical instruments (vendor), insures a guitar for R28 000 (VAT inclusive). The policy provides for a fixed excess amount of R2 350 to be paid. The Insured musician/merchant's guitar is stolen and the Insured claims for total loss.

### Position of the Insurer

The Insurer pays the Insured the full value of the sum insured less the excess (i.e., R28 000 – R2 350 = R25 650) and claims an input credit equal to the tax fraction of the net claims amounts paid (i.e., 15/115 x R25 650 = R3 345.65). The net claim paid by the Insurer is R22 304.35.

### Position of the Insured

Where the Insured is the musician, a non-vendor, he/she is not liable to account for output tax on the claims amount received. As a result, the net amount received is R25 650, which together with the excess places the Insured in the same position he/she was before. The net cost to this Insured is R2 350.

Where the Insured is the merchant, a vendor, the Insured has a section 8(8) liability, with the result that the Insured is liable for section 8(8) VAT of R3 345.65 (i.e., R25 650 x 15/115) leaving it with a net receipt of R22 304.35. This amount plus the excess is R24 654.35 with the result that if the merchant acquires a new guitar for R28 000, it will claim an input credit of R3 652.17 (i.e., R28 000 x 15/115) leaving this Insured with a net cost of R 2 043.48.

### Example 2

An Insured (vendor) insures cash-in-transit under a fidelity policy. The policy provides for a policy limit (sum Insured) of R10 000 000 (exclusive of VAT) and an aggregate deductible of R500 000. The policy further states that section 8(8) VAT will be paid to the Insured in addition to the policy limit. Cash of R700 000 is stolen during an armed robbery.

### Position for the Insurer and the Insured

The claim amount should be calculated as follows:

| | |
|---|---|
| VAT exclusive loss suffered | R700 000 |
| *Less* aggregate excess | (R500 000) |
| Sub-total | R200 000 |
| *Plus* section 8(8) VAT | R30 000 |
| Settlement value payable to Insured | R230 000 |

The Insurer claims the total VAT paid, as an input credit (i.e., 15/115 x R230 000 = R30 000). The Insured accounts for section 8(8) output tax on the net indemnity payment received – i.e., 15/115 x R230 000 = R30 000.

### Example 3

An Insured merchant (vendor) insures cash for a limit of R200 000 exclusive of VAT under an all-risks policy. The policy provides for a fixed excess or R10 000 and provides that section 8(8) VAT will be added to all settlements. The Insured suffers a loss of R150 000.

### Position of the Insurer

The Insurer pays the Insured R140 000 (i.e., R150 000 – R10 000) plus 15% VAT of R21 000 (i.e., R140 000 x 15%), totalling R161 000. The Insurer is entitled to claim an input credit of R21 000 (i.e., R161 000 x 15/115), leaving it with a net cost of R140 000.

### Position of the Insured

The Insured has a section 8(8) output tax liability of R21 000 (i.e., R161 000 x 15/115) leaving it with R140 000.

### Example 4

An Insured (vendor) insures his property under an all-risks policy. The insurance policy provides for a 12% excess per loss, payable to the Insurer. The thatch roof of the Insured's business premises is destroyed by fire and the Insured claims for total loss. The Insurer decides to have the thatch roof replaced (i.e., a trade payment) and requests payment of the excess by the Insured.

### Position of the Insurer

The Insurer receives a tax invoice from the repair merchant for R60 000 VAT inclusive. Since the Insured paid the 12% excess (i.e., R7 200) directly to the Insurer, the Insurer is liable to pay the total amount to the merchant. The Insurer claims an input credit on the amount paid as included on the tax invoice, less the excess (i.e., 15/115 x R52 800.00 = R6 886.95). The Insurer issues a document to the Insured for the excess amounting to R7 200, including VAT in terms of the section 72 ruling included in BGR 14 (Issue 3).

### Position of the Insured

The Insured claims an input credit on the taxable supply made to it by the merchant to the extent of the excess (i.e., R7 200 x 15/115 = R939.13).

**Example 5**

A petrol merchant (vendor) insures his fuel stock for R1 000 000 excluding VAT under an all-risks policy. The policy provides for a fixed excess of R20 000 and provides that section 8(8) VAT will be added to all settlements. The Insured suffers a loss of R600 000.

**Position of the Insurer**

The Insurer pays the Insured R667 000 (i.e., R580 000 plus 15% VAT). The Insurer claims an input credit of R87 000 (i.e., R667 000 x 15/115) with the result that the net claim paid is R580 000.

**Position of the Insured**

The Insured pays section 8(8) VAT of R87 000 (i.e., R667 000 x 15/115) leaving it with a net amount of R580 000 which, together with the excess of R20 000, indemnifies the Insured in full.

**Example 6**

A micro farmer (non-vendor) insures his diesel for R20 000, VAT exclusive. The policy provides for a fixed amount of excess of R1 000. The Insured's diesel became contaminated and he claimed R20 000.

**Position of the Insurer**

The Insurer pays the Insured R19 000 (i.e., 20 000 less excess or R1 000), and claims an input credit of R2 478.26 (i.e., R19 000 x 15/115), leaving it with a net claim of R16 521.74.

**Position of the Insured**

The Insured has no section 8(8) liability and receives R19 000 which, together with the excess of R1 000 indemnifies him in full.

### 11.2.1 Insured pays excess to third party service provider

Insureds are often required to pay the excess directly to a third-party service provider, e.g., a panel beater, for its part of the repair cost of the vehicle. In these instances, the Insurer pays the remainder of the costs as a trade payment to the panel beater. In this regard BGR 14 (Issue 3) provides that the panel beater is required to issue two tax invoices in respect of the repair work to the two different recipients being the Insured, to the extent of the excess, and the Insurer, to the extent of the trade payment. As a result, an insured vendor is entitled to claim an input credit on the tax invoice received from the panel beater, subject to the normal rules governing input credits.

We note that this aspect is under consideration by SARS and National Treasury and once confirmed, the content of this Manual will be amended/updated if required (refer to Preamble).

### 11.2.2 Insurer pays full amount to third party service provider and recovers excess from Insured

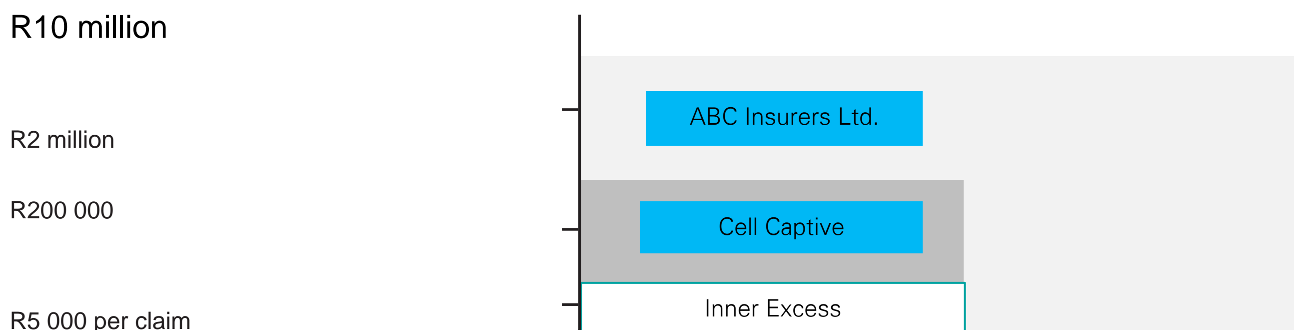
An Insurer may pay the full amount (i.e., including the excess due by the Insured) to a supplier of goods or services (e.g., a VAT registered panel beater). In these circumstances,

the Insurer is, by implication, paying the excess on behalf of the Insured. However, since the Insurer does not acquire the repair service as agent on behalf of the Insured, but merely acts as a paying agent, the Insurer is not permitted to issue the documentation envisaged in section 54(3) of the Act dealing with agents and principals to ensure that a vendor Insured will be entitled to claim the VAT paid as an input credit. To overcome this difficulty, SARS issued a section 72 ruling contained in BGR 14 (Issue 3) which requires that the Insurer issues a document, referred to in par 7.1 above, which will entitle the insured vendor, to claim the VAT incurred as an input credit, where relevant. We note that this aspect is under consideration by SARS and National Treasury and once confirmed, the content of this Manual will be amended/updated if required (refer to Preamble).

In these circumstances the Insurer may claim an input credit equal to the tax fraction of the net trade payment (i.e., the total repair costs less the excess). Equally, an insured vendor is, subject to the general rules governing the claiming of input credits, entitled to claim an input credit, equal to the tax fraction of the excess paid in respect of goods or services supplied by the supplier, provided the Insured obtains and retains the document referred to above and provided the supplier is a registered vendor.

## 11.3 Illustration of excess and insurance levels

Assume a group of companies with assets to the value of R10 million. Given its claims history and to save on insurance premiums, the group decides to self-insure the first R2 million through a Cell Captive and the remaining R8 million through another registered Insurer, ABC Insurers Ltd. They further maintain an Inner excess of R5 000 per claim with a maximum of R200 000 per annum. This scenario can be illustrated as follows:




Thus, every claim up to R5 000 is self-funded by the group companies (i.e., the inner excess). For claims up to R2 million, the first R5 000 is funded by the inner excess and the remainder by the cell captive. Equally, for claims up to R10 million, the first R5 000 is funded through inner excess, up to R2 million from the cell captive and the remainder by ABC Insurers Ltd.

## 11.4 VAT treatment of aggregate excess

Since the aggregate limit represents the uninsured portion of the risk in respect of a policy that is subject to such aggregate excess, Insureds should, in setting the value of the aggregate excess, have regard to whether any potential loss falling within the aggregate limit will include VAT. For example, where a vendor insures his stock in respect of which he is entitled to claim input credits, the aggregate value might be set at a VAT exclusive replacement value.

Equally, where a vendor insures assets, on which no input credit can be claimed upon acquisition (refer par 1.3.3), any potential loss will be a VAT inclusive value. It is therefore advisable in this instance to set the aggregate excess limit to represent a VAT inclusive value.

Where an insured vendor incurs a loss (e.g., damage to a delivery vehicle) and the repairs are funded through an aggregate excess, the Insured may, subject to the normal rules, claim input credits on the taxable supply to him of goods or services. Alternatively, where the loss to be covered by the aggregate excess is such that no supplies of goods or services will be made (e.g., a liability claim by a third party) no input credits can be claimed by the vendor on the payment made to such third party.

To provide clarity to both the Insured and Insurer as to whether excess is to be deducted from the VAT inclusive or VAT exclusive claims amount, depending on the circumstances, the VAT 421 Guide suggests that the policy wording makes it clear so as to avoid any unnecessary uncertainties and disagreement.

# 12 "No-claim bonuses"

## 12.1 Cash payments

Various forms of so-called "no-claim bonuses" exist in the Industry, the most common of which are cash bonuses paid to insured persons as a result of claim-free or low claim periods.

Since the Act does not specifically address the VAT treatment of no-claim bonuses and since SARS has not expressed a view with regards to the VAT treatment of no-claim bonuses in BGR 14 (Issue 3), the legal nature thereof will determine the VAT treatment. Consequently, due consideration must be given to the contractual provisions between the parties to determine the appropriate VAT treatment. In this regard one of two scenarios may potentially apply where no-claim bonuses are paid to Insureds in cash.

If the cash bonus is paid to incentivise the Insured for managing risk, such payment is considered to be an inducement payment for services rendered by the Insured to the Insurer. The VAT treatment would result in the Insured, if registered for VAT, having to issue a tax invoice to the Insurer for the services supplied. The Insurer would then be entitled to claim input credits provided that a tax invoice is received. If the Insured is not a vendor, the Insurer would not obtain a tax invoice and will thus not be entitled to claim input credits on the bonuses paid.

Alternatively, if the cash payment is made to effectively grant a discount on premium (i.e., the initial premium was excessive as it was based on a too high-risk profile), the Insurer would be obliged to issue a credit note to the Insured and would accordingly be entitled to claim the input credit on the discount granted, whether the Insured is a vendor or not.

From the said scenarios it is evident that two different results could potentially be achieved, depending on the legal nature of the payment. Therefore, to give effect to the true intentions of the parties, it is recommended that the policy wording regarding no-claim bonuses is drafted appropriately. Should the policy wording be ambiguous or vague, Insurers may expose themselves to unforeseen VAT costs.

## 12.2 Reduced premiums

Another form of no-claim bonuses also used by the Industry is the discounting of future premiums. Where the Insurer discounts future premiums payable with the no-claim bonus amounts due, the Insurer is effectively charging the Insured a reduced premium for the insurance service. For VAT purposes, the Insurer is obliged to account for output tax on the reduced premium charged and the Insured would likewise be entitled to claim input credits based on the reduced premium paid.

# 13 Recoveries

## 13.1 Third party recoveries

An Insurer may, under its rights of subrogation, make a recovery from a third party or from the third party's Insurer of an amount (or any part thereof) in settlement of an Insured's claim. Such a recovery is not subject to VAT as it is not deemed to be consideration for the supply of goods or services and is not made in terms of a contract of insurance.

## 13.2 Third party recoveries refunded to Reinsurers

Where an Insurer recovers amounts from third parties and is required to refund such recovery to the Reinsurer (vendor) to the extent to which the Insurer reinsured the risk, the Insurer's section 8(8) VAT liability accounted for on the original reinsurance recovery would have been overstated on the basis that the original indemnity payment received is effectively reduced by the recovery refunded to the Reinsurer. Although section 8(8) does not specifically deal with this scenario, SARS has ruled in BGR 32 that such recovery refunded to the Reinsurer, who is a vendor, entitles the Insurer to reduce the section 8(8) VAT liability originally accounted for by the tax fraction of the amount refunded to the Reinsurer. Equally the Reinsurer, who is a vendor, is required to reduce the section 16(3)(c) input credit originally claimed by the tax fraction of the amount received from the Insurer. However, BGR 32 is silent on whether or not VAT should be added to the amount recovered by the Insurer and paid to the Reinsurer. Nevertheless, to ensure that equity prevails, it is recommended that the Insurer adds 15% VAT to the amount to be refunded to the Reinsurer. This is necessary since the third-party recovery is not subject to VAT, but the refund of such recovery to the Reinsurer is.

To illustrate, assume the Insurer reinsures 100% of a risk with a Reinsurer for R11 500 000, including VAT. The Insurer pays a claim for R11 500 000 and claims an input credit of R1 500 000, leaving it with a net claim of R10 000 000. The Reinsurer indemnifies the Insurer for R11 500 000 with the result that the Insurer is liable for section 8(8) VAT of R1 500 000 and the Reinsurer is entitled to a section 16(3)(c) input credit, leaving both the Insurer and the Reinsurer VAT neutral. Should the Insurer make a third-party recovery of say R6 000 000, which is not taxable, it will be required to pay R6 900 000 (i.e., R6 000 000 plus 15% VAT of R900 000) to the Reinsurer, leaving the Insurer VAT neutral. Equally, the Reinsurer will be liable for output tax of R900 000, leaving it VAT neutral and with a net claim paid (after the recovery) of R4 000 000 (i.e., net indemnity paid of R10 000 000 less net recovery received of R6 000 000). It thus follows that unless VAT is added to the recovery paid to the Reinsurer, the Insurer will make a profit equal to the tax fraction of the recovery, at the expense of the Reinsurer. It is therefore recommended that the reinsurance contract provides that the Insurer will be required to refund the third-party recovery, plus 15% VAT, to the Reinsurer.

## 13.3 Excess recoveries

Where an Insurer recovers any amount on behalf of the Insured (e.g., an excess), the Insurer is considered to recover such amount as an agent of the Insured. As a result, the Insurer is not liable to account for output tax in respect of the amount recovered and will not be entitled to claim an input credit in respect of the amount refunded to the Insured, as the refund is not considered to constitute the settling of a claim.

The amount to be recovered from the third party should be equal to the excess paid or incurred by the Insured. Further, no tax invoice is needed, and no output tax liability arises in the hands of either the Insurer or Insured, whether the Insured is a vendor or not.

## 13.4 Recoveries from Reinsurers

Where an Insurer recovers an amount from a Reinsurer, the amount received generally comprises an indemnity payment received by the Insurer which will be subject to VAT in terms of section 8(8) of the Act, unless the premiums paid to the Reinsurer were not subject to VAT.

## 13.5 Salvage sales

The disposal of salvaged goods (salvage) is generally referred to as salvage recoveries. Unlike excess recoveries, it is common practice in the Industry that upon full indemnification of the Insured's loss, the Insurer obtains all right, title and interest in any salvage which may be recovered by it. As a result, the Insurer recovers salvage at its own cost and disposes thereof for its own account. Salvage recoveries are therefore subject to VAT in the same way as any other supply. An Insurer has no VAT liability until the salvage is sold. Insurers who sell salvage are required to issue a tax invoice at the time of sale.

Where salvage recoveries comprise goods which are exported or sold outside the RSA, such supplies will be subject to VAT at the zero-rate, subject to the documentary requirements in terms of section 11(3) of the Act and IN 30 or IN 31, whichever is applicable.

## 13.6 Interest on recoveries

Any interest receivable in respect of recoveries, in terms of the prescribed Rate of Interest Act, 1975, is exempt from VAT and there is no requirement for the recipient to account for output tax under section 8(8) of the Act.

# 14 Indemnity payments received by Insureds – section 8(8) of the Act

## 14.1 Indemnity payments

The term "indemnity" is used in the context of section 8(8) and section 16(3)(c) of the Act, with reference to payments made by Insurers to indemnify Insureds in terms of a taxable contract of insurance.

As the term "indemnity" is not defined in the Act, it cannot be interpreted as having any technical meaning. Instead, the term is to be interpreted in accordance with its ordinary meaning as used in the English language. On this basis, "indemnity" can mean compensation for damage or loss. This interpretation is also in line with the terminology used in the Compensation of Occupational Injury and Diseases Act. No 130 of 1993, as amended.

Consequently, payments for loss under personal accident/stated benefit policies are to be classified as indemnity payments for purposes of the Act.

Based on the above, no distinction is made between indemnity insurance and non-indemnity insurance, with the result that payments/compensation in respect of stated benefits are to be treated as indemnities for purposes of both sections 8(8) and 16(3)(c) of the Act.

## 14.2 Own damage

For the purpose of this document, the term "own damage" means a loss suffered by an Insured and excludes third party damages (refer par 10.5 and par 14.3).

Section 8(8) of the Act provides, *inter alia*, that where a vendor receives an indemnity payment in money under a taxable non-life insurance contract (where the premiums payable under the contract are subject to VAT at either the standard rate or the zero-rate), such vendor is deemed to have made a taxable supply, to the extent that the payment so received relates to a loss incurred in the carrying on of the vendor's enterprise (refer par 1.2.1).

The indemnity payment received is considered to include standard rate VAT and the vendor Insured must calculate, and pay to SARS, the relevant output tax by applying the tax fraction (15/115) to the amount received.

An Insured will not have an output tax liability in the following instances:

- where the Insured is not a vendor;
- where the policy is not subject to VAT (e.g., the Insurer is a foreign Insurer which is not registered for VAT);
- where the indemnity payment relates to a loss incurred by a vendor, but the risk does not relate to the vendor's "enterprise" activities (refer par 1.2);
- where the indemnity payment is received to reinstate the vendor for the total loss or destruction of any goods, in respect of which an input credit was or would have been denied in terms of section 17(2) of the Act, for instance a passenger motor car (refer par 1.3.3);

- where the Insurer indemnifies the Insured by virtue of a supply of goods (e.g., replaces stolen goods) or services (e.g., pays a panel beater to repair the damaged vehicle); or
- where the payment comprises an ex-gratia payment, on the basis that such a payment is not made under a contract of insurance (refer par 10.3).

## 14.3 Third party damages

A person can insure against damages for which there is a legal liability to pay. Examples of this type of insurance, which is commonly known as third party insurance, include third party cover as part of motor insurance, public liability insurance and professional indemnity insurance.

Third party damages payments comprise financial compensation which is due to a third party and for which an Insured is liable because of a loss, damage or injury suffered by such third party.

Section 8(8) of the Act provides that where a vendor (Insured) is indemnified under a contract of insurance and the vendor Insurer pays an amount of money to another person (i.e., the Insurer pays an amount to a third party) in terms of the contract of insurance with the Insured, the insured vendor is deemed to have made a taxable supply in the course of its enterprise.

Where a vendor Insurer makes a third-party indemnity payment under a contract of insurance of an Insured who is registered for VAT, the section 8(8) VAT amount is generally paid to the Insured to indemnify such Insured (vendor) against the VAT liability which arises in terms of the Act. In these circumstances, the vendor Insurer may claim an input credit in respect of the full amount of the indemnity paid (i.e., the total of the amount paid to the third party, as well as the amount paid to the Insured).

**Example**

Where R10 000 is paid to the third party and R1 500 is paid to the Insured, the Insurer may claim an input credit of R1 304.35 in respect of the R10 000, as well as an input credit of R195.65 in respect of the R1 500 (i.e., a total input credit of R1 500).

The vendor Insured is liable to pay the relevant output tax, i.e., R1 500, to SARS on the full indemnity payment by the Insurer.

The third party (irrespective of whether or not such a person is a vendor) is not deemed to have made a taxable supply and does not have an output tax liability on the amount received.

Furthermore, a vendor Insured has no section 8(8) output tax liability where the Insurer indemnifies the third party by replacing or repairing goods destroyed or damaged.

## 14.4 Damages paid by the Road Accident Fund

The Road Accident Fund (the Fund) is not required to be registered for VAT on the basis that the Fund is a public authority and the Minister has not declared its activities as enterprise activities for VAT purposes. Consequently, the Fund is not liable to charge VAT on its premiums. Only natural persons can claim damages from the Fund in their private capacity.

## 14.5 Indemnity payments received by employers

An employer (vendor) may receive an indemnity payment under a taxable policy (e.g., a group accident policy, health policy or motor policy) which involves losses suffered by employees of the company.

When determining the effects of section 8(8) of the Act in respect of the receipt of an indemnity payment, it must be determined whom the Insured is in terms of the policy (i.e., the person with the insurable interest), regardless of the insured person (i.e., the person to whom the indemnity payment is ultimately paid).

### 14.5.1 Employer insures employees' assets/risks

Where the employer (vendor) has taken out insurance in respect of employee-related risks (e.g., personal accident cover) where the employer is the Insured and the employee the insured person. The employer will, subject to the normal rules, be entitled to claim input tax on the premiums and be liable to account for section 8(8) VAT on indemnity payments received from its Insurer.

### 14.5.2 Employer receives indemnity on behalf of employee

Where an employer paid his employee’s insurance premiums as a fringe benefit, or the employer pays and recovers the employee’s insurance premiums as an agent, neither the employer nor the employee will have a section 8(8) VAT liability in respect of indemnity payments received under the policy.

## 14.6 Examples of section 8(8) VAT

**Example 1**

Trading stock is stolen from a vendor that only makes taxable supplies. The Insurer (a vendor) indemnifies the Insured by paying an amount equal to the VAT inclusive value of the stolen stock.

The payment constitutes an indemnity payment and the Insured, if a vendor, must account for output tax by applying the tax fraction (15/115) to the indemnity payment received.

**Example 2**

A vendor’s motor car (on which the vendor was denied an input credit upon acquisition) is involved in an accident and damaged beyond repair. Further, a third-party damages claim is submitted to the vendor’s Insurer. The Insurer (a vendor) indemnifies the Insured by paying an amount equal to the open market value of the vehicle to the Insured. In addition, the Insurer pays the third party for damages.

The vendor Insurer is entitled to claim an input credit in respect of both the indemnity payment made to the Insured and the payment to the third party.

The Insured does not have an output tax liability in respect of the indemnity payment which relates to the total reinstatement of the motor car written off.

The payment to the third party constitutes an indemnity payment on which the Insured must account for output tax and the Insurer has to pay said VAT to the Insured.

### Example 3

A vendor's motor car is involved in an accident. The Insurer (a vendor) pays a panel beater for repair services rendered on the Insured's vehicle.

The payment made to the panel beater does not constitute an indemnity payment received in the hands of the Insured with the result that the Insured has no section 8(8) output tax liability.

### Example 4

An owner (a vendor) of a petrol station receives an indemnity payment for stock of fuel which was stolen. The Insurer (a vendor) indemnifies the Insured by paying an amount equal to the value of the loss within the sum insured limits (e.g., R10 000).

Although fuel comprises zero-rated goods, the owner of the petrol station must account for output tax in terms of section 8(8) by applying the tax fraction to the indemnity payment received.

### Example 5

A vendor receives an indemnity payment in respect of damaged computer equipment (used 50% for making taxable supplies) from his Insurer (a vendor).

The payment received by the Insured constitutes an indemnity payment. The Insured must account for output tax to the extent that the indemnity payment relates to a loss incurred in the course of carrying on an enterprise and therefore has to apply the tax fraction (15/115) to 50% of the indemnity payment received.

### Example 6

A vendor arranges the insurance of the vehicles of its employees, whether through an Insurer or through a Cell Captive company (i.e., the employer provides a fringe benefit consisting of the payment of the insurance premiums on behalf of its employees, being the Insureds). Since this type of fringe benefit is not subject to VAT and since the employer effectively acts as agent on behalf of its employees for purposes of paying the premiums, the employer is not entitled to claim input credits on the premiums paid and is equally not liable to account for section 8(8) VAT on any indemnities received.

# 15 Sums insured for insurance (excluding reinsurance)

## 15.1 General principles

The insured monetary value pertaining to a risk, as stated in an insurance policy, is called the sum insured. A particular risk can be insured for market value, a declared value, or a replacement value. The value of the sum insured is normally determined, *inter alia*, with reference to the value of the potential ultimate loss to be suffered by the Insured.

In terms of section 64 of the Act, any price charged by a VAT vendor in respect of a taxable supply of goods or services is deemed to include VAT. When VAT was introduced in 1991, consensus was reached in the Industry (and Industry practice has since been established) that in most cases, insurance policies will be concluded on a VAT inclusive basis (whether or not inclusive of standard rate VAT or zero-rate VAT). However, as indicated below, in the case of certain Insurers, or in the case of certain risk classes, policies may be concluded on a VAT exclusive basis.

Policies issued by RSA Insurers are generally considered to be inclusive of VAT (i.e., sums insured, premiums and excesses) unless specifically endorsed to the contrary. Therefore, where a policy is silent on VAT, the sum insured reflected in the policy will be the maximum limit of liability, inclusive of VAT, payable by the Insurer.

It has been recognised that in certain circumstances Insureds (i.e., policyholders) may require that a policy be issued on a VAT exclusive basis. For example, a vendor Insured may request the lead-Insurer of a collective policy to issue the policy on a VAT exclusive basis, where at least one of the Co-Insurers is not a RSA Insurer and not a vendor. In this instance, only the portion of the risk co-underwritten by a RSA Insurer will attract VAT in respect of the premium, sum insured, etc. Another example is where the Insured is a vendor and wishes to insure a particular amount in respect of fidelity risk or material risk where the underlying commodity is zero-rated, such as fuel. In these instances, policies are often written on a VAT exclusive basis to ensure that the VAT exclusive sum insured is equal to the actual amount, excluding section 8(8) VAT, which the Insured wishes to insure.

Where an Insured requests the Insurer to issue a policy on a VAT exclusive basis, the policy wording must clearly provide that the sums insured, indemnity limits and premiums are VAT exclusive and that the relevant rate of VAT will be added to premiums and indemnity payments. In this instance, where a RSA Insurer makes a claims payment to a vendor Insured who has a section 8(8) VAT liability, such Insurer must indemnify the Insured by making a payment of 15% VAT in addition to the sum insured or indemnity limit stated in the policy.

Therefore, when determining the value of the sum insured, the category of loss and the VAT consequences of section 8(8) must be considered.

## 15.2 Categories of loss

Non-life insurance losses can, for VAT purposes, be divided into two main categories namely, losses in respect of:

- material damage (e.g., goods such as home content); and
- liability and fidelity (e.g., performance guarantees, personal accident, etc. and fidelity cover).

VAT must be considered when determining the sums insured in respect of material damage cover irrespective of whether or not the Insured is a vendor, as the replacement cost of insured goods generally includes VAT at either the standard rate or the zero-rate.

Where the maximum loss in respect of certain risks cannot be quantified, for instance in the case of liability cover (e.g., professional indemnity cover), an Insured can select a limit of liability. Indemnity limits, as well as claims settlement proceeds, are deemed to be VAT inclusive, unless specified otherwise in the policy (section 64 of the Act).

## 15.3 Sums insured and section 8(8)

The effects of section 8(8) on sums insured, are determined with reference to, *inter alia*:

- the VAT registration status of the Insured;
- the VAT registration status of the Insurer;
- the purpose for which the Insured (vendor) acquired or applied the subject matter of the policy (i.e., whether or not the goods or services are applied in the course of the vendor's "enterprise");
- the category of loss (i.e., in respect of material damage or liability or fidelity);
- whether the subject matter of risk is goods to be imported; and
- the VAT rate applicable to the subject matter being insured.

## 15.4 Examples of sums insured

The determination of sums insured may be demonstrated by way of the following examples:

**Example 1: VAT status of Insured where section 8(8) applies**

A vendor Insurer underwrites either material damage or liability risks of a vendor which fully relates to the Insured's enterprise.

Section 8(8) of the Act would apply should a loss be suffered, and the Insured would be liable to account for output tax on any indemnity payments received in respect of the Insured risks.

The sums insured in respect of all the said risks need to include standard rate VAT (15%) to ensure that the vendor will be fully indemnified, including for the section 8(8) VAT liability. In the event of a claim, standard rate VAT also applies where the subject matter of a material damage insurance policy comprises a non-taxable commodity such as money or a zero-rated commodity such as fuel, i.e., the Insured would have a section 8(8) VAT liability.

### Example 2: VAT status of Insured where section 8(8) does not apply

A vendor Insurer underwrites either material damage or liability risks of an Insured who is not a vendor, or a vendor Insured where the risks do not relate to the Insured's enterprise activities.

Section 8(8) of the Act does not apply as the Insured is not a vendor or the risks do not relate to a vendor Insured's enterprise activities, and therefore there will be no output tax liability in respect of any indemnity payment received from the Insurer.

The sums insured need to include standard rate VAT (15%) in respect of the material damage risks, unless the underlying subject matter of the material damage insurance policy comprises a non-taxable commodity such as money or a zero-rated commodity such as fuel.

Also, the sums insured in respect of liability cover provided to an Insured who is not a vendor or a vendor who does not utilise the insurance cover in the course of its enterprise do not need to take VAT into account.

### Example 3: VAT status of Insurer

A local Insurer (a vendor) and a foreign Insurer (a non-vendor) co-insure either material damage or liability risks of a vendor Insured which fully relate to the Insured's enterprise.

Section 8(8) only applies to the portion of the risk insured by the vendor Insurer and the Insured would only be liable to account for output tax on indemnity payments received from the vendor Insurer.

The sums insured need to include standard rate VAT (15%) only to the extent to which it relates to the portion of the risk underwritten by the vendor Insurer.

As it may prove confusing to the Insured to reflect the monetary value of the sum insured on both a VAT inclusive and VAT exclusive basis, Insurers often elect to write the policy (i.e., sums insured and premiums) on a VAT exclusive basis in the event of co-insurance (refer par 15.1).

### Example 4: Claims payments made for goods to be imported

A local Insurer (vendor) insures material damage (e.g., an inbound marine policy) comprising capital equipment manufactured in Germany and to be imported into RSA, which will be used wholly in a vendor's enterprise.

The VAT, customs duty and cost of importing the goods are as follows:

| | |
|---|---|
| Purchase price (Free-on-board) | R400 000 |
| *Plus* customs duty e.g., 12% | R48 000 |
| *Plus* 10% upliftment (for valuation purposes only) | R40 000 |
| Value for purposes of VAT on importation | R488 000 |
| VAT on importation (i.e., R488 000 x 15%) | R73 200 |

Where the Insured (vendor) suffers a loss in respect of the equipment, which is not available locally and has to be imported, the Insured is liable to account for section 8(8) output tax on indemnity payments received in respect of such equipment.

It is necessary to differentiate between VAT payable on the importation of any goods and section 8(8) VAT which is payable by a vendor on receipt of an indemnity payment.

The sum insured needs to include the section 8(8) VAT to ensure that the vendor is fully indemnified. The sum insured also needs to include the customs duty which would be payable by the Insured on the importation of the equipment. However, the sum insured will not include the import VAT component as the vendor Insured may recover such VAT as an input credit (i.e., it is not a cost to the vendor Insured).

The sum insured is determined as follows:

| | |
|---|---|
| Purchase price (Free-on-board) | R400 000 |
| *Plus* customs duty e.g. 12% | R48 000 |
| Importation cost of goods (excluding VAT) | R448 000 |
| *Plus* section 8(8) liability (i.e., R448 000 x 15%) | R67 200 |
| Sum insured (i.e., importation cost) plus section 8(8) VAT) | R515 200 |

The Insured will pay over the section 8(8) VAT (R67 200) to SARS when receiving an indemnity payment.

### Example 5: VAT status of the Insured where there is an imported service

An RSA resident (non-vendor) insures a material damage risk (e.g., household content) with a non-resident insurance company (non-vendor). Since the insurance is supplied by a non-resident, the RSA homeowner is liable to pay VAT on the imported service, i.e., the insurance cover provided, on the basis that the insurance is not used for purposes of making taxable supplies.

Although the Insured must take the VAT into account which has to be paid in respect of the imported service, the sum insured is not affected by section 8(8) of the Act as the Insured is not a vendor and the insurance contract is not subject to VAT. However, the sum insured must include any VAT payable for the replacement or repair of the goods as this will constitute a cost to the Insured.

# 16 Input tax

## 16.1 Introduction

Licenced non-life Insurers' businesses consist of at least two distinct components namely, underwriting and investments. As a result, Insurers' financials also tend to distinguish between underwriting profits or losses and investment profits or losses. The investments of a non-life Insurer therefore form an integral part of its business. Some Insurers manage their own investments whilst others may appoint asset managers, portfolio managers and other professional advisors to manage their investments. Either way, certain costs are inevitably incurred by Insurers in the course of their investment activities.

From a VAT perspective, investments in the form of equity investments; scrip lending transactions; loans; deposits; debentures and derivatives such as options and futures, are mostly exempt from VAT, unless the supplies in question are made to non-residents. Consequently, where an Insurer invests funds with financial institutions in the RSA or trades in financial instruments with RSA residents, such investments will in most instances not be subject to VAT. In other words, the interest, dividends, profits or losses, as the case may be, will not be subject to VAT.

Further, where an Insurer reinsures or enters into an outward retrocession agreement with non-resident Reinsurers/Insurers, any claims received in respect of such contracts constitute income which is not subject to VAT, i.e., not taxable.

## 16.2 Input tax

### 16.2.1 No input credits or full input tax claimable

The VAT incurred on goods or services acquired by a vendor, only constitutes "input tax" as defined, to the extent to which the goods or services are acquired for purposes of being utilised, consumed or supplied in the course of making taxable supplies. This means that to the extent to which goods or services acquired are utilised wholly for taxable purposes, the VAT incurred can be claimed in full. However, where goods or services acquired are utilised wholly for non-taxable purposes, the VAT incurred on such costs will not be regarded as input tax with the result that it will not be claimable as input credits. This means that where taxable expenses (for example asset management fees) are incurred by the Insurer wholly for the purpose of consumption, use or supply in the course of making non-taxable supplies (for example in respect of only exempt transactions/investments) the VAT incurred on the asset management fees is not claimable as input credits.

Where expenses can be attributed wholly to either exempt, non-taxable or taxable supplies, they are commonly referred to, for VAT purposes, as directly attributable expenses.

### 16.2.2 Apportionment of input credits

Since not all expenses are directly attributable to either wholly taxable or wholly non-taxable supplies, certain expenses (e.g., overhead costs) are referred to as expenses incurred for a so-called "dual purpose".

Where any dual-purpose expenses are incurred, section 17(1) of the Act provides that, unless a vendor has obtained a specific ruling from SARS, the vendor is required to determine the extent to which such dual expenses are used for taxable purposes, by utilising the standard turnover-based method of apportionment. This method determines the

percentage taxable use of dual use expenses by expressing the taxable turnover (e.g., premium income and commissions received) as a percentage of total income (e.g., taxable income plus all non-taxable income such as interest, dividends profits on investments, reinsurance and retrocession claims received, etc.).

Vendors may apply for alternative apportionment methods to be used where the turnover-based method does not yield equitable results. It should be noted though that the Act currently permits SARS to grant permission to use an alternative method of apportionment retrospectively, only with effect from the beginning of the tax year in which the application is lodged.

### 16.2.3 Microinsurers

It is evident from par 16.2.1 above that Microinsurers who supply both non-life and life insurance are not entitled to claim the VAT incurred on taxable goods or services acquired wholly for the purpose of consumption, use or supply in the course of supplying life insurance as input tax. Equally, Microinsurers are entitled to claim full input tax on goods or services acquired wholly for the purposes of consumption, use or supply in the course of supplying non-life insurance.

As noted in par 16.2.2 above, Microinsurers are required to apportion the VAT incurred on goods or services acquired for a dual purpose (i.e., partially for the consumption, use or supply in the course of making taxable supplies and partially for non-taxable supplies). A typical example of such costs is overhead costs.

# 17 Group insurance

## 17.1 Introduction

It is common practice for groups of companies to request an Intermediary to arrange insurance cover for the entire group. These groups often consist of domestic and foreign companies. For group insurance the Intermediary may arrange a single policy with an Insurer, which covers certain specified risks of all the companies within the group. Alternatively, the Intermediary may arrange insurance for the group with different Insurers, some of whom are local and some foreign, for different risk types.

In group policies, the Insured is generally described as, say the holding company and all its subsidiaries. Equally the risks insured are collectively described as the risks of the holding company and its subsidiaries. In these circumstances, it may not be evident from the policy wording or the policy schedules which risks are associated with which companies. Instead, a single premium may be charged in respect of different risk types, with the result that premium schedules will only distinguish between non-taxable, standard rated and zero-rated premiums.

Where group policies are issued, the Intermediary generally recovers a single premium from say, the holding company, who in turn recovers portions of the premiums paid from its subsidiaries. Equally, where losses are suffered, claims are often reported to the holding company first, who may then lodge the claims with the Intermediary. As is the case with premiums, indemnity payments are often paid to the holding company who in turn, pays the amounts to the relevant subsidiaries.

From a VAT perspective it is necessary to determine whether the holding company, in the above scenario, is entitled to claim input credits on the full premium and also whether the holding company is liable to account for any output tax when recovering portions of the premium from its subsidiaries. It is further necessary to determine whether the holding company will have a section 8(8) output tax liability on claims received which relate to losses suffered by subsidiaries, and whether it will be entitled to claim any input credits when claims proceeds are passed on to the subsidiaries.

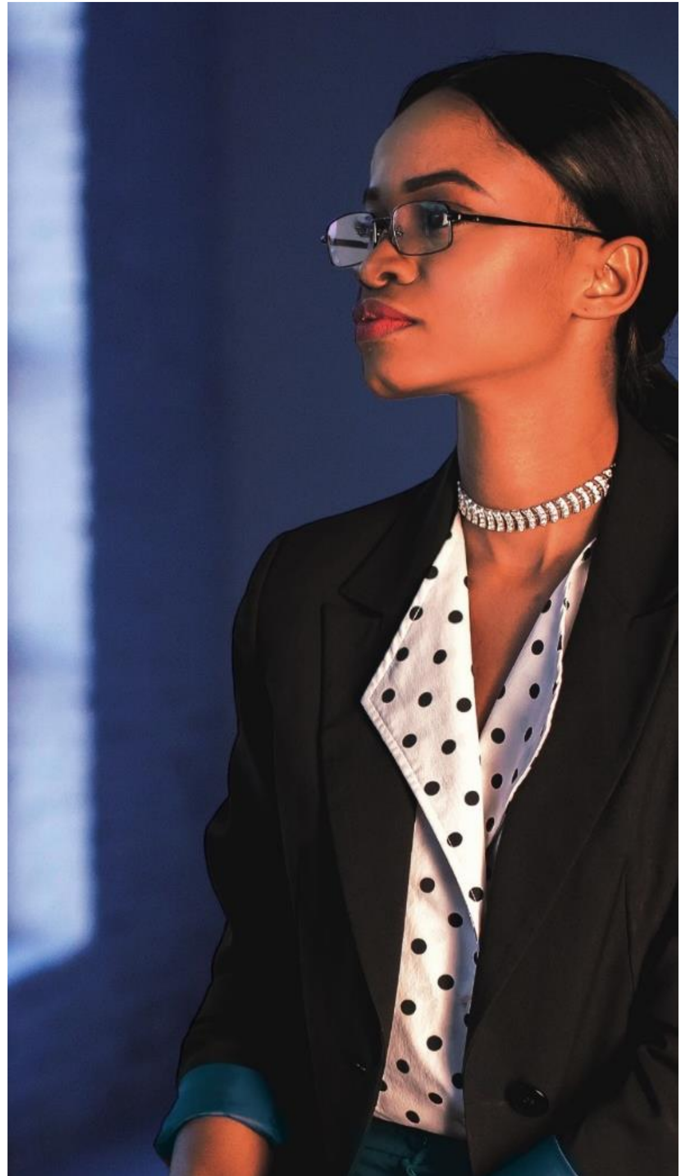
The correct VAT treatment depends primarily on the capacity in which the parties transact with one another. It is therefore important to determine whether it can be said that the holding company incurs the full premium as principal and on-supplies insurance to its subsidiaries or whether the holding company actually incurs that part of the premium, relating to assets and other risks of its subsidiaries, in the capacity as agent with the result that the recovery of premiums from subsidiaries will merely constitute reimbursement of insurance expenses incurred on their behalf.

Unless it can successfully be argued that the holding company has an insurable interest in the relevant risks of its subsidiaries and that the Insurers and Intermediaries have no legal obligation in respect of claims towards the subsidiaries, the holding company cannot be said to have insured the risks of its subsidiaries as principal. Further, unless the holding company is in fact a registered non-life Insurer it is, in terms of the Insurance Act, not permitted to insure the risks of its subsidiaries and to reinsure same with other Insurers. Consequently, it is very unlikely in these circumstances that the holding company will enter into the contract of insurance in the capacity of principal, to the extent to which the policy covers risks of its subsidiaries. Instead, it will most likely enter into the contract as principal only to the extent to which its own risks are insured.

## 17.2 VAT treatment of premiums and claims

Given the fact that group policies are generally issued to say, the holding company and its subsidiaries, it has the effect that the Insurers and Intermediaries enter into a single agreement with the holding company and its subsidiaries. This implies that the holding company acts in the capacity of principal, only to the extent to which it insures its own assets and risks, and acts in the capacity of agent to the extent to which the assets and risks of its subsidiaries are insured.

Where the holding company acts as principal, in relation to its own risks and as agent in relation to the risks of its subsidiaries, the holding company will, subject to the general rules governing input credits, only be entitled to claim an input credit on that portion of the standard rated premium which relates to its own risks, whereas the subsidiaries will be entitled to claim input credits in respect of that part of the premiums which relates to their individual risks only. Equally, the holding company will, subject to the rules governing the payment of section 8(8) output tax on indemnity payments received, only be liable for output tax in respect of its own losses incurred in its enterprise and the individual subsidiaries will be liable for section 8(8) output tax in respect of their individual indemnities received.



The said VAT treatment can only be applied correctly by the group if the resident/non-resident status of the holding company and each individual subsidiary as well as the values of the sums insured, the nature of the risks and the location of the risks of the holding company and the individual subsidiaries are communicated to the Intermediary in order for the Intermediary and Underwriters to correctly determine the VAT rate to be applied to the premiums payable by the relevant Insureds in respect of the specific risks.

## 17.3 Documentary requirements

As far as documentary requirements in respect of the input credits claimable on premiums are concerned, section 54(2) of the Act permits the Intermediaries/Underwriters to issue a single policy or tax invoice in the name of the holding company.

However, in order for the subsidiaries to claim the input credit on their respective portions of the premium, the holding company is, in terms of section 54(3) of the Act, required to furnish the subsidiaries (within 21 days calculated from the end of the calendar month in which the holding company paid the premium) with a full and proper description of the nature of the insurance, the premium relating to each risk class as well as an indication of the VAT rate applicable to each premium.

Since the holding company, in these circumstances, makes no taxable supplies in respect of the reimbursement of premiums sought from its subsidiaries, the holding company may not issue a tax invoice in respect of such recoveries. Instead, it is merely required to furnish the subsidiaries with the said information. As far as the subsidiaries are concerned, they may regard the document issued by the holding company as a tax invoice for purposes of claiming input credits, provided the holding company is in possession of a valid tax invoice from the Insurer/Intermediary in respect of all taxable premiums paid.

Equally, where any indemnity payments are received, the holding company should clearly indicate whether the indemnity payments are subject to section 8(8) VAT or alternatively, whether the indemnity payment was received from a non-resident Insurer or a registered Insurer as well as the nature of the risk to which the indemnity payment relates. This will enable the subsidiary to determine whether it should account for section 8(8) VAT and if so, to what extent.

# 18 VAT treatment of reinsurance & retrocession

## 18.1 Introduction

As is the case with insurance, the VAT treatment of reinsurance and retrocessions (hereinafter collectively referred to as "reinsurance") depends, in the first instance, on the nature of the supplies (i.e., the nature of reinsurance) as well as the VAT status of the supplier and the resident status of the recipient.

From a nature of the supply point of view, the most fundamental difference between insurance and reinsurance is that insurance provides cover in respect of the underlying risks, whereas reinsurance provides cover against the Insurer's (Cedent's) claims risk. In other words, reinsurance services are at least one step removed from the underlying goods or services being insured. It is primarily for this reason that the various zero-rating provisions which apply to insurance do not find application to reinsurance. Instead, different zero-rating provisions need to be considered for reinsurance.

Further, the contractual provisions between Cedents and Reinsurers are in some respects fundamentally different to those of insurance policies. In addition, the cash flows and the documentation used by Reinsurers differ from the cash flows and the documentation used by Insurers.

It is for the abovementioned reasons that it was necessary for the reinsurance industry to request a specific Binding General Ruling from SARS which clarifies the correct VAT treatment to be followed in respect of reinsurance and to obtain the relevant dispensations applicable to reinsurance. In this regard SARS issued BGR 32 dated 18 March 2016.

## 18.2 Standard rated reinsurance

The supply of both facultative and treaty reinsurance in respect of non-life insurance by any person who is a vendor constitutes a taxable supply (refer par 1.2.1) which is subject to VAT at either the standard or the zero-rate. The zero-rate only applies if one or more of the provisions in section 11(2) of the Act find application. Since only one zero rating section may find application (i.e., reinsurance supplied to non-residents), reinsurance supplied by vendor Reinsurers to vendor Cedents are subject to standard rate VAT, regardless of the VAT rate applicable to the underlying insurance (e.g., although inbound marine insurance is subject to zero-rate VAT, the reinsurance thereof by a local Reinsurer is subject to standard rate VAT).

## 18.3 Zero-rated reinsurance

### 18.3.1 Legislative provisions

Section 11(2)(ℓ) of the Act provides for zero-rate VAT to apply in respect of services supplied by a vendor to a person who is not a Resident of the RSA, provided the services are not supplied:

- directly in connection with movable or immovable property located in the RSA; and
- directly to the non-resident or to any other person who is in the RSA at the time the services are rendered.

As mentioned earlier, reinsurance by its very nature cannot be said to be a service which is supplied directly in connection with the underlying risks (i.e., the movable or immovable property). As a result, the first exclusion from the ambit of the section does not apply to reinsurance.

Thus, where a local Reinsurer supplies inward reinsurance to a Cedent who is not a resident of the Republic, the supply of such reinsurance is subject to zero-rate VAT.

Further, all vendors are required to obtain and retain documentary proof, satisfactory to the Commissioner, to substantiate the application of the zero-rate.

### 18.3.2 Documentary proof prescribed by BGR 32 in respect of zero-rated reinsurance

BGR 32 confirms that Reinsurers may, in terms of section 11(2)(ℓ), zero-rate the supply of reinsurance to non-resident Cedents, provided the Reinsurer obtains the following documentation:

- a copy of the reinsurance contract which constitutes an alternative tax invoice (refer par 18.7.2.1);
- proof that the premiums were paid; and
- a declaration from the Cedent confirming that the Cedent is not a resident of the RSA and not a vendor.

BGR 32 further provides that if the Reinsurer fails to obtain the required documents within 90 days from the effective date of the reinsurance contract, the Reinsurer must account for output tax, equal to the tax fraction of the reinsurance premium received. Should the Reinsurer obtain the relevant documents within five years from the time of the supply of the reinsurance, the Reinsurer may claim an input credit in field 18 of its VAT201, in the tax period during which the documents are received.

### 18.3.3 Binding Class Ruling - further dispensation on documentation required in support of the zero-rate

SARS issued a Binding Class Ruling on 7 May 2021 to all members of SAIA who provide reinsurance (the Class Members) in terms of which further dispensation is granted in respect of:

- the documentary requirements in support of the application of the zero-rate on inward reinsurance supplied to non-resident Cedents; and
- the period in which proof of payment needs to be obtained.

In summary, the Binding Class Ruling provides that the following documentation can be relied on to support the application of the zero-rate on inward reinsurance supplied to non-resident Cedents:

- the reinsurance slip and/or bordereau issued to the foreign Cedent;
- the reinsurance agreement and/or reinsurance slip reflecting the identity and details of the foreign Cedent; and
- the reinsurance slip in respect of each facultative reinsurance cover provided.

The Binding Class Ruling also extends the period within which proof of payment must be obtained to a period of 6 months from the earlier of a reinsurance slip and/or bordereau being issued or the time any payment of consideration is received by the Reinsurer.

Class members who have not received payment within the six-month period may, on a case-by-case basis, apply to SARS for a further extension within which to obtain the payment from the foreign Cedant prior to the expiry of such six-month period.

## 18.4 Time of supply of reinsurance

BGR 32 recognises that, unlike insurance, a reinsurance contract does impose an obligation to make payment of the reinsurance premium, albeit that the reinsurance contract may provide for payments to be made periodically or that payment only becomes due after a certain period once the quantum of the premium has been determined. It should be noted that in practice, either the Cedent or reinsurance Broker prepares a reinsurance bordereau which is sent to the Reinsurer, and which contains all relevant information in respect of premiums, brokerage, commissions, claims and claims recoveries. As far as treaty reinsurance is concerned, the bordereau can only become an invoice (i.e., a document notifying an obligation to make payment) once the quantum of the premiums, brokerage, commissions, claims and recoveries are confirmed by the parties. In practice, this confirmation takes various forms including a so-called “confirmed bordereau”, a confirmed statement, an email confirming a particular bordereau, etc. Given the fact that the circumstances of the different types of reinsurance contracts are different, BGR 32 deals with the timing rules for each type of reinsurance individually.

### 18.4.1 Facultative business

In practice, Cedents generally have 90 days from date of inception of the reinsurance cover to pay premiums. The premiums are fixed when the reinsurance contract is entered into. The reinsurance premiums follow the frequency of the premiums payable to the Cedent by its Insureds (i.e., either fully in advance or quarterly). Reinsurance cover is thus provided from inception date, provided the Cedent’s Insureds paid their premiums, failing which there are no claims to insure.

BGR 32 provides that the time of supply of facultative reinsurance is, in terms of section 9(1) of the Act, the earlier of the time an invoice (i.e., the reinsurance bordereau) is issued or payment is received, by either the Reinsurer or reinsurance Broker, unless the reinsurance contract requires that premiums are payable periodically.

Where the reinsurance contract makes provision for payments to be made periodically, BGR 32 confirms that section 9(3)(a) of the Act applies namely, that the timing is triggered on each part of the premium at the earlier of the time an invoice is issued, or payment becomes due or payment is received by either the reinsurance Broker or the Reinsurer.

### 18.4.2 Non-proportional treaty reinsurance

These contracts are generally annual contracts which cover a period identical to the Cedent’s financial year. The rate of the premium is generally determined before the commencement of the Cedent’s financial year. Generally, there are so-called “minimum and deposit premiums” payable, which are based on 90% of the Cedents envisaged annual premiums receivable. The initial premium is payable by the end of the month and the subsequent premiums are payable quarterly. The quantum of the said premiums is thus known at the time of conclusion of the reinsurance contract. At year end, the actual premium is calculated based on the Cedent’s actual premiums received. Should the minimum and deposit premiums exceed the actual premium, generally no refunds are paid by the Reinsurer, whereas any shortfall in premiums needs to be paid to the Reinsurer as a final premium.

Thus, since the deposit and initial premiums are known but payable periodically, BGR 32 confirms that section 9(3)(a) of the Act applies with the result that the timing is triggered at the earlier of the time the quarterly bordereau is issued, or the premiums become due or are received by either the reinsurance Broker or the Reinsurer.

Although BGR 32 does not explicitly deal with the timing of the final premium, it is considered that the timing is triggered in terms of section 9(4)(b) of the Act namely, the earlier of the time the premium becomes due or is received or an invoice is issued, since the quantum thereof is unknown until the Cedent's actual premium income for the year is determined at year end.

### 18.4.3 Proportional treaty reinsurance

Generally, reinsurance premiums are payable quarterly in arrears, and are based on actual premiums received by the Cedent during the quarter. It is for this reason that either the Cedent or the reinsurance Broker prepares a bordereau, to be confirmed by the Cedent, the reinsurance Broker (where applicable) and the Reinsurer. Currently, the said confirmation needs to take place within 45 days after the end of the quarter and payment is to be made within 15 days after confirmation. Therefore, payment is effectively due 60 days after the quarter.

BGR 32 recognises that since premiums are unknown at inception of the reinsurance contract, the provisions of section 9(4)(b) of the Act apply namely, that the timing is triggered at the earlier of the time the premium becomes due or is received or an invoice is issued. In this regard the bordereau will only constitute an invoice upon confirmation of the premium.

## 18.5 Reinsurance brokerage and commission

### 18.5.1 Standard rated brokerage and commission

Reinsurance commissions received by Cedents from Reinsurers, and reinsurance brokerage received by a reinsurance Broker from a Reinsurer, are subject to VAT at either the standard or zero-rate, if the Cedent or the reinsurance Broker, as the case may be, is a vendor.

### 18.5.2 Zero-rated brokerage and commissions

As is the case with reinsurance premiums, the only zero-rated section that may find application is section 11(2)($\ell$) of the Act (refer par 18.3.1) provided the relevant criteria is met. Since the services supplied by reinsurance Brokers cannot be said to be supplied directly in connection with any movable or immovable property located in the RSA, reinsurance brokerage is subject to zero-rate VAT only if a local reinsurance Broker supplies the services to a non-resident Reinsurer. Equally, reinsurance commissions payable to Cedents by Reinsurers are only subject to zero-rate VAT, if the Cedent is a vendor and the Reinsurer is not a resident of the RSA and provided the supplier retains the following documentation:

- a copy of the intermediary agreement;
- proof that the commission/brokerage fee was paid; and
- a declaration from the recipient (i.e., the Reinsurer) confirming that it is not a resident and not a vendor.

BGR 32 further provides that if the supplier (i.e., the Cedent or the reinsurance Broker, as the case may be) fails to obtain the required documents within 90 days from the time of supply in respect the supply for which the reinsurance brokerage or commission was received, the supplier must account for output tax, equal to the tax fraction of the reinsurance brokerage or commission received. Should the supplier obtain the relevant documents within five years from the time of the supply of the reinsurance brokerage or commission, the supplier may claim an input credit in field 18 of its VAT201, in the tax period during which the documents are received.

### 18.5.3 Non-taxable brokerage and commissions

Since VAT is only payable if the supplier of the goods or services is a vendor, it follows that where brokerage is paid by a local Reinsurer to a non-resident reinsurance Broker, such brokerage is not subject to VAT on the basis that the non-resident reinsurance Broker is not a vendor.

However, where a local Cedent receives reinsurance commission from a non-resident Reinsurer, such commission is subject to zero rate VAT since the Reinsurer is a non-resident (subject to the documentary requirements).

## 18.6 Time of supply of reinsurance brokerage and commissions

BGR 32 confirms that the time of supply of reinsurance brokerage and commissions is, in terms of section 9(1) read with section 16(4), triggered on the earlier of the day on which payment is received or an invoice is issued. In this regard it is important to note that reinsurance Brokers and Cedents only become entitled to receive reinsurance brokerage or commission, as the case may be, once the reinsurance premiums become due.

## 18.7 Tax invoices debit and credit notes

### 18.7.1 Legislative provisions

Sections 20 and 21 of the Act requires that vendors, including Reinsurers, reinsurance Brokers and other Intermediaries, issue tax invoices, debit and credit notes. However, since the reinsurance industry does not conventionally issue such documents, it applied for a ruling in terms of section 20(7) and 21(5) of the Act which give the Commissioner the discretion to direct that alternative documents may serve as tax invoices, debit or credit notes.

### 18.7.2 BGR 32

#### *18.7.2.1 Supply of reinsurance*

SARS directed in BGR 32 that Reinsurers are not required to issue tax invoices, debit and credit notes, provided that the reinsurance contract satisfies the following conditions:

- it must contain the Reinsurer’s and Cedent’s name, address, VAT registration number and the policy number;
- it must stipulate the premium amount, indicating either the value of the supply, amount of tax charged and the consideration for the supply, or, if the amount of tax charged is calculated by applying the tax fraction to the consideration for the supply, the consideration and either the amount of tax charged, or a statement that it includes a charge in respect of tax and the rate at which the tax was charged;

- it must contain the following statement (or substantially similar wording) confirming the Commissioner's direction under section 20(7) or 21(5), as the case may be:

  *"In terms of Binding General Ruling 32 issued by a senior SARS official under section 89 of the Tax Administration Act No. 28 of 2011, this document together with proof of payment of premium constitute an alternative to a tax invoice, debit note or credit note as contemplated in sections 20(7) and 21(5) of the Act respectively."*

### *18.7.2.2 Supply of reinsurance brokerage and other Intermediary services*

SARS directed in BGR 32 that reinsurance Brokers and other Intermediaries are permitted to not issue tax invoices, debit, and credit notes in respect of "Intermediary services". BGR 32 defines this term as "has the meaning assigned thereto in section 1 of the Financial Advisory and Intermediary Service Act No. 37 of 2002 and includes the management and administration of a policy as well as the collection of premiums and processing of claims on behalf of the Cedent or Reinsurer".

In particular, SARS directed that the bordereau issued by Intermediaries to Reinsurers in respect of the taxable supply of Intermediary services will be considered to constitute a tax invoice, debit, or credit note as the case may be, although the bordereau does not have to contain the words "tax invoice"/"VAT invoice"/"invoice", "credit note" or "debit note", provided that the bordereau contains the following information:

- the date of issue and the period (i.e., the month and year) to which it relates;
- the name, address and VAT registration number of the Intermediary;
- the name, address and VAT registration number of the Intermediary's client, that is, the Reinsurer or Cedent;
- the value of zero-rated supplies for which consideration is received in the form of commissions, fees and premiums together with an indication that the amount is subject to VAT at the zero-rate; and
- in the case of a standard rated supply, either –
  - the VAT inclusive standard rated commissions, fees and premiums with a statement that it includes VAT at 15%; or
  - the VAT exclusive commissions, fees and premiums, the VAT amount and the VAT inclusive amount.

Intermediaries are however still, in terms of section 20(1) of the Act, required to issue tax invoices in respect of the taxable supplies of any additional services to its clients.

### *18.7.2.3 Recipient-created tax invoices (i.e., self-invoicing by Intermediaries)*

Where the Reinsurer uses the services of a reinsurance Broker but the reinsurance premiums are collected directly by the Reinsurer, the Reinsurer generally determines the amount of brokerage due to the reinsurance Broker and issues a bordereau in respect of the brokerage to the reinsurance Broker.

SARS has ruled in BGR32 that such Reinsurers are, in terms of sections 20(2) and 21(4) of the Act permitted to use the bordereau as a recipient-created tax invoice, credit or debit note, as the case may be, in respect of the supply to the Reinsurer of taxable Intermediary services. This is conditional on the Reinsurer complying with the requirements of IN 56: Recipient-Created Tax Invoices, Credit and Debit Notes and the Bordereau containing the following information:

- the date of issue and the period (i.e., the month and year) to which it relates;
- the name, address and VAT registration number of the Reinsurer;

- the name, address and VAT registration number of the Intermediary;
- the value of zero-rated commissions, fees and premiums and an indication that these amounts are subject to VAT at the zero-rate; and
- in the case of a standard rated supply, either the VAT inclusive standard rated commissions/fees with a statement that it includes VAT at 15% or the VAT exclusive commissions/fees, the VAT amount and the VAT inclusive amount.

## 18.8 Input credits

### 18.8.1 Introduction

Section 16(3) of the Act provides that a vendor must obtain and retain the documentary proof envisaged in section 16(2) to prove its entitlement to claim the input credits. Consequently, the input credits claimed on the supplies below are subject to the vendor obtaining and retaining the documentation referred to in pars 18.8.2 and 18.8.3.

### 18.8.2 Brokerage and commissions

Section 16(3)(a) of the Act permits vendors to claim input credits in respect of taxable services acquired for purposes of using or consuming such services in the course of making taxable supplies. Thus, the brokerage paid by a vendor Reinsurer to a vendor Broker or the commission paid by a vendor Reinsurer to a vendor Cedent, may be claimed as an input credit by the Reinsurer on the basis that the Reinsurer acquires such services wholly for purposes of making taxable supplies of reinsurance, and provided the Reinsurer retains the bordereau, containing the information referred to in pars 18.7.2.2 and 18.8.3, issued either by it or by the Reinsurer Broker or Cedent.

### 18.8.3 Reinsurance indemnity payments made

Section 16(3)(c) of the Act permits vendors to claim input credits, equal to the tax fraction, of indemnity payments made under a taxable contract of reinsurance unless the supply of reinsurance was zero-rated and the Cedent is not a vendor and not a resident of the Republic. Consequently, Reinsurers are not entitled to claim input credits on indemnity payments made in respect of zero-rated inward reinsurance supplied to a non-resident.

Further, these input credits must be supported by the documentary requirements envisaged in IN 92 (refer par 7.1), which currently requires a copy of the reinsurance contract and proof of payment of the indemnity payment made.

## 18.9 Reinsurance recoveries received by a Cedent

Section 8(8) of the Act provides that where a Cedent receives an indemnity payment in terms of a taxable reinsurance c13.2ontract, such Cedent is deemed to make a taxable supply in the course of its enterprise, with the result that the amount so received is subject to standard rate VAT. The output tax is calculated by applying the tax fraction to the indemnity payment received and is due in the tax period in which the indemnity payment was received (refer par 13.2 for value to be refunded by the Cedent to the Reinsurer).

# 19 Life insurance contracts

## 19.1 Definitions

Life insurance policy is defined in the Act to mean any policy of insurance issued in the ordinary course of carrying on a life insurance business as defined in section 1(1) of the Insurance Act, 2017 (Act 18 of 2017).

Life insurance policy is defined in the Insurance Act as meaning, *inter alia*, any arrangement under which a person, in return for provision being made for the rendering of a premium to that person, undertakes to meet insurance obligations on the happening of a life event, health event, disability event or death event or, on or from a fixed determinable date or at the request of the policyholder and includes a renewal or variation of that arrangement.

Life insurance business is defined in the Insurance Act as meaning any activity conducted with the purpose of entering into or meeting insurance obligations under a life insurance policy.

Table 1 of Schedule 2 to the Insurance Act lists the following classes and sub-classes of life insurance:

| | CLASS | | SUB-CLASS | DESCRIPTION |
|---|---|---|---|---|
| 1 | **RISK** | (*a*) | Individual Death | Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable on the happening of a death event |
| | | (*b*) | Individual Health | Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable on the happening of a health event, which sum is not linked to the costs or services regulated under the Medical Schemes Act, 1998 (Act No. 131 of 1998), but includes any kind, type or category of contract identified by the Minister in regulations as an insurance policy that may be entered into under this class |
| | | (*c*) | Individual Disability — lump sum | Lump sum payable on the happening of a disability event |
| | | (*d*) | Individual Disability — recurring payment | Specified or determinable equal or unequal sums of money payable at specified intervals payable on the happening of a disability event |
| | | (*e*) | Group Death | Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable to a beneficiary on the happening of a death event |
| | | (f) | Group Health | Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable to a beneficiary on the happening of a health event, which sum is not linked to the costs or services regulated under the Medical Schemes Act, 1998 (Act No. 131 of 1998), but includes any kind, type or category of contract identified by the Minister in regulations as an insurance policy that may be entered into under this class |

| | CLASS | | SUB-CLASS | DESCRIPTION |
|---|---|---|---|---|
| | | (*g*) | Group Disability— lump sum | Lump sum payable to a beneficiary on the happening of a disability event |
| | | (*h*) | Group Disability— recurring payment | Specified or determinable equal or unequal sums of money payable at specified intervals to a beneficiary on the happening of a disability event |
| | | | | Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals payable to a fund on the happening of a |
| 2 | **FUND RISK** | (*a*) | Death | death event relating to a member of the fund for the purpose of funding in whole or in part the obligation of a fund to provide benefits to its members in terms of its rules, other than a policy relating exclusively to a particular member of the fund or to the surviving spouse, children, dependents or nominees of a particular member of the fund |
| | | (*b*) | Disability— lump sum | Lump sum payable to a fund on the happening of a disability event relating to a member of the fund for the purpose of funding in whole or in part the obligation of a fund to provide benefits to its members in terms of its rules, other than a policy relating exclusively to a particular member of the fund or to the surviving spouse, children, dependents or nominees of a particular member of the fund |
| | | (*c*) | Disability— recurring payment | Specified or determinable equal or unequal sums of money payable to a fund at specified intervals payable on the happening of a disability event relating to a member of the fund for the purpose of funding in whole or in part the obligation of a fund to provide benefits to its members in terms of its rules, other than a policy relating exclusively to a particular member of the fund or to the surviving spouse, children, dependents or nominees of a particular member of the fund |
| 3 | **CREDIT LIFE** | | | Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals to satisfy all or part of a financial liability to a credit provider— |
| | | | | * on the happening of a death event, health event or a disability event; |
| | | | | * in the event of unemployment, or other insurable risk that is likely to impair a person's ability to earn an income or meet credit obligations |
| 4 | **FUNERAL** | (*a*) | Individual | Lump sum or, specified or determinable equal or unequal sums of money payable at specified intervals not exceeding an amount prescribed by the Prudential Authority to cover cost associated with a funeral or the rendering of a service on the happening of a death event |
| | | | | Lump sum or, specified or determinable equal or unequal |
| | | (*b*) | Group | sums of money payable at specified intervals not exceeding an amount prescribed by the Prudential Authority payable to a beneficiary to cover costs associated with a funeral or the rendering of a |

| | CLASS | | SUB-CLASS | DESCRIPTION |
|---|---|---|---|---|
| | | | | service on the happening of a death event |
| 5 | **LIFE ANNUITIES** | (*a*) | Guaranteed (fully or partially) | Specified or determinable equal or unequal sums of money payable at specified intervals from the start of the policy, or a fixed or determinable date— |
| | | (*b*) | Market related | |
| | | (*c*) | With Discretionary Participation features | * for the remainder of the life of the policyholder; or |
| | | | | * to one or more dependants or nominees after the death of the policyholder |
| 6 | **INDIVIDUAL INVESTMENT** | (*a*) | Guaranteed (fully or partially) | Lump sum or periodic payments payable— |
| | | (*b*) | Market related | * on or from a fixed or determinable date, whether payable as a result of a life event, disability event or death event of a person or not; or |
| | | (*c*) | Linked | |
| | | (*d*) | With Discretionary Participation features | * at the request of the policyholder |
| 7 | **FUND INVESTMENT** | (*a*) | Guaranteed (fully or partially) | Benefits provided for the purpose of funding in whole or in part the obligation of a fund to provide investment benefits to its members in terms of its rules, other than a policy relating exclusively to a particular member of the fund or to the surviving spouse, children, dependents or nominees of a particular member of the fund |
| | | (*b*) | Market—related | |
| | | (*c*) | Linked | |
| | | (*d*) | With Discretionary Participation features | |
| 8 | **INCOME DRAWDOWN** | (*a*) | Guaranteed (fully or partially) | Specified or determinable equal or unequal sums of money payable at specified intervals from the start of the policy, or a fixed or determinable date linked to a life event until the value of the investment is exhausted; or a lump sum or specified or determinable equal or unequal sums of money payable at specified intervals equal to the remaining value of the investment to the estate, or one or more dependents or nominees after the death of the policyholder |
| | | (*b*) | Market related | |
| | | (*c*) | Linked | |
| | | (*d*) | With Discretionary Participation features | |
| 9 | **REINSURANCE** | (*a*) | Proportional in respect of a class or sub-class referred to above | |
| | | (*b*) | Non-proportional in respect of a class or sub-class referred to above | |

## 19.2 Exempt policies

Section 12(a) of the Act exempts from VAT the supply of any financial service unless the supply of such financial service would be charged with zero-rate VAT under section 11(2) of the Act. It thus follows that the zero-rating provisions of section 11(2) of the Act take precedence over the exemption provisions of section 12 of the Act.

The provision or transfer of ownership of a life insurance policy in the RSA is regarded to be a financial service in terms of section 2(1)(i) of the Act, which is exempt from VAT as mentioned above.

## 19.3 Zero-rated life insurance policies

The supply of services, which include the issue of a life insurance policy, to a person who is not a resident of the RSA and who is not in the RSA at the time the services are rendered, is a taxable supply which is zero-rated in terms of section 11(2)(ℓ) of the Act, provided the life Insurer obtains and retains the documentation prescribed by IN 31 (Issue 4), i.e. a copy of the zero-rated tax invoice, a copy of the life insurance policy, and written confirmation from the assured that that it is not a Resident of the RSA (if not stated in the policy).

## 19.4 Life insurance commission

The supply by Intermediaries of services relating to the provision of a life insurance policy is subject to VAT. Therefore, where a life Insurer incurs VAT on commissions paid to an Intermediary in respect of the provision of life insurance, the life Insurer will not be entitled to claim the VAT paid as an input credit (refer par 1.3.3.2).

## 19.5 Discount of premiums

As the consideration payable in respect of the issue of a life insurance policy in the RSA is exempt from VAT (refer par 1.2.3), any reduction in such consideration by means of a discount is also exempt from VAT.

## 19.6 Examples of life insurance policies

### Example 1

A life insurance company issues a life insurance policy to a resident of the RSA.

The premium will not be subject to VAT as the supply is exempt from VAT. Furthermore, the company will not be entitled to recover any input credits in respect of any taxable expenses incurred to the extent to which such expenses are incurred for a purpose of issuing the life insurance policy (an exempt supply).

### Example 2

A local life Insurer reinsures a life insurance policy and pays a premium to a local Reinsurer. In terms of the reinsurance contract, the premium payable by the life Insurer is reduced by means of a discount.

Both the reinsurance premium and the discount are exempt from VAT.

### Example 3

A local life Insurer reinsures a life insurance policy and pays a premium to a local Reinsurer. In terms of the reinsurance contract, the Reinsurer has to pay a commission to the life Insurer. The reinsurance premium is exempt from VAT whereas the life Insurer has to levy VAT on the commission charged to the Reinsurer on the basis that it constitutes consideration for the supply of services.

### Example 4

A local life Insurer reinsures a life insurance policy and pays a premium to a foreign Reinsurer. In terms of the reinsurance contract, the Reinsurer has to pay a commission to the life Insurer.

The reinsurance premium is exempt from VAT. Furthermore, the supply is not subject to VAT in terms of section 7(1)(c), i.e., an imported service, on the basis that section 14(5)(b) of the Act provides that no VAT shall be payable on imported services to the extent that the supply concerned constitutes an exempt supply. The commission is, in terms of section 11(2)(ℓ) of the Act, subject to zero-rate VAT on the basis that it constitutes consideration for the supply of services to a non-resident (the foreign Reinsurer) who is not in the RSA at the time the services are rendered.

# 20 Glossary

## Agent/principal relationship

An agent is someone who acts on behalf of or represents another person (the principal). An essential element of agency is that both parties must have consented to the relationship of principal and agent, even if they do not recognise that their agreement amounts to such a relationship.

Where an agent acts on behalf of a principal, any supply made by, or to the agent is deemed to be made by, or to the principal. The Act nevertheless permits an agent who is a vendor to issue tax invoices, debit or credit notes on behalf of its principal where taxable supplies are made by an agent on behalf of the principal. Equally, the Act permits agents to receive tax invoices, debit and credit notes or to be the importer of record, in respect of goods supplied to, or imported by an agent on behalf of its principal. An agent is obliged to notify the principal of the details of any supplies made by it, any goods imported by it and any supplies made to it on behalf of the principal within 21 days of the end of the month during which the supplies or importation took place.

It should be noted that the obligation to account for output tax and the entitlement to claim input credits remains with the principal. In other words, an agent can generally not account for output tax or claim any input credits on supplies made or received on behalf of its principal.

## Aggregate excess

An aggregate excess (or sometimes referred to as an aggregate deductible) is that part of an Insured's risk for which the Insurer, who issued the policy which is subject to such aggregate deductible, assumes no risk. To illustrate, a person may wish to insure his vehicle fleet that is worth R1 million, subject to an aggregate deductible of R400 000 during a given period stipulated in the contract of insurance. Only once the Insured suffers a loss which, in aggregate over the specified period exceeds the aggregate excess amount, will the Insurer indemnify the Insured for such amount by which the aggregate excess is exceeded.

In this instance, it follows that the insured risk will generally be limited to any loss suffered in excess of the aggregate deductible amount stated in the policy. Consequently, the Insured is not, in this instance, liable to pay any amount to his Insurer in the event of a loss. Similarly, the Insurer has no liability towards the Insured in respect of any losses suffered that fall within the ambit of the aggregate limit. However, the Insured may obtain separate insurance cover for the aggregate limit stated in the policy or maintain a self-insurance fund for the aggregate limit (refer par 11.4).

## Bordereau

A bordereau (or bordereaux in plural) as used in the insurance industry, is a document/schedule which details the transactions entered into with regard to premiums and commissions (i.e., premium bordereau) or with regard to claims paid (i.e., claims bordereau) or in the case of reinsurance, with regard to premiums, brokerage, commissions, claims and claims recoveries (i.e., reinsurance bordereau).

### Captive insurance companies

Essentially, a captive insurance company is a company set up mainly to insure risks of its shareholders but may also insure the risks of other persons.

### Cedent

In reinsurance terms, a Cedent is the insurance company which cedes/transfers its claims risks associated with insurance policies issued, to another Insurer, called the Reinsurer, in terms of a reinsurance contract.

### Cell captive insurance

A cell captive insurance company is a company consisting of a number of captive insurance cells. Generally, the Insureds in respect of each captive hold a particular class of shares in the insurance company, which shares effectively constitute a shareholding in the relevant cell. These shares enable the shareholder to receive a dividend variable with the profitability from the cell. Consequently, potential dividends can only be paid in respect of profits within the cell concerned.

### Co-insurance

Co-insurance is an arrangement whereby two or more Insurers enter into contracts with an Insured (called a collective policy) to cover the risk in agreed proportions. The nominated lead Insurer issues the collective policy as principal, to the extent to which it insures the risk, and as agent on behalf of the other Co-insurers to the extent to which they insure the risk.

Co-insurers must account for VAT on their respective portions of the risk (i.e., account separately for any VAT in respect of premiums, claims, commission, etc.). The lead Insurer would in most instances be responsible for the administration of any claims, commissions, etc. relating to the policy. The lead Insurer would under these circumstances notify the other Co-insurers of their respective portions of the claims, commissions, etc. under the policy.

### Discounting of premium or discounting of commission (i.e., inducement fees and policy fees)

Insurance Brokers are, in terms of the Insurance Act, entitled to receive commissions, which are regulated in terms of the said Act, from Insurers for the arranging and facilitating of the issuing of non-life insurance policies underwritten by Insurers. Brokers equally qualify for the commission where they arrange for an insurance policy to be renewed. Where Brokers have clients with large insurance portfolios, the Brokers often agree with their clients that they will pay their commission in respect of the renewal of the policy to the client, and that they will charge a policy fee, which is substantially less than their commission, to the client. This has the effect that the Insured's actual cost in respect of insurance premiums is less, hence the term "Discounting of premium". (refer “Referral fee”).

### Excess/deductible

Although Insureds generally seek to insure goods or services for its replacement value, it is common practice that insurance policies contain a clause that provides for an Insured to effectively assume part of the risk. This is achieved by virtue of subjecting claims to an amount payable by the Insured. Such an amount is generally known as an excess or deductible. Excesses or deductibles are often determined as a percentage of the claims amount or consists of a fixed amount as stipulated in the insurance policy (refer par 11).

### Facultative reinsurance

Facultative reinsurance is negotiated separately for each insurance policy that is reinsured and is reinsurance of individual claims risks or a defined selection of claims risks which are individually underwritten per insurance policy that is reinsured (refer par 18.4.1).

### Foreign-going aircraft

The term "foreign-going aircraft" is defined in section 1(1) of the Act as meaning:

- any aircraft engaged in the transportation for reward of passengers or goods wholly or mainly on flights between ports in the RSA and ports in export countries or between ports in export countries; or
- foreign military aircraft.

### Foreign-going ship

The term "foreign-going ship" is defined in section 1(1) of the Act as meaning:

- any ship or other vessel engaged in the transportation for reward of passengers or goods wholly or mainly on voyages between ports in the RSA and ports in export countries or between ports in export countries;
- any ship or other vessel registered in an export country where such ship or vessel is utilized for the purposes of a commercial, fishing or other concern conducted outside the RSA by a person who is not a vendor and is not a Resident of the RSA; or
- any foreign naval ship.

### Fidelity insurance

Fidelity insurance is insurance against the loss of money. Typically, a retailer will insure the cash in the tills and money in a safe.

### Indemnity insurance

Indemnity insurance is insurance against the actual loss suffered, which means that the Insurer aims to place the Insured in the same position (disregarding excess) than before the loss.

### Inner excess

Inner excess is applicable to excesses in respect of captive insurance arrangements. An Insured may insure say the first R2 million of his risks through a cell captive and the remaining R8 million with another Insurer. In this instance all claims against the cell captive might be subject to an excess of say R5 000 per claim with a maximum of R200 000 per annum. In this scenario the R5 000 per claim excess amount is referred to as the inner excess (refer par 11.4).

### Insurable interest

An Insured is required to have an insurable interest in any risk to be insured. This means that the person requesting insurance must have an interest in, relationship with or liability with respect to the subject matter of the insurance which is of such a nature that such person will benefit by its preservation or be prejudiced by its loss.

### Insurance as defined in the Act

Insurance is defined in section 1(1) of the Act to mean insurance or guarantee against loss, damage, injury or risk of any kind whatsoever, whether pursuant to any contract or law, and includes Reinsurance. Further, the term “contract of insurance” is defined to include a policy of insurance, insurance cover and a renewal of a Contract of insurance. Insurance is furthermore defined to exclude any life insurance supplied in the RSA. Life insurance is regarded as a financial service and is generally exempt from VAT unless zero-rated (refer par 19.3).

From the said definition of insurance, it follows that the supply of insurance in the context of the Act is not limited to registered Insurers only (i.e., non-life Insurers who issue policies under the provisions of the Insurance Act).

To illustrate: where, for example, a manufacturer (vendor) carries on business through divisions which are separately registered as vendors and the head office division provides insurance against loss in respect of assets used by such divisions, such supply will constitute the supply of insurance, provided a contract was entered into between the parties. However, to supply insurance, it is evident from the definition of “insurance” that risk needs to be assumed. Thus, where for example a financial institution requires cash collateral in the form of a deposit equal to or exceeding the amount for which the guarantee is issued for no consideration, such issuing of the guarantee will not constitute the supply of insurance on the basis that the financial institution in this scenario does not assume any risk. Generally, in this scenario, the financial institution will merely charge a fee for issuing the guarantee, with the result that no premium is payable.

### Insured

For the purpose of this Manual, the term “Insured” is to be interpreted as the person who has an insurable interest in any risk to be insured, and who obtains insurance against such risk under a non-life insurance policy and is named the Insured in such policy.

### Insured person

For the purposes of this Manual, an insured person includes the person who is stated to be the Insured in any non-life insurance policy and not necessarily the person or company named as Insured in the policy to whom any indemnity or compensation is paid (whether directly or indirectly). For instance, the latter would be any employer company who pays premiums in respect of a group personal accident policy taken out on behalf of its employees (refer par 4.4).

### Insurer

Unless indicated otherwise, in the context of this Manual, the term “Insurer” is to be interpreted as an Insurer in respect of non-life insurance or a non-registered Insurer who assumes the risk or obligations under a non-life contract of insurance or guarantee, whether in terms of the Insurance Act or any other contract or law. An Insurer thus includes locally registered non-life Insurers, captive Insurers, non-resident Insurers, Reinsurers, Lloyd’s (to the extent of its Coverholder business) etc.

## Inward reinsurance

Inward reinsurance is the acceptance by a Reinsurer of insurance risk ceded to it by a Cedent, in terms of a reinsurance contract.

## Lloyd's Coverholder business

The Lloyd's correspondents with whom underwriting members of Lloyd's have binding authority agreements in the RSA are called “Coverholders”. The binding authority agreements provide, *inter alia*, that the Coverholders may, either directly or through an Intermediary, conclude contracts of insurance, collect premiums and pay out claims on behalf of Lloyd's in the RSA. Lloyd's Coverholder Business is subject to VAT in RSA since 1 January 2001, on the basis that the policies in question are concluded in the RSA, as opposed to so-called “Lloyd's open market business”, where the policies are not concluded in the RSA, which falls outside the ambit of the Act (refer to par 1.2.3 and par 0). Consequently, Lloyd's Coverholder Business is, from a VAT perspective, treated on the same principles which apply to any other non-life Insurer in the RSA, as set out in this Manual.

In essence there are two types of Coverholders namely, those who are Underwriting management agents (UMAs) for Lloyd's and those who are non-mandated Intermediaries. The main difference between the two types of Coverholders are that:

*UMA's:*

- are not permitted to deal directly with the public in soliciting/selling policies (i.e., UMA's cannot earn commission since they have to use independent Intermediaries to sell policies as agents for Lloyd’s);
- may share in the profit with the Insurer; and
- may enter into premium financing arrangements;

*Non-mandated Intermediaries:*

- are entitled to solicit and sell policies directly to the public, for which they are entitled to earn commissions as regulated by the Insurance Act;
- may not share in the profit with the Insurer; and
- may not enter into premium financing arrangements.

However, both types of Coverholders may perform Intermediary services such as premium collections, processing of claims etc. and may earn binder fees for binder services rendered.

Both types of Coverholders have the following responsibilities in respect of Lloyd's VAT:

- to maintain separate accounting records in respect of Lloyd's' VAT liability (i.e., VAT on premiums, claims commissions binder fees etc.);
- to retain valid VAT documentation on Lloyd's behalf; and
- to prepare “dummy” VAT returns and to submit same, together with the relevant supporting documentation, to Lloyd's South Africa (Pty) Ltd, who consolidates the dummy returns and submits Lloyd's' VAT returns to SARS.

It should be noted that certain Coverholders have limited binding authority which require Coverholders to refer each risk to the lead Underwriter in London for acceptance, and in some cases ratings, prior to the issuing of any documentation, often referred to as a line slip.

Non-life insurance contracts concluded under a limited binding authority may therefore be concluded either in the RSA or in London, depending on the business process followed.

### Lloyd's Underwriters

As from 1 January 2001, insurance business underwritten by Lloyd's is considered to be carrying on an enterprise (refer par 1.2.2) for VAT purposes to the extent that Lloyd's correspondents conclude non-life insurance contracts in the RSA.

Lloyd's business can be divided into the following two categories:

- contracts concluded in the RSA (Coverholder business); or
- contracts concluded outside the RSA (open market business).

In terms of the provisions of the Act, the concluding of Lloyd's non-life insurance contracts in the RSA comprises the making of taxable supplies (refer par 1.2.1) whereas the concluding of Lloyd's contracts outside the RSA comprises non-taxable supplies (refer par 1.2.3). As a result, Lloyd's is registered as a vendor in the RSA only in respect of Coverholder business, with effect from 1 January 2001.

### Marine insurance

The word "marine" is confusing in the context of marine insurance. In essence all insurance in respect of goods/cargo being conveyed using any mode of conveyance (i.e., ship, aircraft, trucks etc.) constitutes marine insurance, regardless of the destination from where or to where the goods are being transported. For example, insurance in respect of goods being transported by road from Durban to Johannesburg constitutes marine insurance. For insurance in respect of the cross-border transportation of goods, the Industry generally refers to inbound marine or outbound marine insurance.

### Microinsurance business

The term is defined in the Insurance Act as meaning:

“insurance business—

a) *conducted in respect of any of the following classes and sub-classes of insurance business set out in Schedule 2—*
   i. *life insurance business, classes 1, 3, 4 or 9; and*
   ii. *non-life insurance business, in the sub-class personal lines in—*
      *(aa) classes 1, 2, 3, 9, 11, 14 or 17; and*
      *(bb) class 10, but only to the extent that the insurance obligations directly relate to the classes referred to in item (aa); and*

b) *in the case of life insurance business and class 14 referred to in paragraph (a)(ii)(aa), in respect of which the aggregate value of the insurance obligations relating to each life insured under an insurance policy does not exceed the maximum amounts prescribed; and*

c) *in the case of non-life insurance business other than class 14 referred to in paragraph (a)(ii)(aa), in respect of which the aggregate value of the insurance obligations under an insurance policy does not exceed the maximum amounts prescribed; and*

d) *in respect of which the aggregate value of the insurance obligations under all insurance policies issued by the same Insurer to the same policyholder does*

*not exceed the maximum amounts prescribed under paragraphs (b) and (c).*”

### Non-indemnity insurance

Non-indemnity insurance is insurance where a person is compensated financially for a loss suffered by the Insured which cannot be reinstated, such as personal accident cover.

### Non-life insurance policy

In general terms, a non-life insurance policy is a contract for a short period (normally a period of 12 months) whereby one party (the Insurer) agrees to indemnify another party (the Insured) against specified damage, loss or liability arising from the occurrence of specified risks, or to compensate the Insured or beneficiary upon the occurrence of a specified event. Most non-life policies are monthly or annual contacts. The consideration payable by the Insured to the Insurer is called a premium.

### Non-proportional treaty reinsurance

Non-proportional treaty reinsurance is reinsurance of claims risks of a Cedent which are in excess of an agreed amount, hence it is also referred to as excess reinsurance (refer par 18.4.2).

### Open market business

Lloyd's has appointed independent Intermediaries, known as open market correspondents, in the RSA who are approved by Lloyd's to introduce certain risks directly to a Lloyd's Broker in London. These risks are not placed with Lloyd's under a binding authority, but are accepted individually by Lloyd's and are referred to as open market placements.

Contracts of insurance in respect of such risks are concluded in London and are not subject to VAT (refer par 1.2.3). As a result, premiums in respect of Lloyd's open market business are not subject to VAT and Insureds who receive indemnity payments under an open market business contract do not have a section 8(8) VAT liability (refer par 14).

### Outward reinsurance

Outward reinsurance is the transfer by a Cedent of some or all of its insured risks to a Reinsurer in terms of a reinsurance contract.

### Personal accident insurance

Personal accident insurance is insurance against personal injury which is intended to cover medical costs as well as partial or permanent disability caused by the injury. This type of policy is often taken out by employers for the benefit of their employees and office holders. Further, travel policies often contain an element of personal accident cover.

### Professional indemnity insurance

Professional indemnity insurance is insurance against claims by clients of professional service providers or third parties, who claim to have suffered financial loss as a result of the alleged inferior services supplied by the professional.

### Proportional treaty reinsurance

Proportional treaty reinsurance is where one or more Reinsurers take a stated percentage share of the claims risk of each, or a selection of, insurance policies that an Insurer issues. The effect is that the Reinsurer receives the said stated percentage of the premiums collected by the Insurer as reinsurance premiums (refer par 18.4.3).

### Public liability insurance

Public liability insurance covers the risk of damage, loss or injury suffered by any member of the public on the premises of or on board a vessel, craft of vehicle owned/operated by the Insured.

### Referral fees

Only persons or companies that are registered as insurance Brokers/Intermediaries are, in terms of the Insurance Act, entitled to earn commissions on arranging the issuance of insurance policies. Thus, where a person who is not registered as a Broker introduces a prospective client to an Intermediary, the Intermediary may agree with that person that should the Intermediary be successful in facilitating the issuance of an insurance policy to such client, the Intermediary will pay the person a referral fee (refer "Discounting of premium/commission").

### Reinsurance

A reinsurance contract is an agreement between one Insurer (Cedent) and another Insurer (Reinsurer) in terms of which the Cedent transfers part or all of its claims risks associated with specific or elected risk classes to the Reinsurer in terms of a reinsurance contract. Essentially there are two types of reinsurance, namely treaty reinsurance and facultative reinsurance.

Cross-border reinsurance is generally referred to as foreign inward or outward reinsurance. Foreign inward reinsurance is where a local Reinsurer reinsures the claims risks of a foreign Insurer, and foreign outward reinsurance is where a foreign Reinsurer reinsures the claims risks of a local Insurer.

### Reinsurance brokerage

Where an Insurer reinsures its claims risks directly with a Reinsurer (i.e., not through a reinsurance Broker) the Insurer/Cedent is entitled to receive reinsurance commission from the Reinsurer.

Where an Insurer reinsures its claims risks through a reinsurance Broker, the reinsurance Broker is entitled to receive brokerage/commission from the Reinsurer (refer par 18.5).

### Reinsurance commission

Where an Insurer reinsures its claims risks directly with a Reinsurer (i.e., not through a reinsurance Broker) the Insurer/Cedent is entitled to receive reinsurance commission from the Reinsurer (refer par 18.5).

### Resident of the Republic

The term "Resident of the Republic" is defined in section 1(1) of the Act to mean a resident as defined in section 1 of the Income Tax Act and further includes any person to the extent that such person carries on any enterprise or other activity in the Republic and has a fixed or permanent place in the Republic relating to such enterprise or activity.

Section 1 of the Income Tax Act defines the term "Resident" as meaning any:

"a) natural person who is—

i. *ordinarily resident in the Republic; or*

ii. *not at any time during the relevant year of assessment ordinarily resident in the Republic, if that person was physically present in the Republic—*

    (aa) *for a period or periods exceeding 91 days in aggregate during the relevant year of assessment, as well as for a period or periods exceeding 91 days in aggregate*

*during each of the five years of assessment preceding such year of assessment; and*

*(bb) for a period or periods exceeding 915 days in aggregate during those five preceding years of assessment,*

*in which case that person will be a resident with effect from the first day of that relevant year of assessment: Provided that—*

*A. a day shall include a part of a day, but shall not include any day that a person is in transit through the Republic between two places outside the Republic and that person does not formally enter the Republic through a "port of entry" as contemplated in section 9 (1) of the Immigration Act, 2002 (Act No. 13 of 2002), or at any other place as may be permitted by the Director General of the Department of Home Affairs or the Minister of Home Affairs in terms of that Act; and*

*B. where a person who is a resident in terms of this subparagraph is physically outside the Republic for a continuous period of at least 330 full days immediately after the day on which such person ceases to be physically present in the Republic, such person shall be deemed not to have been a resident from the day on which such person so ceased to be physically present in the Republic; or*

*b) person (other than a natural person) which is incorporated, established or formed in the Republic or which has its place of effective management in the Republic, but does not include any person who is deemed to be exclusively a resident of another country for purposes of the application of any agreement entered into between the governments of the Republic and that other country for the avoidance of double taxation: Provided that where any person that is a resident ceases to be a resident during a year of assessment, that person must be regarded as not being a resident from the day on which that person ceases to be a resident: Provided further that in determining whether a person that is a foreign investment entity has its place of effective management in the Republic, no regard must be had to any activity that—*

*(a) constitutes—*

*i. a financial service as defined in section 1 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002); or*

*ii. any service that is incidental to a financial service contemplated in subparagraph (i) where the incidental service is in respect of a financial product that is exempted from the provisions of that Act, as contemplated in section 1 (2) of that Act; and*

*(b) is carried on by a financial service provider as defined in section 1 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), in terms of a licence issued to that financial service provider under section 8 of that Act"*

## Retrocession

Retrocession is essentially reinsurance, mostly between a local Insurer and a foreign Reinsurer. Retrocession is generally done by virtue of treaty reinsurance and generally occurs where a foreign Reinsurer agrees with a local Insurer, that the local Insurer will insure local Insureds against certain agreed risks, where after the local Insurer will cede (i.e., reinsure) the entire portfolio with the foreign Insurer. The ultimate effect is that the foreign Reinsurer essentially assumes the risk in respect of insurance provided to the local market.

## Sasria Limited (Sasria)

Sasria basically covers riot (political and non-political) and terrorism risks, which include labour disturbance, civil commotion and strikes and lockouts. Sasria carries on insurance business similar to any other Insurer and is registered as a VAT vendor. Consequently, the treatment of Sasria cover is identical to the VAT treatment of insurance cover provided by any other Insurer.

Sasria cover is normally granted as an integral part of insurance supplied by other registered Insurers with the result that Sasria cover is not normally granted in isolation. Insurers normally act as Intermediaries for and on behalf of Sasria. The effect is that the VAT payable on that part of the premium which relates to Sasria cover is accounted for by Sasria whilst the Insurer (who acted as Intermediary) merely receives a commission from Sasria. Such commissions are subject to VAT where the Intermediaries are vendors.

## Self-insurance

Many corporates maintain a fund on their balance sheet for purposes of funding the uninsured portions of their risk (e.g., their excess or aggregate excess). These on-balance sheet funds are commonly referred to as self-insurance. Another form of self-insurance is insurance through a cell captive.

## Stated benefits

Policy cover provided in case of e.g., personal injury, limited to specified amounts payable to the Insured.

## Static cover

Static cover means insurance cover whilst the insured goods are in storage. When goods are insured in terms of marine policies, the insurance generally covers incidental storage (i.e., storage of the goods which is integral and incidental to the transportation of the goods, such as overnight storage before the goods are being loaded onto a vessel aircraft or truck). However, Insureds can elect to insure goods for so-called “elected static cover”. This could typically happen where goods are insured under a marine policy and the Insured knows that some of the goods will be required to be stored for a period of time.

## Stock throughput policies

Stock throughput policies are essentially marine policies. The main differences between the two types of policies are that with conventional inbound or outbound marine policies, the policy covers either the supplier or the recipient, depending on who has the insurable interest per the agreed INCO terms (e.g., free on board (FOB), cost insurance freight (CIF) etc.).

Further, it generally covers the risk associated with the transportation of the goods from one specified destination to another. For example, if a foreign supplier sells goods to a local purchaser on a CIF basis, the local purchaser assumes the risk of the goods once the ship has docked or the aircraft has landed in the RSA, with the result that the foreign supplier may insure the goods from the time it leaves its premises until the time the ship has docked or the aircraft has landed in RSA, whilst the purchaser may insure the goods from the time the goods are loaded onto a truck to be transported to its final destination in the RSA. In this instance it could happen that that neither party is insured against the risk of the goods being damaged/destroyed whilst being offloaded.

With stock throughput policies, insurance cover in respect of the goods, including raw materials to be used in the manufacturing of goods, is given from a certain event e.g., the importation of raw materials, until the final manufactured goods are delivered to e.g., the retailer. In other words, the insured insures the goods, in its various different forms and stages of manufacture, packaging, storage, transportation etc. from the time of importation of the raw material up to delivery of the final product to the retailer. It should be noted however that stock throughput policies do not provide cover in respect of the risks directly associated with e.g., the manufacturing of the goods. Instead, it provides cover directly associated with the goods being transported and stored until it reaches its final destination. Separate insurance cover can however be taken in respect of risks directly in respect of the process of manufacture or packaging (refer par 4.2.1.2).

### Subrogation

Subrogation is the right for an Insurer to legally pursue a third party that caused an insurance loss to the Insured. This is done as a means of recovering the amount of the claim paid by the Insurer from the third party.

### Third party insurance

Third party insurance covers the Insured against loss suffered by third parties which are believed to be caused by the Insured. A typical example is where a person comprehensively insures (i.e., insurance for own damage and third-party damage) his/her vehicle and the Insured for example causes an accident, his/her insurance will cover the damage caused to the third party's property.

### Travel policies

Travel policies cover various different risks, which the Insured may elect to insure. These could include loss of luggage, lost air tickets, personal accident, overnight accommodation in the case of delayed or cancelled flights, etc. The policies provide cover from a particular point of departure until the Insured reaches a particular point of return e.g., from the time the person leaves his/her home in Cape Town, until the person returns home from a month-long tour of Europe.

### Treaty reinsurance

Where an Insurer/Cedent enters into a pre-negotiated reinsurance contract with a Reinsurer in terms of which the Cedent agrees to cede all claims risks in respect of a particular risk class or classes to the Reinsurer. For example, a Cedent cedes to the Reinsurer all claims risks in respect of existing and future motor and property policies issued or to be issued by the Cedent. Treaty reinsurance consists of so-called “proportional treaty reinsurance” and “non-proportional treaty reinsurance” (refer par 18.4.2 and par 18.4.3).

### Underwriting management agent (UMA)

A UMA is an agent of the Insurer that has been granted a binding authority by the Insurer to facilitate the issuing of insurance policies on the Insurer's behalf. In summary a UMA:

- is not permitted to deal directly with the public in soliciting/selling policies (i.e., cannot earn commission). Instead, it must use independent Intermediaries to sell policies as agents for the Insurer;
- may perform Intermediary services such as premium collections, processing of claims etc.;
- may perform outsource services e.g., disposal of salvage, IT systems, insurance surveys etc.;
- may share in the profit/loss with the Insurer; and
- may enter into premium financing arrangements.

# 21 BGR 14 (Issue 3)

**BINDING GENERAL RULING (VAT): NO. 14 (Issue 3)**

# 22 BGR 32

## BINDING GENERAL RULING (VAT): NO. 32

# 23 List of Abbreviations used

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|---|---|
| **BGR** | Binding General Ruling |
| **IN** | Interpretation Note |
| **PAYE** | Pay As You Earn |
| **the Act** | the Value-Added Tax Act, No 89 of 1991 |
| **RSA** | Republic of South Africa |
| **SARS** | South African Revenue Service |
| **Insurance Act** | Insurance Act, no 18 of 2017 |
| **UMA** | Underwriting management agent |
| **VAT** | Value-Added Tax |

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