BINDING GENERAL RULING (VAT) 43

DATE: 12 September 2017

ACT	**:**	**VALUE-ADDED TAX ACT 89 OF 1991**
SECTION	**:**	**SECTION 1(1) DEFINITIONS OF "INPUT TAX" AND "SECOND-HAND GOODS"**
SUBJECT	**:**	**DEDUCTION OF INPUT TAX IN RESPECT OF SECOND-HAND GOLD**

Preamble

For the purposes of this ruling, unless the context indicates otherwise –

- **"BGR"** means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- **"carat"** means a unit for measuring the purity of gold on the gold carat scale, which expresses the proportion of gold in parts per 24[1] by mass in comparison to the full mass of the item, that is, each carat indicates that 1/24th of the whole item consists of pure gold;
- **"foreign gold coin"** means any gold coin minted outside South Africa;
- **"gold"** means the chemical element with symbol AU and atomic number 79;
- **"non-taxable supply"** means a supply by a non-vendor or a supply by a vendor, otherwise than in the course or furtherance of that vendor's enterprise;
- **"notional input tax"** means an amount contemplated in subparagraph (*b*) of the definition of "input tax" as defined in section 1(1) of the VAT Act;
- **"section"** means a section of the VAT Act;
- **"solely of gold"** means at least 99,5% pure gold;
- **"sole purpose"** means the only purpose for which the vendor acquired gold;
- **"same state without further processing"** means without undergoing any transformational process which may change the purity, quality or form of the gold in any way;
- **"substantially the same state"** means the principal essentials of the item containing gold is not changed with reference to the gold as a whole;
- **"VAT"** means value-added tax;
- **"VAT Act"** means the Value-Added Tax Act 89 of 1991; and
- any other word or expression bears the meaning ascribed to it in the VAT Act.

[1] Government Notice R. 570 of 9 July 2007: Precious Metals Regulations (*Government Gazette* 30067), as amended.

1. Purpose

This BGR sets out the circumstances under which the supply of gold is regarded as falling within the exclusions envisaged in paragraph (ii) of the definition of "second-hand goods" in section 1(1).

2. Background

A vendor that acquires second-hand goods, including goods made from precious metals, under a non-taxable supply, may deduct notional input tax. This allows for the unlocking of part of the VAT on goods previously paid by final consumers as those goods re-enter the formal supply chain.

In 2014, changes were made to the VAT Act to amend the definition of "second-hand goods" to specifically exclude "gold" and "goods containing gold" and thereby denying the notional input tax credit on these goods. The policy rationale for the 2014 amendments was to curb fraudulent notional input tax deductions on the acquisition of gold and gold jewellery. The amendment was not intended to have a negative impact on legitimate transactions within the second-hand goods industry.

In order to address the abovementioned concern, the 2014 amendments were revised to limit the extent of the exclusion contained in the definition of "second-hand goods" as contained in section 1(1). This amendment came into operation on 1 April 2017.

3. Discussion

Vendors acquiring second-hand gold (that was previously owned and used) under a non-taxable supply, may not deduct input tax in respect thereof unless the exceptions to the definition of "second-hand goods" are met. This definition distinguishes between three classes of supplies which are discussed in **3.1** to **3.3** below.

3.1 Goods consisting solely of gold [paragraph (*aa*)]

Goods consisting solely of gold can only be regarded as second-hand goods if the gold is acquired for the sole purpose of supplying it in the same state without further processing.

3.1.1 Purity of gold

For purposes of this BGR, "solely" means that the goods must consist of at least 99,5% pure gold. On the basis that 100% purity is unattainable, 24 carat gold is accepted as consisting solely of gold as this designation is only allowed by industry where the gold content is at least 99,5%.[2]

In instances where a person acquires a piece of gold jewellery which seems to consist only of gold; that is, no other precious metals, stones or gems are attached to it, this does not mean that the item consists solely of gold. Gold is a very soft metal to which other metals are added to improve durability to make other products, for example, jewellery. These alloys,[3] including yellow, white and rose gold, will not qualify as consisting solely of gold. Consequently, any goods consisting of less than

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[2] Table 2 of Annexure B to Regulation 570 of 9 July 2008: Precious Metal Regulation.

[3] Silver, copper, zinc and palladium are generally added to pure gold to improve durability and colour. **www.gold.org/jewellery/about-gold-jewellery** [Accessed 12 September 2017].

24 carats gold, for example, an 18 carat wedding ring should be considered under **3.3**.

Even though some South African gold coins[4] consist solely of gold, these coins will not be regarded as second-hand goods due to the specific exclusion contained in the definition of "second-hand goods". (See **3.2**.)

3.1.2 Purpose for which gold was acquired

The vendor must acquire these goods for the sole purpose of supplying it in the same state without any further processing (see **3.1.3**). At the date of acquisition, the vendor's only intention must therefore be to supply the gold to another person in the course and furtherance of the vendor's enterprise. Any goods acquired for a dual purpose do not qualify as "second-hand goods".

3.1.3 Same state without further processing

In order to qualify for the notional input tax deduction, the gold must be supplied in the same state without any further processing. The vendor may not melt the gold or subject the gold to any transformational process which may change the purity, quality or form of the gold in any way. The vendor may however clean and polish the gold before supplying it to another person.

3.2 Gold coins [paragraph (*bb*)]

Gold coins contemplated in section 11(1)(*k*) are specifically excluded from the definition of "second-hand goods".[5] Consequently, gold coins issued by the South African Reserve Bank in accordance with section 14 of the South African Reserve Bank Act 90 of 1989 (or that remain in circulation per provision (1) of that section) will not be regarded as second-hand goods. These coins include Kruger Rands[6] and gold coins in the National Geographic,[7] Natura,[8] Protea,[9] and R1[10] series as well as any other gold coins declared by the Ministry of Finance to be legal tender.[11]

3.3 Other goods containing gold [paragraph (*cc*)]

A vendor may only deduct notional input tax in respect of second-hand gold acquired under a non-taxable supply if the goods are acquired for the sole purpose of supplying those goods in the same or substantially the same state to another person.

3.3.1 Other goods

This residual category includes all other goods that contain gold, which do not fall within **3.1** or **3.2**, such as –

- gold jewellery, including 9 and 18 carat gold items;
- foreign gold coins that consist of less than 99% gold, such as the American Eagle series and British Gold Sovereign;

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4 National Geographic, Natura and Protea series which consist of 24K gold.
5 Definition of "second-hand goods" paragraph (ii)(*bb*).
6 General Notice 658 of 7 October 2016.
7 General Notice 266 of 29 April 2016.
8 General Notice 654 of 7 October 2016.
9 General Notice 1184 of 27 November 2016.
10 General Notice 1187 of 27 November 2015.
11 Schedule 2 to the South African Reserve Bank Act, 1989.

- computer components;
- medical equipment;
- electronic appliances; and
- dentures.

3.3.2 Substantially the same state

The term "substantially" means the principal essentials of the gold contained in the goods are not altered or transformed. If the vendor therefore changes a small or nominal detail of the goods containing gold, it will not preclude the vendor from deducting notional input tax.

In instances where the vendor acquires goods containing gold and change the nature thereof, for example, where the vendor buys gold rings which are melted before being sold as earrings, no notional input tax is allowed on acquiring the gold from a non-vendor.

4. Ruling

This ruling constitutes a BGR under section 89 of the Tax Administration Act 28 of 2011.

4.1 Goods that are regarded as "consisting solely of gold"

The following goods are regarded as "consisting solely of gold" for purposes of item (ii)(*aa*) of the definition of "second-hand goods":

- Gold bars and ingots
- Foreign 24 carat gold coins such as the Australian Lunar series, Chinese Panda series, One Ounce Britannia (minted since 2013), Canadian Maple series and Australian Nuggets
- Any other certified 24 carat gold item

4.2 Goods that are regarded as "other goods containing gold"

The following goods are regarded as "other goods containing gold" which are supplied in substantially the same state for purposes of item (ii)(*cc*) of the definition of "second-hand goods":

- Jeweller resizing a ring before resale
- Replacing a precious stone in a gold ring before resale
- Combining single 22 carat gold coins to form a set for resale
- Upgrading a computer before resale
- Replacing faulty parts before reselling medical equipment or electronic appliances

In instances where the vendor smelts (or intends to smelt) the gold acquired under a non-taxable supply, the gold will not qualify as "second-hand goods" due to the transformational nature of the process.

4.3 Deduction of notional input tax

A vendor may deduct notional input tax in respect of goods listed in –

- **4.1**, if the goods are acquired with the only intention to supply the goods to another person in the same state without further processing;
- **4.2**, if the goods are acquired only to supply the goods to another person, and

provided the goods were previously owned and used, and are acquired in the course or furtherance of that vendor's enterprise and the requirements of section 16(2)(*c*) read with section 20(8) are met.

Kruger Rands and gold coins in the National Geographic, Natura, Protea and R1 series as well as any other gold coins declared by the South African National Treasury to be legal tender are not regarded as "second-hand goods".[12] A vendor is therefore not entitled to deduct any notional input tax where these coins are acquired under a non-taxable supply.

5. Period for which this ruling is valid

This BGR is effective from 1 April 2017 until it is withdrawn, amended or the relevant legislation is amended.

To the extent that this BGR does not provide for a specific scenario relating to second-hand gold or goods containing gold, a vendor may apply for a VAT ruling or VAT class ruling in writing by sending an e-mail to **VATRulings@sars.gov.za** or facsimile to 086 540 9390. The application should consist of a completed VAT301 form and must comply with the provisions of section 79 of the Tax Administration Act, excluding section 79(4)(*f*) and (*k*) and (6).

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[12] The exclusion provision is contained in item (ii)(*bb*) of the definition of "second-hand goods" of section 1(1).