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Draft Regulation proposing a domestic reverse charge on valuable metals

In brief

On 6 October 2021, National Treasury issued a draft Regulation and explanatory memorandum imposing a domestic reverse charge on the supply of valuable metals to apply from 1 January 2022.

The public has been invited to submit comments on the draft Regulation by close of business on 6 November 2021.

In detail

Background

Since 1 April 2015, various amendments relating to gold and goods containing gold were made to the VAT Act. The policy rationale for these amendments was to curb fraudulent input tax deductions on the acquisition of gold and gold jewellery.

During the 2021 budget, the Finance Minister proposed that measures be implemented to address undue VAT refunds on gold.

In light of the above, on 6 October 2021, National Treasury issued its draft Regulation (DRC Regulation) and explanatory memorandum proposing the imposition of a domestic reverse charge (DRC) on the supply of valuable metals.

The objective of the DRC Regulation is to eliminate fraudulent vendors from re-characterising gold and goods containing gold thereby minimising VAT payments to SARS and extracting fraudulent VAT refunds from SARS. If finalised in its current form, the Regulation will apply with effect from 1 January 2022.

The DRC introduces a new definition of 'valuable metal', as any metallic good which is constituted of, but not limited to, gold, copper, zinc, magnesium, lead or uranium –

- which is processed by way of smelting, refining or other similar process, into a gold bearing bar or similar item; or

- which is in the form of a gold bearing bar or similar item.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

Matthew Besanko
Cape Town
+27 (0) 21 529 2027
m.besanko@pwc.com

Rodney Govender
Durban
+27 (0) 31 271 2082
rodney.govender@pwc.com

Juan Swanepoel
Johannesburg
+27 (0) 11 797 4747
juan.s.swanepoel@pwc.com

Annemarie Janse van Rensburg
Cape Town
+27 (0) 21 529 2810
annemarie.janse.van.rensburg@pwc.com

The definition includes 'ancillary supplies' in connection with the above, although no further guidance is provided on what is intended by ancillary supplies. Excluded from the definition are:

- metallic goods produced by a mine with a valid mining permit; or
- certain gold products sold to the South African Reserve Bank (SARB), the SA Mint Company or any registered bank; or
- gold coins issued by SARB.

The DRC Regulation will apply to all vendors involved in the entire production and distribution chain that make supplies of valuable metals, subject to the above exclusions.

How will the DRC Regulation work?

The DRC applies to the standard rated sale of valuable metal between two VAT-registered vendors. Under the DRC Regulation, the purchaser and not the seller will be required to declare the VAT charged on the sale of valuable metals to SARS.

In order to achieve the above, the DRC Regulation imposes the following obligations on both the seller and purchaser:

Obligations of the seller

The seller must:

- take reasonable steps to ensure that the recipient is a vendor;
- issue a tax invoice to the recipient on the date of the supply. There is no grace period of 21 days as allowed for other supplies. The tax invoice must reference that the supply is subject to the DRC;
- charge VAT but not pay it over to SARS;
- account for only the value of the supply in Field 3 of its VAT return;
- not deduct input tax on irrecoverable debts in respect of a sale subject to the DRC;
- issue a debit or credit note in accordance with section 21 and reference that the supply is subject to the DRC; and
- in addition to the normal VAT record-keeping requirements, obtain, retain and maintain, as part of the VAT record-keeping requirements, a list of all supplies subject to the DRC.

Obligations of the recipient

The purchaser must:

- furnish proof to the supplier that it is a vendor;
- not pay the VAT charged on the supply to the seller;
- account for and pay the VAT charged on the supply in Field 12 of its VAT return in the tax period in which the tax invoice is issued by seller;
- deduct the input tax in Field 18 of its VAT return, in the tax period in which the tax invoice is issued by seller;
- not deduct the input tax (as above) if the VAT charged by the seller has not been accounted for and paid to SARS by the recipient. Input tax in respect of this supply must be deducted no later than 12 months after the end of the tax period during which the tax invoice for that supply was issued;
- issue a statement to the seller, within 21 days of the end of the calendar month during which a tax invoice was issued, containing the following information:
  - the tax invoice number;
  - the value of the DRC supplies;
  - full and proper description of the valuable metals as well as the percentage of the gold content contained within the valuable metals;
  - confirmation that the VAT charged by the seller was accounted for and paid to SARS by reflecting the applicable tax period and payment under the payment reference number issued by SARS. The deduction of input tax without the issuing of this statement will result in the purchaser being liable to pay back the input tax in the tax period when the 21-day period lapses;
- in addition to the normal VAT record-keeping requirements, retain a copy of its proof of VAT registration and the statement referred to above.

Liability for VAT

The seller and purchaser will be jointly and severally liable for VAT on any supply of valuable metal subject to the DRC, unless the seller can satisfy SARS that it has taken reasonable steps to comply with its obligations.

Transitional measures

The seller will be required to account and declare output tax on the sale of valuable metal where the time of supply occurs before the implementation of this draft Regulation.

Both the seller and the recipient will be allowed a period of one month from the date of implementation of the Regulation to ensure compliance.

Furthermore, a vendor that is engaged in a business that will be subject to the implementation of the DRC will be required to update its VAT registration status with SARS to indicate that its supplies are subject to the DRC.

Exports

A recipient who purchases valuable metal for the purpose of exporting such valuable metals must do so under supervision, as per the Customs and Excise Act, 1964.

Conclusion

The draft DRC Regulation creates significant additional administrative burdens for both the seller and purchaser and will require further changes to your ERP system to adequately deal with the DRC obligations.

The draft DRC Regulation does not take into account the practical difficulties arising from the implementation thereof and affected business are encouraged to provide input to National Treasury on such difficulties. National Treasury has requested comments to be sent to it by close of business on 6 November 2021.