

EXPLANATORY MEMORANDUM TO THE PROPOSED AMENDMENTS TO THE REGULATIONS ON THE DOMESTIC REVERSE CHARGE RELATING TO VALUABLE METAL, ISSUED IN TERMS OF SECTION 74(2) OF THE VALUE-ADDED TAX ACT, 1991 (ACT NO.89 OF 1991)

31 JULY 2023

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BACKGROUND

On 8 June 2022, government gazetted the Regulations on domestic reverse charge relating to valuable metal, issued in terms of section 74(2) of the Value-Added Tax Act, 1991 (Act 89 of 1991) (“the VAT Act”), which was effective from 1 July 2022. The aim of these regulations was to foreclose schemes and malpractices to claim undue VAT refunds from SARS by vendors operating in the value chain relating to high-risk goods containing gold.

REASONS FOR CHANGE

It has come to the Government’s attention that the Regulations require further clarity in certain respects. The rationale for these proposed amendments is to provide that clarity.

DETAILED EXPLANATION OF THE PROPOSED AMENDMENTS

Regulation 1: Definitions

1. Clarifying the definition of “Residue”

Currently, Regulation 1 defines “residue” to mean any debris, discard, tailings, slimes, screening, slurry, waste rock, foundry sand, beneficiation plant waste or ash. It has come to government’s attention that there is confusion in the industry as to whether this definition relates only to residue as a result of mining operations or whether it includes residue as a general concept. The proposed amendment clarifies that “residue” as envisaged relates to any debris, discard, tailings, slimes, screening, slurry, waste rock, foundry sand, beneficiation plant waste or ash as a result of a

mining operation by a “holder” as defined in section 1 of the Mineral and Petroleum Resources Development Act (2002) (“MPRDA”) or the person contracted to such a “holder”, and not as a general concept.

2. Clarifying the definition of “valuable metal”

Currently, Regulation 1 defines “valuable metal” to mean any goods containing gold in the form of jewellery, bars, blank coins, ingots, buttons, wire, plate, granules, or in a solution or residue or similar forms, including any ancillary goods or services. This definition excludes supplies of goods produced from raw materials by any holder as defined in section 1 of the MPRDA or by any person contracted to such holder to carry on mining operations at the mine where the holder carries on mining operations. It also excludes a supply of goods contemplated in section 11(1)(f), (k) or (m) of the VAT Act.

It has come to government’s attention that some vendors interpret the phrase “any goods containing gold in the form of jewellery, bars, blank coins, ingots, buttons, wire, plate, granules” to mean that the gold component must be in the prescribed forms, as opposed to goods containing gold supplied in the prescribed forms. The policy rationale for the proposed amendment, is to provide clarity in this definition. It is further proposed that the definition of “valuable metal” is amended to include gold in the form of a sponge or powder, as these forms are included in the Precious Metals Act.

3. Introducing a “*de minimis*” rule

The definition of “valuable metal” includes all goods containing gold in the prescribed forms, regardless of the gold content. This has unintended consequences where jewellery or other goods are gold plated with a thin layer of gold. The proposed amendments exclude the supply of valuable metal containing less than 1 per cent of gold in gross weight; and a supply of gold-plated jewellery where the gold is present as a minor constituent only. These amendments exclude the two supplies from the definition of “valuable metal”, which ultimately means that the DRC Regulations will not apply to those supplies (i.e., the normal VAT rules will apply).

Regulations 2 and 3: Clarifying the responsibilities of the recipient of valuable metal

In the DRC Regulations, the recipient of “valuable metal” is required to issue a statement to the supplier within 21 days of the end of the calendar month during which the tax has been accounted and paid for, detailing, amongst other things, the percentage of the gold content in the “valuable metal”. Recipients may not always be in a position to determine the gold content of the “valuable metal” supplied to them. The proposed amendments to the Regulations transfer the responsibility for declaring the percentage of the gold content in a “valuable metal” supplied from the recipient to the supplier of the “valuable metal”.

Regulation 8: Clarifying the transitional measures

The regulations as gazetted allowed vendors a transitional period of one month, from 1 July 2022 to 1 August 2022, to comply with the requirements. This implied that registered vendors were required to account for and pay VAT in accordance with these regulations in respect of all qualifying transactions in the August 2022 tax period. It has since come to government’s attention that some vendors do not fully understand the application of the transitional measures. The proposed amendment seeks to provide clarity that the transitional measures require registered vendors to account for and pay VAT for transactions falling within the ambit of the regulations in the tax period covering 1 August 2022.

Regulation 10: Amendment of the effective date

As a consequence of the amendment of the transitional measures, it is proposed that the effective date of the regulations be amended to the 1 August 2022.

EFFECTIVE DATES

1. The proposed amendments to the DRC Regulations will come into effect on the date of promulgation, with the exception of the proposed amendments to regulations 8 and 10.

2. The proposed amendments to regulations 8 and 10 are deemed to have come into effect on the 1 August 2022.