

BINDING GENERAL RULING (VAT) 69

DATE: 5 April 2024

ACT : VALUE-ADDED TAX ACT 89 OF 1991
SECTION : SECTIONS 54(2C) AND (3)
SUBJECT : DOCUMENTS AND RECORDS TO BE RETAINED AND MAINTAINED BY AGENT UNDER SECTION 54(2C) AND (3)

Preamble

For the purposes of this ruling –

- **“BGR”** means a binding general ruling issued under section 89 of the Tax Administration Act 28 of 2011;
- **“customs documentation”** means the export documentation prescribed under the Customs and Excise Act 91 of 1964;
- **“depositor”** means a vendor that delivers gold to a refinery for refining or smelting purposes;
- **“principal”** or **“principal depositor”** means the vendor deemed to have made a supply under section 54 and on whose behalf gold is supplied as contemplated in section 54(2C);
- **“recipient”** means the depositor’s customer in respect of the supply of gold;
- **“section”** means a section of the VAT Act;
- **“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. Purpose

This BGR sets out the further particulars prescribed by the Commissioner under section 54(2C) that the agent must obtain and retain on behalf of the principal depositor, as well as the records to be maintained under section 54(3).

2. Background

The main purpose of gold refineries is to refine and smelt gold or ore received from depositors. In most instances, the refineries also act as agents and sell or export gold on behalf of these depositors. The agent is allowed to issue invoices in relation to the supplies made on behalf of the depositors under section 54. However, under the same section it is confirmed that the depositor remains the principal in respect of the supply of gold, as well as the export of the gold. Gold from more than one depositor is typically required to make up the volume ordered for sale or export.

It is accordingly not possible for each depositor to have its gold or ore treated separately from the gold or ore of other depositors. It follows that once a specific depositor's gold or ore enters the refining or smelting process, it is co-mingled with the gold or ore of other depositors and effectively loses its identity as belonging to a specific depositor.

Given that gold is a highly regulated commodity and that the refinery or smelter continuously sells gold as an agent on behalf of the depositors to potential buyers that are limited to the members of the London Bullion Market Association based in London (the Bullion Bank) in the form of export sales (direct or indirect) as envisaged in section 11(1)(a), sales to the South African Reserve Bank, the South African Mint Company (Pty) Ltd. and Banks registered under the Banks Act 94 of 1990, as envisaged in section 11(1)(f), it is important that vendors are able to properly and accurately account for VAT.

3. Discussion

Section 54(2C) provides that the Commissioner will prescribe the acceptable documentary evidence the agent must obtain and retain for purposes of gold being supplied as contemplated in section 11(1)(f) or when gold is exported from the Republic in the circumstances contemplated in paragraph (a) or (d) of the definition of "exported" in section 1(1) and in accordance with section 12 of the of the Precious Metals Act 37 of 2005.

Under section 54(3), the agent must maintain sufficient records in respect of tax invoices, debit notes, or credit notes issued on behalf of a principal under section 54(1).

The agent must maintain and retain the relevant records in accordance with section 55, read with Part A of Chapter 4 of the Tax Administration Act 28 of 2011.

4. Ruling

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act 28 of 2011 insofar as it relates to rulings under **4.1**, and **4.2**.

4.1 Section 54(3)

The agent will issue a tax invoice to the recipient under section 54(1) and in respect of this supply issue to the principal a document as prescribed by section 54(3) (for example, a Sale of Gold Certificate) containing the following particulars:

- Value of ounces of gold sold
- Purchase order number
- Name, address and VAT registration number of the principal depositor
- Statement that the gold was sold subject to VAT at the zero-rate

4.2 Section 54(2C)

In instances of a sale by the agent on behalf of the principal depositor as contemplated under section 54(2C), and the Commissioner is satisfied that the agent has issued the principal with a document as prescribed in 4.1 above, the agent is required to obtain and maintain the following:

- A copy of the zero-rated tax invoice for both exports and supplies under section 11(1)(f)

In the case of exports, the agent is further required to obtain and retain the following:

- The recipient's order or the contract between the recipient and the agent
- Proof that the agent paid the transport costs (direct exports only)
- A copy of the airfreight transport documentation
- The customs documentation
- Proof of payment for the gold supplied to the recipient

The agent would be liable to account for output tax in the event that the agent is not in possession of the above documentation to substantiate the zero rate.

5. Period for which this ruling is valid

This BGR applies from 1 April 2024 until it is withdrawn, amended or the relevant legislation is amended.

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