THE GOLDEN RULE: SARS CLARIFIES A VENDOR’S ENTITLEMENT TO CLAIM INPUT TAX IN RESPECT OF SECOND-HAND GOLD

Subject to certain exceptions, the Value-Added Tax Act, No 89 of 1991 entitles a vendor to claim a notional input tax deduction in respect of second-hand goods acquired under a non-taxable supply, where such second-hand goods are acquired from a resident of the Republic for the purpose of consumption, use or supply in the course of making taxable supplies.
With effect from 1 April 2015, vendors were prohibited from claiming notional input tax deductions in respect of the acquisition of second-hand goods comprising of ‘gold’ or of ‘goods containing gold’. The exclusion was introduced to curb fraudulent notional input tax deductions in respect of the acquisition of gold and gold jewellery. The amendment, however, had a negative impact on legitimate transactions within the second-hand gold industry. The definition of second-hand goods was accordingly amended with effect from 1 April 2017 in order to limit the extent of the exclusion.

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Subjection to certain exceptions, the Value-Added Tax Act, No 89 of 1991 (VAT Act) entitles a vendor to claim a notional input tax deduction in respect of second-hand goods acquired under a non-taxable supply, where such second-hand goods are acquired from a resident of the Republic for the purpose of consumption, use or supply in the course of making taxable supplies.

However, with effect from 1 April 2015, vendors were prohibited from claiming notional input tax deductions in respect of the acquisition of second-hand goods comprising of ‘gold’ or of ‘goods containing gold’. The exclusion was introduced to curb fraudulent notional input tax deductions in respect of the acquisition of gold and gold jewellery. The amendment, however, had a negative impact on legitimate transactions within the second-hand gold industry. The definition of second-hand goods was accordingly amended with effect from 1 April 2017 in order to limit the extent of the exclusion; thus allowing a notional input tax deduction in respect of the acquisition of second-hand goods in certain specific circumstances.

The term ‘second-hand goods’ is now defined in s1 of the VAT Act to mean, among other things, goods which were previously owned and used, but does not include:

- goods consisting solely of gold unless acquired for the sole purpose of supplying such goods in the same state without any further processing;
- gold coins contemplated in s11(1)(k) of the VAT Act; or
- any other goods containing gold unless those goods are acquired for the sole purpose of supplying those goods in the same or substantially the same state to another person.

Who’s Who Legal

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Vendors acquiring second-hand gold or goods containing gold under a non-taxable supply are accordingly not entitled to claim a notional input tax deduction unless the exceptions to the definition of ‘second-hand goods’ are met.

On 12 September 2017, the South African Revenue Service (SARS) issued Binding General Ruling (VAT) 43 (BGR43) which sets out and clarifies the circumstances under which the supply of gold is regarded as falling within the exceptions provided in the VAT Act's definition of ‘second-hand goods’.

Gold coins
A vendor will not be entitled to claim a notional input tax deduction in respect of second-hand goods comprising of gold coins issued by the South African Reserve Bank, including Kruger Rands, Protea and the R1 series. There are no exceptions to this exclusion.

Other goods containing gold
“Other goods containing gold” include all goods containing gold which do not fall under the first two categories discussed above. In terms of BGR43, this will include, for example, 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; certain computer components; medical equipment and electronic appliances.

In order to claim a notional input tax deduction in respect of second-hand goods comprising of goods containing gold, the vendor must acquire such goods for the sole purpose of supplying those goods in the same or substantially the same state to another person in the course or furtherance of such vendor’s enterprise. In terms of BGR43, this means that the principal essentials of the gold contained in the goods must not be altered or transformed. A vendor may therefore change a small or nominal detail of the goods containing gold, and will not be precluded from deducting notional input tax. However, where a vendor changes the nature of the goods containing gold, for example melting a gold ring to make gold earrings, no notional input tax deduction will be allowed in respect of the acquisition of the gold ring.
BGR43 accordingly provides that where a 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. BGR43 also provides specific examples of goods containing gold which are supplied in ‘substantially the same state’; these include, for example, the resizing of a gold ring or replacing a precious stone in a gold ring before resale and upgrading faulty parts before reselling medical equipment.

**Effect of BGR43**

Where a vendor claims an input tax deduction in respect of which the vendor did not qualify for, SARS may impose penalties and interest on the prohibited input tax claimed.

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