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**DRAFT REGULATIONS ON DOMESTIC REVERSE CHARGE
RELATING TO VALUABLE METALS, ISSUED IN TERMS OF SECTION
74 OF VALUE-ADDED TAX ACT, 1991 (ACT NO. 89 OF 1991)**

6 OCTOBER 2021

Draft Regulations on Domestic Reverse Charge Relating to Valuable Metals, issued in terms of section 74 of Value-Added Tax Act, 1991 (Act No. 89 of 1991), are hereby published for comment.

National Treasury and SARS hereby invite comments in writing on the Draft Regulations on Domestic Reverse Charge Relating to Valuable Metals. Please forward written comments to the National Treasury's tax policy depository at 2020AnnexCProp@treasury.gov.za and SARS at acollins@sars.gov.za by close of business on **6 November 2021**.

Schedule

1. Definitions

In these Regulations, unless otherwise indicated, any word or expression to which a meaning has been assigned in the Value-Added Tax Act, 1991 (Act No. 89 of 1991), bears the meaning so assigned, and—

“Customs and Excise Act” means the Customs and Excise, 1964 (Act No. 91 of 1964);

“domestic reverse charge” means the VAT charged at the standard rate on a taxable supply of goods must be accounted for and is payable, on the supplier’s behalf, by the recipient of the supply and is not payable by the supplier, if the—

- (a) goods being supplied consist of valuable metals;
- (b) supplier is a vendor; and
- (c) recipient is a vendor;

“the Act” means the Value-Added Tax Act, 1991 (Act No. 89 of 1991);

“Tax Administration Act” means the Tax Administration Act, 2011 (Act No. 28 of 2011);

“valuable metal” means, any metallic good which is constituted of, but not limited to, gold, copper, zinc, magnesium, lead or uranium—

- (a) which is processed by way of smelting, refining or other similar process, into a gold bearing bar or similar item; or
- (b) which is in the form of a gold bearing bar or similar item,

including any ancillary supply in connection with paragraphs (a) and (b) above, but does not include—

- (i) any metallic good produced by a mine, holding a valid permit issued by the cabinet member responsible for Mineral Resources, before refining for upgrading to the London Good Delivery standard; or
- (ii) goods contemplated in section 11(1)(f) or section 11(1)(k) of the Act;

“VAT” means value-added tax.

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2. Responsibilities of the supplier of valuable metal, being a vendor

Where a vendor makes a supply of valuable metal to another vendor in the Republic, the vendor making the supply shall—

- (a) take reasonable steps to ensure that the recipient of the supply is a vendor;
- (b) notwithstanding the 21-day period contemplated in section 20(1) and (1B) of the Act, issue a tax invoice in accordance with section 20 of the Act and subject to the further requirements stated in Regulation 4 hereto;
- (c) only account for the value of the supply, in accordance with Regulation 6(a) and not the VAT charged on the supply of the valuable metals;
- (d) not be entitled to input tax on irrecoverable debts on the VAT charged on the supply;
- (e) issue a debit or credit note in accordance with section 21 of the Act and subject to the further requirements stated in Regulation 5 hereto; and
- (f) 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 domestic reverse charge contemplated in these Regulations and the documentary evidence contemplated in subparagraph (a) and Regulation 3(a).

3. Responsibilities of the recipient of valuable metal, being a vendor

Where a vendor makes a supply of valuable metal to another vendor in the Republic, the vendor to whom the supply is made must—

- (a) furnish proof to the supplier that the person is a vendor;
- (b) not pay the VAT charged on the supply to the supplier, being a vendor, making the supply;
- (c) account for and pay the VAT charged on the supply in accordance with Regulation 6(b) in the tax period in which the tax invoice is issued by the vendor making the supply;
- (d) deduct the input tax, subject to the requirements of sections 16, 17 and 20 of the Act, in accordance with Regulation 6(b)(ii) in the tax period contemplated in subparagraph (c) above;

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- (e) not deduct the input tax contemplated in subparagraph (d) if the VAT contemplated in subparagraph (c) has not been accounted for and paid to SARS, which input tax must be deducted in a tax period which ends no later than 12 months after the end of the tax period during which the tax invoice for that supply was issued;
- (f) notify the vendor making the supply, in writing by means of a statement within 21 days of the end of the calendar month during which a tax invoice was issued, of the following particulars:
 - (i) the tax invoice number;
 - (ii) the value of the domestic reverse charge supplies;
 - (iii) full and proper description of the valuable metals as well as the percentage of the gold content contained within the valuable metals;
 - (iv) confirmation that the VAT charged by the vendor making the supply was accounted for and paid to SARS by reflecting the applicable tax period and payment under the payment reference number issued by SARS, provided that, where the statement is not provided in accordance with this subparagraph and a deduction of input tax was made on the supply, VAT is payable on the amount equivalent to the input tax deduction made, in the tax period corresponding to the date on which the said 21-day period lapses;
- (g) in addition to its normal VAT record-keeping requirements, retain a copy of the document contemplated in subparagraph (a) and the statement contemplated in subparagraph (f) as part of the VAT record-keeping requirements.

4. Additional requirements for tax invoices

The requirements for tax invoices contemplated in section 20 of the Act are applicable for the purposes of these Regulations, with the following additional requirements:

- (a) the tax invoice for the supply must be issued at the time contemplated in Regulation 2(b);
- (b) a clear reference on the tax invoice that the supply is subject to the domestic reverse charge as contemplated in these Regulations;

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- (c) the VAT charged on the supply of valuable metal under these Regulations should not be included in the amount shown as VAT due by the vendor making the supply; and
- (d) a statement that the amount of VAT charged must be accounted for and paid (on behalf of the supplier) by the recipient, being a vendor.

5. Additional requirements for credit and debit notes

The requirements for credit and debit notes contemplated in section 21 of the Act are applicable for the purposes of these Regulations, with the following additional requirements:

- (a) a clear reference on the debit or credit note that the supply is subject to the domestic reverse charge as contemplated in these Regulations;
- (b) a statement that the—
 - (i) increase, in the case of a debit note, to the VAT amount that was previously accounted for and paid by the recipient, being a vendor, must be accounted for and paid by such recipient; or
 - (ii) decrease, in the case of a credit note, from the VAT amount that was previously accounted for and paid by the recipient, being a vendor, must be accounted for and deducted by such recipient.

6. Additional reporting requirements in VAT returns

The requirements for returns and payment of tax contemplated in section 28 of the Act are applicable for the purposes of these Regulations, with the following additional requirements:

(a) Supplier, being a vendor

- (i) the value of the supply of the valuable metal must be reported in Field 3 of its VAT return;
- (ii) the value of the increase or the decrease as a result of the issue of a credit or debit note must be reported in Field 3 of its VAT return.

(b) Recipient, being a vendor

- (i) the VAT that is subject to the domestic reverse charge must be reported in Field 12 of its VAT return;

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- (ii) where the recipient, being a vendor, is entitled to a deduction of input tax, subject to the provisions of sections 16, 17 and 20 of the Act, such input tax must be reported in Field 18 of its VAT return; and
- (iii) where the recipient, being a vendor, is required to increase the amount of VAT contemplated in Regulation 5(b)(i), such increase must be reported in Field 12 and to decrease the amount of VAT contemplated in Regulation 5(b)(ii), such decrease must be reported in Field 18 of its VAT return.

7. Irrecoverable debts

For purposes of these Regulations, the provisions of section 22 dealing with irrecoverable debts will not apply to the supplier of valuable metal, being a vendor, as contemplated in these Regulations.

8. Liability for VAT

(1) Failure to apply the domestic reverse charge will result in the supplier and recipient vendors being held jointly and severally liable for any VAT loss suffered by the fiscus elsewhere in the production and distribution supply chain.

(2) The supplier vendor will not be held liable if the supplier vendor satisfies the Commissioner that the vendor has taken reasonable steps to comply with its obligation under these Regulations, including verifying the recipient vendor's VAT registration status and issuing, obtaining and maintaining the required records and statements of compliance from the recipient vendor.

(3) The enforcement of any obligation to account for and pay VAT under the Act shall apply for the purposes of these Regulations in relation to any person that is required to account for and pay any VAT as if that VAT were VAT on a supply made by that person.

9. Transitional measures

(1) Where a vendor has made a supply of valuable metal and where an invoice was issued or payment was received, whichever is the earlier, or in the case of connected persons, the time the goods were removed or if the goods were not removed, the time the goods were made available to the recipient, whichever is the earlier, on a date

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prior to the commencement date of these Regulations, the vendor must account for the VAT in its VAT return and must pay the VAT to SARS.

(2) Where a vendor has made a supply of valuable metal and where a tax invoice, contemplated in Regulation 2(b), was issued on a date on or after the commencement date of these Regulations, or in the case of connected persons, where the goods were removed or made available to the recipient on or after the commencement date of these Regulations, the vendor must comply with the domestic reverse charge contemplated in these Regulations.

(3) A vendor will be allowed a period of one month from the date of implementation of these Regulations to ensure that it complies with the requirements.

10. Re-validation of VAT registration status under Chapter 3 of the Tax Administration Act

(1) A vendor or representative vendor contemplated in section 46 of the Act is required to update its VAT registration status, within 21 business days from the earlier of implementation of the domestic reverse charge or the date that a supply is made which is subject to the domestic reverse charge, to indicate that the vendor makes supplies that are subject to the domestic reverse charge.

(2) The person referred to in subparagraph (1) who wilfully and without just cause fails to update its registration status is guilty of an offence and upon conviction is subject to a fine or imprisonment as contemplated in Chapter 17 of the Tax Administration Act.

11. Exports of valuable metal by a recipient, being a vendor

(1) A recipient of valuable metal, being a vendor that exports such valuable metal in accordance with paragraph (a) or (d) of the definition of “exported” in section 1(1) of the Act, must, in addition to the provisions of section 11(3) of the Act, export the valuable metal under supervision, as contemplated in the Customs and Excise Act.

(2) A vendor will not be allowed to apply the zero rate, contemplated in section 11(1)(a) of the Act, unless the requirements contemplated in subparagraph (1) above are met and the vendor obtains and retains the applicable documentary evidence of the supervision in accordance with the Customs and Excise Act.

13. Short title and commencement

These regulations are called the Domestic Reverse Charge Regulations and come into operation on 1 January 2022.