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SPECIFICITY OF GOLD TRADE

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ABSTRACT:

Investment gold encompasses gold in the form of levers or weight plates accepted on the market of precious metals, of a purity equal to or greater than 995 thousand and gold coins of a purity equal to or greater than 900 thousand that meet the prescribed conditions. If the sale of investment gold is carried out by the taxpayer of value added tax, exemption from value added tax applies. The investor gold dealer is obliged to keep the prescribed records. Investing in investment gold is a relatively safe investment whereby no natural person taxes the earned income.

Key words: investment gold, gold bullion, gold plate, VAT exemption

1. INTRODUCTION

Investing in gold as a precious metal has always been a relatively safe investment and it comes in various forms (eg golden jewelry or levers). From trading point of view the most important form is investment gold.

The definition of investment gold, from a tax point of view, is regulated by the Act on Value Added Tax (hereinafter: VAT Act), Council Directive 2006/112 / EC of 28 November 2006 on the common system of value added tax (hereinafter: Council Directive 2006/112 / EC) and Council Implementing Regulation (EU) no. 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112 / EC on the common system of value added tax (hereinafter: Council Implementing Regulation No 282/2011).

2. WHAT IS INVESTMENT GOLD?

In accordance with Art. 113 (1) of the VAT Act, investment gold, is considered to be gold in levers or weight plates and gold coins. It is stated that gold in levers or weight plates must be expressed in weights accepted in the precious metals market with a purity equal to or greater than 995 thousandths. Gold in levers or weight plates may or may not be represented by securities.

In Art. 344 of the Council Directive 2006/112 / EC is stated that investment gold is:

Gold, in the form of levers or weight plates, of a weight accepted on the precious metal market, of a purity equal to or greater than 995 thousandths, whether or not represented by securities

Gold coins of purity equal to or greater than 900 thousand, which are minted after 1800is and are or were legal means of payment in the country of origin and are normally sold on an open market at a price not exceeding 80% of the value of the gold contained in the coins. These coins are considered not to be sold for numismatic purposes.

Beginning from 1999, each Member State is obligated to notify the Commission, by 1 July each year, of coins which meet the criteria stated in point. 2 Art. 344 (1) and are traded in that Member State¹. Furthermore, the Commission is obliged, before 1 December each year, to publish a list of all the coins in the 'C' series of the Official Journal of the European Union and it is considered that the coins included in the publication meet the set criteria throughout the year for which the list was published.

The stipulation for the publication of the list of gold coins is incorporated in Art. 192 (2) of the Regulation on value added tax (hereinafter: VAT Regulation). Council Implementing Regulation no. 282/2011 brings clarifications regarding the weights accepted in the gold market. Specifically, in Annex III. of the said Regulation it is stated that the following units and weights are permitted in the gold market:

Unit	Tradeable weights
kg	12,5/1
gram	500/250/100/50/20/10/5/2,5/2
ounca (1 ounce = 31,1035 g)	100/10/5/1/1/2/ 1/4/
tael (1 tael = 1,193 unce) ²	10/5/1
tola (10 tola = 3,75 unce) ³	10

¹ Art. 345. Council Directive 2006/112/EC

² Tael = traditional chinese weight mark. Nominal fineness of the Hong Kong tael leveris 990, but in Taiwan the 5 and 10 tael levers can be of 999,9 fineness.

³ Tola = traditional indian weight mark for gold. The most popular lever is the size od 10 tola, fineness of 999.

The Ministry of Finance, in its opinion from 25/02/2015 (Class: 410-01/13-01/4238) has presented special procedures regarding taxation of investment gold and distinguishing commemorative coins and gold bullion or weight plates.

In its opinion they state: *„According to the provisions of Art. 113 of the Value Added Tax Act (Official Gazette 73/13, 99/13 - Decision of the USRH, 148/13 and 153/13 - Decision of the USRH) by “investment gold” within the meaning of that Act, gold is considered to be bullion or tile, weights accepted in the precious metals market, of purity equal to or greater than 995 thousandths, whether represented by securities or not, gold coins of purity equal to or greater than 900ths, minted after 1800is and are or were legal means of payment in the country of origin and are normally sold on an open market at a price not exceeding 80% of the value of the gold contained in the coins. These coins are considered not to be sold for numismatic purposes. In accordance with Art. 345. by EC Directive 2006/112, each Member State shall notify the Commission by 1 July each year of coins which fulfill the criteria laid down in Art. 344 (1) 2. of that Directive and marketed in that Member State. Each year, the European Commission publishes in the Official Journal of the European Union a list of gold coins that are considered investment gold in all Member States. Given that the relevant gold coins in question are not on the above list, we are of the opinion that they cannot be subject to the special taxation procedure for investment gold. Since the Republic of Croatia may, through the Croatian National Bank, propose that the commemorative gold coins of purity 999/1000 thousandths be included in the said list, the taxpayer may ask the Croatian National Bank to inquire whether the respective gold coins in question are considered investment gold in the Republic of Croatia. Regarding the part of the inquiry about what records of transactions with investment gold should be kept, please note that under the provision of Art. 117 of the Value Added Tax Act, taxpayers must issue invoices and keep records of transactions in investment gold. Taxpayers must keep information on this, including customer identity information, within the time limits prescribed by the General Tax Act.*

Consequently, although the Act on Value Added Tax and the Ordinance on Value Added Tax (Official Gazette 79/13, 85/13 - Amendments and 160/13) do not specifically prescribe the form and content of transactions with investment gold must be provided by the taxpayer in his bookkeeping or off-balance sheet records on the basis of proper and credible bookkeeping documents.”

3. ADVANTAGES OF INVESTING IN INVESTMENT GOLD

From the investors point of view, eg. an individual, there are numerous advantages of investing in investment gold. The main advantage is high level of security because throughout history it has been proven that its value increases

during crisis. The price of gold increases annually 7% (average growth over the last 20 years). It is documented that during the recession the price of this metal had a growth of 30% per year.⁴

Furthermore, increase in the price of gold will not lead to taxation because it is not classified as income in the provisions of the Income Act.⁵ Also, when the gold is sold there is no taxation and therefore it is a good investment from a taxation aspect.

4. APPLICATION OF SPECIAL TAXATION PROCEDURE FOR INVESTMENT

The provisions of VAT Act, Art. 113. – 117. regulate a special procedure of investment gold taxation. There are various reasons for implementing a special procedure for investment gold taxation and they mainly stem from the fact that investment gold transactions should be equated with other financial instruments or services that are subject to exemptions - as explained in the Council Directive 2006/112 / EC.

A special taxation procedure for investment gold with VAT exemptions:

- delivery of investment gold,
- the acquisition of investment gold within the EU and
- import of investment gold from third countries.

The specificity of special taxation procedure of investment gold is the VAT exemption. In accordance with the Art. 114 of VAT Act, VAT exemption applies on delivery, acquisition within the EU and import of investment gold including investment gold in the form of certificates of individual or group gold storage, gold traded through trading gold account including loans and swap in gold that include transfer of ownership or receivables regarding investment gold, as well as investment gold transactions involving future contracts that result in the transfer of ownership or claims to investment gold.

VAT is also exempt from the services of intermediaries acting on behalf of others if they mediate in gold delivery for their client.

However, exceptionally of Art 114 VAT Act, taxpayer who produces gold or converts gold into investment gold has the right to choose will his deliveries of investment gold be taxed.

Equally, the right to apply the taxation of investment gold in accordance with Art 113 (1) 1 of VAT Act (golden levers or weight plates) has the taxpayer who is a supplier of industrial gold to another taxpayer. Investment gold man-

⁴ www.bankazlata.com

⁵ Official Gazette., no. 115/16. i 106/18.

ufacturers, who sell their gold as goods, not investment gold, to other taxpayers can apply for the regular taxation process and charge VAT. In that case, they have the right to tax deduction on the deliveries received.

If the supplier of gold decides to tax his deliveries than the broker for gold mediation services has the right to choose for taxation. In accordance with art 193 (1) of the VAT Rulebook the taxpayer delivering the gold for industrial purposes to another taxable person and the intermediary shall be obliged to inform the competent office of the tax authorities of its decision which taxation model will they apply..

Those entities are entitled to taxation of their deliveries from the first day of the month following the month in which they notified the tax authorities.

However if the decision is not to tax the deliveries the exemption will be applied in accordance with the art 114 of VAT Act. According to art 115. (4) of VAT Act the taxpayer carrying the deliveries of gold material or gold semi manufactures products finesses of 334 thousand or greater will transfer of tax liability to the recipient.

4.1. WHO CAN APPLY THE SPECIAL TAXATION PROCEDURE FOR INVESTMENT GOLD

Entrepreneurs who are subject to value added tax may apply a special taxation procedure for investment gold. In principle, deliveries of investment gold are exempt from VAT in accordance with Art. 114 of the VAT Act, and therefore the taxpayer (the supplier) is not entitled to deduct the input tax on the goods and services used to make the said deliveries. However, Art. Article 116 (1) of the VAT Act regulates the right to deduct tax prepayment for taxpayers (suppliers of investment gold or gold producers) when they have not opted for the regular method of taxation.

The taxpayer is entitled, in accordance with Art. 116 (1) of the VAT Act to deduct the VAT paid or levied for:

- investment gold delivered to him by a person who has chosen taxation under Art. 115 (1) and (2) of the VAT Act,
- procurement or acquisition within the EU or for the importation of gold, other than investment gold, which he himself has made and subsequently converted into investment gold by a taxpayer or someone on his behalf,
- services rendered to him, consisting of a change in the shape, weight or purity of the gold, including investment gold.

In accordance with Art. 116 (2) of the VAT Act, a taxpayer who produces investment gold or converts gold into investment gold has the right to deduct the VAT paid or levied on for goods delivered or acquired within the EU, imported goods or services rendered in relation to the production or conversion of that gold, which is exempt from VAT under Art. 114. (a) VAT Act, taxable.

With regard to the application of the preceding provision, the Ministry of Finance - Tax Administration expressed its position on 28 September 2015 (Class.: 410-01 / 15-01 / 1402), from which we extract: *"Therefore, the delivery of gold coins that can be considered investment gold, because they satisfy the conditions prescribed in Art. 113 (1) 2 of the Act, is exempt from VAT without the right to deduct tax in accordance with the provisions of Art. 58 (4) 1 of the Act.*

Considering that for the above mentioned gold coins, the taxpayer withheld the pre-tax upon purchase, and the delivery of the same was exempt from VAT without the right to deduct, the taxpayer must correct the pre-tax deduction in accordance with the provisions of Article 63, (1 and 2) of the Act. Since it is a taxpayer who makes deliveries for which a tax deduction is allowed and deliveries for which a tax deduction is not allowed, deliveries of VAT-exempt gold coins without the right to deduct tax are included in the denominator for the calculation of the amount of pre-tax the supply of goods and services for which a deduction of tax is allowed in accordance with the provisions of Art. 62, paragraph 1 of the Act.

In the case of joint sale of different coins that are individually subject to VAT, with certain coins subject to VAT and others exempt from VAT, it is necessary to determine the tax base for each individual coin as well as the amount of VAT calculated on coins that are taxable."

In order to be able to fulfil the conditions explained in the previous position, the entrepreneur should keep separate records.

4.2. OBLIGATIONS OF THE INVESTMENT GOLD SELLER

The taxpayer engaged in the sale of investment gold is obliged, in accordance with Art. 117 of the VAT Act, to keep records of transactions with investment gold and keep information about it, including information on customer identity, in line with deadlines prescribed by the General Tax Act.⁶

The contents of the records of transactions with investment gold have not been defined in detail in the VAT Act and the VAT Regulations, which means that the taxpayer can establish the required records himself. We are of the opinion that an investment gold dealer could establish a record of investment gold transactions in such a way that it contains the following information:

⁶ Official Gazette., no. 115/16. and 106/18.

- information about the investment gold dealer (name, headquarters address, PIN)
- information on the supplier (s) of investment gold (name, address, PIN or VAT identification number)
- date and number of the invoice received (incoming invoice)
- information on investment gold at the time of purchase (type of gold, quantity / weight, value and information on gold finesse)
- customer information (name, address, PIN)
- date and number of the issued invoice (outgoing invoice) and
- information on investment gold at the time of sale (type of gold, quantity / weight, value and information on gold finesse).

An entrepreneur - an investment gold dealer shall set up records in accordance with the information required for the business and in accordance with the provision of Art. 193 (3) of the VAT Regulations.

4.3. COMPULSORY ELEMENTS OF INVESTMENT GOLD INVOICES

The compulsory elements of a VAT payer's invoice are determined by several regulations. However, when it comes to the trade in investment gold, the mandatory invoice elements specific to this type of transaction are contained in the VAT Act. Since this is an application of VAT exemption, the invoice should include the note "Delivery exempt from VAT in accordance with Art. 114 of the VAT Act." In the part of the invoice relating to the entry of data on the trade name of the goods, the type of investment gold (eg Alkar gold coin), country of origin, finesse and weight in grams must be indicated. It is advisable to include in the invoice the information that the coins are on the list of gold coins published in the Official Journal of the European Commission.

When investment gold is sold to an individual (citizen), the provisions of the General Tax Act on cash invoice apply regarding the content of the invoice. However, in view of the dealer's obligation to keep the customer's identity information, we believe that the account must include the name (first and last name) of the individual.

4.4. SPECIFIC FEATURES OF ACCOUNTING MONITORING OF INVESTMENT GOLD TRADE

Investment gold for a dealer engaged in its sale is a commodity that is recorded on acquisition as a current asset. However, investment gold is specific because of its tax status from the point of view of the VAT Act, but also because of its natural characteristics. It is a commodity of great value, and therefore,

companies engaged in the trading of investment gold must provide a high level of protection, which requires additional operating costs.

An investment gold dealer in the Republic of Croatia can purchase gold from domestic entrepreneurs involved in the production of gold bullion or gold coins, from entrepreneurs from other EU Member States and from imports. When investment gold is sourced from another EU Member State, that transaction is not recorded in the VAT form or in the VAT -S form because it is exempt from VAT.

The invoice received is also not recorded in the Invoice Book (Form U-RA) as it is not obligated to record incoming invoices for exempt deliveries. Purchased gold is recorded as a commodity within Class 6, Calculation Group 66 - Goods at purchase price. In the analytical records of goods, each type of coin or gold bullion is kept separately. Given the specifics of investment gold, a trader engaged in its sale may deposit the purchased gold with the seller. In that case, they will receive a receipt for individual or group gold storage for the purchased gold, which may also be resold.

A company that buys investment gold will make the appropriate entries of the business event, depending on whether the gold was purchased for resale or as an investment with a view to holding for more than a year. If the gold was purchased for resale, the records are kept under Grade 6 within Account Group 66 - Commodity and if the gold was purchased for the purpose of holding for more than a year, the cost of investment gold would be recorded under Account Group 06 - Long-Term Financial assets. An investment gold trading company may also offer the storage of the gold. The said service is subject to VAT at the rate of 25% and is separately contracted.

5. CONCLUSION

A special procedure for taxing investment gold was introduced with the intention of equalizing the use of gold as a financial instrument in the tax treatment, from the point of view of the VAT Act, with other instruments for which exemption is prescribed. The VAT Act regulates what is considered investment gold, the manner in which the special taxation procedure is implemented and the possibility of exercising the right to opt for taxation. An investment gold dealer should keep records of the purchase and sale of investment gold. The invoice has to have the reference about the VAT exemption.

LITERATURE:

1. Direktiva Vijeća 2006/112/EZ od 28. studenog 2006. o zajedničkom sustavu poreza na dodanu vrijednost
2. Pravilnik o porezu na dodanu vrijednost (Nar. nov., br. 79/13. – 1/19.)
3. Provedbena uredba Vijeća (EU) br. 282/2011 od 15. ožujka 2011. kojom se utvrđuju provedbene mjere za Direktivu 2006/112/EZ o zajedničkom sustavu poreza na dodanu vrijednost

SPECIFIČNOSTI TRGOVINE INVESTICIJSKIM ZLATOM

SAŽETAK RADA:

Investicijsko zlato obuhvaća zlato u obliku poluga ili pločica težine prihvaćene na tržištu plemenitih kovina, čistoće jednake ili veće od 995 tisućinki i zlatne kovanice čistoće jednake ili veće od 900 tisućinki koje ispunjavaju propisane uvjete. Ako prodaju investicijskog zlata obavlja obveznik poreza na dodanu vrijednost, primjenjuje se oslobođenje od poreza na dodanu vrijednost. Trgovac investicijskim zlatom obvezan je voditi propisane evidencije. Ulaganje u investicijsko zlato predstavlja relativno sigurno ulaganje kod kojeg, fizičke osobe, ne plaćaju porez na ostvarenu zaradu.

***Ključne riječi:** investicijsko zlato, zlatna poluga, zlatna pločica, oslobođenje od PDV-a*