

***Study on applying the current
principle for the place of supply
of B2B services to B2B supplies
of goods
Place of establishment of the
customer***

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Appendix 10: Qualitative impact assessment
special scheme for investment gold

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1. Purpose of the special regime¹

- 1 A separate exempt VAT treatment for investment gold was introduced by the Council Directive 1998/80/EC² of 12 October 1998, replacing the provision under article 12(3)(e) and point 26 of Annex F of the Sixth VAT Directive³, granting the option to the Member States either to continue to exempt transactions concerning gold other than gold for industrial use or to implement such a scheme. Currently this special scheme for investment gold is laid down in articles 344 to 356 of VAT Directive 2006/112/EC⁴.
- 2 Under the Sixth Directive⁵, before the special scheme for investment gold was introduced, the normal VAT arrangements were applicable. Tax was due on supplies of investment gold, but some Member States could apply a tax exemption for those supplies on a transitional basis. This distortion of competition between the Member States has been eliminated by the implementation of VAT Directive 1998/80/EC giving all Member States the possibility to introduce a special scheme for investment gold.
- 3 As the supply of gold for investment purposes is similar in nature to other financial investments often exempted from tax, the tax exemption appeared to be the most appropriate tax treatment for supplies of investment gold. The purpose of this special scheme for investment gold is to promote the use of gold as a financial instrument and to strengthen the competitiveness of the European gold market because the gold market is an international market with a quoted price which is practically the same throughout the world, from sheer necessity on a tax-exempt basis.

2. Summary of the provisions

- 4 Under the special scheme, article 344 of the VAT Directive provides for a definition of “investment gold”, i.e. gold, in the form of a bar or wafer of weights accepted by the bullion market, whether or not represented by securities and gold coins listed by the Member States.
- 5 The supply, intra-Community acquisition and importation of investment gold are exempt from tax pursuant to article 346 of the VAT Directive. This also includes services of undisclosed agents involved in those transactions.

¹ Terra, B., Kajus, J., Chapter 12.6 – Investment Gold – A guide to the Recast VAT Directive, http://online.ibfd.org/collections/evdcom/html/evdcom_recast_chap12.html?WT.z_na

² Council Directive 98/80/EC of 12 October 1998, supplementing the common system of value added tax and amending Directive 77/388/EEC –Special scheme for investment gold.

³ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment.

⁴ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

- 6 Although the exemption applies, specific taxable persons have the right to opt for applying the normal VAT system. Member States must allow this right of option for taxable persons, producing investment gold or transforming gold into investment gold, who supply this investment gold to another taxable person (article 348 of the VAT Directive). Member States may allow taxable persons who normally supply gold for industrial purposes, to opt for the taxation of supplies of gold bars or wafers, as referred to in point (1) of article 344(1), to another taxable person, which would otherwise be exempt pursuant to article 346. They may restrict the scope of this option (article 349 of the VAT Directive).
- 7 With regard to transactions on a regulated gold bullion market, Member States are authorised not to apply the special scheme for investment gold. No VAT may be applied to intra-Community supplies and to exports of investment gold. They may introduce simplification measures because of the huge number and the speed of such operations.
- 8 According to article 353 of the VAT Directive, Member States which, pursuant to article 352 of the VAT Directive, tax transactions between taxable persons who are members of a regulated gold bullion market for the purpose of simplification, must authorize suspension of tax to be collected and relieve taxable persons of the accounting requirements in respect of VAT. If the customer who is not a member of the regulated gold bullion market is a taxable person required to be identified for VAT purposes in the Member State in which the tax is due solely in respect of these transactions, the vendor shall fulfil the tax obligations on behalf of the customer in the Member State where the VAT is due.
- 9 The exemption from VAT on investment gold transactions is an exemption with a limited right to deduct VAT (articles 354 and 355 of the VAT Directive). The taxable persons involved in the production or the supply of investment gold or in the transformation of gold into investment gold have a right to deduct input VAT if their subsequent supply of gold is exempt under the special scheme for investment gold.
- 10 In order to prevent tax fraud, special obligations exist for traders in investment gold. Member States must assure that traders in investment gold keep, as a minimum, accounts of all substantial transactions in investment gold and the documents which enable the customers in such transactions to be identified. Member States may also accept equivalent obligations under measures adopted pursuant to other Community legislation, such as Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (article 356 of the VAT Directive).
- 11 Moreover, pursuant to article 198 of the VAT Directive, the reverse charge mechanism can be introduced by the Member States for the supply of investment gold, whereby the customer is liable to pay the VAT due.

3. Qualitative impact assessment of the special scheme

- 12 We will only assess the general impact of the new B2B localisation and liability principles with respect to the application of the special scheme for investment gold.
- 13 Due to the specific scope, we have not used a schematic approach to map the scenarios, analyse their VAT treatment and perform a detailed assessment and consequently we did not prepare tables and a visualisation in diagrams. This assessment is merely based on the insights gained from the general and other special schemes assessed in this report.

3.1. Investment gold including gold coins

3.1.1. General considerations

3.1.2.

- 14 The general objective of the special regime as stated above is, first, to provide for the broadest application of an exemption for the supplies of investment gold as they are similar in nature to other financial investments and, second, to enhance the international competitiveness of the EU gold market as, apparently, such transactions are not taxed in other markets and also considering the fact that the relevant quoted price is practically the same throughout the world.
- 15 Following the new B2B localisation principle, the place of supply of the goods in scope of the special scheme will be determined following the place of establishment of the business customer applying exemptions as they exist for local supplies, cross-border supplies in the EU, and importations. In the “to be” situation, the concept of intra-Community acquisitions will disappear and will thus be disregarded for the business customer.
- 16 Contrary to the general assumption of the Study, we believe no correction mechanism is required if the customer is established outside the EU and the investment gold would be located in the EU. The supply of the investment gold will be outside the territorial scope of the VAT Directive. This leads to the same result as exempting the transaction under the special scheme does in the “as is” situation. The same goes if the customer is established in the EU and the investment gold is located outside the EU, resulting in the place of supply being in the EU but with exemption for the supplier or the customer concerned, depending on the applicable liability rules. In both situations, no taxation will occur, which is in line with the special scheme principle of exempting supplies of investment gold .
- 17 We presume that, in the “to be” situation, also the importations of investment gold will remain exempt as it is today.
- 18 As a prerequisite for a proper application of the special scheme for investment gold under the new B2B localisation principle, a uniform definition of the goods falling within the scope of the special scheme should be introduced in all Member States, resulting in the deletion of the option for Member States to exclude from the special scheme small bars or wafers having a weight of 1 g or less (article 344 (2) of the VAT Directive) and in a fully harmonised comprehensive list of gold coins applicable in all Member States (article 345 of the VAT Directive).

- 19 The option for taxation that Member States can introduce pursuant to article 348 of the VAT Directive should be reconsidered and, preferably also be repealed. The potential restricted input VAT (if any) for supplies of investment gold by taxable persons who produce investment gold or transform any gold into investment gold should be resolved by another solution than an option for taxation. One of these alternatives is, in our opinion, to combine article 355 of the VAT Directive with article 173(2)(a) and (b) of the VAT Directive, in a way that the scheme for investment gold should oblige the producer or transformer of investment gold to exercise his right to deduct by determining a deductible proportion for each sector of his business, on the condition that separate accounts are kept for each sector, or by determining a deductible proportion for each sector of his business and to keep separate accounts for each sector.
- 20 Another prerequisite for a proper functioning of the special scheme for investment gold under the new B2B localisation principle is to also repeal article 349 of the VAT Directive allowing Member States to grant an option to industrial gold traders for taxation of the supplies of investment gold. This option does not cover gold coins defined as investment gold. This option cannot be maintained in the “to be” situation. Currently the supplier has the option which in practice only leads to taxation for local supplies. In future the place of taxation is where the customer is established and, where the customer is liable for the VAT due, he should each time be informed by his supplier in order to comply. This is not workable for either the traders or the Member States. The potential restricted input VAT (if any) for supplies of investment gold by industrial gold traders should be resolved by amending article 354 of the VAT Directive.
- 21 Articles 198(2), 208 and 255 of the VAT Directive would become redundant if options for taxation were repealed. In the “to be” situation, the scheme would become less complex to comply with and less vulnerable to tax fraud.
- 22 An amended article 355 of the VAT Directive would be better suited to meet the objective of eliminating any irrecoverable VAT in the hands of the taxable person, being a producer, a transformer or an industrial gold trader.
- 23 Member States must continue to ensure, as stated under article 356 of the VAT Directive, that traders in investment gold established in the EU keep detailed accounts of all substantial transactions in investment gold and also keep full documentation of their customers in such transactions. We also believe the same requirements should be imposed on business customers established in the EU if they acquire investment gold from taxable traders outside the EU, with a view to combating fraud and tax evasion.
- 24 The supply of investment gold under the exemption of the special regime will grant the taxable dealer a right to deduct input VAT for investment gold transactions. This possibility should also be available where the supply of the investment gold would be outside the territorial scope of EU VAT according to the new B2B localisation principle for taxable persons established in the EU.

3.1.3. Impact in the country of taxation “as is” and “to be”

3.1.4.

- 25 One can conclude that the budgetary impact in the country of taxation “as is” and “to be” will be quite limited or even nil in the case of a shift in the place of supply or in the person liable for payment of VAT. The exemption and the right to deduct VAT will continue to apply, there should be no budgetary impact for either the current or future Member State of taxation. In terms of supervision and inspection, the impact should be limited as administration will be easier than under the current localisation rules. There will be more legal certainty for taxable persons applying the special scheme, which should decrease the potential for disputes. The current measures to prevent fraud and tax evasion should continue to apply in the future, providing traceability and auditability of the transaction for the tax authorities.

3.1.5. Impact on supplier (“to be”)

3.1.6.

- 26 The high-level assessment of the new B2B localisation and liability principles with respect to the application of the special scheme for investment gold can be considered to be positive for the supplier:
- 27 No budgetary impact for the supplier even if the options to tax are repealed on condition that appropriate measures are introduced to allow input VAT deduction in respect of the supplies or importations linked to the production, transformation or trade of investment gold.
- 28 Positive impact on legal certainty and simplicity as it will be easier to administer in a day-to-day practice than under the current localisation rules due to the repeal of the options to tax, the harmonised application in the EU of the special regime, and the definition of a common list of goods in scope.
- 29 Always a shift of liability for cross-border transactions towards the customer established in the EU but outside the country of establishment of the supplier of investment gold. If the supplier of investment gold and the customer are established in the same Member State, there is no shift in liability. This will be without effect as the exemption of the special scheme for investment gold will always apply.
- 30 Positive impact on cost of implementation and compliance as, for taxable persons, it will be easier to administer in a day-to-day practice. Full automation will be possible, leading to a decrease in time spent (as the VAT determination logic is based on the place of establishment of the customer, VAT exemption is always applicable, and no options for taxation are available anymore). Only limited changes to processes/ systems/ technologies will be required in order to comply with the new VAT treatment of the supply. Nevertheless, suppliers should keep detailed accounts of all substantial transactions in investment gold and also keep full documentation of their customers in such transactions.

3.1.7. *Impact on customer ("to be")*

- 31 The high-level assessment of the new B2B localisation and liability principles with respect to the application of the special scheme for investment gold can be considered to be positive for the customer:
- 32 If the supplier and the customer are established in the same Member State, positive cash flow impact for the customer as the options to tax are repealed for the supplier for local supplies of investment gold.
- 33 Positive impact on legal certainty and simplicity as it will be easier to administer in a day-to-day practice than under the current localisation rules due to the repeal of the options to tax, the harmonised application in the EU of the special regime, and the definition of a common list of goods in scope where the liability is shifted to the customer.
- 34 Positive impact on the cost of implementation and compliance as, for the customer, it will be easier to administer in a day-to-day practice. Full automation is possible, leading to a decrease in time spent as VAT exemption is always applicable and no options for taxation are available anymore.
- 35 Always a shift in liability for cross-border transactions towards the customer established in the EU but outside the country of establishment of the supplier of investment gold, but this will be without effect as the exemption of the special scheme for investment gold will always apply.

3.2. Transactions on a regulated gold bullion market

3.2.1. *General considerations*

3.2.2.

- 36 The general objective of the special regime as already stated above is, first, to provide for the broadest application of an exemption for the supplies of investment gold as they are similar in nature to other financial investments and, second, to enhance the international competitiveness of the EU gold market. Consequently, a tax exemption appears to be the most appropriate tax treatment for supplies of investment gold, also for those on the regulated bullion market.
- 37 Member States are authorised to derogate and not to apply the special scheme for investment gold with regard to specific transactions on a regulated gold bullion market. In the "as is" situation, these simplifications are limited to specific local transactions. In practice no VAT is collected because the collection of VAT is suspended pursuant to article 353 of the VAT Directive where both the customer and supplier are a member of the domestic regulated gold bullion market. Where the customer is not a member of such market, it would need a registration to account for the tax due only for those transactions, while all other obligations have to be fulfilled by the supplier. The physical flow of the gold bullions supplied is no longer followed. Domestic supplies of goods will be defined by the place of establishment of the customer, which may be in the country of the regulated gold bullion market where the gold bullions are traded or not. The liability may be shifted or not.

- 38 Following the new B2B localisation and liability principles, the place of supply of the goods in scope of the special scheme will be determined following the place of establishment of the customer. In the “to be” situation, except if the supplier is established in the same Member State as the customer, the relevant Member State of taxation is the country of establishment of the customer if established in the EU. The relevant simplifications in the “to be” situation would be the Member State of the customer that provides for the option to tax (if any) and no longer the Member State of localisation of the goods in scope.
- 39 As the scope of application of the current option to tax will be limited to supplies of gold bullions where the supplier and customer are established in the same Member State and where both of them are a member of the regulated market in that Member State, we consequently suggest repealing this option to tax.
- 40 If the customer is established outside the EU, the supply of the goods in scope of the special scheme would fall outside the scope of EU VAT and the option to tax would no longer be applicable in any case.
- 41 We believe the option for taxation for specific transactions on the regulated bullion market should no longer be available to Member States in the “to be” situation and should be repealed.
- 42 If the option to tax were repealed, the special scheme for investment gold as discussed under section 1.1. would always be applicable and would lead to harmonised application of the exemption of the special scheme for investment gold in the “to be” situation under the conditions set out under section 1.1. The supply of investment gold under the exemption of the special regime will grant the taxable dealer a right to deduct input VAT for investment gold transactions. This possibility should also be available where the supply of the investment gold would be outside the territorial scope of EU VAT according to the new B2B localisation principle.
- 43 Articles 198 (1), 352 and 353 of the VAT Directive would become redundant if the current option for taxation for Member States were repealed. The special scheme would become less complex to comply with in the “to be” situation.
- 44 However, it needs to be further analysed whether this approach would result in a better taxation mechanism for treating transactions on the “local” regulated gold bullion markets in the EU compared with the current schemes in the various Member States, also depending on the importance and economic impact of these markets.

3.2.3. Impact in country of taxation “as is” and “to be”

3.2.4.

- 45 The budgetary impact in the country of taxation “as is” and “to be” will be quite limited or even nil in the case of a shift in the place of supply or in the person liable for payment of VAT. In the “as is” situation, a suspension of the VAT to be collected is in place for transactions between taxable persons who are members of a gold bullion market regulated by the Member State concerned or the reverse charge procedure is applicable (VAT is always fully deductible) for transactions between a member of the gold bullion market and another taxable person who is not a member of that market.

- 46 In terms of supervision and inspections, the impact should be limited as it will be easier to administer than under the current localisation rules and there will be more legal certainty for taxable persons applying the special scheme, which should decrease the potential for disputes. The current measures to prevent fraud and tax evasion should continue to apply in the future, providing traceability and auditability of the transaction for the tax authorities.

3.2.5. Impact on supplier (“to be”)

- 47 The high-level assessment of the new B2B localisation and liability principles with respect to the application of the special scheme for investment gold in respect of supplies on the regulated gold bullion market can be considered to be positive for the supplier:
- 48 No budgetary impact for the supplier even if the options to tax are repealed on condition that appropriate measures are introduced to allow input VAT deduction in respect of the supplies of investment gold.
- 49 Positive impact on legal certainty and simplicity as it will be easier to administer in a day-to-day practice than under the current localisation rules due to the repeal of the options to tax in the Member States and the harmonised application of the special regime in the EU.
- 50 Always a shift of liability for cross-border transactions towards the customer established in the EU but outside the country of establishment of the supplier of investment gold. If the supplier of investment gold and the customer are established in the same Member State, no shift in liability but this will be without effect as the exemption of the special scheme for investment gold will always apply.
- 51 Positive impact on cost of implementation and compliance as, for taxable persons, it will be easier to administer in a day-to-day practice, there will be a possibility for full automation leading to a decrease in time spent (with the VAT determination logic being based on the place of establishment of the customer, VAT exemption being always applicable, and no options for taxation being available anymore), and only limited changes to processes/ systems/ technologies will be required in order to comply with the new VAT treatment of the supply. Nevertheless, suppliers should keep more detailed accounts of all substantial transactions in investment gold and also keep full documentation of their customers in such transactions.

3.2.6. Impact on customer (“to be”)

- 52 The high-level assessment of the new B2B localisation and liability principles with respect to the application of the special scheme for investment gold in respect of the regulated gold bullion market can be considered to be positive for the customer:

- 53 If the supplier and the customer are established in the same Member State, no impact for the customer as suspension of the VAT to be collected was in place for transactions between taxable persons who are members of a bullion market regulated by the Member State concerned or the reverse charge procedure was applicable (and VAT was always fully deductible) for transactions between a member of the bullion market and another taxable person who is not a member of that market.
- 54 Positive impact on legal certainty and simplicity as it will be easier to administer in a day-to-day practice than under the current localisation rules due to the repeal of the options to tax for Member States for specific transactions and the harmonised application of the special regime in the EU where the liability is shifted to the customer.
- 55 Positive impact on the cost of implementation and compliance as, for the customer, it will be easier to administer in a day-to-day practice. Full automation is possible, leading to a decrease in time spent as the VAT exemption is always applicable and no options for taxation are available anymore to the Member States.
- 56 Always a shift in liability for cross-border transactions towards the customer established in the EU but outside the country of establishment of the supplier, but this will be without effect as the exemption of the special scheme for investment gold will always apply.