

South Africa's VAT changes: the impact on e-commerce

South Africa targets foreign e-commerce suppliers

The buying and selling of services over the internet has become ubiquitous. This article provides an update on the efforts of the South African Revenue Service ('SARS') and National Treasury ('Treasury') to bring foreign e-commerce suppliers on to a level tax playing field, by requiring them to register under the Value-Added Tax Act 1991 ('the VAT Act').

In South Africa, it is usually the case that an entity selling goods or services will (i) be charged VAT (normally at a standard rate of 14%) on its inputs by its suppliers, (ii) charge VAT on its outputs to its customers, and (iii) will have to register with SARS in order to claim back the tax paid in step (i) and pay over the tax collected in step (ii).

This system has functioned fairly smoothly, until recently. Technological advances have meant that many goods and services – music, films, books, gambling, education, and so on – are now easily consumable over the internet, from suppliers based anywhere in the world.

The VAT Act requires anybody conducting an enterprise in South Africa to register as a so-called 'VAT vendor.' In the past, typical e-commerce transactions were taxed in terms of a 'reverse charge mechanism,' where the onus was on the consumer to pay VAT on imported e-commerce goods and services. This system has been practically unenforceable and compliance levels were low. Local e-commerce suppliers have been unable to compete with their foreign counterparts, because they are forced to incorporate a 14% premium into their prices, to account for VAT.

To address these issues, the VAT Act was amended (by the Tax Laws Amendment Act 2013) to oblige suppliers of 'electronic services' (a) to South African residents, or (b) where payment for such services originates from a South African bank, to register as VAT vendors.

On 30 January 2014, the Minister of Finance published draft regulations clarifying what exactly constitutes 'electronic services.' These regulations will be open for public comment, until 20 February 2014.

The regulations list electronic services as including educational services, games and gambling, information system services, internet-based auction service facilities, maintenance services (in relation to, for example, a website or blog), subscription services (for example, online newspapers and magazines) and the supply of e-books, films and music.

One can expect that electronic service providers such as Amazon or Kalahari.com could be required to charge VAT on e-books and other electronic publications they sell to numerous South Africans on a daily basis. Such services have become commonplace in many South Africans' day to day lives and the charging of VAT thereon seems to be the logical progression. Other such items that could be subject to VAT in respect of online purchases include: audio clips, for example 'iTunes'; the streaming of live performances; music videos; and television

series. All of these items, amongst others, have been specifically listed in the regulations.

However, the regulations go further and have included a wide variety of services that one would not ordinarily expect to be charged VAT. For example, the supply of any internet-based or multiplayer role-playing game has been specifically included, which could see your average South African indirectly paying VAT on a virtual sword purchased during the course of a multiplayer role-playing online game. Furthermore, VAT could be charged on the numerous upgrades for games or other options available on Facebook and other social networking services. The regulations have gone as far as to specifically include, *inter alia*: home-made videos, jingles, desktop images, ringtones and screensavers as electronic services that could be subject to VAT.

The legislation would apply to foreign suppliers of electronic services, as well. Initially the SARS and the Treasury had proposed a monetary threshold of zero for foreign e-commerce suppliers. This was far too onerous a threshold, and the threshold has been increased: a foreign e-commerce supplier will be liable to register under the VAT Act at the end of any month in which the total value of its supplies of electronic services exceeds R50 000 (approx. 3,291 Euros as of 10.2.14).

There will also be no distinction between business-to-business and business-to-consumer suppliers, to guard against regulatory arbitrage (for example, private consumers may masquerade as businesses to avoid VAT) and to mitigate the compliance burden already placed on foreign e-commerce suppliers. These amendments will become effective from 1 April 2014.

It is worth re-iterating that these amendments do not technically create a new revenue stream for the fiscus – the transactions targeted have always been subject to VAT, but the reverse charge mechanism rendered the proper collection thereof practically impossible. While they may be a bitter pill for foreign e-commerce suppliers to swallow, the introduction of these changes is certainly not surprising and brings South Africa's VAT regime up to speed with the burgeoning digital economy.

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