South African Institute of Tax Professionals

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The National Treasury
240 Madiba Street
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The South African Revenue Service
Lehae La SARS, 299 Bronkhorst Street
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BY EMAIL: Aneesa Baig (Aneesa.Baig@treasury.gov.za)
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RE: COMMENTS ON DRAFT AMENDMENTS TO REGULATIONS PRESCRIBING ELECTRONIC SERVICES FOR VALUE-ADDED TAX

We are writing to comment on the Draft Amendments to Regulations Prescribing Electronic Services for Value-Added Tax and related amendments to the Value-Added Tax Act. We appreciate the opportunity to participate in the process and would welcome further dialogue.

Please do not hesitate to contact us should you need further information.

Yours sincerely

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THE ETHICS INSTITUTE

Deletion of definition of "electronic services supplier"

This term is not defined in the current Regulation and can therefore not be deleted.

Definition of "electronic services"

The proposed definition of "electronic services" is wide. This means that there will be a huge administrative burden on SARS to register non-resident taxpayers for Value-Added Tax (VAT).

With the wide definition of "electronic services" there may be instances of double taxation of services in the foreign and local jurisdiction, for example the broadcast of a live event which takes place in the European Union in South Africa. It is not clear whether consulting or professional services would constitute "electronic services" by virtue of the fact that the advice or report is emailed to the recipient.

The meaning of electronic agent, electronic communication and the internet should be clarified. We recommend that the Explanatory Memorandum to the Regulation should give practical examples of which mediums would be included and excluded and services which would typically be included. As a general rule, services subject to VAT in a foreign jurisdiction should not also be taxed in South Africa.

Business-to-business supplies: using the reverse mechanism to collect the VAT

In our view broadening the South African definition to the proposed extent would result in further unnecessary VAT registrations for foreign suppliers. SARS will not have any net revenue gain in relation to business-to-business (B2B) supplies. We do not understand the rationale to include e.g. foreign multi-national entities that enter into global agreements for the supply of e.g. software to its South African subsidiary, in the South African VAT net. We therefore recommend that the application of the rules to B2B transactions be reconsidered to alleviate the significant and unnecessary administrative burden this will cause for foreign suppliers as well as for SARS.

In the absence of the aforementioned consideration to implement rules that distinguish between B2B and B2C transactions, we submit that National Treasury and SARS consider the introduction of a reverse charge mechanism in line with the EU rules. In our view the benefits would result in alleviating the VAT registration administration burden for both foreign suppliers and SARS, the difficulty in collecting the VAT from foreign suppliers, etc. This will result in the recipient declaring an output tax and off set input tax credit based on

the value of the invoice received from the non-resident supplier. Vendors making both exempt and taxable supplies will limit the input tax off-set based on the normal input tax rules.

"Educational services" to be defined

Educational services are excluded from "electronic services" and should, therefore, be defined.

Interaction between the intermediary and the principal

In terms of the proposed legislation, the intermediary would need to be aware of the VAT and residency status of the principal to assess whether it has a requirement to register and account for VAT in respect of the supplies made by the non-resident. We recommend that the legislation be amended to exclude the non-resident electronic services supplier from the VAT net to the extent that the intermediary is required for VAT in terms of section 54(2B).

Consideration

The determination of consideration should be clarified for the purposes of electronic services to cater for the advanced market place where consideration takes various forms. An issue relates to what constitutes "consideration" as payment for electronic services mainly due to, e.g. an all-inclusive price being charged, no monetary consideration payable etc. A particular area where these complexities relating to advertising and subscription services as well as consideration for the services are encountered, is what is known as "Pay Per Click"(PPC) advertising. Another example is the provision of a global online marketplace by a foreign supplier via a website, whereby third-party suppliers can sell their range of products. Another example is also in relation to the provision of web applications by foreign suppliers where the term "subscription service" encompasses both the scenario where subscription fees are paid in advance for a particular service using the web application or where a person subscribes to a web application free of charge where fees are only due if and to the extent of the actual use of the services to which access is gained via a web application. In some instances, subscriptions generally paid in respect of web applications are actually not paid to have access to the application but rather to those services to which the application provides access to.

Proposed implementation date of 1 October 2018

The proposed amendment of the Regulations and the proposed amendment of the Value-Added Tax Act go hand-in-hand. The proposed implementation date of 1 October 2018 is too soon, taking into account that it is unlikely that the amendments will have been passed into law by then. We recommend that SARS should hold off on the introduction of the draft Regulation until all considerations could be taken into account and a conclusion could be reached. In addition, the systems updates required will also take a significant amount of time. Therefore, we would recommend that the implementation date should be at least six months after the promulgation of the relevant amending legislation.