

VAT on e-services South Africa's Experience

Legal Tax Design, Tax and Financial Sector Policy Unit, 2018

Background

- In 2012 the OECD Committee on Fiscal Affairs (CFA) created the Global Forum on VAT
- In 2013 the OECD launched an action plan to address tax revenue losses due to Base Erosion and Profit Shifting (BEPS), as requested by the G20 Finance Ministers
- 2013 Report pointed out that BEPS constituted a serious risk to tax revenues, tax sovereignty and tax fairness
- OECD proposed 15 action items to address BEPS concerns
- Action Plan 1 deals with "Addressing the Tax Challenges of the Digital Economy"
- Working Party 9 worked on developing guidelines relating to international VAT / GST
- Guidelines reflected internationally agreed principles relating to the BEPS concerns from a VAT / GST perspective

Background

- The cross border supplies of "goods" are generally taxed at the point of entry of those goods into the country
- "Services" generally relates to intangible supplies that do not physically cross any border post
- As a result these are largely "invisible" to tax authorities
- Prior to BEPS projects there were risks of double taxation and double non-taxation
- Countries relied on domestic legislation such as "reverse charge mechanisms" or "VAT on imported services"
- These relied on self-assessment by both VAT registered and non-VAT registered persons
- Risks of tax avoidance were high
- OECD guidelines recommended legislative amendments that shifted the onus of paying the tax from the domestic recipient to the offshore supplier

South Africa – VAT Treatment of e-services: Pre and Post- 2014

- In SA, prior to June 2014, South African recipients of services were required to declare VAT on imported services, provided that the recipient was not a vendor that was making 100% taxable supplies
- Effective 1 June 2014, South Africa introduced legislation relating to VAT on the inbound supply of services supplied by electronic means
- This effectively shifted the onus of declaring the VAT from the domestic consumer to the non-Resident supplier, in terms of the OECD Guidelines
- In essence, foreign suppliers of electronic services are required to register for VAT in SA (provided that the registration requirements are met)
- This is irrespective of the fact that the supplier may not have a Permanent Establishment or any physical presence in SA
- Where registration is not required, VAT on imported services is still an obligation on the recipient

VAT TREATMENT OF E-SERVICES: POST 2014: ADMIN & COLLECTION

- South Africa was the 2nd country in the world to introduce legislation to this effect (Norway was the 1st)
- To ease the admin burden on the foreign supplier, the South African Revenue Service (SARS) provided for streamlined VAT registration and admin processes
- Reduced compliance burden
- Seamless registration and filing of returns
- All done electronically
- Simplified Registration and Collection Regime
- **RESULTS (June 2014 – Sept 2017):**
 - Almost R2 billion in VAT collected (approx. USD161 million) (possibly lost previously from undeclared VAT on imported services)
 - Over 200 new registrations from foreign suppliers
 - Very high collection success rate
 - Average registration time = less than 4 days

REASONS FOR THE PROPOSED CHANGES TO THE VAT TREATMENT OF E-SERVICES

- The new legislation, however, provided that only supplies of services that were specified in a list in the new Regulation would be subject to VAT
- It was very limited in application
- The consequence of this was that a large proportion of inbound services supplied electronically fell out of this net and were thus not subject to VAT
- This created trade distortions between local suppliers and non-Resident suppliers and enabled an environment where the services that were not listed were largely untaxed
- Non-Resident suppliers were placed in an advantageous position as compared to domestic suppliers of the same services
- In order to reduce the risk of distortions in trade between foreign suppliers and domestic suppliers where VAT is one of the reasons for such distortions, South Africa is now proposing amendments to its VAT legislation relating to the inbound supply of services via electronic means
- Proposed changes to the Regulation were announced in 2015, 2017 and in 2018 in the Budget Review
- The proposed changes were published for comment on Budget Day 2018

PROPOSED CHANGES: DEFINITION OF SERVICES

- The specified list of Electronic Services that are taxable under the Regulations is being deleted
- The Regulations will now cover all “services” as defined in the VAT Act that are supplied by means of an “electronic agent”, “electronic communication” or the “internet” for any consideration
- The term “services” is defined very broadly to mean:
“..anything done or to be done, including the granting, assignment, cession or surrender of any right or the making available of any facility or advantage, but excluding a supply of goods, money or any stamp, form or card contemplated in paragraph (c) of the definition of “goods””

PROPOSED CHANGES: REQUIREMENT FOR REGISTRATION

- The supplier of electronic services will be required to register for VAT in the Republic if the supplier meets the following requirements:
 - The electronic services are supplied by a person from a place in an export country, and
 - Such person is conducting an “enterprise” in the Republic (as defined in the VAT Act), and
 - At least 2 of the following circumstances are present:
 - The recipient of the electronic services is a Resident of the Republic,
 - Any payment made to the supplier in the export country originates from a bank that is registered or authorised in South Africa in terms of the Banks Act, 94 of 1990
 - The recipient of those electronic services has a business, residential or postal address in the Republic, and
 - The total value of the taxable supplies made by that person in the Republic has exceeded R50,000 within any consecutive 12-month period (currently in line with the domestic voluntary registration threshold)

PROPOSED CHANGES: EXCLUSIONS

The following services are excluded from the definition of e-services in the Regulations:

1. Educational services provided by a person that is regulated by an educational authority in that export country; and
2. Telecommunications services as defined

The Role of Platforms

- Countries have recognised that platforms / intermediaries have an important role to play in both the supply chain and the collection of VAT
- This is an area that is extremely complicated and difficult to legislate for based on a number of factors; viz.
 - The wide variety of platform services that are in existence today (including the role of each platform in the supply chain)
 - The rate of evolution of business models in this area
 - The fact that in most instances countries do not have legal jurisdiction over foreign suppliers
 - Invoking mutual assistance and other international agreements may be costly and time-consuming

The Role of Platforms

- Platforms may be the principal supplier
- Platforms may grant access to other suppliers to sell on their platform / APP
- Platforms may be responsible for the entire transaction from start to finish (purchase, payment, invoicing, delivery)
- Platforms may outsource some or all of those functions
- Suppliers may use multiple platforms to sell on
- Suppliers may sell both directly to consumers and through platforms

PROPOSED CHANGES: PLATFORMS

- Special provisions have been introduced to deal with "intermediaries" (platforms)
- As a result, the following new definition of the term "intermediary" is proposed in the VAT Act :

"Intermediary means any person who facilitates the supply of electronic services supplied by the electronic service supplier and who is responsible for issuing the invoices and collecting payment for the supply"

PROPOSED CHANGES: PLATFORMS

- In order to address the issues of double non-taxation, South Africa is proposing to introduce the “deemed supplier” concept for digital platform / intermediaries
- Intermediary assumes full liability for VAT, irrespective of contractual agreements
- Subject to the normal VAT rules relating to compliance (administration) and non-compliance (interest and penalties)
- Policy Rationale for this is that the intermediary is in possession of all the required information relating to the transaction and has control over the transaction.

PROPOSED CHANGES: PLATFORMS

- This approach ensures parity between domestic suppliers of similar services and foreign suppliers
- It ensures that the VAT system creates certainty and fairness in treatment for all taxpayers, irrespective of their physical location or place of permanent establishment
- It is based on the concept of the place of consumption or the destination principals of VAT
- The same rules would apply to a domestic intermediary

IMPORTANT POINTS TO NOTE

- Neither the VAT Act nor the Regulations make a distinction between Business to Business (B2B) supplies and Business to Consumer (B2C) supplies
- Where the supplier of e-services is not required to register for VAT in SA because the supplier does not meet the VAT registration requirements, the recipient of these services may be required to declare VAT on imported services in terms of the VAT Act
- Suppliers of e-services that are registered for VAT in SA may claim input tax credits on VAT incurred in SA in the making of those taxable supplies

THANK YOU