
VAT treatment of the supply of electronic services: an update

26 October 2018

In brief

The Medium Term Budget Policy Statement (“MTBPS”), presented in Parliament this week by the Minister of Finance, was accompanied by the introduction of the Rates and Monetary Amounts and Amendment of Revenue Laws Bill 37 of 2018 (“the Bill”). Certain amendments contained in the Bill deal with changes in the VAT treatment of the supply of electronic services (“e-services”) in South Africa. In addition, National Treasury published amendments to the existing regulations dealing with e-services.

In detail

Amendments proposed by the Bill

The Bill contains the following proposed amendments:

- The introduction of a definition of “intermediary” into the VAT Act. The definition contemplates a person who facilitates the supply of e-services and who is responsible for issuing the invoices and collecting payment for the supply;
- An amendment to specifically deem the supply of e-services by an intermediary (as defined) to be supplied by that intermediary and not by the actual supplier; and
- An increase in the VAT registration threshold in relation to the supply of e-services from the current R50 000 to R1 million. The R1 million threshold is to be calculated with reference to any consecutive 12-month period.

Revised e-services regulations

The existing e-services regulations have been in place since 1 June 2014. It is proposed that the revised regulations will take effect on 1 April 2019.

The scope of e-services to which the existing e-services regulations apply includes the

provision of certain educational services, games and games of chance, internet-based auction services, e-books, audio-visual content, still images, music and various subscription services. Notably, the existing regulations do not apply to services such as cloud-computing and software.

The proposed e-services regulations have broadened the ambit of the definition of e-services. E-services now include any services supplied by means of an electronic agent, electronic communication or the internet for any consideration.

The only e-services that are excluded under the proposed regulations are the following:

- the supply of “telecommunications services” as defined;
- the supply of educational services by a person regulated by an educational authority in a foreign country; and
- certain inter-company supplies within a “group of companies” as defined. In this regard, both companies must form part of the same group of companies, the supplying company must not be a resident of South Africa, and the supplying company must

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supply the services itself and exclusively for the South African resident company.

It should therefore be noted that, where a non-resident company procures certain services from a third party and on-supplies these services to a group entity in South Africa, such services will not qualify for the exclusion envisaged in the e-services regulations. A typical example would be a situation in which global contracts are entered into with third party suppliers for the benefit of all companies within the group.

Importantly, the revised e-services regulations do not distinguish between B2B and B2C supplies.

The above amendments and the revised e-services regulations will take effect on 1 April 2019.

The takeaway

In light of the above, effective from 1 April 2019, all non-resident suppliers of electronic services (excluding those specifically excluded from the revised e-services regulations) have a potential VAT registration liability in South Africa if the total value of their supplies exceeds R1 million in a twelve-month period.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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