

VAT on the supply of electronic services: release of regulations

22 March 2019

In brief

On 18 March 2019, the long-anticipated regulations prescribing the electronic services that are subject to South African Value-Added Tax (VAT) were published by the National Treasury. The regulations will be effective from **1 April 2019**.

Unfortunately, the delay by National Treasury in finalising the regulations has left foreign companies with very little time to register for VAT and implement any changes necessary to commence charging VAT on the supply of electronic services.

In detail

General

Given the delay in issuing the final regulations, it is somewhat surprising that there is only one change to the draft regulations. This change is in respect of the definition of “group of companies”, in which the shareholding requirement has been reduced from 100% to 70%

Essentially, the impact of the regulations (which was reflected in the draft regulations) remains unchanged, and is generally as follows:

- There is no distinction between business to business supplies and business to consumer supplies;
- The regulations are broad in scope, and cover the supply of services that were previously excluded, such as software, cloud computing and advertising;
- There are provisions to deal with “intermediaries” and “platforms” – an intermediary will, for purposes of accounting for VAT, be deemed to be the principal in respect of electronic services supplied by foreign suppliers using its platform;

- Provision for specific exclusions, limited to the following:
 - Telecommunications;
 - Educational services provided by a person regulated by an educational authority; and
 - Certain inter-company transactions; and
- An increase in the VAT registration threshold from R50,000 (approximately US\$3,500) to R1 million (approximately US\$70,000), which is in line with the domestic VAT registration threshold.

Examples of electronic services

Electronic services that would be covered by the regulations include the following:

- Educational services, such as distance teaching programmes, educational webcasts, courses or education programmes and webinars (excluding educational services that are specifically excluded);
- Games and games of chance such as electronic games, interactive games, electronic betting or wagering;
- Auction services;
- On-line advertising or the provision of advertising space;

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- On-line shopping portals;
- Web-based broadcasting;
- Access to or downloading of e-books, audio visual content, still images, music and films;
- Access to blogs, journals, magazines, newspapers, games, publications, social networking, webcasts, webinars, websites, web applications and web series;
- Website hosting, data warehousing and application hosting;
- Downloads of or access to software;
- Software applications (“apps”) downloaded by users on mobile devices;
- Software applications allowing users to provide sharing services such as ridesharing and accommodation;
- Supplies of electronic services where the non-resident company supplies procured services to the resident company and the non-resident and resident company form part of the same “group of companies”;
- On-line booking services; and
- On-line automated maintenance of programmes.

The scope now includes **any service** supplied electronically and the above is by no means an exhaustive list.

Preparing for the change and determining your VAT registration obligation

From 1 April 2019, every person conducting an enterprise in the context of electronic services, which has made taxable supplies in excess of R1 million in any consecutive 12-month period, is required to obtain a VAT registration and account for VAT at the rate of 15% on the supply of electronic services.

The legislation requires a foreign supplier of electronic services to determine whether:

- its supplies fall within the regulation;
- it conducts an enterprise activity for VAT purposes; and
- it has made taxable supplies of electronic services that have exceeded R1 million in any consecutive 12 months.

This implies that an ESS supplier that was not in scope under the previous regulations, for example a supplier of software licenses, will only commence its enterprise activities on 1 April 2019 (i.e. the effective date of the new regulations). Only after 1 April 2019 will these suppliers be regarded as making taxable supplies and, as such, the obligation to register and account for VAT will only arise after the taxable supplies made exceed R1 million. While this seems to be an anomaly in the legislation (on the basis that the general approach in determining if a threshold has been exceeded would be a combination of a prospective and retrospective approach), it may alleviate the immediate registration requirement and will allow ESS suppliers more time to apply for a VAT registration and implement the required changes.

Please note that where a foreign ESS supplier obtained a VAT registration in anticipation of the changed regulations, it will be liable to account for the output VAT from 1 April 2019. By processing the VAT registration and issuing the VAT number, the South African Revenue Service (“SARS”) has confirmed that the ESS supplier is conducting a VAT enterprise. This is regardless of the fact that, at the time of applying for the VAT registration, the person will not have made taxable supplies that exceeded the R1 million threshold.

In order to simplify the registration process and make it easy for foreign ESS providers to be compliant, applications for VAT registration (as well as supporting documents) are accepted via email. Moreover, it is not necessary for foreign ESS providers to have a local bank account or local representative is required.

Once the application form and supporting documents are submitted, the processing period is approximately one week.

Frequently Asked Questions (“FAQs”)

SARS has published FAQs in order to provide guidance in respect of the changes. The FAQs deal extensively with the intermediary concession and inter-company exclusions.

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Let's talk

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