

VAT on foreign electronic services will be hard to collect

The South African Value Added Tax Act Amended Regulations state that foreign suppliers of more than R1m pf "electronic services" over the preceding 12 month period are obliged to register for VAT in South Africa. However, tax experts say this will be difficult to enforce.



Image source: Getty/Gallo

Through the regulations, the South Africa's National Treasury attempted to reduce the risk of distortions in trade between foreign and domestic suppliers. For the consumer making use of these electronic services in South Africa, this could mean an additional cost of 15%.

Gerhard Badenhorst, a director in the tax & exchange control practice at Cliffe Dekker Hofmeyr (CDH), says cross border services are notoriously difficult to tax, but the Amended Regulations have widened the definition of "electronic services" to include any electronic services supplied by a foreign supplier via an electronic agent, electronic communication or the internet for any consideration.

"The implication is that basically everything that can be supplied electronically, even to businesses, is now subject to VAT," he says.

However, there are limited exemptions to the regulations:

- Educational services supplied by an entity or institution in an export country and regulated by an educational authority in terms of the laws of that export country;
- Telecommunications services; and
- Cross-border intergroup supplies that are used exclusively by the SA resident group company. However, the group must hold at least 70% of the equity shares in the group company for the exemption to apply.

Telecom services exempt, but content not

The Amended Regulations do not provide a definition for "telecommunications services", however, it is only the telecommunication services which are exempt, and not any content. This means that fixed and mobile telephone services and internet access would not be subject to tax, but any sound, data, text or videos conveyed/transmitted via these mediums would be subject to tax.

Badenhorst notes that collecting VAT on imported services from the consumer has always been difficult, adding that compliance with the Amended Regulations is also hard to enforce.

Additional burden

“Foreign suppliers will have to register for VAT and be saddled with the additional burden of having to collect and pay over VAT to the South African Revenue Service,” he says.

“Naturally, you can’t compel them to do this, so it’s more a matter of voluntary compliance. There is also the risk that the foreign supplier may collect the VAT and not pay it over. Although non-compliance will attract penalties and may even lead to criminal prosecution, I just can’t see how they are going to enforce this.”

Badenhorst points out that other countries such as New Zealand and Australia have similar regulations in place, but they have exempted business to business transactions.

“Including business to business transactions, as in the case of South Africa, simply creates an unnecessary barrier and a lot of burdensome admin. Local businesses are entitled to deduct the VAT they pay on electronic services, or if they are not entitled to a deduction, they must pay VAT anyway, so this does not create an additional stream of revenue for government,” he explains.

“In terms of private consumers, there is definitely an obligation to pay VAT on these transactions, but I do believe that business to business transactions should be excluded.”

Badenhorst argues that while the legislation is not flawed in its entirety, there is definitely room to review and refine it.

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