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Changes to South African VAT regulations will now include software and other electronic services provided to South Africans by foreign suppliers

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Before 2014 the supply of inbound electronic services required the South African recipient to declare VAT on these services but compliance was minimal. So, with effect from 1 June 2014, the VAT Act was amended and regulations were introduced which changed the way that certain imported electronic services were to be taxed. The onus shifted from the South African consumer to the off-shore supplier of the services. However, following Budget Reviews and Minister Gigaba's Budget speech in February of this year, changes have again been proposed to the VAT regulations that are intended to remove uncertainties and broaden the scope of electronic services. Clearly Government sees the supply of electronic services by foreign suppliers as an area that should fall within the South African VAT net and the draft regulations go a long way in achieving this.

According to National Treasury the current regulations limit the scope of electronic services that are taxable. Under the amended regulations the intention is to widen the scope of the regulations to apply to all 'services' as defined in the VAT Act that are provided electronically. In doing so, the policy intention is to reduce the risk of distortions in trade between foreign suppliers and domestic suppliers where VAT is one of the reasons for such distortions.

The proposed, and much wider, definition of electronic services will include '*...any services supplied by means of an electronic agent, electronic communication or the internet for any consideration...*' but excluding educational services that are regulated by an educational authority in an export country and telecommunications services. Cloud computing, software supplies, anti-virus, online advertising, broadcasting, gaming, online consulting and training services would all now fall within electronic services. No distinction is made between business-to-business and business-to-consumer transactions.

Should you be a foreign supplier of any electronic services to a South African resident who has an address in South Africa and payment originates from a South African bank, then where the value of your electronic supplies exceeds R50 000 in any 12 month period you will be required to register as a VAT vendor in South Africa and levy VAT on those services going forward. In practice, a foreign supplier can apply for registration *via* electronic mail and is not required to open a South African bank account nor appoint of a South African resident representative vendor.

It has also been proposed by National Treasury that in order to broaden the scope even further amendments are planned to specifically deal with 'intermediaries' and 'platforms'. The idea being where suppliers provide electronic services using the electronic platform of another person (an intermediary) that person will be deemed to be the supplier for VAT purposes where that person facilitates the supply of the electronic services and is responsible for, amongst other things, the issuing of the invoice and the collection of the payment. This would not include those intermediaries that are only facilitating payment, such as pure payment platforms.

The VAT regulations are still in draft form and open for public comment until 22 March 2108. The Regulations are intended to come into effect on 1 October 2018.

As such, foreign businesses providing electronic services to South African consumers that were previously not required to register for VAT in South Africa may not be so fortunate once the proposed regulations come into effect. It would be prudent to consider the services you provide in light of the new VAT provisions.

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