

South Africa releases final E-services VAT regulations, effective 1 April 2019

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Executive summary

South Africa's National Treasury issued the final regulations expanding the definition of "electronic services" (E-services) for value added tax (VAT) purposes which become effective 1 April 2019.

Detailed discussion

Background

As of 1 June 2014, foreign suppliers of E-services into South Africa were required to register and account for VAT in South Africa. The regulations defining E-services included a very specific list of services and only foreign suppliers of these services were subject to account for South African VAT.

In South Africa's 2018 National Budget Speech, released on 21 February 2018, the Minister of Finance stated that the regulations defining E-services for VAT purposes would be updated and on the same date released amended draft regulations.

In the 2018 draft regulations, the Minister of Finance deleted the specific types of services currently regarded as E-services and included any type of service supplied electronically. The only exclusions under the draft regulations were the supply of educational services by a person regulated by an educational authority in an export country and the supply of telecommunications services.

Amended E-Services application

On 24 October 2018, the Minister of Finance delivered the Medium Term Budget Policy Statement and released the final regulations defining E-services. The final regulations did not materially change from the draft regulations apart from an additional exclusion to provide relief to intra-group supplies.

In terms of the final regulations a foreign supplier will not be deemed to supply E-Services if:

- ▶ The recipient of the services and the foreign supplier form part of the same group of companies.
- ▶ The recipient exclusively acquired the services for the purposes of consumption in South Africa.

A new definition of “Group of Companies” was inserted to the final regulation, which essentially requires direct or indirect shareholding of 100% to constitute a Group of Companies.

On the same day, the Minister of Finance also released the Rates and Monetary Amounts and Amendment of Revenue Laws Bill, in which certain specific amendments to the *VAT Act* was introduced with regards to E-Services.

Currently the South African *VAT Act* or the E-services regulation does not make any specific provisions for supplies via an electronic platforms. A new definition of an “intermediary” was inserted into the *VAT Act* together with a deeming provision which from 1 April 2019 deems the supply of E-services to have been made by the intermediary and not by the foreign supplier. An intermediary is, in terms of the *VAT Act*, a person that facilitates the supply of E-services and is responsible for the issuing of the invoice and the collection of the payment.

Implications

The final E-service regulations have not yet been signed into law, but it is expected that the wording in these final regulations will be the final wording and that the South African Parliament will sign the E-services regulation, together with the Rates and Monetary Amounts and Amendment of Revenue Laws Bill, into law in the next coming weeks.

All suppliers of E-services to South Africa should analyze whether they should register for VAT and start preparing for implementation on 1 April 2019. The amended E-Service regulations broadens the South African VAT net and will create more VAT registrations for offshore suppliers. Typical examples of supplies that will fall within the final E-services regulation will include any supplies made by shared service centers of any back office support functions, IT support services and software licenses on-charged.

Even though a new specific exemption with regards to intra-group supplies was inserted to the final E-service regulation, all suppliers forming part of a “Group of Companies” should examine whether its supplies falls within the specific exclusions or whether it has a registration obligation.

Lastly, all foreign suppliers supplying E-services via an “intermediary” should analyze whether the intermediary falls within the *VAT Act*, or whether it has a registration obligation in its own right.

For additional information with respect to this Alert, please contact the following:

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