

## South Africa publishes amendments broadening scope of electronic services for VAT purposes

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On 18 March 2019, the South African National Treasury published amendments to the Regulation prescribing electronic services for purposes of the definition of "electronic services" in section 1 of the *Value-Added Tax Act*. The amendments to this Regulation, which is key in determining whether a foreign supplier of electronic services should register for and levy South African Value-Added Tax (VAT), become effective on 1 April 2019. The effect of these amendments is to significantly broaden the scope of the 2014 Regulation, which defined "electronic services" for South African VAT purposes since 1 June 2014.

In terms of South African VAT legislation, a person should register for and levy South African VAT if the person supplies electronic services (e-services) from a place outside South Africa, where at least two of the following circumstances are present:

- ▶ The recipient of those e-services is a South African resident
- ▶ Any payment to that person in respect of such e-services originates from a South African bank
- ▶ The recipient of those e-services has a business address, residential address or postal address in South Africa

In addition to the above requirements, the services supplied should qualify as "electronic services" as defined in the Regulation and the value of the person's taxable supplies should exceed the VAT registration threshold for electronic

service suppliers (prior to 1 April 2019 the threshold was taxable supplies in excess of R50,000; from 1 April 2019 the threshold is taxable supplies in excess of R1 million in any consecutive 12-month period).

The 2014 Regulation provided that only the following services qualified as e-services if supplied by means of an electronic agent, electronic communication or the Internet for a consideration:

- ▶ Educational services if not supplied by a regulated foreign entity
- ▶ Games and games of chance
- ▶ Internet-based auction services
- ▶ Miscellaneous services (e-book, audio visual content, still images, music)
- ▶ Subscription services

The amendments to the Regulation provides that from 1 April 2019 any service will qualify as an electronic service, if supplied by means of any electronic agent, electronic communication or the Internet for a consideration, except for the following:

- ▶ Regulated foreign educational services
- ▶ Telecommunication services
- ▶ Limited inter-group supplies

The inter-group exclusion applies where a nonresident company and a resident company form part of the same "group of companies" and the nonresident company itself supplies the e-services exclusively for the purposes of consumption of those services by the resident company.

A "group of companies" for this purpose means two or more companies where one company directly or indirectly holds at least 70% of the equity shares of the other company. Where shares are held indirectly through another company, the shareholder should hold at least 70% of the equity shares of the company that holds the equity shares in the other company.

The draft version of the amendments to the Regulation, which was published in 2018, proposed a 100% equity shareholding to qualify for the inter-group exclusion. This was considered to be too narrow, so National Treasury agreed to relax the requirement to a 70% equity shareholding. However, to qualify for this exclusion, the nonresident company itself must supply the e-services exclusively for the purposes of consumption of those

services by the resident company. Expenses on-charged by a foreign holding company to a South African subsidiary company will most likely not qualify for this exclusion.

Foreign e-service suppliers should take note of the following regarding the South African VAT legislation relating to e-services:

- ▶ As with the 2014 Regulation, the 2019 amendments makes no distinction between business to business (B2B) and business to consumer (B2C) supplies. Some relief is provided for inter-group B2B transactions under the 2019 amendments, but the relief only applies in respect of services that are supplied exclusively for purpose of consumption by the South African group entity.
- ▶ The supply of software was not explicitly included as an e-service under the 2014 Regulation. Under the 2019 amendments, the supply of software will qualify as an e-service, unless one of the specific exclusions apply.
- ▶ Where an intermediary facilitates the supply and is responsible for invoicing and receiving payment in respect of the supply, the intermediary will from 1 April 2019 be responsible for levying VAT on the e-service and paying it over to the South African Revenue Service (SARS). These rules relating to intermediaries only apply if the e-service supplier is not a registered vendor for South African VAT purposes.
- ▶ The SARS issued a number of private binding rulings based on the 2014 Regulations, specifically relating to whether certain services qualified as e-services for South African VAT purposes. Since the legislation on which these rulings were based will be amended with effect from 1 April 2019, the rulings are likely to no longer apply.

A foreign entity supplying services to South African recipients (irrespective of whether the recipient is a business or a consumer) should consider the following in determining whether it should register for South African VAT as a foreign e-service supplier:

- ▶ Are the services supplied by means of any electronic agent, electronic communication or the Internet for a consideration?
- ▶ If yes, does the educational services, telecommunication services or inter-group exemptions apply?
- ▶ If no, does the total value of the supplies during any consecutive 12-month period exceed R1 million?
- ▶ If yes, the foreign supplier has to register for and levy South African VAT.

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

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