VAT Cross-Border E-Commerce Rules promulgated

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The indirect taxation of cross-border e-commerce transactions have been high on the agenda for tax authorities worldwide. There is clearly a perception that much of these transactions are escaping indirect tax (essentially VAT) because the supplier and consumer are in different jurisdictions. Following the release of the OECD International VAT/GST Guidelines most VAT jurisdictions have adopted new rules for the taxation of cross-border e-commerce. In essence, where a supply of services are made by a non-resident to a resident of another country, the non-resident supplier is now required to register as a taxable person (vendor in SA parlance) in the jurisdiction where the resident is established provided it meets the usually annual registration requirements (such as a specified turnover thresholds, being R1 million in SA). Importantly most foreign jurisdictions have adopted a distinction between supplies made from business-to-business (B2B) and business-to-consumer (B2C), the former not being subject to the new rules – essentially because of reverse charge ('imported service' in SA parlance) rules that would in any case capture such B2B supplies in certain circumstances.

SA led the way in 2014 when it introduced new rules to tax cross-border e-commerce transactions (referred to as

“electronic services”), requiring foreign suppliers to register and account for SA VVAT on these transactions if their turnover of supplies to SA residents exceeded R50 000 (now increased to R1 million). However, because electronic services were narrowly defined, few B2B transactions were effectively excluded. Following the release of the OECD VAT/GST Guidelines SA, like most other VAT jurisdictions have broadened the scope of e-commerce transactions subject to VAT as provided for in the regulations issued today. **This change is profound and will affect most cross border e-commerce transactions were the supplier is a non-resident and the recipient is a SA resident, whether an individual or company**.

Unfortunately SA has decided not to draw a distinction between B2B and B2C transactions and **all cross-border B2B e-commerce will potentially be affected**. I say potentially because e-commerce services supplied intra-group will be excluded from the new rules. A “group of companies” is defined as companies where there is at least a 70% common shareholding. While this intra-group exclusion is to be welcomed, it may not be enough to accommodate those group transactions where the common shareholding threshold of 70% will not be met.

The change to the taxation of cross-border e-commerce for businesses is significant and non-resident suppliers who render electronic services to SA residents need to urgently consider to what extent they are affected by the new rules.

Ends

Kind Regards,

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