

VAT registration of foreign businesses

The tax issues associated with e commerce on the Internet remains largely unresolved. Enforcement of tax compliance is generally reliant or can be pin-pointed to geographical areas however in cyber space or the Internet world these geographical boundaries do not exist. The underlying question is whether existing direct and indirect principles can be successfully implemented in imposing and enforcing the taxation of e commerce. E commerce changes things of fundamental importance from a direct and indirect tax perspective. It allows a foreign vendor who essentially has no physical presence to sell into another territory and bypass the payment of any local taxes that may have been imposed on a source basis ie. the purchase of e-books by a consumer or music, where there are no checks in place from a collection mechanism as opposed to the delivery of physical goods that must bypass customs. E commerce has created a whole new way of thinking in terms of creating products previously sold in the form of tangible property, intangible property and services. If existing tax rules are applied there can be a significant change from "technology importing countries" to "technology exporting countries." The obvious issue that arises is what if the foreign vendor is based in a tax haven, does the vendor escape taxation altogether?

It was proposed in the budget speech that in order to curtail foreign businesses who supply goods and services essentially in cyber space from escaping the VAT net that all foreign business supplying digital goods and services will be required to register as VAT vendors in South Africa. This line of thinking follows the current trend adopted by the European Union requiring such suppliers to register for VAT in the country where the consumer resides. The question of whether

non residents need to register as vendors in South Africa has been the subject matter of much debate over the years. Generally a person would not be regarded as carrying on a business or other activity in a country unless that person either has a physical presence in the country or the person provides goods or performs services in that country personally or through an agent.

VAT is an indirect tax which applies across the board to almost all supplies of goods and services and is essentially levied at every stage of production and in the distribution chain. The VAT Act provides for the imposition of VAT in respect of the supply of goods and services and on the importation of goods and services. Persons who make taxable supplies in the course or furtherance of an enterprise conducted wholly or partly in South Africa are required to register as vendors, provided the minimum turnover threshold is reached. Vendors collect output VAT from their customers and claim credits for input VAT paid by them.

The immediate problem that arises is enforcement, such as determining the location of the vendor, or where the goods or services were produced or manufactured and/or delivered, establishing what was purchased and where the purchaser is located.