

MEDIA RELEASE

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More work is required in ecommerce space to ensure that the law keeps pace with technological developments: PwC Tax

The Davis Tax Committee's (DTC) First Interim Report on VAT focuses on a number of key challenges inherent to VAT in South Africa. While the report makes a number of recommendations, it includes a substantial section on the application of VAT in the electronic commerce environment. "We welcome the recommendations by the DTC on electronic services, and agree that legislation should keep pace with the technological developments in the field," says Charles de Wet, Head of Indirect Tax at PwC Africa.

The taxation of electronic services in South Africa is relatively recent, with regulations having been implemented on 1 June 2014, ahead of other countries, which are only now expanding the scope of their legislation.

While the current legislation seeks to predominantly tax services supplied in the Business-to-Consumer ('B2C') space the DTC has suggested that not allowing for this distinction is recommended as the preferable course of action. The effect is that all transactions (including transactions between businesses) are subject to VAT in the same manner. "This finding is significant as the current SA VAT legislation does not seek to distinguish between Business-to-Business ('B2B') and B2C supplies. " explains de Wet.

Recent reports have also suggested that the existing electronic commerce legislation is not broad enough to capture all supplies, and National Treasury has already announced moves to include software into the scope of services. In the case of online advertising, the DTC interestingly indicates that the existing regulation may not need to be amended or changed as it can be argued that the current regulation does in fact cover these activities. The DTC has recommended that a guide should be published to clarify the position.

These comments signal that the DTC considers the existing regulations in a broad manner whereas business and the South African Revenue Service (SARS) alike have, until now, interpreted the existing regulations as prescriptive and narrow. Ultimately, the report correctly confirmed that legislation and its scope should be clear and not make it possible for the definition of electronic services to be manipulated, says de Wet.

While the recommendations made by the DTC in the interim report are welcomed, certain practical issues currently being experienced in the electronic commerce space are not dealt with in the interim report and need further consideration. For example, the existing legislation seeks to tax those foreign entities who satisfy two of the necessary criteria which generally include making supplies to recipients in South Africa, and receiving payment from a local bank account.

The legislation doesn't, however impose VAT on those foreign suppliers who are able to circumvent these requirements by, for example, making services available through Virtual Private Network (VPN) services which serve to hide the true identity of a South African recipient, or who receive payment by way of gift cards and other means which cannot be traced back to a South African bank account.

"As technology evolves, these issues should be given more attention to ensure that these supplies are also included with the scope. A failure to remain current may see South Africa's work in taxing electronic services space becomes impeded," concludes de Wet.

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