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Submission File

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South African Revenue Service  
Private Bag X923  
Pretoria  
0001

BY E-MAIL: [policycomments@sars.gov.za](mailto:policycomments@sars.gov.za)

Dear SARS

**CLARITY REQUIRED: VALUED-ADDED TAX (“VAT”) OBLIGATIONS ON IMPORTED SERVICES WHERE A FOREIGN SUPPLIER OF ELECTRONIC SERVICES FAILS TO REGISTER AND ACCOUNT FOR VAT IN SOUTH AFRICA**

1. We herewith take an opportunity to present the South African Institute of Chartered Accountants (“SAICA”) VAT Committee’s request for clarity on the liability of a recipient of imported electronic services to account for VAT on these imported services where the foreign supplier is liable but fails to register and account for VAT in terms of the Electronic Services Regulations in South Africa (“SA”), read in conjunction with the South African Value-Added Tax Act No. 89 of 1991 (“VAT Act”).
2. We set out below our comments in this regard.

**COMMENTS**

3. A person will be liable to register for VAT in SA at the end of any month where the person:
  - a. Supplies electronic services from a place in an export country, where at least two of the following circumstances are present:
    - i. The recipient of those electronic services is a resident of the Republic;
    - ii. any payment to that person in respect of such electronic services originates from a bank registered or authorised in terms of the Banks Act, 1990 (Act No. 94 of 1990);
    - iii. the recipient of those electronic services has a business address, residential address or postal address in the Republic; and



- b. Has generated taxable supplies in excess of R 1 million in any consecutive 12-month period.
4. Once registered for VAT in SA, the foreign supplier of electronic services will declare VAT on all taxable supplies of services made in terms of section 7(1)(a) of the VAT Act. The SA recipient will claim an input tax deduction, where applicable.
5. Section 7(1)(a) imposes VAT on the supply by any vendor of goods or services supplied by him on or after the commencement date in the course or furtherance of any enterprise carried on by him.
6. As vendor is defined in section 1 of the VAT Act to mean “*any person who is or is required to be registered under this Act*”, we would therefore interpret that any supplies made by a foreign electronic services supplier who is liable but not registered for VAT, would still be subject to VAT under section 7(1)(a) and not in terms of section 7(1)(c) which imposes VAT on the supply of any imported services.
7. “Imported services” is defined in section 1 to mean a “*supply of services that is made by a supplier who is resident or carries on business outside the Republic to a recipient who is a resident of the Republic to the extent that such services are utilized or consumed in the Republic otherwise than for the purpose of making taxable supplies.*”
8. Arguably, by satisfying the requirement to register for VAT in SA, the foreign supplier of electronic services is carrying on an enterprise or business activity in SA. Therefore, by definition, the recipient has not acquired imported services for which tax is leviable under 7(1)(c).
9. Section 14(4) of the VAT Act also states that “*where a person carries on activities outside the Republic which do not form part of the activities of any enterprise carried on by him and in the course of such first-mentioned activities services are rendered for the purposes of such enterprise which, if rendered by anybody other than the said person, would be imported services, such services shall for the purposes of section 7(1)(c) be deemed to be imported services supplied and received by that person in respect of such enterprise.*” This would therefore add support to our view that where supplies are made as part of the activities of the enterprise, no imported services will be payable.
10. Section 14(5) of the VAT Act clarifies that “*the tax chargeable in terms of section 7(1)(c) of the VAT Act shall not be payable in respect of a supply which is chargeable with tax in terms of section 7(1)(a) of the VAT Act.*”
11. Further, we also draw attention to SARS’ response to Question 66 of the Frequently Asked Questions Guide on Electronic Services which states that “*Electronic services do not fall within the ambit of “imported services” to the extent that the supplier is conducting an “enterprise” in South Africa and is required to register as a vendor.*” We appreciate this clarification, however, submit that this Guide is not the law.



12. Based on our interpretation of the above legislation, the law would seem to support that the recipient will not need to account for VAT on imported services where the foreign supplier is liable but has not registered for VAT in SA.

13. Submission: We request that SARS clarifies its position on the above matter in an “official publication” for e.g., an Interpretation Note or Binding General Ruling which will constitute practice generally prevailing. Further, if a vendor has erroneously paid VAT on imported services, we recommend that SARS clarifies the refund mechanism that is available to the vendor to recover the VAT erroneously paid.

Should you wish to clarify any of the above matters please do not hesitate to contact us.

Yours sincerely

**Leon Oosthuizen**  
**Chair: VAT Committee**

**Dr Sharon Smulders**  
**Project Director: Tax Advocacy**

*The South African Institute of Chartered Accountants*