



DLA CLIFFE DEKKER
HOFMEYR

TAX ALERT

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THE NEGATIVE IMPACT OF E-COMMERCE VAT ON EDUCATION

Educational institutions making exempt supplies will likely be negatively impacted with the impending introduction of VAT on e-commerce transactions in South Africa with effect from 1 April 2014.

One could even go as far to say that educational institutions had it good under the reverse charge mechanism (also referred to as VAT on 'imported services') as there was arguably no VAT leakage when dealing with foreign suppliers of certain e-commerce services.

Environmental concerns, technology advancements and access to information are all contributing factors to the way in which university students, in particular, embrace the digital libraries offered by educational institutions. Students are able to access extensive amounts of information from electronic databases made available by universities and sourced from foreign suppliers. There is however a concern that the introduction of VAT on e-commerce transactions could have a knock-on effect on the cost of education, as educational institutions would likely need to pass on the additional 14% VAT not previously budgeted for. Educational institutions generally make exempt supplies, the 14% standard rate of VAT charged by suppliers, represents a fixed cost which cannot be claimed back from the South African Revenue Service (SARS) as input tax.

In general, educational institutions making exempt supplies to students were not required to pay VAT on imported services as reliance was placed in many instances (potentially incorrectly) on the exemption catered for in s14(5)(c) of the Value-Added Tax Act, No 89 of 1991 (VAT Act). The aforementioned section provided exemption from VAT on importation where there was a supply of an 'educational service' (undefined term) by an educational institution in an export country, which is regulated by an educational authority in that export country. It is debatable

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whether the supply of knowledge databases by large offshore publishing houses qualify under the exemption in s14(5)(c) of the VAT Act, the main bone of contention being oversight by an educational authority in that export country.

The debate as to whether VAT on imported services should have been charged or not, will, however be put to rest with the introduction of VAT on e-commerce transactions, as the offshore database suppliers would likely be required to register as vendors and charge VAT at the standard rate of 14%. Although the date of implementation will be pushed back to 1 April 2014, there is an important piece of documentation that offshore suppliers of e-commerce services will be waiting for.

This is based on responses by National Treasury and the South African Revenue Service (SARS) to the Standing Committee on Finance (SCOF), on 11 September 2013, stating that the Minister of Finance will issue a regulation as to which e-commerce services will be subject to VAT. No further details have been provided regarding the date on which the regulation will be issued, but it is hoped that it would address potential anomalies and exclude suppliers that were unintentionally caught in the South African VAT net.

Ruaan van Eeden

SUPPLY OF SERVICES FOR CONTINGENT CONSIDERATION

The recent Taxation Laws Amendment Bill 2013 (TLAB), proposed a new section dealing with time of supply rules for contingent services.

The proposed s9(4)(b) of the Value Added Tax Act, No 89 of 1991 (VAT Act) provides that *"where services are supplied under an agreement and the consideration for such services supplied in whole or part is not determined at the time that such services are rendered or performed, that supply shall be deemed to take place when and to the extent that any payment in terms of the agreement is due or is received or an invoice relating to the supply is issued by the supplier or the recipient, whichever is the earliest."*

A vendor must include a supply and calculate output tax in its VAT return if an invoice is issued during the tax period in terms of s16(4) of the VAT Act. The tax is calculated on the tax inclusive consideration indicated on that invoice. Notwithstanding the general rule relating to the date of issue of an invoice, a supply will also be recognised if any payment is received by the supplier before the invoice is issued. However, the current issue is that while there are time of supply rules which apply under s9 of the VAT Act under circumstances where goods have been supplied, even where the consideration cannot be determined upfront, the same provision does not extend to circumstances where services are supplied for a contingent consideration.

The immediate problem that arises is in transactions where the determination of the consideration for the supply is subject to various underlying factors, for example in the mining industry, where the price can only be determined on extraction of the metals and/or the average prevailing exchange rate at the time. Another example referred to in the Explanatory Memorandum of the TLAB, is where certain services are linked to future

contingent events, such as the payment of risk services performed by a company linked to share price performance over a certain period of time. Another a situation that arises is where the payment for certain agency services supplied may be inextricably linked to the price of the underlying goods supplied. To counter these situations where services are offered for a contingent consideration and where no special time of supply rules are in place, s9(4)(b) of the VAT Act has been proposed.

The reason for the proposal is to amend the anomaly and by implementing special time-of-supply rules that will apply to both goods and services, more specifically, where consideration for the performance still needs to be ascertained or can only be ascertained at a later date. The trigger date will occur on the earlier of the date when either payment is due or received or the date of invoice. The effective date for the proposed amendment is 1 January 2014.

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