

Supplies of Electronic Services



Background

Electronic based services have due to the COVID-19 pandemic become key to the survival of many businesses globally. If your business has recently started using technology to provide services to South African based clients you might need to familiarise yourself with VAT regulations applicable to electronic services in South Africa. For business that have been providing services electronically to other businesses in South Africa, related parties in South Africa or the general public, it is important to familiarise yourself with the changes made to the Regulations impacting electronic services referred to on this document as the Original or Updated Regulations.

The Original Regulations limited the scope of services that qualified as electronic services and which must be charged with VAT at the standard rate. The Original Regulations came into effect on 1 June 2014. These have since been updated. The intention of the Updated Regulations which came into effect on 1 April 2019 is to substantially widen the scope of services that qualify as electronic services, so that **all services** supplied for a consideration (subject to a few exceptions), which are provided by means of an electronic agent, electronic communication or the internet, are electronic services and must be charged with VAT at the standard rate.

Old Regulations explained

Foreign suppliers of “electronic services” into South Africa are required to register and account for VAT in South Africa as of 1 June 2014. This regulation defining electronic services, includes a specific list of services and only foreign suppliers of these services fall within the ambit of the South African VAT regime.

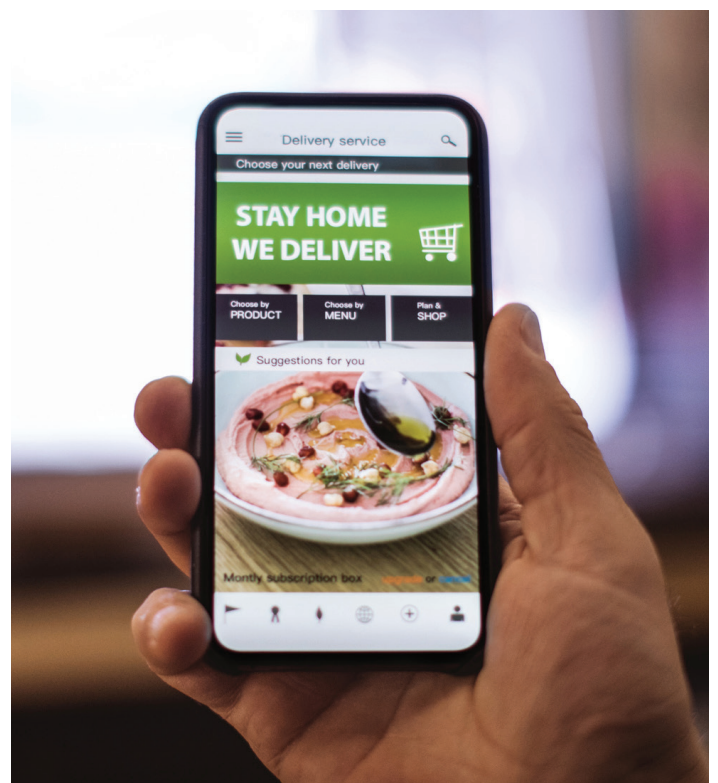
To minimize the administrative burden on global suppliers of electronic services, most jurisdictions differentiate between Business to Business (B2B) and Business to Consumer (B2C) supplies. The reason behind this differentiation is that in most instances where it is a B2B supply the recipient of the service will be allowed to claim the VAT charged as an input tax deduction. Both the Old Regulation and the Updated Regulation, does not make this differentiation thereby subjecting B2B supplies to South African VAT. This outcome was intentional as the South African VAT system does not fully subscribe to the B2B and B2C concepts.

With effect 1 June 2014, any person who carries on an “enterprise” of “electronic services” is obliged to register for VAT purposes in South Africa at the end of the month in which its supplies exceeds R50 000.

The term “electronic services” is defined in section 1 of the VAT Act to mean “electronic services” as prescribed by a Regulation.

The Regulation states that an “electronic service” is a service which is listed in the Regulation and is supplied by means of an “electronic agent”, “electronic communication” or the “internet” for a “consideration”.

In terms of the Regulation, electronic services includes, inter alia, a subscription service to any blog, journal, magazine, newspaper, games, internet-based auction service, periodical, publication, social networking service, webcast, webinar, web site, web application and web series.



Updated Regulations explained

As mentioned above, the Old Regulations have been updated and an Updated Regulation came into effect on 1 April 2019.

Electronic services according to the Updated Regulations means any services supplied by a non-resident for a consideration by means of –

- an electronic agent;
- an electronic communication; or
- the internet

Electronic services are therefore services, the supply of which –

- is dependent on information technology;
- is automated; and
- involves minimal human intervention.

Simply put, this means that from 1 April 2019, suppliers of electronic services will have to pay VAT on a much wider scope of electronic services. The Updated Regulations now include **any services** that qualify as “electronic services” (other than a few exceptions mentioned below).

Exclusions according to the Updated Regulations

Specifically excluded from the Updated Regulations are –

- telecommunications services;
- educational services supplied from an export country, which services are regulated by an education authority under the laws of the export country); and
- certain supplies of services where the supplier and recipient belong to the same group of companies.

Electronic services should be distinguished from those services that, by their nature, are not electronic services, but the product has merely been delivered or communicated by electronic means. For example, if research was done outside of the Republic by a non-resident business, then the service concerned does not become an electronic service merely because the final report was sent to the South African client by e-mail. Instead, the recipient will have to consider whether the research services acquired from the non-resident qualify as “imported services” or not.

This then implies that from 1 April 2019, the foreign electronic services supplier or intermediary must register as a vendor at the end of any month where the total value of taxable supplies made by that supplier exceeds R1 million in any consecutive 12-month period. The 12-month period is calculated from 1 April 2019.

VAT Registrations

Foreign electronic service suppliers that were liable to account for VAT under the Original Regulations, but did not register, will continue to be liable from that earlier date and not only from 1 April 2019 under the Updated Regulations. Registrations can also be made voluntarily if taxable supplies exceeding R50 000 in a preceding period of 12 months have been made.

Failure to register for VAT both under the Old Regulation and the Updated Regulation will result in a default to

the South African Revenue Services (SARS) which will lead to administrative noncompliance penalty equal to 10%, understatement penalty that may go up to 200% and interest at applicable rates, levied. SARS may at times instigate criminal charges should it be of the view that the default was intentional.

When to account for VAT

Electronic service suppliers are required to account for VAT and submit returns according to the tax periods allocated them. Tax periods end on the last day of a calendar month. The cut-off dates in certain instances may be changed. SARS has issued Binding General Ruling 19 (BGR 19) which deals with the “Approval to end a Tax Period on a Day other than the Last Day of the Month”.

Tax periods are generally on a two-monthly basis, being –

- Category A ending on the last day of January, March, May, July, September and November;
- Category B ending on the last day of February, April, June, August, October and December.

Suppliers of Electronic Services will however be required to submit monthly VAT returns under Category C if the value of taxable supplies exceeds R30 million in a consecutive period of 12 months. Submitting VAT returns under Category C means qualifying Suppliers will be required to submit returns ending on the last day of each of the 12 months of the calendar year.

Generally, VAT returns must be furnished and payments made by the 25th day of the first month commencing after the specific tax periods. However, vendors submitting returns electronically may submit their returns and make payments on the last business day of the month during which the 25th day falls.



Tax invoice details

The tax invoice must contain certain particulars as referenced in the BGR 28 dealing with “Electronic Services”, and sets out the following:

- Information that must be contained in a tax invoice, debit or credit note.
- Exchange rate that must be applied to the amount of the VAT charged in South African Rand.
- The manner in which prices must be quoted or advertised.

VAT Rulings

Whether or not a person is supplying electronic services is a question of fact. SARS generally does not rule on questions of fact. However, should the suppliers of electronic services not be certain whether or not to register for VAT in SA, they may submit a request for clarity to **VATElectronic@sars.gov.za**.

Should the nature of the enquiry require further guidance, then there may be a need to apply for a VAT Ruling.

Electronic Foreign Suppliers who have previously obtained a VAT Ruling under the Old Regulation need to re-apply seeking clarity under the Updated Regulation. This is because VAT Rulings cease to be effective when the provisions of the tax laws that are the subject to the VAT Ruling are repealed or amended.

Conclusion

The effect of the Updated Regulation stretches widely as opposed to the Old Regulation. The Updated Regulation include most services provided by a non-resident. We have mentioned that under the Updated Regulation certain supplies of services where the supplier and recipient belong to the same group of companies are excluded. It is however important under the Updated Regulation that any multinational group of companies with a cost sharing structure analyses whether its inter-group transactions subjects a non-resident supplier to South African VAT.

Further, the validity of any private binding rulings issued based on the Old Regulation definition of “electronic services” will have to be reconsidered under the Updated Regulation.

How can SNG Grant Thornton TAX assist you?

1. Help provide an opinion of whether your electronic services constitutes an Electronic service as defined based on the Old Regulation and/or Updated Regulation.
2. Where applicable, assist with a VAT Ruling Application to SARS seeking clarity on whether the electronic services supplied lead to a VAT registration in SA.
3. Help register you for VAT purposes in SA where applicable.
4. Assist in back dating the VAT registration, if applicable, and assist you with measures to initiate the waiver of all applicable penalties.
5. Help with the timely submission of return and payments to SARS.

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