SNG Grant Thornton

Audit | Tax | Advisory

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TaxFocus | Newsletter

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Tax Articles

Changes to VAT legislation on electronic services in South Africa.

The National Treasury of South Africa in consultation with all other relevant stakeholders made a proposal to amend the concept of electronic services in its current form for VAT purposes. The proposal is to align with the digital economy that is evolving and exclude certain businesses from registering for VAT when all necessary requirements are met.

Overview of the current framework:
The South African (RSA) VAT framework for electronic services currently makes no distinction between business to business (B2B) or business to customer (B2C) services. Currently the following services are excluded from the definition of electronic services: telecommunication services, educational services supplied and regulated in the exporting country and services supplied by a member of the same group of companies to a South African resident for consumption by that resident company. Any foreign service provider who supplies the electronic services for consumption in South Africa is required to register for VAT according to the current legislation.

Content creators be aware, content may be included in the RSA VAT net:
The definition of Telecommunication services in the current regulations does not include Content. Consequently, the supply of Content by the Content creators will form part of the definition of electronic services that warrants VAT registration. The Regulation (GN 5993 of 14 March 2025) defines Content to include "signals, writing, images, sounds, or information of any kind that are transmitted or received by a telecommunications service".

The definition of "telecommunication services" has equally been expanded to explicitly exclude Content, and this therefore results in the Content being included in the definition of electronic services for VAT purposes and the Content creators/suppliers being potentially exposed to VAT registration in RSA where all the other criteria are met.

Potential relief for businesses who supply electronic services to business registered for VAT in RSA:
To move closer to the Organisation for Economic Co-operation and Development ("OECD") recommendations which include a distinction between services offered by business to other business (B2B), the regulation dealing with electronic services has been amended.

The amendment to the regulations has the effect of excluding from the requirement to register for VAT, electronic services offered from an export country by foreign businesses registered for VAT in RSA. The foreign business must not have a physical presence in RSA for the registration exclusion to apply.

[1] regulations prescribing electronic services for the purpose of the definition of "electronic services" in Section 1(1) Of The Value-Added Tax Act, 1991 (Notice 5993, 14 March 2025

Other expected developments regarding the registration requirements: The current regulation excludes the supply of electronic services that are supplied by a foreign business to a VAT registered business (VAT vendor) in RSA. From this, services provided to a business that is not registered for VAT in RSA will be exposed to VAT registration requirements. The exposure will extend to services provided by foreign business directly to RSA customers.

The questions that may arise thereafter amongst others:

- Whose burden of proof is it for the registration exclusion?
- Do we need to apportion supplies made to registered VAT businesses against non-VAT vendors to calculate the registration threshold of R 1 million?
- Will certain supply of services be regarded as negligible if majority of services are provided to registered VAT businesses against non-VAT vendors?
- The regulation and application of the VAT Act is effective from the 1st of April 2025.

Please contact SNG Grant Thornton tax services for further assistance.

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Overview of the South African Global Minimum Tax Legislation.

In order to implement the GloBE Pillar Two rules in South Africa, a draft Global Minimum Tax Bill 2024 ("Global Minimum Tax Bill") was published on the 21st of February 2024 and subsequently enacted into law on the 24th of December 2024 through the Global Minimum Tax Act 46 of 2024 ("the GMT Act"). The GMT Act introduces the imposition of Top-up Taxes on qualifying multinational enterprises (MNEs) operating within South Africa.

The GMT Act is deemed to have come into operation on the 1st of January 2024, and qualifying MNE's are required to apply the provisions of the GMT Act in the fiscal year beginning on or after that date (1 January 2024), meaning it has retrospective application. This approach ensures that South Africa does not lose out on any top-up tax that could otherwise be collected by another jurisdiction, particularly concerning MNEs operating within the country.

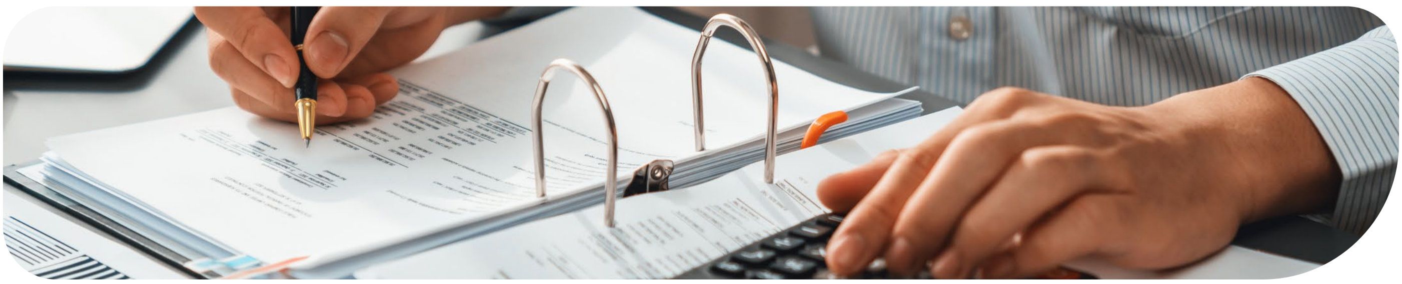
Qualifying Multinational Enterprises

The provisions of the GMT Act apply to entities within a "multinational enterprise group," which is defined in the GMT Act as any group that includes at least one entity or permanent establishment located outside the jurisdiction of the Ultimate Parent Entity, as outlined in Article 1.2 of the GloBE Model Rules, and falls within the scope of Article 1.1 of those rules. In essence, the GMT Act applies to entities within an MNE group that has a total consolidated group revenue that exceeds EUR 750 million in at least two of the four fiscal years immediately preceding the tested fiscal year.

Application of the GMT Act Provisions

Instead of redrafting the Organisation for Economic Co-operation and Development (OECD) Model Rules, the South African GMT Act directly incorporates the OECD GloBE Model Rules, along with related commentary, administrative guidance and safe harbors, into the South African law through Part II of the GMT Act. As a result, the GMT Act references the OECD GloBE Model, specifying which provisions of the OECD GloBE Model will not apply in the context of South Africa.

The GMT Act provides for two key measures to impose the top-up tax for qualifying multinationals paying an effective tax rate of less than 15 per cent in South Africa. These measures are, the Domestic Minimum Top-up Tax (DMTT) and the Income Inclusion Rule (IIR). The DMTT take precedence over IIR and therefore DMTT should be considered prior to the IIR, and this measure ensures that the domestic minimum tax liability is fulfilled before resorting to international mechanisms, like the IIR, to prevent base erosion and profit shifting.



Domestic Minimum Top-up Tax

The DMTT, similar to the Qualified Domestic Minimum Top-up Tax (QDMTT), enables South Africa to impose top-up tax on the profits of low-taxed South African-based entities within MNE groups that do not have an Ultimate Parent Entity (UPE) in South Africa.

The DMTT places joint and several tax liability on the South African entities for any top-up tax related to their low-taxed income.

The following articles of the OECD GloBE Model Rules are specifically excluded from the interpretation of DMTT section of the GMT Act:

- Article 2, which covers the charging provisions
- Article 5.2.4, which covers the allocation of Top-up Tax amongst Constituent Entities.
- Article 5.2.5, which covers allocation of Top-up Tax amongst Constituent Entities when there is no Net GloBE Income for that Fiscal Year.
- Article 5.4.2 to 5.4.3, which covers the additional top-up tax.
- Article 6.2.1(h), which covers the application of Income Inclusion Rule in respect of the acquisition of a target entity.
- Article 6.4.1(b) and (c), which covers the application of Income Inclusion Rule and Under-Taxed Profits Rule (UTPR) in connection with Joint Venture and Joint Venture Subsidiaries.
- Article 6.5.1(e) to (f), which covers the application of Income Inclusion Rule and UTPR in connection with Multi-Parented MNE Groups.
- Article 7.3, which covers the eligible distribution tax system.
- Article 9.3, which covers the exclusion from the UTPR of MNE Groups in the initial phase of their international activity.

Furthermore, the QDMTT safe harbours specified in the GloBE Commentary will not be applicable when applying the provisions of DMTT under the GMT Act.

Income Inclusion Rule

The IIR requires the domestic UPE entity of the MNE Group to pay top-up taxes equivalent to its direct or indirect ownership interest in the foreign entity with low-taxed income. For a South African-based UPE with foreign subsidiaries or permanent establishments, the IIR may apply to the top-up tax determined in accordance with Articles 2.1 to 2.3 of the GloBE Model Rules.

The following articles of the OECD GloBE Model Rules are specifically excluded from the interpretation of the IIR section of the GMT Act:

- Articles 2.4 to 2.6, which covers the UTPR charging provisions.
- Article 9.3, which covers the exclusion from the UTPR of MNE Groups in the initial phase of their international activity.

It is important to note that the UTPR is not included in South Africa's GMT legislation.

Obligation to Submit the GloBE Information Return

Each South African entity belonging to MNE group, is required to submit the GloBE information return (GIR) in terms of the GloBE Minimum Tax Administration Act, 2024 (GMTA Act). In terms of the GMTA the GIR is a return that conforms to the requirements of Articles 8.1.4 to 8.1.6 of the GloBE Model Rules. The GIR will be submitted in South Africa only if the UPE/designated filing entity is not located in a country that has a bilateral or multilateral agreement with the South African Revenue Services (SARS), which facilitates the automatic exchange of GIRs (referred to as a "qualifying competent authority agreement") for the relevant fiscal year.

An entity can be appointed by the MNE Group to file returns on behalf of the MNE Group entities, the selected entity is commonly referred to as the" designated filing entity". This entity will be responsible for submitting returns on behalf of the MNE Group. The GMTA Act does provide for an alternative whereby by an entity that is part of an MNE group may be selected as a designated local filing entity. The selected local designated entity will be responsible for filing the GIRs on behalf of all the South Africa entities within the MNE Group.

The GloBE information return must be submitted within 15 months after the end of the MNE Group's fiscal year (or within 18 months if the South African entity(ies) has never been obligated to submit a GloBE information return in another jurisdiction prior to the 1st of January 2024). If the designated filing entity (located in a country that has a qualifying competent authority agreement with South Africa) of the MNE Group has filed the GloBE information return in its country, the South African entity(ies) must notify SARS 6 months before the due date of the return. The notification should specify the entity responsible for submitting the GloBE information return and the jurisdiction where it will be submitted.

Payment of the Top-up Tax, Penalties, Interest and Refunds.

The top-up tax can be paid by the designated local filing entity or the designated filing entity on behalf of all local entities. If the designated local filing entity or designated filing entity fails to make the payment, the South African entity(ies) will be liable for the top-up tax.

Non-submission of the GloBE Information Return or the notification may result in SARS imposing an administrative penalty of up to R50,000. The penalty may be doubled or tripled in the following scenarios:

- **If the unpaid top-up tax exceeding R5 million, the penalty imposed may be up to R100,000, and**
- **If the unpaid top-up tax exceeding R10 million, the penalty imposed may be up to R150,000.**

Other penalties outlined in the Tax administration Act 28 of 2011 (TAA) may be imposed by the SARS for failure to comply with the obligations set out in the GMTA Act. Interest may be imposed for failure to comply with the obligations outlined in the GMTA Act, the imposition of interest will be regulated by TAA.

SARS is required to refund the South African entity(ies) any amount that is due to excess top-up-tax payments, in accordance with the TTA.

Records Retention Requirements

The TAA requirements should be considered when determining the records that should be retained by the domestic entity. In addition to the record retention obligations under the TAA, the domestic entity must also maintain records to demonstrate compliance with both the GMT Act and the GMTA Act. The period that the records, books of accounts, or documents must be retained for purposes of the GMTA Act is extended to seven years.

Impact of GloBE Rules on businesses

For South African headquartered MNE groups operating in jurisdictions like the Virgin Islands, Guernsey, Isle of Man, Jersey, or other regions with low tax rates, it is essential to evaluate how the implementation of the GloBE rules affects the overall tax risk for the group. These regions, historically known for their favorable tax rates, could face growing pressure to align with global tax standards, potentially leading to higher tax obligations.

In South Africa, the GloBE rules could significantly impact businesses in sectors that benefit from substantial tax incentives, such as mining, research, filmmaking, manufacturing, and those operating in Special Economic Zones (SEZs).

It is recommended that qualifying MNE groups in these industries conduct comprehensive assessments to understand how these changes will affect their global tax position. Failure to comply with the GloBE rules could lead to additional taxes, penalties, and reputational damage. By conducting this assessment, businesses can identify potential risks, adjust their strategies, and ensure ongoing compliance with the evolving global tax landscape.

Should you require personalized advice or further clarification regarding South Africa's Global Minimum Tax legislation and its potential impact on your business, please do not hesitate to contact us. Our team is available to provide tailored guidance and support to ensure your compliance with the evolving tax landscape.

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Case Law

Deductibility of similar finance costs – Taxpayer Trust v The Commissioner of the SARS

Ordinarily, in raising finance for a business, a taxpayer may incur finance costs such as raising fees, services fees and administration costs. These costs can be regarded as either capital or revenue in nature which determine whether such costs are deductible or not. In determining whether such finance costs can be deducted from a taxpayers taxable income in terms of the Income tax Act it is vital to consider what the Act provides in section 11(a) and 24J, read with 23g.

In a recent court case between Taxpayer Trust and The Commissioner for South African Revenue Services (IT 76795) [2025] ZATC 1 (13 January 2025), Taxpayer Trust sought to claim a section 24J or alternatively a section 11(a) deduction in relation to finance raising costs that were incurred in obtaining finance that was used to purchase and to also effect improvements on a commercial property. The taxpayer's argued that the raising fees are deductible ''interest or other similar charges'' as envisaged in section 24J. However, SARS contended that the raising fees are not ''interest or similar charges'' and are capital in nature and could therefore not be deducted from the taxpayers' income.

Section 24J(1) provides that interest includes the gross amount of any interest or similar finance charges, discount or premium payable or receivable in terms of or in respect of a financial arrangement.
Under section 24J(2), amounts of interest, as calculated under section 24J for the borrower of an instrument, are deemed to be incurred and are deductible from the income of a taxpayer if certain requirements are met.

Some of the important interpretations that the court had to consider in arriving at the final ruling included the interpretation of the meaning of ''interest'' and similar charges. In doing so, the court considered the principles that were established in certain relevant past court cases. In interpreting the meaning of ''includes'' as envisaged in section 24J(1), the court made reference to a court case Attorney-General, Transvaal v Additional Magistrate, Johannesburg . In this court case, Innes CJ held that "include" when "used in a definition clause or in an interpretative sense is no doubt generally a word of enlargement" and De Villiers AJ held that "including" in that context "is a word of addition, not of limitation".

Based on the above the court in Taxpayer Trust v SARS agreed that the use of "including" enlarges or broadens the definition of interest for purposes of section 24J. The court also interpreted the use of ''or'' between interest and similar finance charges. The court considered the Oxford dictionary definition, which indicates that "or" is "used to link alternatives". Therefore "similar finance charges" is an alternative to "interest". It is something other than interest.

Furthermore, the court interpreted the meaning of ''finance charge'' by referring to the Oxford dictionary meaning which defines ''finance charge'' as "an amount paid by the borrower to a lender for arranging a loan, or interest amounts paid on the loan". The court indicated it was accepted by all that raising fees are finance charges.

Moreover, the court's interpretation also covered the meaning of ''similar''. The court stated that "similar" connotes some resemblance of some sort. It added that ''similar" does not mean "identical to" or something to that effect. In this context, the court referred to the court case R v Revelas, in which it was held that similarity may be basic or superficial, general or specific and thus the words 'similar' should not be given the meaning 'the same'.

Based on the arguments above, the taxpayer contented that there must be relevant resemblance to interest in one or more respects and "similar" cannot mean "strictly comparable by having characteristics in common" or "predominantly have matching characteristics to interest" as SARS submitted.

SARS argued that for a raising fee to be a "similar finance charge" it must have the fundamental characteristics of common law interest. It was contented that as the raising fees were incurred prior to the effective dates of the loan or facility agreements, they were "separate and distinct to and from the interest that can only occur after the loan or facility agreements become effective". However, the court had a different view on this assertion as it argued that the timing difference between the incurral of raising fees and the incurral of interest is not a relevant dissimilarity because it does not change the nature of the charges in question.

Furthermore, SARS argued that because the raising fees had to be paid before the taxpayer would receive the benefit of the loan, the raising fees were not compensation for the use of the money. However, the court did not agree with this assertion, contending that the payment of the raising fees is part and parcel of the compensation for the loan. Without the payment of the raising fees there would be no loan, and the taxpayer would not have had the benefit of the money.

The court also argued that raising fees was a consideration for arranging the loans and not for the use of the loan. The raising fees are indeed a consideration for the arrangement of the loan and without the payment of the raising fees there would be no loan. This underscores the close association between the raising fees and the loans and indicates a relevant similarity between the two

SARS also argued that the raising fees involved once off payments while interest was paid periodically. However, this dissimilarity was also considered irrelevant by the court.

Based on all the interpretations and arguments as mentioned above, the court concluded that the Taxpayer Trust was entitled to deduct finance-raising fees as there was a close link between the raising fees and loan. The raising fees were compensation or consideration for obtaining the loan. Without the payment of the raising fees, the loan would not be obtained and therefore the court determined that the raising fees satisfy the definition of "interest or similar finance charges" as envisaged by section 24J(1).

In conclusion, as determined by the court, it is imperative to note that in determining whether raising fee meets the definition of ''interest or similar finance charges'' the word ''similar'' should not be construed to mean ''same'' and thus raising fees need not have the same characteristics as interest. What is important is to determine whether there is a close link or connection between the raising fee and the loan raised, and this will inform the deductibility of the raising fees.

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Kenyan Tax Appeal Tribunal Rules on Resale Price Method vs. Transactional Net Margin Method in Transfer Pricing Case

In a recent ruling, the Kenyan Tax Appeal Tribunal addressed a critical issue regarding the most appropriate transfer pricing method in controlled transactions. The case involved Avic International Beijing Limited (the Appellant), a Kenyan company engaged in the importation, assembly, and sale of trucks, machinery, and motor vehicle spare parts. The Kenya Revenue Authority (KRA) had applied the Transactional Net Margin Method (TNMM) for determining the arm's length price, which led to significant transfer pricing adjustments. Avic International contested this decision, arguing that a more suitable method would have been the Resale Price Method (RPM), which they believed was better aligned with their business model.

Avic International claimed that KRA's application of the TNMM resulted in unrealistic additional revenues and that the tax authority had incorrectly charged corporate tax on revenues. One of the core matters of the dispute was centered around the most appropriate transfer pricing method for the transaction, with the Appellant arguing that RPM was more suitable.

RPM, according to the Appellant, should apply because they purchased CKD motor vehicle parts from a related party without value addition and simply assembled and sold the final products. However, the KRA rejected RPM, citing differences in functions, International Commercial Terms ('Incoterms'), missing financial data, and the Appellant's role in value-adding activities, deeming TNMM as more appropriate.

RPM vs. TNMM: Key Differences and the Tribunal's Rationale

The RPM) is a traditional method used to determine the arm's length price by focusing on the price at which a related party sells to an unrelated customer. The method calculates an arm's length gross margin, taking into account the functions performed, risks incurred, and the profit that should remain for the sales company. In contrast, the TNMM looks at the net profit margin relative to a base such as sales, costs, or assets, comparing the tested party's profitability with that of comparable independent entities.

The Tribunal, however, upheld the use of TNMM, reasoning that the Appellant operated as a fully-fledged manufacturer while the related entity in China primarily acted as a procurement service provider. The Tribunal also pointed out that RPM was unsuitable due to the lack of comparable data, product and functional differences, and the Appellant's significant value addition. The Tribunal also noted issues such as mismatches in Incoterms (FOB vs. CIF) and missing financial data for the Appellant's related party transactions. Consequently, TNMM was deemed the most suitable method for determining the arm's length price, leading to a transfer pricing adjustment in the 2017-2021 period.

Conclusion: Key Takeaways

This case emphasizes the critical importance of selecting the most appropriate transfer pricing method based on a comprehensive functional analysis. The Tribunal's preference for TNMM over RPM highlights the need for companies to provide robust benchmarking studies, ensure functional comparability, and maintain thorough documentation (including translations of key agreements). Businesses must also consider Incoterms, NACE Codes for industry classification, and ensure compliance with OECD guidelines and local tax laws to ensure that they have substantial evidence that may be used to defend their position in the tax authority audits.

In order to reduce the risks of transfer pricing adjustments and penalties, taxpayers should regularly review their transfer pricing policies, maintain up-to-date documentation, and seek professional advice. Engaging in Advance Pricing Agreements (APAs) can also help identify risks early and optimize tax efficiency. For expert guidance on transfer pricing issues, businesses can rely on specialized firms, who offer dedicated support for complex transfer pricing matters.

If your business requires assistance with transfer pricing services or transfer pricing documentation, do not hesitate to contact us. Our team of experts is ready to provide tailored support to help you navigate the complexities of transfer pricing and ensure compliance.

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Recently Published Rulings

Binding Class Rulings

Number	Date of issue	Applicable legislation	Subject
BCR 92	31 March 2025	Income Tax Act, 1962	Application of the proviso to section 8EA(3)

Binding Private Rulings

Number	Date of issue	Applicable legislation	Subject
BPR 414	31 March 2025	Income Tax Act, 1962	Application of proviso to section 8EA(3)

Available from: https://www.sars.gov.za/legal-counsel/interpretation-rulings/published-binding-rulings/

SARS Updates

2025 Revenue Collection

On 1 April 2025, SARS announced a positive revenue-collection outcome for the 2024/25 fiscal year. By the end of March 2025, **SARS had collected a record gross amount of R2.303 trillion, representing year-on-year growth of 6.9% against estimated nominal GDP growth of 5.4% (2024/2025).** SARS paid refunds of R447.7 billion to taxpayers, the highest-ever amount in refunds (versus R413.9 billion in the prior year), representing growth of 8.2%. This brings the collected net amount to R1.855 trillion, which is almost R8.8 billion higher than the revised estimate, and R114.0 billion more than last year's R1.741 trillion.

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