BIZCOMMUNITY

The taxing problem of e-commerce

The digital commerce environment is developing and evolving at such a rate that global tax systems are struggling to keep up. VAT and its application to e-commerce, for example, has given rise to a variety of compliance challenges for governments because digital commerce transcends traditional jurisdictional boundaries.

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Staying relevant

In South Africa, taxing electronic services was implemented on 1 June 2014, ahead of many other countries. The rules impose a liability on the supply of electronic services by any supplier from a place in an export country (any country other than South Africa) where at least two of the following factors are present:

- the recipient is a South African resident;
- payment for such electronic services originates from a registered bank; and/or
- the recipient of the supply has a business, residential or postal address in South Africa.

Certain qualifying electronic services were prescribed by the minister of finance, by regulation, in the *Government Gazette* on 28 March 2014. Simply stated, the VAT rules compel foreign merchants to register as South African VAT vendors and to account for VAT, among other things, where the foreign merchant provides electronic services to South African consumers or receives payment for such electronic services from a South African bank and the revenue exceeds R50,000 a year.

This compulsory registration is significantly less than the registration threshold of R1m that applies in relation to all other types of supplies. A foreign merchant who supplies electronic services and who has registered as a vendor in South Africa is required to account for VAT at the standard VAT rate of 14% on all the defined electronic services provided by the foreign merchant to South African customers. The rules in relation to taxation of electronic services were initially well-received by business and it thus important to ensure that the VAT rules regarding e-commerce remain relevant and true to South Africa's VAT principles.

Davis Tax Committee recommendations

As part of its comprehensive review of the South African tax system, the Davis Tax Committee (DTC) made certain recommendations in relation to VAT and e-commerce transactions in its *Interim Report on VAT*, released on 7 July 2015

(DTC VAT Report). These include, among other things, the following:

- that supplies between group companies be excluded from the ambit of the VAT rules;
- that the invoice basis of accounting for VAT be the default position; and
- that no distinction be made between supplies made between businesses, so-called business-to-business (B2B) and business-to-consumer (B2C) supplies and no concessions be granted by manipulating the list of qualifying electronic services. In considering the VAT e-commerce regulations in a broad manner, the DTC recommends that more flexible legislation is required to ensure South African VAT e-commerce legislation stays relevant.

Keeping legislation current

The escalating problems of deteriorating tax revenue collection and further downward revisions to economic growth projections have significantly eroded government's fiscal position. Tax revenue, as described in the Medium Term Budget Policy Statement, is projected to fall short of the 2017 Budget estimate by R50.8bn, the largest under-collection since the 2009 recession.

Fortunately, South Africa has a relatively low VAT policy gap owing to the relatively straightforward and simple VAT policy structure in place. To ensure that this position is maintained, it is imperative that South Africa's e-commerce legislation keep pace with recent developments and takes heed of the recommendations in the DTC VAT Report.

The proposal contained in the 2015 budget that software be included in the list of electronic services in the regulations would also assist with broadening, strengthening and consolidating the VAT e-commerce base and will ensure that South Africa's e-commerce legislation remains current thereby enabling the fiscus to realise the maximum potential tax revenue possible from e-commerce transactions ending in South Africa.

Source: Webber Wentzel