UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA

Taxation of the Digital Economy: The impact of South Africa's Value-added Tax provisions on Tax compliance

by

Pieter-Willem Janse van Vuuren

U19328402

Submitted in partial fulfilment of the requirements for the degree
MCom in Taxation

in the

FACULTY OF ECONOMIC AND MANAGEMENT SCIENCES

at the

UNIVERSITY OF PRETORIA

Supervisor : Prof Annet Wanyana Oguttu

Date of submission:
2019-10-18

UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA

DECLARATION OF ORIGINALITY
UNIVERSITY OF PRETORIA

The Department of Accounting Sciences places great emphasis upon integrity and ethical conduct in the preparation of all written work submitted for academic evaluation. While academic staff teach you about referencing techniques and how to avoid plagiarism, you too have a responsibility in this regard. If you are at any stage uncertain as to what is required, you should speak to your lecturer before any written work is submitted.

You are guilty of plagiarism if you copy something from another author's work (e.g. a book, an article or a website) without acknowledging the source and pass it off as your own. In effect you are stealing something that belongs to someone else. This is not only the case when you copy work word-for-word (verbatim), but also when you submit someone else's work in a slightly altered form (paraphrase) or use a line of argument without acknowledging it. You are not allowed to use work previously produced by another student. You are also not allowed to let anybody copy your work with the intention of passing if off as his/her work. Students who commit plagiarism will not be given any credit for plagiarised work. The matter may also be referred to the Disciplinary Committee (Students) for a ruling. Plagiarism is regarded as a serious contravention of the University's rules and can lead to expulsion from the University.

The declaration which follows must accompany all written work submitted while you are a student of the Department of Taxation. No written work will be accepted unless the declaration has been completed and attached.

Full names of student: Pieter-Willem Janse van Vuuren

Student number: u19328402

Topic of work: Taxation of the Digital Economy: The impact of South Africa's Value-added Tax provisions on Tax compliance

Declaration

1. I understand what plagiarism is and am aware of the University's policy in this regard.
2. I declare that this dissertation is my own original work. Where other people's work has been used (either from a printed source, Internet or any other source), this has been properly acknowledged and referenced in accordance with departmental requirements.
3. I have not used work previously produced by another student or any other person to hand in as my own.
4. I have not allowed, and will not allow, anyone to copy my work with the intention of passing it off as his or her own work.

SIGNATURE Pieter-Willem Janse van Vuuren

DEDICATION

I dedicate this work evenly between the following involved parties who assisted me endlessly to finalise this document: my wife, my mother, Prof Annet Oguttu, all the staff at the University of Pretoria and my current employer Ernst and Young.

Table of Contents

1 Background 1
1.1 Introduction 1
1.2 Problem statement 6
1.3 Research question 7
1.4 Research objectives 8
1.5 Research methodology 8
1.6 Comparative study 9
1.7 Scope covered by this study 10
1.8 Structure of study 10
2 OECD guidelines on vat policy in the digital economy 12
2.1 Introduction 12
2.2 Oecd – Key principles for E-commerce 13
2.3 Oecd – International VAT guidelines for E-commerce 15
2.3.1 Summary of the OECD VAT/GST guidelines 16
2.4 Overview 18
3 Taxation of electronic services in the EU 19
3.1 An introduction to VAT and E-commerce in the EU 19
3.2 An overview of E-commerce in the EU 20
3.3 EU Place of supply rules 21
3.4 2015 EU VAT Directive amendments 22
3.4.1 Non-EU businesses 22
3.4.2 EU businesses 23
3.5 Evaluation of the MOSS and Place of supply rules 23
3.5.1 The Law applicable: Article 56,57,58 & 59 of the EU VAT Directive 24
3.5.2 Complexities created by the EU MOSS scheme 27
3.5.2.1 Difficulties in establishing the place of supply correctly 27
3.5.2.2 Lack of clarity as to whether the services related to a specific business ..27
3.5.2.3 Disruptions caused by the new MOSS requirements 28
3.6 The New 2019 and 2021 EU VAT Rules For E-commerce And Services 28
3.6.1 Introduction of a threshold amount to the MOSS Scheme 29
3.6.2 The extension of the MOSS regime 29
4 Taxation of electronic services in South Africa 30

4.1 Introduction to VAT and E-commerce in South Africa 30
4.2 Reverse charge mechanism....32
4.3 Businesses obligated to register for VAT 33
4.4 Enterprise definition....34
4.4.1 Meaning of electronic services (Pre- 1 April 2019)....35
4.4.2 Meaning of electronic services (Post- 1 April 2019) 35
4.4.3 Meaning of “Export Country” 37
4.4.4 The Recipient must be a resident of the Republic....37
4.4.5 Payment received from a registered bank 38
4.4.6 The recipient of the electronic service has a business, residential or postal address within South Africa....38
4.5 VAT registration requirements....39
4.5.1 Registration requirements 39
4.5.2 VAT registration process....40
4.5.3 Administrative challenges 41
5 Comparative analysis 42
5.1 To what extent has South Africa complied with the OECD Guidelines....43
5.2 Recommendations for South Africa to be in line with OECD Guidelines....51
5.3 Comparison between EU and South Africa....52
5.4 Recommendations to emulate from the EU VAT Directive....53
6 Conclusion....54
References 56

KEY WORDS

Value Added Tax

E-commerce

Digital products

VAT on E-commerce

Place of supply

The electronic services Regulations

Digital economy

Destination based taxation

Origin-based taxation

Common consolidated corporate tax base

1 BACKGROUND

1.1 INTRODUCTION

The pace of globalisation is ever-increasing. The integration of world markets and increased cross-border transactions create international tax challenges that need to be addressed. A study conducted in 2017 showed that online trading had grown year on year by over 20%, with a 24% increase in trading in 2017 (Martynkiewicz-Frank, 2018: 159).

This study considers how indirect taxes, in particular Value Added Tax (VAT), can be effectively applied to digital sales (OECD, 2014: 5). Although there are various indirect taxes used in taxing the value of the supplies of "goods and services", VAT has become the most popular as it is easier to administer than other taxes and it is the least distorting type of tax. There are some countries that refer to it as "Goods and Services Tax" (GST), the method behind charging the GST is however identical to that of VAT.

VAT is essentially imposed on the supply of "goods and services" indirectly by means of a "value-add" in each step of the supply-chain which place the ultimate tax liability on the ultimate consumer. The final consumer is therefore indirectly taxed through the taxing of each transaction until the goods reach them (Stiglingh, M, 2016: 1019).

Globally, there has been an increase in implementing VAT systems, to the point that VAT is regarded as the most significant development in tax in decades (Lamensch, 2015: 8). It was found that in the previous century, VAT accounted for roughly 20% of the global tax revenue and has been adopted by over 240 countries. In the 1960's roughly 10 countries applied VAT as consumption tax, today more than 150 countries levy VAT, which includes developed and emerging markets (Lamensch, 2015: 10). Currently all the OECD member countries levy VAT. The United States is a big exception as they do not levy VAT. They do however apply sales or use tax which is considered a substitute to VAT (Nalewajk, 2016).
Worldwide, the digital taxation issue that countries are grappling with to ensure that their VAT systems are effective, is to determine which jurisdiction has taxing rights on the online profits (Nalewajk, 2016). This question requires consideration on whether a digital

transaction should be taxed where it is consumed, or where the suppliers have a fixed place of residence. Another issue is, that the VAT systems in countries around the world in their current forms, may not be equipped to deal with the latest developments in technology (Nalewajk, 2016).

An important concept used by VAT regimes worldwide to levy VAT on supplies is "place of supply" rules. These rules are used in most developed countries in order to determine which country will have the right to levy VAT. In general, VAT is usually imposed where goods or services are supplied or deemed to be supplied (Lamensch, 2015: 16). Thus, the "place of supply" rules identify the jurisdiction which has taxing rights to specific supplies. When goods and services are supplied across borders, the "supply" can either be in the country of the supplier or in the country where the consumer is located. Thus, there is a requirement to differentiate between either "origin", which is the jurisdiction of the supplier, and the "destination" which is where the customer is located (Lamensch, 2015: 18). The decisions policy makers make between either an "origin" or a "destination tax system" has significant social and economic consequences (Lamensch, 2015: 18). This decision will directly influence the amount of tax revenues to be collected, as it will determine which jurisdiction has taxing rights on the supplies. It will also have a significant influence on whether businesses will embark on new business ventures in a foreign country.

From a practical point of view the "origin principle" provides advantages as suppliers account for VAT at the home country VAT rate on all their supplies. Suppliers are thus familiar with the VAT process which reduces the administration burden and compliance cost (Krinis, 2016: 61). Another benefit from a government's point of view is that the opportunities for fraud is also reduced (Lamensch, 2015: 19).

However, an origin-based tax system leads to non-competitive advantages and distorts fair competition between local and cross-border suppliers as consumers are influenced by the resulting tax implications on the price of supplies. It is also well known that origin-base taxes disrupt the business of net importers as they are required to declare the importation and then claim the VAT from the export country (Lamensch, 2015: 19). This system is also known as the reverse charge mechanism or VAT on electronic services scheme and assist jurisdictions in taxing goods and services where it is consumed. This in effect means that

the origin principle also levies VAT based on the destination principle because of the distribution of revenue to the destination jurisdiction. Consequently, the origin principle is not commonly used by countries globally (Lamensch, 2015: 20).

The Organisation for Economic Cooperation and Development (OECD) is one of the main role players in addressing international tax challenges. The Base Erosion and Profit Shifting (BEPS) project, which is spearheaded by the OECD, attempts to minimise the potential for companies to avoid, or reduce, the tax burden in their country of residence through applying modern business structures or through moving intangible assets to jurisdictions with lower tax rates (Picciotto, 2013: 1108). In 2015, the OECD developed 15 Action measures which, if adopted by countries worldwide, would protect their tax bases from BEPS (OECD, 2015 2).

The very first action measure recognised in the 15 BEPS Action measures, is to address the tax risks associated with the digital economy (OECD, 2015: 2). BEPS Action 1 places significant focus on tax fairness between local and offshore businesses by ensuring that offshore businesses do not abuse the borderless nature of the digital economy, by using digital business transactions to avoid taxes. This could result in foreign businesses being able to provide products at lower prices than local businesses, as local businesses comply with strict tax compliance requirements which leads to higher sales prices inclusive of tax. In general, BEPS Action 1 focus on ensuring that taxes are levied in the countries where profits are earned, focussing on principles of efficiency, certainty, simplicity and fairness (OECD, 2015: 2; De Bruyn, 2016: 13).

BEPS Action 1, which deals with “addressing the digital economy”, aims to address digital transactions by taking a comprehensive approach to analyse both direct and indirect tax threats posed by online businesses (OECD, 2015: 5). After analysing different types of companies and business models to understand the digital economy, Action 1 addresses the possibilities of companies having a digital presence in various countries without being liable for taxes in those countries.

Based on the views of Schippers and Verharen (2018), the OECD's BEPS measures do not fully deal with all the tax challenges created by digitalisation, but at least BEPS Action 1 addresses most of the digital developments.

VAT is applied internationally to address tax challenges presented by the digitalisation (OECD, 2015: 2). On 1 January 2015, the European Union (EU) enacted specific VAT provisions to tax electronically supplied services (European Commission sixth VAT Directive, 2006). In South Africa, legislation was enacted to protect the fiscus against the threat of virtual markets by levying VAT on digital transactions provided by foreign suppliers. South Africa's electronic services Regulations, which tax "electronic services" as defined, came into effect on 1 June 2014 (National Treasury electronic services Regulations; 2014). In short, this was done by updating the "enterprise" definition in section 1 of the "Value-Added Tax Act number 89 of 1991" (hereafter referred to as the VAT Act). While these regulations have been successfully implemented, amendments to the legislation were enacted in 2019. These amendments will also be reviewed in this study (National Treasury electronic services Regulations, 2018).

South Africa introduced VAT for the first time on 30 September 1991. VAT is a broad-based tax levied indirectly on services received or consumption of goods (VAT Act, 1991; Moodley, 2016: 13). The South African VAT system works well in South Africa when goods and/or services are supplied within the borders of the Republic. It becomes more technical when goods are supplied cross-border. Different countries have different taxing rules that could possibly lead to double taxation or double non-taxation (Schippers and Verharen, 2018: 2). These challenges are compounded with the rapid growth of technology which has expanded corporate business models across multiple jurisdictions. This necessitates a VAT-compliance system in South Africa that is easy to understand and implement as this will motivate foreign investment and not disrupt the ease of doing business in South Africa.

As mentioned above, in 2014, South Africa's National Treasury addressed the challenge of the digital economy by enacting provisions in the VAT Act which required foreign electronic services providers to register for VAT (National Treasury electronic services Regulations, 2014). National Treasury originally published the Regulations prescribing electronic services in reference to the definition of electronic services in section 1(1) of the VAT Act. However,

the 2014 Regulations limit the scope of electronic services that are caught in the Regulations (National Treasury electronic services Regulations, 2014). In 2015, the Davis Tax Committee (DTC) report identified provisions to be updated in the electronic services Regulations (DTC VAT Report, 2015: 10). Consequently, in 2018 National Treasury introduced amendments to the electronic services Regulations, which entailed expanding the electronic services definition to enlarge the South African tax base going forward (National Treasury electronic services Regulations, 2018: 3).

The intention of the amendments to the Regulations, which became effective on 1 April 2019, is to broaden the electronic services definition to apply to: "all services that are provided by way of an electronic agent, electronic communication or the internet for any consideration" (National Treasury electronic services Regulations; 2018: 3).

In the EU, The VAT system, is facing similar challenges in the modern digital economy. A VAT system based on the "destination principle" was introduced in the EU as a possible solution (European Union Council Directive 2006/112/EC, 2006). A destination principle tax system effectively follows the transaction and attempts to tax in the destination jurisdiction in which the supply is consumed. At a seminar held at the Erasmus University in Rotterdam on 11 October 2017, Rita De la Féria (Professor of Tax Law at the University of Leeds) opined that although she does not regard destination-based taxation as any more or less legitimate than origin-based taxation, it would put a stop to tax competition and avoidance (De La Féria, 2018: 1). At the same seminar, Rogier Vanhorick (Partner and global digital leader at Deloitte) highlighted some risk in regard to a destination-based taxation system and consequently proposed aligning taxes with payments ("Follow the money" principle). The follow the money principle considers the recipient of the service from whom the payment was received to be the final consumer regardless who that recipient is (Schippers and Verharen, 2018: 62). The reason for Vanhoricks's view was because it would prove difficult to determine destination. The same could however be said in regard to the following the money principle as this is ultimately also a matter of determining the location of the consumer, because taxation would then still be based on the destination principle (Schippers and Verharen, 2018: 62).

The OECD's VAT/General Sales Tax (GST) Guidelines explains place of supply rules, which are applied by most countries (OECD VAT/GST Guidelines, 2017: 37). According to the OECD's guidelines, non-resident suppliers should be required to register and pay VAT/GST in the jurisdiction where tax is due. These guidelines recommend that jurisdictions apply a "simplified registration and compliance regime" to assist in the administrative burdens on offshore suppliers (OECD VAT/GST Guidelines, 2017: 37).

The digital economy, in particular Electronic commerce (E-commerce) entails Business to Business (B2B)[1] and Business to Consumer (B2C)[2] transactions (Kenton, 2019: 1). This study analyses both types of cross-border electronic transactions, with an increased focus on business transactions in South Africa and in the EU. Thereafter, any benefits and shortcomings relating to the administration and compliance system of VAT registration will be analysed from a South African context. This is because the challenges in the administration of VAT registration may impact on the ease of doing business in South Africa, which may lead to demotivation of foreign investments and ultimately impacts South Africa's GDP as a whole.

1.2 PROBLEM STATEMENT

It is apparent that the trend in the global economy, which was previously focused on the trading of goods, is now transforming into a global economy based around services (Schippers and Verharen, 2018).

VAT is levied in South Africa on goods and services supplied within its borders (VAT Act, 1991: Section 7(1)). All suppliers of these goods and services are obligated to register as VAT vendors and charge VAT on their taxable supplies at either 15% or 0% (VAT Act, 1991: Section 7(1)). As foreign suppliers of digital products have no physical presence in South Africa, there was previously no requirement for these companies to register as VAT vendors in South Africa (VAT Act, 1991: Section 7(1)). This led to an unlevel playing field between local businesses and foreign suppliers providing online products.

[1] Business-to-business (B2B) is a situation where one business makes a commercial transaction with another via an online sales portal (Kenton, 2019).
[2] "The term business-to-consumer (B2C) refers to the process of selling products and services directly between consumers who are the end-users of its products or services" (Kenton, 2019).

In 2014 National Treasury addressed the issue by enacting provisions in the VAT Act which required foreign electronic services providers to register for VAT (National Treasury, 2014). This initial step taken by the "South African Revenue Services" (SARS) set the course in the right direction and pioneered the digital market landscape in South Africa (Gopal, 2017: 3). The original 2014 regulations were successfully implemented as it led to the registration of a high number of foreign electronic services providers. The reason for this successful implementation of the original regulation was because the rules are simple to understand for both the foreign taxpayers and the South African tax practitioners who have to implement these rules (Gopal, 2017: 7).

Despite the initial progress achieved by the current legislation, it is still too limited to address the growing threat to the fiscus posed by the digital economy (SARS Explanatory Memorandum, 2019: 4). Legislation will have to be broadened however, this only seems possible to achieve by placing additional administrative burdens on all foreign and South African electronic services providers. This will add to the frustration of foreign companies and further disrupt the ease in doing business in South Africa (Gopal, 2017: 9).

This study focuses on the VAT consequences associated with the new electronic services legislation in South Africa, focussing on the various South African and foreign companies which will have additional administrative burdens, which may lead to minimum revenue collection for the fiscus. The reason this will result in minimum VAT revenue for the fiscus, is because the majority of these transactions will be between businesses (DTC Final VAT Report, 2018: 18). When a foreign business provides a service to a local business and applies the standard VAT rate of 15%, the local supplier will also claim VAT input at 15%. This effectively means no additional revenue, at the cost of severe administrative burdens placed on global businesses (De Swardt and Oberholzer, 2006: 22).

1.3 RESEARCH QUESTION

Whether the 2019 amendments to the electronic services Regulations for taxing digital transactions will disrupt the ease of doing business in South Africa?

1.4 RESEARCH OBJECTIVES

- To examine the current electronic services landscape in South Africa, focusing on the VAT legislation passed in the 2014 and the 2019 amendments made to the definition of electronic services providers and how these amendments will influence the administrative operation of corporate companies.
- To compare the 2019 amendments to the VAT legislation on electronic services in South Africa to the OECD guidelines and legislation in the EU in order to analyse if South Africa is aligned with OECD guidelines and international trends.
- To come up with recommendations to address the fair taxing of the rapidly growing digital economy in South Africa by analysing the EU VAT system for possible suggestions.

To reach the objectives of this study, a review will be performed on E-commerce in the form of a literature review by analysing local and internationally published works such as academic research, journals and electronic articles.

1.5 RESEARCH METHODOLOGY

A systematic review is the best suited literature review method for this study. A systematic review incorporates all evidence that meets a specified eligibility criterion to conclude on a research problem statement or question. The review process will be applied to search for relevant "digital economy-related" articles using online database searches and other sources. The most relevant research articles will be considered to analyse the taxing methods of digital transactions in South Africa and the EU.

The study entails a comparative study of the South African and EU's VAT provisions that apply to the digital economy. The study mainly contains elements of a descriptive study to analyse the current tax structures and also includes elements of an exploratory study to consider and compare best practices around the world. The objective is to conclude on a feasible way forward with regards to South Africa's VAT system in light of the

recommendations in Action 1 of the OECD BEPS Report: "Addressing the digital economy" and how these recommendations have been applied in the EU.

Action 1 of the OECD Action measures was studied to better understand how the digital economy leads to BEPS. Thereafter, digital transactions, in particular the E-commerce industry, was researched which included the taxing methods of these electronic transactions to ensure fair taxing rights to the profits on E-commerce.

1.6 COMPARATIVE STUDY

This study entails a systematic comparative literature review of South African and international papers, books and reports regarding VAT on the digital economy.

The literature review pursues to answer the research question relating to this study. Some of the most important research categories of the articles identified during this review will be the year of publication and the country perspective. The year of publication is an important category as South Africa's electronic services Regulations was promulgated in 2014. The country perspective is also of high importance as the study is a specific comparative study between South Africa's legislation and that of the EU. South Africa and the EU's VAT provisions will also be compared to the OECD's guidelines. The review of the EU provisions is focussed on the current and new VAT rules within the EU which will come into force on 1 January 2021 (European Commission, 2018). The new EU rules are intended to simplify the place of supply VAT regime in the EU with regards to E-commerce. This EU regime is compared to South African VAT rules on E-commerce which were enacted on 1 April 2019 (National Treasury electronic services Regulations, 2018).

The EU was specifically selected for the comparative study for the following reasons:

- As is the case in South Africa, the EU also makes use of VAT as their consumption tax.
- The EU has implemented specific VAT legislation to ensure taxation of electronic services supplied by a foreign country supplying to recipients within the EU.

- The EU is one of South Africa's largest trading partners. "From 1999, the EU was a destination of more than 40% of South Africa's exports while at the same time accounting for over 70% of South Africa's Foreign Direct Investment (FDI)", (Essays. UK, 2018: 1).
- Over the last two decades there have been many preferential trade agreements signed between South Africa and the EU, for example the Trade, Development and Co-operation Agreement (TDCA) established between the EU and South Africa (Essays. UK, 2018: 1). Because of the large volume of trade between the EU and South Africa, the EU VAT system was selected for the comparative study with South Africa.

1.7 SCOPE COVERED BY THIS STUDY

The scope of the study is limited on consumption taxes, i.e. VAT in South Africa and the EU. Corporate Income tax has been excluded from this research paper. The United States and other jurisdictions' sales tax regime on E-commerce was not taken into consideration. The study is also limited to the provisions of the electronic services Regulations in South Africa as of 1 October 2019. The 2019 amendments in the VAT Act and Regulations which specifically deem "intermediaries" and "platforms" suppliers for VAT purposes have also been excluded from this study. At the time of this study, limited research had been performed on the latest South African amendments.

1.8 STRUCTURE OF STUDY

Part 1: Background

Part 1(this part) provides a background to the study while explaining the relevance of the study. It sets out the research objectives, rationale and methodology of the study. Finally, it provides a summary of the parts covered in the study.

Part 2: OECD Guidelines on VAT in the Digital Economy

Part 2 describes the OECD VAT/GST principles. Specific focus is placed on B2B and B2C electronic supplies. Part 2 compares the current South African electronic services Regulations against the latest OECD's VAT/GST guidelines. It also reviews possible simplified registration and compliance guidelines as discussed in the OECD guidelines.

Part 3: Taxation of the digital economy in the EU

Part 3 discusses the EU Sixth VAT Directive for taxing electronic services providers in the EU (European Union Council Directive 2006/112/EC, 2006). The EU's place of supply rules and registration processes are explained. The EU VAT system is compared to that of South Africa and how the EU proposes to develop processes to simplify tax administration. Relevant differences between the EU VAT Directive and the South African electronic services Regulations are discussed.

Part 4: An overview of Taxation of the Digital Economy in South Africa

Part 4 provides an overview of the South African legal frameworks which are relevant to the research question. The industry of E-commerce is explained, where after it reviews the levying of VAT on "Imported Services" and how this has led to the specific electronic services Regulations published by the National Treasury. It also reviews the compliance burden placed on business by performing a detailed comparison between the electronic services Regulations and the OECD guidelines in order to achieve the main research objectives in the comparative study.

Part 5: Recommendations and Conclusion

Having considered the OECD guidelines and having a comparative of the EU and South Africa's approach, Part 5 summarises the findings and comes up with recommendations to improve the ease of doing business in South Africa.

2 OECD GUIDELINES ON VAT POLICY IN THE DIGITAL ECONOMY

2.1 INTRODUCTION

The OECD was founded in 1960 when 18 EU countries, the United States and Canada collaborated to create an organisation focussed on global research and development. The OECD has since grown to have 36-member countries stretching from North and South America to Europe and the Asia-Pacific region (OECD Members and Partners, 2019: 1). The member countries are represented by ambassadors, who are part of the OECD Council, which oversees and advises on the OECD's work, as set out in the OECD Convention. These member countries include many of the world's most advanced economies but also emerging economies (OECD Members and Partners, 2019: 1).

During February 2015, the OECD published its final reports to address BEPS (OECD, 2015: 1). Action 1 of the BEPS reports came up with measures to ensure effective revenue collection for governments, which includes measures to tax cross-border supplies of electronic services (OECD, 2015: 3).

Action 1 of the BEPS reports confirmed that the risks associated with the digital economy is because of the mobility of consumers, and the increasing ability of businesses to enter into business activities globally (OECD BEBS Action 1, 2015: 12). The continued technological advances make it possible to do business without having brick-and-mortar businesses in those jurisdictions. The electronic sales are entered into by the businesses in multiple jurisdictions, even without having employees present in those jurisdictions (OECD BEPS Action 1, 2015: 119). Technology has also made it possible for businesses to shop around the globe before acquiring services from another business (B2B). Corporate companies providing VAT exempt supplies can thus acquire services from a jurisdiction with a low or no VAT/GST rate to minimise cost (OECD BEPS Action 1, 2015: 120).

Apart from services that are not provided from B2B, technology also makes it possible for businesses to provide services to consumers (B2C). In this instance consumers shop for cheaper prices online, rather than buying the service from local suppliers (Krinis, 2016: 77). When jurisdictions cannot force online suppliers to levy VAT, more often than not, their

prices will beat the local suppliers. This leads to uneven playing fields between local and foreign businesses (OECD, 2015: 121).

Two taxing methods (based on different jurisdiction tax-laws) exist when imposing VAT/GST on electronic services supplied across borders:

- Origin principle: The supplier country has taxing rights. Should the jurisdiction in the supplier country not impose any VAT/GST, no VAT/GST would be payable (OECD, 2017 :16).
- Destination principle: The consumer country has taxing rights to the supply. This approach is aligned with the OECD VAT/GST guidelines. VAT will be declared and settled in the consumption country where the services are consumed it is consumed (OECD, 2017: 38)

As expressed by the OECD, the overall performance of VAT systems depends on three main factors:

- “The degree of compliance by taxpayers;
- the structural features of the tax: rates, exemptions, thresholds, and
- the capacity of the tax administration to manage the system in an efficient way.” (OECD, 2006: 42):

The OECD acknowledges that “revenue authorities across the world have an important role in ensuring the full potential that lies within E-commerce is realised. Revenue authorities have the objective to create an economic environment wherein E-commerce can flourish while also ensuring that E-commerce does not undermine the ability of tax collectors to collect the revenues required to fund public sector services for communities” (OECD Policy Brief, 2001: 1).

2.2 OECD – KEY PRINCIPLES FOR E-COMMERCE

During the early years of addressing E-commerce, the OECD’s held a Conference in 1998 in relation to E-commerce in Ottawa (Ottawa OECD Multinational Conference, 1998). The OECD’s Committee of Fiscal Affairs (CFA) issued a framework to the ministers at the OECD

ministerial conference in Ottawa (hereinafter referred to as The Ottawa Taxation Framework) (Ottawa OECD Multinational Conference, 1998). This was the first piece of work produced by the OECD with regards to E-commerce.

According to the OECD, "The Ottawa Taxation Framework" is increasingly accepted worldwide as a sound basis for research on taxation of E-commence (OECD, 2001: 11). The Ottawa principles are: "neutrality, efficiency, certainty, simplicity, effectiveness, fairness and flexibility" as explained below. "The principles outline agreed conditions for taxpayer service, tax administration, consumption tax and international taxation norms" (OECD, 2001: 12).

- "Neutrality – taxation should be neutral and equitable between forms of E-commerce and between conventional and E-commerce, in doing so, avoiding double taxation or unintentional non-taxation."
- "Efficiency – compliance costs to business and administration costs for governments should be minimised as far as possible."
- "Certainty and simplicity – tax rules should be clear and simple to understand, in order for taxpayers know where they stand."
- "Effectiveness and fairness – taxation should generate the right amount of tax at the right time, thereby minimising the potential for evasion and avoidance."
- "Flexibility – taxation systems should be flexible and dynamic in order to ensure they keep pace with technological and commercial developments." (OECD, 2001: 10).

The above principles agreed upon at the 1998 Ottawa Ministerial Conference were intended to assist policy makers with a framework for the development of an effective system for taxing E-commerce (OECD, 2015: 20). In addition to the above, the Ottawa report makes a number of recommendations in regard to consumption taxes on how to design the "place of taxation" rules and providing recommendations for achieving this will keeping the administrative burden to a minimum. These principles were issued to guide countries on the correct tax treatment of electronic services and intangibles supplied across borders and are to be considered by countries when designing their domestic rules (OECD, 2001: 3).

2.3 OECD – INTERNATIONAL VAT GUIDELINES FOR E-COMMERCE

The OECD's CFA launched the project to develop the International VAT/GST Guidelines in 2006. These Guidelines have since been updated in the OECD VAT/GST Guidelines of 2017 (OECD VAT/GST Guidelines, 2017: 2). The CFA acknowledged that: "Jurisdictions would benefit from an internationally agreed standard that contributes towards ensuring that VAT systems interact consistently so that they facilitate rather than distort international trade" (OECD VAT/GST Guidelines, 2017: 3).

The VAT/GST Guidelines provide governments with clarity on VAT and E-commerce matters, as these guidelines are internationally agreed upon standards. This provides policy makers around the world with a consistent and universal framework to assist in the advancement of their VAT/GST regimes. The aim of the guidelines is to be easy to understand and implement so as to ultimately support the growth of world markets and have a better working global economy (OECD, 2017: 3). The guidelines' aims are as follows:

i. "The Guidelines set forth a number of principles for the VAT treatment of the most common types of international transactions, focusing on trade in services and intangibles, with the aim of reducing the uncertainty and risks of double taxation and unintended non-taxation that result from inconsistencies in the application of VAT in a cross-border context" (OECD, 2017: 11);

ii. "The Guidelines do not aim at detailed prescriptions for national legislation. Jurisdictions are sovereign with respect to the design and application of their laws. Rather, the Guidelines seek to identify objectives and suggest means for achieving them. Their purpose is to serve as a reference point" (OECD, 2017: 11);

iii. "The Guidelines are evolutionary in nature and should be reviewed in light of relevant developments" (OECD, 2017: 11);

iv. "The Guidelines apply only to VAT systems, by whatever name or acronym they are known, that embody the basic features of broad-based taxes on final consumption collected from, but in principle not borne by, businesses through a staged collection process (by whatever approach, e.g. invoice-credit method or subtraction method)" (OECD, 2017: 11).

2.3.1 Summary of the OECD VAT/GST guidelines

The guidelines are summarised in the following 2 categories, with specific underlying guidelines.

Firstly, the guidelines aim to improve neutrality of value added taxes in the context of cross-border trade by means of the following:

- **Guideline 2.1:** "The burden of value added taxes themselves should not lie on taxable businesses except where explicitly provided for in legislation" (OECD, 2017: 20);
- **Guideline 2.2:** "Businesses in similar situations carrying out similar transactions should be subject to similar levels of taxation" (OECD, 2017: 21.);
- **Guideline 2.3:** "VAT rules should be framed in such a way that they are not the primary influence on business decisions" (OECD, 2017: 21.);
- **Guideline 2.4:** "With respect to the level of taxation, foreign businesses should not be disadvantaged or advantaged compared to domestic businesses in the jurisdiction where the tax may be due or paid" (OECD, 2017: 22);
- **Guideline 2.5:** "To ensure foreign businesses do not incur irrecoverable VAT, jurisdictions may choose from a number of approaches" (OECD, 2017: 23);
- **Guideline 2.6: "**Where specific administrative requirements for foreign businesses are deemed necessary, they should not create a disproportionate or inappropriate compliance burden for the businesses" (OECD, 2017: 24).

Secondly, the guidelines assist to establish the place of taxation for cross-border supplies of services and intangibles:

The destination principle

- **Guideline 3.1:** "For consumption tax purposes internationally traded services and intangibles should be taxed according to the rules of the jurisdiction of consumption" (OECD, 2017: 38);

B2B supplies – The general rule guidelines

- **Guideline 3.2: "**For the application of Guideline 3.1, for B2B supplies, the jurisdiction in which the customer is located has the taxing rights over internationally traded services or intangibles" (OECD, 2017: 41);
- **Guideline 3.3:** "For the application of Guideline 3.2, the identity of the customer is normally determined by reference to the business agreement" (OECD, 2017: 42);
- **Guideline 3.4:** "For the application of Guideline 3.2, when the customer has establishments in more than one jurisdiction, the taxing rights accrue to the jurisdiction(s) where the establishment(s) using the service or intangible is (are) located" (OECD, 2017: 45).

B2C – The general rule guidelines

- **Guideline 3.5:** "For the application of Guideline 3.1, the jurisdiction in which the supply is physically performed has the taxing rights over B2C supplies of services and intangibles that are:
    - physically performed at a readily identifiable place; and
    - are ordinarily consumed at the same time as and at the same place where they are physically performed, and ordinarily require the physical presence of the person performing the supply and the person consuming the service, or intangible at the same time and place where the supply of such a service or intangible is physically performed" (OECD, 2017: 67);
- **Guideline 3.6:** "For the application of Guideline 3.1, the jurisdiction in which the customer has its usual residence has the taxing rights over B2C supplies of services and intangibles other than those covered by Guideline 3.5" (OECD, 2017: 69).

B2B and B2C supplies – Specific rules

- **"Guideline 3.7** The taxing rights over internationally traded services or intangibles supplied between businesses may be allocated by reference to a proxy other than the customer's location as laid down in Guideline 3.2, when both the following conditions are met: The allocation of taxing rights by reference to the customer's location does

not lead to an appropriate result when considered under the following criteria: Neutrality Efficiency of compliance and administration Certainty and Simplicity Effectiveness Fairness. A proxy, other than the customer's location, would lead to a significantly better result when considered under the same criteria." (OECD, 2017: 78);

- **"Guideline 3.8** For internationally traded supplies of services and intangibles directly connected with immovable property, the taxing rights may be allocated to the jurisdiction where the immovable property is located." (OECD, 2017: 84).

2.4 OVERVIEW

Internationally, there is a high demand to standardise the treatment of E-commerce, with many organisations taking initiative. The OECD however, has set the pace in providing guidance in taxing the digital economy. The OECD provides guidelines and principles for consumption taxes regarding VAT in both domestic and international trade. The first set of guidelines is dedicated to the principle neutrality as it is one of the most important principles of an efficient VAT design. The second set of guidelines, which assists in achieving VAT neutrality is "determining the place of taxation of cross-border supplies" to facilitate a coherent adoption of an international familiar VAT legislation (OECD, 2017: 38). The OECD confirms, that the basic tax neutrality principles of VAT is achieved as follows: "It is achieved in principle by the multi-stage payment system: each business pays VAT to its providers on its inputs and receives VAT from its customers on its outputs. To ensure that the correct amount of tax is remitted to tax authorities, input VAT incurred by each business is offset against its output VAT, resulting in a liability to pay the net amount or balance of those two." (OECD, 2017: 20).

Internationally there is no consensus on a uniform VAT legislation, however it is confirmed by work performed by the OECD that it is accepted globally that VAT should be levied based on the "destination principle" (OECD, 20017:38). The abovementioned features are also found in the South African VAT Act. In Part 4, the South African electronic services Regulations will be compared and evaluated against the OECD's guidelines.

3 TAXATION OF ELECTRONIC SERVICES IN THE EU

3.1 AN INTRODUCTION TO VAT AND E-COMMERCE IN THE EU

The European countries were the first to come up with VAT systems. The first European country to apply VAT was Germany which levied tax on the various stages in the selling process of goods in 1918 (Nalewajk, 2016: 11). VAT was first implemented as a taxing system by France in 1954. After the French starting levying VAT in 1954, the VAT system quickly spread to the rest of Europe due to the establishment of the Common Market which today is referred to as the European Union (Nalewajk, 2016: 11).

Online shopping is a growing trend globally, and the EU online market is no exception to the norm. There are more than 818 million people residing in the EU and by the end of 2016, already more than 331 million people had become online shoppers (Nalewajk, 2016: 23). The use of the internet and the growing popularity has accelerated the disappearance of the borders between the EU states and as a result, it become crucial for the EU to create a single digital market for online shoppers and suppliers in which to operate (Nalewajk, 2016: 23). A single market would add to the convenience and general ease of doing business for the consumer and the supplier (Joumard, 2002: 109).

A review of the EU VAT policies is helpful for various reasons. Firstly, VAT as a percentage of total GDP in the EU, is very high and has continued to rise since its inception. Secondly, although caution should be applied when comparing tax burdens, there is consensus that the tax rates on consumption taxes on average are much higher in the EU than in other OECD countries (Krinis, 2016: 61). Thirdly, when the EU removed all restrictions when moving goods and services across borders, it gave rise to various challenges within the EU (Joumard, 2002:97). These issues have all contributed to a strong EU tax system which warrants an analysis of the EU VAT system compared to South African VAT regime.

The OECD principles of VAT, as discussed in the previous parts of this study, forms the basis on which the EU VAT system was built. Similar to South Africa, the EU VAT provisions also apply a broad-based tax system, levying tax on the value-ad in the transaction supply of goods and services i.e. it’s an indirect, broadly based consumption tax, assessed on the

value added to goods and services where businesses do not bear the final tax burden (European Commission, 2016).

The EU VAT system has developed over the years through a number of directives issued by the European Commission (Nalewajk, 2016: 12). The system, in its current form, is a result of the first EU Sixth VAT Directive (77/388/EC). However, "Council Directive 2006/112/EC of 28 November 2006" (hereafter referred to as the EU VAT Directive) regulates the VAT rules in relation to the European market. This directive effectively replaced the Sixth VAT Directive of 1977. Despite various attempts to streamline the VAT rules in the EU to levy a standard rate across all states, different VAT rates are applied in different EU jurisdictions (Nalewajk, 2016: 12). Directive 2006/112/EC does however provide a minimum standard VAT rate of 15% and a minimum reduced VAT rate of 5% (European Union: Article 81, Directive 2006/112/EC). These rates must be respected and applied by all EU countries. The average VAT rate used by EU countries is around 20% (Nalewajk, 2016).

3.2 AN OVERVIEW OF E-COMMERCE IN THE EU

The rapid growth of E-commerce in the EU led to significant disruptions and discrimination against on-line sellers (OECD, 2017: 54). This discrimination is because of the "origin taxing principle" which was applied in the EU (Joumard, 2002:110). Effectively, "origin taxing principle" means that on-line sellers had to account for VAT in the supplier's country's VAT rate, even if it was selling on-line products to a purchaser in a country with a lower VAT rate (Joumard, 2002:110). Should a supplier for instance be located in a jurisdiction with a higher VAT rate, they would effectively have a competitive disadvantage. Another disadvantage for EU suppliers was that suppliers who were located outside the EU (Non-EU suppliers) would not be required to account for VAT in the EU, while EU-suppliers would always account for VAT. This led to further discrimination of EU suppliers (Joumard, 2002: 11).

To address the tax challenges posed by E-commerce, the EU implemented the OECD recommendations discussed in Part 2 in its VAT system (European Union Council Directive 2006/112/EC, 2006). This was done in June 2000, when the European Commission proposed a directive which required non-EU suppliers to register for VAT in at least one EU

jurisdiction where the online products were sold (Joumard, 2002: 110). The supplier would then only apply the VAT rules of that specific jurisdiction on all its online sales. The requirement introduced by the European Commission to require non-EU suppliers to register in only one EU jurisdiction was specifically introduced to eliminate the compliance burden (Joumard, 2002: 111). For the same reason, there was also a minimum threshold introduced for on-line supplies before requiring non-EU on-line sellers to register for VAT (Nalewajk, 2016: 44). The Commission's goal was to encourage non-EU suppliers to keep doing business in the EU and to utilise tax administration resources in jurisdictions where the potential for revenue collection would be high (Nalewajk, 2016: 23).

Several tax provisions have been adopted and included in the EU VAT directive since 2000, with some of the latest changes in the provisions which came into effect on 2 January 2015 (Lamensch, 2015: 3). The EU Commission has set themselves the goal to complete the "Single Digital Market" by 2020 by aligning itself to its "Digital Agenda" and "Single Markets Act" (European Commission, 2018) The EU Commission wants the EU to build confidence and trust in the digital market as it has the potential to contribute to growth and create employment throughout the EU (European Commission Single Digital Market strategy, 2015).

3.3 EU PLACE OF SUPPLY RULES

The "place of supply" in the EU is usually where the supplier has a fixed place of business from where he coordinates the supply (Gopal, 2017: 28). The EU's general rule regarding place of supply is found in chapter 3 (Article 43) of the EU sixth VAT Directive which reads as follows (European Union Council Directive 2006/112/EC, 2006):

> "The place of supply of services shall be deemed to be the place where the supplier has established his business or has a fixed establishment from which the service is supplied, or, in the absence of such a place of business or fixed establishment, the place where he has his permanent address or usually resides."

It's clear that the place of supply rule forms the basis of the EU VAT system as it is used to establish which country has taxing rights and therefore at which VAT rate the transaction

should be taxed. It is however challenging to determine the place of supplies with different types of transactions and goods and services being delivered in today's modern economy (Nalewajk, 2016).

Different transactions may include supply of goods, import of goods and supply of services. From an EU perspective it is also important to differentiate between either, B2B and B2C transactions. For all these types of transactions, the EU VAT Directive applies the VAT rate of the jurisdiction of the final destination of the goods or services supplied (Krinis, 2016: 88). The only exception was in the case B2C from EU suppliers where the VAT rate of the seller could apply. However, as from 1 January 2015, the EU introduced council Directive 2008/8/EC of 12 February amending Directive 2006/112/EC.

3.4 2015 EU VAT DIRECTIVE AMENDMENTS

From January 2015, the EU issued a VAT Directive which provides that, when B2C transactions occur, the place of supply for both EU and non-EU suppliers of electronic services, is the customer's place of "belonging", i.e. the place where the consumer has a fixed address or usually resides (European Commission, Council Directive 2008/8/EC; Gopal, 2017: 31).

This change is aligned to the internationally agreed OECD VAT Guidelines to tax online supplies where the supplies are consumed (OECD, 2017: 41; Krinis, 2016: 61). The 2015 EU VAT directives placed additional administrative requirements on the supplier, as they are required to collect additional information on the customers to establish their identities. However, this led to an additional administrative burden in the EU for the suppliers (Europa: Title V, Directive 2006/112/EC; Gopal, 2017: 28).

3.4.1 Non-EU businesses

Since 2010, non-EU businesses have already been obligated to levy VAT on B2C supplies of: "telecommunications services; radio and television broadcasting services and electronically supplied services" (Europa: Article 2, Directive 2006/112/EC). Thus, the 2015 amendments do not have a substantial influence on non-EU business. However, in

compliance with the VAT directive, they have to reconsider if they have established a business in the EU which assisted with their obligation to collect VAT (Europa: Article 2, Directive 2006/112/EC).

3.4.2 EU businesses

The VAT treatment of EU businesses is similar to that of non-EU businesses. As discussed earlier, before the 2015 EU directive amendments to electronic services provisions, electronic services provided to businesses were already subject to VAT in the recipient's location. However, where EU businesses made B2C supplies, the obligation regarding the collection of the VAT on the transaction rests solely on the supplier's shoulders (Krinis, 2016: 61).

The changes effected in 2015 meant that for all digital transactions relating to B2C and B2B supplies, the place of supply shifted to the jurisdiction where the buyer is located (European Commission, Council Directive 2008/8/EC). The 2015 changes were part of the original VAT changes (which applied to non-EU States), to assist the process to align tax treatment of non-EU States to that of EU member States (De la Féria, 2014).

3.5 EVALUATION OF THE MOSS AND PLACE OF SUPPLY RULES

The most notable consequence of the 2015 EU VAT directive was the establishment of a taxing regime that enables suppliers to benefit from a single electronic declaration called a VAT MOSS (VAT-Mini-One-Stop-Shop), to minimise the administrative burden on suppliers (European Commission Council Regulation, 2012).

VAT MOSS is a scheme adopted by the EU to enable businesses to only submit one VAT return per business in the EU every quarter, rather than having to go through the painful process of registering in multiple EU states in which it operates (European Commission Council Regulation, 2012). Effectively this shifts the obligation to pay the relevant VAT to the correct EU country from the business to the domestic tax collection authorities. In theory, businesses could choose not to register under the MOSS scheme, however then the business would be required to register for VAT in each of the 27 EU member states. It would

make more sense from a business perspective to opt-in to voluntarily register for the MOSS scheme (Nalewajk, 2016). However, the suppliers of a businesses who have a permanent business establishment in a specific EU state are required to register for the VAT MOSS in that EU state (Europa: Article 359-369, Directive 2006/112/EC; Gopal, 2017: 28).

The 2015 MOSS scheme is regarded as revolutionary because for the first time in history, a member State in the EU is collecting VAT on behalf of another Member State (Krinis, 2016: 62). The MOSS schemes which applies to EU member states is different to the MOSS scheme available to non-EU countries (Europa: Article 365, Directive 2006/112/EC). There is also no threshold amount before a business is required to register under the MOSS scheme, thus as soon as a foreign country provides digital supplies to an EU country it will be required to register under the MOSS scheme (Europa: Article 359, Directive 2006/112/EC). It's further important to note that the MOSS scheme does not replace the normal VAT registration processes when a supplier has a business establishment in an EU country, as they will still be required to use the local VAT registration systems (Krinis, 2016: 62).

Prior to the launch of the MOSS Scheme there were some views that the scheme was complex and would lead to substantial legal uncertainties (De la Féria, 2014). However, the early results received from a study in 2017 tells a successful story for EU tax administrators who implemented the MOSS Scheme (European Commission inception impact assessment, 2017). In 2015, sales declared through the MOSS scheme were more the €18 billion, resulting in more than €3 billion in revenue collected coming from more than 13,000 newly MOSS registered businesses (Krinis, 2016: 64).

3.5.1 The Law applicable: Article 56,57,58 & 59 of the EU VAT Directive

Article 56 of the EU sixth VAT Directive reads as follows (European Union Council Directive 2006/112/EC, 2006):

> "(1) The place of supply of the following services to customers established outside the Community, or to taxable persons established in the Community but not in the same country as the supplier, shall be the place where the customer has established his

business or has a fixed establishment for which the service is supplied or, in the absence of such a place, the place where he has his permanent address or usually resides:

(i) telecommunications services;

(j) radio and television broadcasting services;

(k) electronically supplied services, such as those referred to in Annex II below;

(l) the supply of services by intermediaries, acting in the name and on behalf of other persons, where those intermediaries take part in the supply of the services referred to in this paragraph.

(2) Where the supplier of a service and the customer communicate via electronic mail, that shall not in itself mean that the service supplied is an electronically supplied service for the purposes of point (k) of paragraph 1."

"Annex II", referred to in point (K) above of article 56(1) lists the following as electronically supplied services:

"(1) Website supply, web-hosting, distance maintenance of programmes and equipment; (2) supply of software and updating thereof; (3) supply of images, text and information and making databases available; (4) supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events; (5) supply of distance teaching."

Article 57 of the EU sixth VAT Directive reads as follows (European Union Council Directive 2006/112/EC, 2006):

"(1) Where the services referred to in point (k) of Article 56(1) are supplied to non-taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State, by a taxable person who has established his business outside the Community or has a fixed establishment there from which the service is supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community, the place of supply shall be the place where the non-taxable person is established, or where he has his permanent address or usually resides.

(2) Paragraph 1 shall apply until 31 December 2006...."

Article 59 of the EU sixth VAT Directive reads as follows (European Union Council Directive 2006/112/EC, 2006):

> "(1) Member States shall apply Article 58(b) to telecommunications services supplied to non-taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State, by a taxable person who has established his business outside the Community or has a fixed establishment there from which the services are supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community.
>
> (2) Up until 31 December 2006, Member States shall apply Article 58(b) to radio and television broadcasting services, as referred to in point (j) of Article 56(1), supplied to non-taxable persons who are established in a Member State, or who have their permanent address or usually reside in a Member State, by a taxable person who has established his business outside the Community or who has a fixed establishment there from which the services are supplied, or who, in the absence of such a place of business or fixed establishment, has his permanent address or usually resides outside the Community."

Article 58(b) of the EU sixth VAT Directive relates to "place of effective enjoyment or us" and reads as follows (European Union Council Directive 2006/112/EC, 2006):

> "(1) In order to avoid double taxation, non-taxation or distortion of competition, Member States may, with regard to the supply of the services referred to in Article 56(1) and with regard to the hiring out of means of transport:
>
> > (b) consider the place of supply of any or all of those services, if situated outside the Community, as being situated within their territory, if the effective use and enjoyment of the services takes place within their territory.
> >
> > However, this provision shall not apply to the services referred to in point (k) of Article 56(1), where those services are rendered to non-taxable persons."

3.5.2 Complexities created by the EU MOSS scheme

Although the introduction of the EU MOSS scheme is widely regarded as successful, the 2015 EU VAT directive amendments created some complexities, some of which include:

3.5.2.1 Difficulties in establishing the place of supply correctly

The first challenge is to determine the place of the supply as referred to in paragraph 1 of Article 57, which is not always easy. The rules dictate that “electronically supplied services, telecom services, radio and broadcasting services” are taxable where the customer is located, also in B2C scenarios (Krinis, 2016: 56). Although the MOSS scheme removes the burden from having to register in various EU states. a business is still required to determine the location of their customers to correctly apply the destination jurisdiction’s VAT rate. An EU implementation Regulation No 1042/2013 was issued which allowed for presumption to be taken by suppliers to make the process easier to establish the customer’s location, should the presumption requirements be met. Should these requirements not be met, the supplier needs to provide two pieces of evidence (independent of the turnover amount and which are non-contradictory), to prove the location of the customer. This evidence is not always easy to obtain and is not guaranteed to be satisfactory to the VAT authorities (Krinis, 2016: 64).

3.5.2.2 Lack of clarity as to whether the services related to a specific business

The second challenge is the “lack of clarity” as to which services and/or products are included in the 2015 amendments. The directive refers to telecommunications, broadcasting and electronic services. This could include any online learning lectures, software subscriptions, electronic publications and mobile applications. This caused confusion amongst various small and medium sized enterprises (SME’s) in the EU as to whether their products fall within the scope of electronically supplied services or not (Krinis, 2016: 64). This issue is not unique to the EU and is consistent with the issue identified with regard to the amended South African electronic services Regulations discussed in Part 3 (Krinis, 2016: 69). Based on the Irish Revenue Commissioners, four characteristics have to be present for a service to qualify as electronic supplied services (Irish Office of Revenue Commissioners, 2019: 1):

- "It has to be delivered via the internet or another electronic network;
- It has to be mainly automated;
- It must require minimal human involvement; and
- It has to be impossible to deliver the service without any information technology" (Irish Tax and Customs, 2019: 1).

3.5.2.3 Disruptions caused by the new MOSS requirements

The third negative impact was the disruptive impact the MOSS scheme had on the SME's and microbusinesses within the EU. The main reason for the 2015 EU electronic services amendments was because large multinational technology companies were establishing their headquarters within EU jurisdictions with lower VAT rates. This however, adversely influenced the smaller technology companies as well (Krinis, 2016: 76). The most significant complaint expressed by businesses was that the MOSS scheme lacked a threshold amount. A turnover threshold amount would remove the need for multiple smaller businesses to register for the MOSS scheme should they not meet the threshold amount (OECD Taxation Working Paper, 2018: 22). This need mainly exists because small businesses were previously exempted from registering for VAT in many EU countries (OECD Taxation Working Paper, 2018: 22). In the United Kingdom (UK), a business would be exempt from registering for VAT should their total turnover in the UK be below €100,000 (which is quite a substantial amount from a revenue perspective) (Krinis, 2016: 77). Threshold amounts however create their own issues as some EU jurisdictions have a nil threshold amount and would risk losing tax revenue and create some distortions between the market segments (Krinis, 2016: 91).

3.6 THE NEW 2019 AND 2021 EU VAT RULES FOR E-COMMERCE AND SERVICES

As part of the EU's Single Digital Market strategy, the EU adopted new VAT rules on 5 December 2017, the EU Council implemented "Council Directive (EU) 2017/2455", "Council Regulation (EU) 2017/2454" and "Council Implementing Regulation (EU) 2017/2459". These new VAT rules adopted in 2017 are referred to as the E-commerce Package (European Commission, 2018). The most significant rules in the new VAT E-commerce package are the following:

3.6.1 Introduction of a threshold amount to the MOSS Scheme (Effective from 1 January 2019)

Amendments to the MOSS Scheme were requested by businesses since its introduction in 2015. Small businesses especially, have been hoping for a MOSS VAT registration threshold (Krinis, 2016: 93). This resulted in the introduction of a VAT threshold amount of €10,000 applicable from 1 January 2019 (European Union: Article 3(2)(b), Directive 2006/112/EC). This much expected threshold amount was introduced for all EU-established suppliers. Should the supplier not meet the threshold, the services are still taxable in the EU State of the supplier, unless the supplier voluntarily chooses to register under the MOSS scheme (European Union: Article 2, Directive 2006/112/EC). Additionally, if the annual turnover is less than €100,000, the supplier benefits from a reduced burden regarding the evidence requirements in order to identify the location of the customer (Europa: Article 58, Council Directive 2006/112/EC).

3.6.2 The extension of the MOSS regime (effective from 1 January 2021)

The MOSS (which will become known as the One Stop Shop (OSS)) scheme will be broadened to include all services and cross-border supplies of goods to non-taxable persons within the EU, the MOSS scheme will be applicable to EU and Non-EU based businesses. Non-EU businesses will have to make use of an EU-established intermediary to oversee their VAT administrative requirements (European Commission: Article 2, Directive 2006/112/EC). This change is in line with global trends to move to a more effective “destination tax” principle (Ernst & Young, 2018: 1).

There will also be special provisions applicable to electronic interfaces that facilitates supplies of goods (European Union: Article 1 to 4, Directive 2006/112/EC). If the OSS scheme is not used on imports, another ‘mechanism’ will be available to ease the administrative burden. Under the newly enhanced MOSS scheme, VAT will be collected at the original “point of sale” from the EU customers, where after the VAT will be remitted to the Member State of identification in the OSS. (Europa: Section 4, Council Directive 2006/112/EC)

Should the suppliers choose not to use the import scheme, the suppliers could use another 'mechanism' which enables VAT to be collected through the use of intermediaries to collect the VAT directly from the customers, where after it will be remitted to the revenue authorities (Europa: Article 242a, Directive 2006/112/EC).

The rules will only become effective as of 1 January 2021 as they have an impact on businesses and its IT systems to comply with the electronic interface rule. This gives businesses sufficient time to update their IT systems.

The new rules will facilitate greater cross-border trade through a reduction in VAT compliance costs and will enable EU companies to be more competitive in the European markets, taking into account the non-EU businesses which are currently not levying VAT in the EU (European Commission Single Digital Market strategy, 2015).

4 TAXATION OF ELECTRONIC SERVICES IN SOUTH AFRICA

4.1 INTRODUCTION TO VAT AND E-COMMERCE IN SOUTH AFRICA

As alluded to in Part 1, VAT was levied for the first time in South Africa on 30 September 1991 (VAT Act). VAT is levied indirectly on the use of services or consumption of goods (VAT Act, 1991: Section 7). In South Africa the invoice method system is used to levy VAT (VAT Act, 1991: Section 7, 16 and 20). An invoice method system implies that VAT is displayed on all invoices, therefore in South Africa the sales price is inclusive of VAT, with the VAT portion disclosed separately on the invoice. The South African VAT system requires an audit trail of invoices which assists in tax administration. The VAT system is therefore, "self-enforcing" because businesses can claim the input VAT amount paid, only if the input VAT is supported by a valid tax invoice (VAT Act, 1991: Section 16).

The first serious steps towards the introduction of an invoice-method system for VAT in South Africa were taken early in 1988 (Moodley, 2016: 13). The draft Value-Added Tax Bill was finally issued for general comment on 18 June 1990 (Report of the VATCOM 1991: 8). The Minister of Finance simultaneously appointed a committee (VATCOM) consisting of

members from both the public and private sectors to review comments submitted by relevant parties on the 'draft Bill' (Report of the VATCOM 1991: 3). The VATCOM released its comprehensive report on 19 February 1991, of which the most important recommendations regarding VAT were that:

- The rate should be kept as low as possible. It recommended that, in order to achieve that objective, the phasing-in of the input tax credit for capital goods and other possible business inputs be considered;
- Exemptions, zero-ratings and exceptions should be kept to a minimum;
- The proposed inclusive system of quoting tax should be implemented;
- A limited number of goods currently exempt from GST, such as maize products, rice, bread and milk powder should be zero-rated;
- Financial services should be exempt;
- Input tax credits for entertainment should be denied;
- The treatment of motor cars should be the same as other capital goods (that is, input tax credit be phased in, instead of denied);
- Land and housing should be subject to tax;
- Municipal rates should be taxable;
- Medical services and medicine should also be taxable (Report of the VATCOM 1991: 9).

While several of the recommendations were accepted by the government, the final Value-Added Tax Act, No. 89 of 1991, as adopted by Parliament and promulgated on 12 June 1991, did not provide for the phasing-in of capital goods (Republic of South Africa, 1991). Shortly thereafter the Act was passed by Parliament and significant amendments were introduced. VAT was effectively implemented for the first time on 30 September 1991 (a Monday) and consequently the rate of VAT was set at 10% (Republic of South Africa, 1991). Today, VAT in South Africa is levied at 15% on taxable supplies, which is to be carried by the final consumers (VAT Act, 1991: Section 7).

In today's market conditions, South African consumers have unlimited choices of where and how they shop for goods and services. They can choose to purchase the goods and services from a local supplier or from a foreign supplier. Before VAT was imposed on foreign electronic services providers, South African consumers preferred purchasing goods from the foreign supplier as no VAT would be imposed on their supplies (Gopal, 2017: 1). This gave the foreign service providers an unfair advantage, unless the consumer declared the VAT on the imported service in South Africa through the reverse charge mechanism (explained below) (OECD VAT/GST Guidelines, 2017:17). This led to a specific taxing provision been implemented in the VAT Act in 2014 and in 2019 for a more robust approach to ensure VAT is collected on the sale of electronic services to South African clients.

4.2 REVERSE CHARGE MECHANISM

Before the first electronic services regulation was published in 2014, a foreign company was not required to register for VAT in South Africa or to pay VAT over to SARS. The South African clients were however required to declare the services to the revenue authorities as imported services (VAT Act, 1991: Section 7).

Section 1 of the VAT Act defines "imported services" as:

> "a supply of services that is made by a supplier who is resident or carries out 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."

Thus, an imported service is one where services are acquired from a non-resident business for the purpose of making non-taxable supplies to be consumed in South Africa, i.e. not acquired for making normal business-related taxable supplies. For these imported services, the South African consumer has to "self-assess" if VAT would be liable on the transaction (OECD VAT/GST Guidelines, 2017:30). SARS expects the South African residents to self-assess and then declare the imported services to SARS and pay VAT at 15% over to SARS, in terms of section 7(1)(C) of the VAT Act. This is known as the "Reverse Charge Mechanism" (Gopal, 2017:9).

Section 7(1) (C) only levies VAT when imported services are acquired or utilized in South Africa for the purpose of making non-taxable supplies. This section applies specifically as the recipient of the service could claim input tax, which gives rise to a “VAT neutral position”. This section ensures entities supplying exempt services don’t preverbally buy services from offshore entities as this would create a disadvantage for local suppliers. (Gopal, 2017:6).

From 2014 onwards, the reverse charge mechanism would still apply to the local suppliers, however companies providing services in South Africa would have to do a detailed analysis of whether they must register as a VAT vendor in South Africa in terms of the proviso (vi) of the definition of an “enterprise” in section 1 of the VAT Act.

4.3 BUSINESSES OBLIGATED TO REGISTER FOR VAT

To be able to assess whether a company is required to register as a vendor for VAT purposes, one needs to refer to Part III of the VAT Act as this section considers the requirements and steps for VAT vendor registrations. Section 23(1) of the VAT Act states that:

> “every person who, on or after the commencement date, carries on any enterprise and is not registered, becomes liable to be registered:
>
> (a) At the end of the month where the total value of taxable supplies made by that person in the period of 12 months ending at the end of that month in the course of carrying on all enterprises has exceeded R1 million;
>
> (b) At the commencement of any month where the total value of the taxable supplies in terms of the contractual obligation in writing to be made by that person in the period of 12 months reckoned from the commencement of the said month will exceed the above-mentioned amount…”

4.4 ENTERPRISE DEFINITION

Section 23(1A) states:

> "every person who carries on any enterprise as contemplated in paragraph (b)(vi) of the definition of "enterprise" in section 1 and is not registered, becomes liable to register at the end of the month where the total value of taxable supplies made by that person exceeded R50 000."

Firstly, section 23 of the VAT Act deals with registration of persons making supplies in the course of an enterprise. Secondly, it has specific rules for entities which provide electronic services. In order for a company to be required to register, it first needs to be assessed whether it is an "enterprise" as defined terms in the VAT Act.

An "enterprise" is defined in section 1 of the VAT Act as any activity which is carried on regularly or continuously, in the course of furtherance of that enterprise, by any person partly or wholly in the Republic and goods or services are provided to any other person for a consideration, whether for profit or not.

Further to this, paragraph (b)(vi) of the definition of enterprises specifically includes the following:

b) "without limiting the applicability of paragraph (a) in respect of any activity carried on in the form of a commercial, … or professional concern –

(i) …

(vi) the supply of electronic services by a person from a place in an export country, where at least two of the following circumstances are present:

(aa) the recipient of those electronic services is a resident of the Republic;

(bb) 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);

(cc) the recipient of those electronic services has a business address, residential address or postal address in the Republic".

As per the first part of the definition above, a company would not be seen as an enterprise if it did not meet the requirements that the enterprise is being partly or wholly performed within the Republic.

Therefore, foreign service providers would usually not be required to register in terms of section 23(1) of the VAT Act, if none of the work is performed directly within South Africa.

However, as mentioned above, there is an additional part of the definition of enterprise that needs to be considered, being the inclusion of electronic services (as explained below).

4.4.1 Meaning of electronic services (Pre- 1 April 2019)

Electronic services are defined in section 1 of the VAT Act as “those electronic services prescribed by the Minister by regulation in terms of this Act”. Therefore, for any services provided before 1 April 2019 the previous electronic services definition as per the regulation must be considered. The regulations, released on 28 March 2014 (National Treasury electronic services Regulations; 2014), includes any electronic services for:

a) Education services;
b) Games and gambling services;
c) Information systems services;
d) Internet based auction services;
e) Maintenance services;
f) Miscellaneous services (e-book, film, images, music or software); and
g) Subscription services (National Treasury electronic services Regulations; 2014).

It was noted that the above regulations, which applied up until 31 March 2019, do not include any information or reports provided electronically.

4.4.2 Meaning of electronic services (Post- 1 April 2019)

On 24 October 2018, Treasury announced that new draft regulations would be released, and the effective date of these new regulations would apply as from 1 April 2019 (National Treasury, 2018). The new regulations have changed the definition of electronic services by

broadening the term, which now includes any communication via data messages (electronic communication) as well as computer programs or any automation of data messaging (electronic agent) and any internet services provided (National Treasury, 2018). The only exceptions are:

a) Electronically provided educational services;
b) Telecommunication services; or
c) The supply of services from the export company to a resident and they:
    a. Form part of the same "group of companies" with 100% equity holding; and
    b. The services provided are exclusively for the consumption of that "resident company" (National Treasury electronic services Regulations; 2018: 3).

The term electronic services as amended is defined in section 1(1) of the VAT Act to mean electronic services as prescribed by the "Explanatory Memorandum: Regulations Prescribing electronic services". It is important to note that the Regulations do not differentiate or define B2B and B2C supplies. As a result, a B2B and B2C supply falling within the ambit of the regulations is regarded as an electronic service for South African VAT purposes.

This causes some concern, because in terms of the new meaning of electronic services, most services may fall within the scope of electronic services if the services or information is provided in any electronic format (DTC Final VAT Report, 2018: 34).

"Telecommunication services" is the one excluded service in South Africa. VAT jurisdictions have acknowledged that it is possible to differentiate between "electronically supplied services" and "telecommunication services" (DTC Final VAT Report, 2018: 35). The EU VAT Directive defines "telecommunication services" as:

> ""Telecommunications services" shall mean services relating to the transmission, emission or reception of signals, words, images and sounds, or information of any nature by wire, radio, optical or other electromagnetic systems, including the related transfer or assignment of the right to use capacity for such transmission, emission or

> reception, with the inclusion of the provision of access to global information networks" (European Commission Sixth VAT Directive, 2006: Article 24).

Suppliers will have to differentiate between electronic communications and telecommunication. All electronic communications are included, while telecommunications services are excluded from electronic services. Services provided via any internet source could possibly also be argued to be electronic services (DTC Final VAT Report, 2018: 89).

Furthermore, the compulsory registration threshold contained in section 23(1A) of the VAT Act was increased to R1 million, which is in line with local VAT vendor requirements (VAT Act, 1991: Section 23).

4.4.3 Meaning of "Export Country"

Paragraph (b)(vi) of the enterprise definition requires that the service must be performed from an export country. An export country is defined in this paragraph as any country other than the South Africa and any place which is not within the borders of South Africa. Should the foreign company have no physical presence in South Africa, the services provided are from an export country. In order words, the definition of "enterprise" in relation to electronic services is an activity which relates to the supply of services from an export country to the Republic.

4.4.4 The Recipient must be a resident of the Republic

A supplier would qualify as an electronic services provider under paragraph (b)(vi) (aa) of the enterprise definition, if the business receiving the service, is incorporated or has a place of effective management[3] within South Africa, i.e. be a resident of the Republic (OECD, 2017; VAT Act, 1991: Section 1).

---

[3] The OECD Model Tax Convention Commentary explains the "place of effective management" as: "the state where key management and commercial decisions that are necessary for the conduct of the entity's business are in substance made. It refers to the place where the day-to-day responsibility for the management of the company or entity".

4.4.5 Payment received from a registered bank

A supplier would qualify as an electronic services provider under paragraph (b)(vi) (bb) of the enterprise definition, if the payment is from a South African bank account.

4.4.6 The recipient of the electronic services has a business, residential or postal address within South Africa

A supplier would qualify as an electronic services provider under paragraph (b)(vi)(cc) of the enterprise definition, if the person who receives the services has a South African business address or postal address. South African businesses and individuals are required under South African law to have a business address or postal address in South Africa. Therefore, this requirement would usually be met should a bank account exist (Financial Intelligence Centre Act, 2001: 21).

Should all the above requirements be met, a business will be an enterprise as defined in the VAT Act. The business then needs to consider whether they are making taxable supplies in excess of new threshold amount of R1 million (VAT Act, 1991: Section 23).

The term “taxable supplies” as used in section 23 of the VAT Act means any goods or services which have VAT imposed on it, at the standard rate or zero rate, in terms of section 7(1)(a). A service is defined in section 1 of the VAT Act as: “anything done or to be done, including the granting, assignment, cession or surrender of any right or the making available of any facility or advantage, but excluding a supply of goods, money or any stamp, form or card contemplated in paragraph (c) of the definition of goods”.

Section 7(1)(a) requires that VAT is levied on any services provided by a vendor in the “course or furtherance of his enterprise”. This requirement has to be specifically analysed for each specific type of service delivered. Should the services be in the course of the enterprise, it will fall within the scope of section 7(1)(a) and be taxable supplies as defined.

The above technical requirements add to foreign services providers’ frustration when doing business in South Africa as professional advice is often required to determine if a registration

obligation exists in South Africa. Each one of the above requirements requires attention from the offshore businesses providing services in South Africa. They firstly must establish who the recipients are in relation to their services in order to determine if they are South African citizens or not. Additional information of the client is then required to confirm if the banking accounts and business, or residential addresses, are in South Africa or not. This is after an analysis is performed to establish if the specific type of services qualifies as electronic services.

4.5 VAT REGISTRATION REQUIREMENTS

As soon as a business is an enterprise making taxable supplies, as defined in section 1 of the VAT Act, there is a requirement to register for VAT. From 1 April 2019 it became important to clearly state if a business falls within the ambit of an enterprise and is required to register in terms of section 23(1A) of the VAT Act. The requirement to register as a VAT vendor is in terms of section 23 of the VAT Act if the services exceed R1 million. Businesses will be liable to register as a VAT vendor at the end of the month in which the taxable income exceeds R1 million. Although the registration threshold amount was amended from R50 000 (in terms of section 23(1A) set out above) to R1 million in order to align with a normal VAT registration threshold, R1 million is still in fact low, causing a high administrative burden on small entities to register (VAT Act, 1991: Section 23).

4.5.1 Registration requirements

It is worth noting that section 23(1A) of the VAT Act directs when the obligation to register as a vendor occurs. Section 22(2), in Chapter 3 the Tax Administration Act 20 of 2011 (TAA) indicates that the registration must take place within 21 business days from when the obligation for the taxpayer to register becomes apparent.

For foreign entities, 21 days is an extremely short time for suppliers to register for VAT. It is important to know that these entities often do not have any employees in South Africa and very rarely have tax managers in South Africa to review this requirement. This requires foreign companies to be completely dependent on professional consulting firms to assist with the registration process. This leads to additional costs which could be substantial

depending on the number of entities to be registered. Although SARS has dedicated staff in place to assist with the registration process of electronic service providers, the process still proves frustrating for these foreign entities and local tax consultants alike.

These registration processes are often prolonged when SARS requires additional information or causes unnecessary delays from their side. SARS does have a streamlined VAT registration process for electronic services, but there have still been some issues from their side like registering companies under the two-monthly tax periods rather than one-monthly tax periods (VAT Act, 1991: Section 27; Gopal, 2017:16). Although faith is put in SARS that most of the issues are only teething issues, it further disrupts the ease of doing business in South Africa.

An issue that is currently being faced is that SARS only registers electronic services vendors on the payment basis and not on the invoice basis. This is due to the fact that with electronic services, invoicing and payment generally occurs simultaneously in B2C supplies (SARS, 2019:3). However, from a B2B perspective the payments basis provides additional challenges. To complete VAT returns, based on the payment basis, adds an additional administrative burden on companies because accounting systems are set up on the invoice basis. In order to account for VAT based on actual payments, requires the ledgers to be reconciled in order to match the VAT return.

4.5.2 VAT registration process

Guidance on the VAT registration process and all other compliance requirements are provided in the SARS “VAT 404 – Guide for Vendors”. This comprehensive guide aims to assist local and foreign VAT vendors in South Africa.

Although the supporting documents that must be submitted with the VAT101 form can be different depending on the client and surrounding circumstances, there are some standard supporting documents required. The following documents must be provided to SARS when registering as an electronic services provider in South Africa (SARS: Registration Guide for Foreign Suppliers of Electronic Services, 2019: 3):

- Completed and signed VAT 101 registration form;
- Incorporation certificate of the foreign electronic services provider;
- Proof of business foreign tax registration;
- Certified identity document or passport of the representative vendor of the foreign business in South Africa; and
- Signed power of attorney (If applicable) (SARS: Registration Guide for Foreign Suppliers of Electronic Services, 2019: 3).

Electronic services providers can register as VAT vendors in South Africa through a less complex registration process as per "SARS VAT Registration Guide for Foreign Suppliers of Electronic Services". The completed supporting documents together with the completed and signed VAT Application Form must be emailed to SARS at eCommerceRegistration@sars.gov.za (SARS: Registration Guide for Foreign Suppliers of Electronic Services, 2019: 4). The Commissioner will process the VAT Application Form and inform the E-Service provider once the registration is successful and from when the entity is required to charge VAT on supplies and submit returns (SARS: Registration Guide for Foreign Suppliers of Electronic Services, 2019: 4).

4.5.3 Administrative challenges

To be VAT compliant in South Africa is in general a cause of concern for foreign businesses. This results in time constraining tasks which requires substantial human and monetary resources to be tax compliant in South Africa. The electronic services Regulations, now more than ever, require foreign business suppliers to carefully analyse if an obligation exists to register as VAT Vendors in South Africa. This may result in substantial additional costs to do business in South Africa. In addition, these suppliers would run the additional risks of facing non-compliance penalties as well as additional compliance and consulting fees (VAT Act, 1991: Section 39).

Foreign companies need to determine how to correctly complete the VAT 101 form and thereafter also trust that SARS is satisfied with the supporting documents provided.

Thereafter the electronic services vendor needs to register for E-Filing and become comfortable using the online system. They then have to stay up to date with the most demanding administrative challenge that is, being VAT compliant by submitting VAT returns and request reports on E-Filing, like SARS statement of accounts, in order to determine if they have been assessed correctly. (SARS: Registration Guide for Foreign Suppliers of Electronic Services, 2019: 4).

Foreign businesses also experience difficulty in setting up the E-Filing profile. Alternatively, tax practitioners can be appointed to assist with these services, however this will lead to extra costs. Another challenge is that the VAT payments are made from a foreign bank account which is also a complicated process. Payments from a foreign bank account take around 2-3 days to be processed by SARS so there are extra delays which may result in late payment and therefore penalties and interest being levied (SARS Frequently asked questions, 2019: 24; VAT Act, 1991: Section 39).

Additionally, levying VAT on supplies within South Africa may lead to compliance costs such as redesigning websites' home pages, communicating changes in tax charge mechanisms to clients and including third parties to their business models. Business models could be impacted as some businesses may be required to purchase or adjust client date collection systems or buy new accounting systems. Some businesses would also opt for hiring a professional accountant to assist with their business processes (Nalewajk, 2016).

5 COMPARATIVE ANALYSIS

In order to address the challenges faced by foreign service providers, this comparative analysis considers to what extent South Africa complies with the OECD VAT Guidelines discussed in Part 2, where guidelines regarding dealing with those challenges has been provided. It is also important to consider how the EU has addressed such challenges in order to come up with recommendations for the resolution of South Africa's challenges.

5.1 TO WHAT EXTENT HAS SOUTH AFRICA COMPLIED WITH THE OECD GUIDELINES

It is in the interest of South Africa to attempt to adhere to tax standards and principles as recommended by the OECD as discussed in Part 2. As the world market is becoming ever smaller, a standard set of principles would greatly assist in simplifying tax administration in the global economy and specifically online supplies of goods and services across all country borders. Therefore, even though South Africa is not an OECD member country, South Africa should attempt to adhere to the taxing principles as provided by the OECD in relation to the digital economy (OECD Members and Partners, 2019: 1). This will result in South Africa being aligned with global trends and motivate foreign business investments in South Africa.

The DTC recommended that "the adoption of internationally accepted explicit place of supply rules that are understood by both South African and foreign suppliers will enhance understanding of where VAT must be accounted for on cross-border supplies" (DTC Final VAT Report, 2018: 7).

In the table below, the OECD VAT guidelines discussed in Part 2, are compared with South Africa's electronic services Regulations. The purpose is to determine if South Africa's regulations are aligned to the OECD guidelines.

The OECD's VAT Guidelines	The South African VAT Act: The electronic services Regulation
Guideline 2.1 **"The burden of value added taxes themselves should not lie on taxable businesses except where explicitly provided for in legislation."**	This guideline is met. Although the introduction of the electronic services Regulations, in effect, shifted the obligation of collection from the South African consumer to the foreign supplier, the final VAT burden still lies with the South African consumer (SARS, 2019:1).

Businesses pay VAT to their providers and then receives VAT from their customers on sales. This ensures the final consumer carries the tax burden.	Where offshore services are supplied to South African businesses, the South African business can still claim input VAT and then levy on any taxable supplies within South Africa to the final consumer (VAT Act, 1991: Section 1).
Guideline 2.2 **"Businesses in similar situations carrying out similar transactions should be subject to similar levels of taxation."** The ultimate tax at the end of a particular supply chain should be proportionally the same as the various stages of the supply chain.	This guideline is met. South Africa does not apply different VAT rates in different provinces. Foreign and local business who provide electronic services are obligated to apply to the same rules and levy VAT at 15% on their supplies (VAT Act, 1991: Section 7). All businesses are subject to the same levels of taxation.
Guideline 2.3 **"VAT rules should be framed in such a way that they are not the primary influence on business decisions."** Factors like financial, social and legal factors do influence business decisions. VAT and taxes in general are a factor to be considered (as it is one of businesses most material creditors), VAT consequences on E-commerce should not be the main factor influencing decisions to conduct business in foreign jurisdictions.	This guideline is met. The South African VAT Acts treats local and foreign electronic services providers equally (VAT Act, 1991: Section 1). The South African electronic services Regulations do not influence foreign business to take decisions to adopt specific operating structures when conducting business in South Africa. Decisions are primarily based on economic conditions (DTC Final VAT Report, 2018: 92).

Guideline 2.4 **“With respect to the level of taxation, foreign businesses should not be disadvantaged or advantaged compared to domestic businesses in the jurisdiction where the tax may be due or paid.”** The guideline confirms that: “VAT systems are designed to apply in a fair taxation of businesses to ensure there is no unfair competitive advantage afforded to domestic or foreign businesses. This is achieved by the application of the destination principle, under which exports are free of VAT and imports are taxed on the same basis, and at the same rate as domestic supplies.” (OECD VAT/GST Guidelines, 2017:22)	This guideline is met. The competitive advantage foreign electronic services suppliers had over local businesses led to the distortion of global markets. This was one of the major E-commerce challenges. The South African electronic service Regulations required foreign electronic services providers to be taxed under the same net as local suppliers. This successfully addressed this inequality. (SARS Explanatory memorandum, 2019: 5).
Guideline 2.5 **“To ensure foreign businesses do not incur irrecoverable VAT, jurisdictions may choose from a number of approaches.”**	This guideline is met. Basic principle of VAT on E-Commerce across all jurisdictions is to levy VAT on consumption in the jurisdiction where it occurs (DTC Final VAT Report, 2018: 91). The OECD however encourages different approaches to ensure foreign businesses do not incur irrecoverable VAT. An example of an approach which was successfully met by South Africa is to increase the threshold for foreign electronic services providers to register as VAT vendors from R50,000 to R1 million (VAT Act, 1991: Section 1).

Guideline 2.6 **"Where specific administrative requirements for foreign businesses are deemed necessary, they should not create a disproportionate or inappropriate compliance burden for the businesses."** "It may be appropriate for tax administrations to impose specific compliance requirements on different categories of businesses. This may apply, for example, to small enterprises and enterprises in specific sectors or to foreign businesses." (OECD VAT/GST Guidelines, 2017:25)	This guideline is met. Revenue authorities should always attempt to balance appropriate taxing measures with the need to prevent unjustified discrimination. Under the electronic services Regulations foreign businesses, which are required to register as VAT vendors, do not need to meet the normal registration requirements, as they do not have to appoint a South African representative or open a South African bank account (SARS: Registration Guide for Foreign Suppliers of electronic services, 2019: 4).
Guideline 3.1 **"The destination principle"** **"For consumption tax purposes, internationally traded services and intangibles should be taxed according to the rules of the jurisdiction of consumption."** "VAT systems must have mechanisms for identifying the jurisdiction of **consumption** by connecting such supplies to the jurisdiction where the final **consumption** of the services or intangibles is expected to take place." (OECD VAT/GST Guidelines, 2017:38)	This guideline is met. Taxing cross-border supplies of services and intangibles at place of consumption is the new norm globally. The South African electronic services Regulations do tax at place of consumption by applying paragraph (b)(vi) of the definition of enterprises in the VAT Act, which requires consumers to have a business or residential address within South Africa which effectively is the place of consumption. South Africa however does not have specific "place of consumption/enjoyment rules" like the EU (European Commission Sixth VAT Directive, 2006: Article 59).

Guideline 3.2 **"B2B supplies – The general rule"** **"For the application of Guideline 3.1, for B2B supplies, the jurisdiction in which the customer is located has the taxing rights over internationally traded services or intangibles."**	This guideline is met. Although South Africa's VAT Act should place more emphasis on differentiating between B2B and B2C supplies, the South African electronic services Regulations tax services at place of consumption by applying paragraph (b)(vi) of the definition of enterprises which requires consumers to have a business or residential address in South Africa which is effectively the residence of the customer (VAT Act, 1991: Section 1).
Guideline 3.3 **"For the application of Guideline 3.2, the identity of the customer is normally determined by reference to the business agreement."**	This guideline is met. South African electronic services Regulations tax services at the place of customer by applying paragraph (b)(vi) of the definition of enterprises which requires consumers to have a business or residential address in South Africa which is effectively the destination of the customer. The address would legally be required to appear on all business agreements (VAT Act, 1991: Section 1).
Guideline 3.4 **"For the application of Guideline 3.2, when the customer has establishments in more than one jurisdiction, the taxing rights accrue to the jurisdiction(s) where the establishment(s) using the service or intangible is (are) located."**	This guideline is met. The South African electronic services Regulations tax at place of consumption by applying paragraph (b)(vi) of the enterprise definition which requires consumers to have a business or residential address in South Africa which effectively, is the place of consumption. South Africa however does not have specific

	"place of consumption/enjoyment" rules like the EU. If foreign electronic services providers have customers in South Africa, they will be required to register for VAT and complete the VAT 201 returns for either monthly or bi-monthly for all supplies consumed in South Africa.
Guideline 3.5 **"B2C supplies – The general rules"** **"For the application of Guideline 3.1, the jurisdiction in which the supply is physically performed has the taxing rights over B2C supplies of services and intangibles that are** - **physically performed at a readily identifiable place, and** - **are ordinarily consumed at the same time as and at the same place where they are physically performed, and** - **ordinarily require the physical presence of the person performing the supply and the person consuming the service or intangible at the same time and place where the supply of such a service or intangible is physically performed."**	This guideline is met. Guideline 3.1 refers to "place of consumption". Guideline 3.5 refers to "place of supply". The South African VAT Act levies VAT on services that are physically rendered at the place the service is performed by applying section 7(1)(b) read with the enterprise definition which requires suppliers to levy VAT in terms of the normal VAT rules without having to consider the South African electronic services Regulations. "Guideline 3.5 is aimed primarily at supplies that are typically consumed at an identifiable place where they are performed, rather than supplies that can be provided remotely or that can be consumed at a time and place other than the place of performance. Examples include services physically performed on the person (e.g. hairdressing, massage, beauty therapy, physiotherapy)."

Guideline 3.6 **"For the application of Guideline 3.1, the jurisdiction in which the customer has its usual residence has the taxing rights over B2Csupplies of services and intangibles other than those covered by Guideline 3.5."**	This guideline is met. Although South Africa should place more emphasis on differentiating between B2B and B2C supplies, the South African electronic services Regulations tax services at place of consumption by applying paragraph (b)(vi) of the enterprise definition which requires consumers to have a business or residential address which is the place of supply
Guideline 3.7 **"The taxing rights over internationally traded services or intangibles supplied between businesses may be allocated by reference to a proxy other than the customer's location as laid down in Guideline 3.2, when both the following conditions are met: The allocation of taxing rights by reference to the customer's location does not lead to an appropriate result when considered under the following criteria: Neutrality Efficiency of compliance and administration Certainty and Simplicity Effectiveness Fairness. A proxy other than the customer's location would lead to a significantly better result when considered under the same criteria. Similarly, the taxing rights over internationally traded B2C supplies of services or intangibles may be allocated**	This guideline is met. VAT Act applies a destination-based tax system and foreign supplied services are taxable where is it consumed. Section 1 of the VAT Act defines electronic services supplied and then taxable in South Africa as the supply of electronic services by a person from a place in an export country, where two of the following circumstances are present: "(aa) the recipient is a resident; (bb) any payment originates from a South African bank account; (cc) the recipient of those electronic services has a South African business address, residential address or postal address." (VAT Act, 1991: Section 1). It should be noted that the electronic services Regulations do not provide for a proxy to be used, especially taking into account that it does not specifically differentiate between

by reference to a proxy other than the place of performance as laid down in Guideline 3.5 and the usual residence of the customer as laid down in Guideline 3.6, when both the conditions are met as set out in a. and b. above."	B2C and B2B supplies and therefore does not provide for a proxy for the different supplies.
Guideline 3.8 **"For internationally traded supplies of services and intangibles directly connected with immovable property, the taxing rights may be allocated to the jurisdiction where the immovable property is located."** "This expression does not have an independent meaning but aims simply to narrow the scope of the specific rule in the sense that it contemplates that there should be a very close, clear and obvious link or association between the supply and the immovable property." (OECD VAT/GST Guidelines, 2017: 85)	This guideline is met. This guideline confirms that taxing rights may be allowed to the jurisdiction where the immovable property is situated. South Africa has specific taxing provisions for supplies in relation to immovable property by applying the source principles as per section 9 of the Income tax Act and also levying VAT on services as per section 7 of the VAT Act (Income Tax Act, 1962: Sections 9(1)(c) to 9(1)(f); VAT Act, 1991: Section 1, 7 and 11(2).

5.2 RECOMMENDATIONS FOR SOUTH AFRICA TO BE IN LINE WITH OECD GUIDELINES

From the analysis in the table above, South Africa's electronic services Regulations meet the OECD VAT Guidelines. There is however room for improvement, as confirmed in the 2018 Davis Tax Committee Report, as the Regulations do not have explicit place of supply rules (DTC Final VAT Report, 2018: 92). There is the risk of future double taxation or non-taxation when not moving in the same direction as the international norm in regard to taxing cross-border transactions (OECD VAT/GST Guidelines, 2017: 56). The latest 2019 amendments which have been done in South African was performed only by editing qualifying electronic services in electronic services Regulations (National Treasury electronic services Regulations; 2018: 3).

South African rules, in its current form, do not distinct between B2B and B2C supplies (DTC Final VAT Report, 2018: 8). Based on the SARS VAT Frequently Asked Questions ("FAQ's"), this outcome was intentional as the South African VAT system does not subscribe to the B2B and B2C concepts (SARS VAT FAQ's, 2019: 3). Based on the SARS explanatory memorandum, introducing a B2B exemption concept for non-resident suppliers, would create an unfair cash-flow advantage for the non-resident suppliers which domestic suppliers would not be able to benefit from (SARS Explanatory memorandum, 2019: 8).

Certain supplies for consideration, supplied through an electronic agent, electronic communication or over the internet within the "same group of companies" do not qualify as electronic services as defined in the updated Regulations (SARS VAT FAQ's, 2019: 3). Foreign suppliers of electronic services in South Africa have to consider this exclusion once they have confirmed they will be providing electronic services in South Africa. This exclusion is expected to bring some relief in the administrative burden for large groups of companies entering into cross-border transactions and providing electronic services in South Africa (SARS VAT FAQ's, 2019: 4).

The term "group of companies" as used in amended Regulations means: "two or more companies in which one company (the "controlling group company") directly or indirectly holds shares in at least one other company (the "controlled group company")" to the extent that:

- "70% of the equity shares in each controlled group company are directly held by the controlling group company, one or more other controlled group companies or any combination thereof; and
- The controlling group company directly holds 70% of the equity shares in at least one controlled group company" (SARS VAT FAQs, 2019: 6).

The OECD Guidelines state that "Where specific administrative requirements for foreign businesses are deemed necessary, they should not create a disproportionate or inappropriate compliance burden for the businesses" (OECD VAT/GST Guidelines, 2017: 17). Although the exclusion of the group of companies can be viewed as bringing relief, the updated Regulations, when compared to the OECD guidelines, still create a substantial administrative burden on foreign suppliers (OECD VAT/GST Guidelines, 2017: 17). The SARS Explanatory Memorandum merely provides that: "Electronic services that are supplied by a non-resident company to a resident company that forms part of the same group of companies will be excluded from these Regulations, provided that the services are supplied exclusively for the purposes of consumption by the resident company" (The SARS Explanatory memorandum, 2019: 7). The requirements to qualify as a group of companies as per the Regulations are strict, and therefore this exclusion only brings relief for a limited number of companies (SARS VAT FAQs, 2019: 7). The Regulations may thus be criticised as imposing "a disproportionate or inappropriate compliance burden" for the businesses.

5.3 COMPARISON BETWEEN EU AND SOUTH AFRICA

In Part 3, an analysis of EU provisions was performed. It therefore makes sense to compare the EU VAT Directive against the South African VAT Act and draw a comparative conclusion from a South African perspective.

Although the South African VAT Act applies the same VAT rate of 15% in all the South African provinces (VAT Act, 1991: Section 7), the taxing principles of the EU VAT Directive are similar to that of the South African VAT Act.

Even though the EU VAT Directive is similar to the South African VAT Act, the EU VAT Directive targets every type of transaction through clear VAT provisions, whereas the South African VAT Act applies a general VAT charging section (section 7 of the VAT act as discussed in Part 2) in order to levy VAT on a multiple of different transactions.

The analysis of the EU MOSS scheme in Part 3, shows that there are some similarities with the South African system. One of the main benefits of the MOSS scheme, is that it removes the requirement for a company to register in the multiple EU jurisdictions, even when the business supplies online services in different EU jurisdictions (European Union Directive, 2006: Chapter 6). South Africa uses one VAT registration process in all nine provinces and applies VAT at the same rate of 15%. The South African electronic services Regulations provide similar benefits to foreign electronic services providers as the EU system as each business only has to submit one VAT return per business.

Different to the EU, the South African electronic services Regulations apply a general charging provision which requires foreign businesses to perform a detailed analysis of their business and transactions to conclude if they should register for VAT in South Africa or not (VAT ACT, 1991: Section 7). This makes its more complex for foreign business to establish if they should register for VAT in South Africa.

5.4 RECOMMENDATIONS TO EMULATE FROM THE EU VAT DIRECTIVE

There are advantages of the MOSS scheme that could improve the South African electronic services Regulations. South Africa’s electronic services Regulations are complex, which makes it difficult for foreign business to establish if they should register for VAT in South Africa. Similar to the EU MOSS scheme, South Africa should focus on simplification as this will ultimately result in a greater collection of tax revenue (Krinis, 2016: 103).

Similar to the EU, South Africa has a threshold amount, which has been increased to R1 million from R50,000 before electronic services providers are required to register for VAT in South Africa (VAT Act, 1991: Section 23). South Africa should consider differentiating between different types of supplies, i.e. B2B and B2C supplies. Although the group of company exemption has been introduced in South Africa, it is not a familiar concept to foreign electronic services providers. SARS should alternatively consider increasing the low registration threshold amount of R1 million on electronic services providers regarding B2B transactions to lower the administrative burden of foreign entities. (DTC Final VAT Report, 2018: 35). South Africa can also specifically list what is excluded from electronic services. Similar to Article 56(2) of the EU sixth VAT Directive.

6 CONCLUSION

The South African VAT Act levies VAT on electronic supplied services by means of what could be referred to as “implicit rules” regarding electronic services. (National Treasury electronic services Regulations, 2018: 3). Based on this study, the South African electronic services Regulations do not provide for clear “general place of supply rules” as recommended in the OECD Guidelines (DTC Final VAT Report, 2018: 7).

The DTC recommended that: “The VAT Act be amended to ensure the inclusion of clearly stated place of supply rules, specifically rules that are in harmony with the OECD Guidelines and which are supported and adhered to by other VAT jurisdictions” (DTC Final VAT Report, 2018: 82).

South Africa issued the Electronic Services Regulations, which originally become effective on 1 June 2014 and was updated in 2018, in order to tax electronic services as defined by foreign suppliers (National Treasury electronic services Regulations, 2018: 3). Although South Africa is applying the updated Electronic Services Regulations, there are still administrative challenges for offshore companies to become VAT compliant in South Africa. To date, South Africa has not introduced explicit place of supply rules for B2B and B2C supplies respectively. The CFA committee confirmed after the Ottawa Conference countries must apply place of taxation rules that differentiate between B2B (as the country where the

recipient has a business presence), and B2C transactions (as the country where the recipient resides) (Ottawa OECD Multinational Conference, 1998; DTC Final VAT Report, 2018: 91).

Even though, the South African VAT Act includes, “implicit rules” to tax digital transactions, the DTC recommended the South African VAT Act to be amended in order to provide for the inclusion of clear “place of supply rules” which are aligned with the OECD Guidelines and which are, as previously discussed, adhered to by the EU (DTC Final VAT Report, 2018: 93).

As discussed in Part 4, the South African definition of “telecommunication services” does not meet the “enterprise” definition” in section 1 of the VAT Act as telecommunication services are excluded from electronic services (VAT Act, 1991: Section 1). The DTC identified that a more distinct and clearer definition of the term telecommunication services is required. The EU definition makes it easier to identify supplies which constitute electronically supplied services and to avoid unnecessary burdens on suppliers. Another recommendation from the DTC as confirmed by this: “It is recommended that: South Africa adopts such a definition so that the customer be liable to account for any tax due in respect of B2B transactions where the recipient business is a VAT registered entity. This can be achieved through the reverse charge mechanism” (as discussed in Part 3) (DTC Final VAT Report, 2018:82). The reverse charge mechanism is applied where it is consistent with the overall design of the national consumption tax system (DTC Final VAT Report, 2018: 86). Accordingly, the supplier should then not be required to be identified for VAT or account for tax in the customer’s jurisdiction (DTC Final VAT Report, 2018: 86).

REFERENCES

Davis Tax Committee. 2015. *First interim report on VAT to the Minister of Finance*.

Davis Tax Committee. 2018. *Final report on VAT to the Minister of Finance*.

De Bruyn, C. W. 2016. *A comparative analysis of the projects undertaken in the development of a taxation framework in the digital economy*. Cape Town: University of Cape Town.

De la Féria, R. 2014. Sections 103-106: VAT-mini-one-stop-shop (MOSS). *British Tax Review,* 5: 428-433.

De la Féria, R. 2018. *European Commission proposes far-reaching reform of the EU VAT system,* Rotterdam. [Online] Available from: http://www.europesefiscalestudies.nl/?page_id=1019 [Accessed: 2019-03-01].

De la Féria, R. 2018. The definitive VAT system: Breaking with transition. *EC Tax Review,* 27(3): 122-126.

De Swardt, R.D. & Oberholzer, R. 2006. Digitised products: How compliant is South African Value-Added Tax? *Meditari accountancy research*, 14(1): 15-28.

Ernst & Young (EY). 2018. *New EU VAT rules simplify VAT for E-commerce.* [Online] Available from: https: www.ey.com/g//en/services/taxinternational -tax/alert-ne-eu-vat-rules-simplify-vat-for-E-commerce. [Accessed: 2019-03-01].

Ernst & Young (EY). 2018. South Africa releases final electronic services VAT regulations, effective 1 April 2019. South Africa.

Essays, UK. 2018. *South Africa's comparative advantage: EU and SADC*. [Online] Available from https://www.ukessays.com/essays/economics/south-africas-comparative-advantage-within-the-eu-and-sadc-economics-essay.php. [Accessed: 2019-03-01].

European Commission. 2015. *Communication from the Commission to the European Parliament, the council, the European economic and social committee and the committee of the regions: A digital single market strategy for Europe*. [Online] https://europa.eu/rapid/attachment/IP-15-4919/en/DSM_communication.pdf [Accessed: 2019-08-25].

European Commission. 2008. *Council Directive 2008/8/EC of 12 February 2008 amending Directive 2006/112/EC as regards the place of supply of services.*

European Commission. *2017. inception impact assessment.* [Online] Available at: https://ec.europa.eu/digital-single-market/en/news/summary-report-targeted-consultation-hpc-initiative-europe-and-eurohpc-inception-impact. [Accessed: 2019-08-25].

European Commission. 2012. *European Commission: Council Regulation (EU) No 967/2012* of 9 October 2012 (OJ L 290, 20/10/2012: 1-7).

European Union. 2006. *Council Directive 2006/112/EC European Commission*. [Online] Ec.europa.eu. Available at: https://eur-lex.europa.eu/eli/dir/2006/112/oj [Accessed: 2019-06-25].

Gopal, A. R. 2017. *Value-Added Tax on electronic services*. Cape Town: University of Cape Town.

Government Printers. 1991. *Report of the Value-Added Tax Committee (VATCOM).*

Irish Office of the Revenue Commissioners. *Irish Tax and Customs. Value Added Tax.* [Online] Available: https://www.revenue.ie/en/vat/vat-moss/telecommunications-broadcasting-and-electronic/index.aspx [Accessed: 2019-08-28].

Joumard, I. 2002. Tax systems in European Union countries. *OECD Economic Studies,* 34: 91-151.

Kenton, W. 2019. Business essentials Business-to-Consumer (B2C). *Investopedia* [Online] Available from: https://www.investopedia.com/business-essentials-4689832. [Accessed: 2019-02-27].

Krinis, D. 2016. *VAT challenges of the digital economy: an EU perspective*. Unpublished Dissertation: Master's in accounting. Portugal: Universidade do Minho https://repositorium.sdum.uminho.pt/bitstream/1822/42303/1/Dóra%20Krinispdf.

Lamensch, M. 2015. European Value Added Tax in the digital era. *IBFD doctoral series 36.*

Martynkiewicz-Frank, M. 2018. E-Commerc challenge within B2B transactions inside EU countries. *Prace Naukowe Uniwersytetu Ekonomicznego we Wrocławiu,* 515: 157-165.

Moodley P, 2016. *Vat treatment of financial services: A comparative analysis between the methodologies applied in South Africa and other tax jurisdictions*. An unpublished Masters of Commerce. Johannesburg: University of the Witwatersrand.

National Treasury. 2014. *Government Notice on Regulation prescribing electronic services for the purpose of the definition of "Electronic Services" in section 1 of the Value-Added Tax Act.* Pretoria: Government Printers.

National Treasury. 2018. *Government Notice on Regulation prescribing Electronic Services for the purpose of the definition of "Electronic Services" in section 1 of the Value-Added Tax Act.* Pretoria: Government Printers.

OECD. 2001. *Electronic commerce policy brief*. [Online] Available: http://www.oecd.org/development/electroniccommerce.htm. [Accessed: 2019-08-25].

OECD. 2001. *Taxation and electronic commerce: Implementing the Ottawa tax framework conditions*. [Online] Available: http://www.oecd.org/tax/consumption/5594899.pdf. [Accessed: 2019-07-02].

OECD. 2003. *Implementation of the Ottawa taxation framework conditions:* The 2003 Report. [Online] Available: http://www.oecd.org/tax/administration/20499630.pdf.

OECD. 2006. *Consumption tax trends, VAT/GST and excise rates, trends and administration issues.* [Online]. Available from: https://read.oecd-ilibrary.org/taxation/consumption-tax-trends-2006_ctt-2006-en#page1 [Accessed: 2019-04-19].

OECD. 2013. *OECD international VAT/GST guidelines - Draft consolidated version.* Available from: http://www.oecd.org/ctp/consumption/ConsolidatedGuidelines20130131.pdf [Accessed: 2019- 02-17].

OECD. 2014. *BEPS Action 1: Address the tax challenges of the digital economy.* [Online]. Available from: https://www.oecd.org/ctp/tax-challenges-digital-economy-discussion-draft-march-2014.pdf [Accessed: 2019-02-22].

OECD. 2015. *BEPS Action 1: Address the tax challenges of the digital economy, Action 1-2015 final report.* [Online]. Available from: https://read.oecd-ilibrary.org/taxation/addressing-the-tax-challenges-of-the-digital-economy-action-1-2015-final-report_9789264241046-en#page3 [Accessed: 2019-04-19].

OECD. 2017. *International VAT/GST guidelines*, [Online]. Available from: https://read.oecd-ilibrary.org/taxation/international-vat-gst-guidelines_9789264271401-en#page4 [Accessed: 2019-04-19].

OECD. Hellerstein, W. Buydens, S. & D. Koulouri & Hellerstein, W. 2018. *OECD Taxation working papers, No. 39. Simplified registration and collection mechanisms for taxpayers that are not located in the jurisdiction of taxation: A review and assessment.* [Online] Available: https://www.oecd-ilibrary.org/taxation/simplified-registration-and-collection-mechanisms-

for-taxpayers-that-are-not-located-in-the-jurisdiction-of-taxation_64bcf5de-en. [Accessed: 2019-08-25].

OECD. 2019. *Members and partners - OECD*. [Online] Available at: http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm [Accessed: 2019-08-22].

Picciotto, S. 2013. Can the OECD mend the international tax system? *Tax Notes International* 71(12): 1105-1115.

Republic of South Africa. 1962. *Income Tax Act, No. 58 of 1962*. Pretoria: Government Printer.

Republic of South Africa. 1990. *The Banks Act, No. 94 of 1990*. Pretoria: Government Printers.

Republic of South Africa. 1991. *The Value Added Tax Act No.89*. Pretoria: Government Printer.

Republic of South Africa. *Value-added Tax Committee. 1991. Report of the value-added tax committee (VATCOM).* Pretoria: Government Printer.

Republic of South Africa. 1991. *Report of the Value-Added Tax Committee (VATCOM)* February 1991. Pretoria: Government Printers.

Republic of South Africa. 2001. *Financial Intelligence Centre Act, 38 of 2001: 21*. Pretoria: Government Printers.

Schippers, M.L. & Verhaeren, C.E. 2018. Taxation in digitising world: Solutions for corporate income tax and Value Added Tax. *EC Tax Review* 2018(1): 61-66.

South African Revenue Services. 2019. *Explanatory memorandum: Regulations prescribing electronic services for the purposes the definition of "Electronic services" in section guide*

for foreign suppliers of electronic services. [Online]. Available from: https://www.sars.gov.za/AllDocs/LegalDoclib/ExplMemo/LAPD-LPrep-EM-2019-01%20-%20Explanatory%20Memorandum%20on%20Regulations%20prescribing%20electronic%20Services%2018%20March%202019.pdf. [Accessed: 2019-08-04].

South African Revenue Services. 2019. *Frequently asked questions. Supplies of electronic services.* [Online]. Available from: https://www.sars.gov.za/AllDocs/OpsDocs/Guides/LAPD-VAT-G16%20-%20VAT%20FAQs%20Supplies%20of%20electronic%20services.pdf [Accessed: 2019- 08-08].

South African Revenue Services. 2019. *Registration guide for foreign suppliers of electronic services in section 1(1) of the Value-Added Tax Act, 1991.* [Online]. Available from: https://www.sars.gov.za/AllDocs/OpsDocs/Guides/VAT-REG-02-G02%20-%20Foreign%20Suppliers%20of%20Electronic%20Services%20-%20External%20Guide.pdf. [Accessed: 2019-07-03].

South African Revenue Services. 2019. *SARS VAT.* [Online]. Available from http://www.sars.gov.za/TaxTypes/VAT/Pages/default.aspx. [Accessed: 2019-08-02].

Stiglingh, M., Koekemoer, A., Wilcocks, J, van Schalkwyk, L. & de Swart, R. 2016. *SILKE: South African Income Tax 2017*. 1st ed. Durban: LexisNexis.

UK Essays. 2018. *South Africa's Comparative Advantage: EU and SADC*. [Online]. Available from: https://www.ukessays.com/essays/economics/south-africas-comparative-advantage-within-the-eu-and-sadc-economics-essay.php?vref=1 [Accessed: 2019-04-14].