

An Explorative Study: Place of Supply Rules for Value-Added Tax in South Africa

by

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An Explorative Study: Place of Supply Rules for Value-Added Tax in South Africa

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Value-Added Tax (VAT) was introduced in South Africa in 1991 by the Value Added Tax Act No. 89 of 1991 (the VAT Act). The South African VAT system is based on the destination or consumption of the goods or service supplied. The initial place where these goods and services are supplied is not taken into consideration. As a result, non-residents in some instances will be liable to register as VAT vendors and account for VAT even if they are not physically present in South Africa. The absence of place of supply rules therefore impacts on determining where a supply takes place and on the VAT registration of for example non-residents.

This study aims to determine whether the South African VAT legislation, to some extent, makes provision for place of supply rules, to establish whether general place of supply rules for certain African and developed countries exist, to draw a comparison between these countries and to determine the possibility of implementing similar rules for South Africa.

The study concludes that although not sufficient, the South African VAT legislation provides for certain inferred VAT place of supply rules. Worldwide, different countries apply place of supply by different means, and it is therefore not viable to combine all the various countries' rules into one set of rules for implementation in South Africa. However, in order for South African VAT legislation to be in line with international trends, the study suggests that South Africa should investigate and determine whether place of supply rules should not formally be introduced in its legislation. VAT place of supply rules is important, as introducing same will equip South Africa to



better align itself with its international trading partners. It will enable the supplier and consumer to determine whether a person should register for VAT in South Africa, clarify where a supply takes place and at what rate VAT should be charged. It will also minimise confusion as to the application of VAT treatment of certain transactions and eliminate or limit the possibility of double or non-taxation that can arise.

Keywords:

Value-Added Tax (VAT)

Place of Supply

South Africa

International

VAT Registration

VAT Treatment

‘n Verkennende Studie: Plek van Lewering Reëls vir Belasting op Toegevoegde Waarde in Suid Afrika

deur

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Belasting op toegevoegde waarde (BTW) het in Suid Afrika in werking getree in 1991 deur die implementering van die Belasting op Toegevoegde Waarde Wet No. 89 van 1991 (die BTW Wet). Die Suid Afrikaanse BTW sisteem is van so aard dat BTW betaalbaar is by die uiteindelijke bestemming of finale gebruik van goedere en dienste wat gelewer word. Die oorspronklike plek van lewering word nie in ag geneem nie. Die gevolg hiervan is dat nie-inwoners in sommige gevalle aanspreeklik sal wees om te registreer vir BTW ondernemers en om BTW te betaal, selfs al is hulle nooit fisies in Suid Afrika teenwoordig nie. Die afwesigheid van plek van lewering reëls het ‘n invloed op die bepaling van die plek van oorsprong van die lewering asook die BTW registrasie van byvoorbeeld, nie-inwoners.

Die studie het ten doel om te bepaal of Suid Afrikaanse wetgewing tot ‘n seker mate plek van lewering reëls insluit, om te bepaal of algemene plek van lewering reëls vir sekere Afrika en ontwikkelde lande in werking is, om ‘n vergelyking tussen hierdie lande se reëls te trek en om die moontlike implementering van soortgelyke reëls in Suid Afrika te ondersoek.

Die slotsom van die studie is dat alhoewel nie voldoende, die Suid Afrikaanse BTW wetgewing wel voorsiening maak vir toevallige plek van lewering reëls. Verskillende lande hanteer plek van lewering reëls op verskillende wyses en dit is dus nie moontlik om een stel gekombineerde reëls op te stel en toe te pas in Suid Afrika nie. Om die Suid Afrikaanse BTW wetgewing egter in lyn met internasionale tendense te bring, stel die studie voor dat Suid Afrika ondersoek instel en bepaal of plek van lewering



reëls nie formeel ingesluit moet word in diewetgewing nie. BTW plek van lewering reëls is belangrik omdat die implementering daarvan Suid Afrika beter sal toerus om in lyn te wees met sy internasionale handelsvennote. Dit sal ook die verskaffer en verbruiker in staat stel om te bepaal of 'n persoon in Suid Afrika moet registreer vir BTW, duidelikheid verskaf rakende die oorsprong of plek van lewering en teen watter koers BTW gehef moet word. Dit sal ook die verwarring rondom die korrekte hantering van BTW op spesifieke transaksies verminder en die potensiaal van dubbel of geen belasting beperk of elimineer.

Sleutelwoorde:

Belasting op Toegevoegde Waarde (BTW)

Plek van Lewering

Suid Afrika

Internasionaal

BTW Registrasie

BTW Hantering

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AN EXPLORATIVE STUDY: PLACE OF SUPPLY RULES FOR VALUE-ADDED TAX IN SOUTH AFRICA

CHAPTER 1

1 INTRODUCTION

Value-Added Tax (hereinafter referred to as VAT) was introduced in South Africa in 1991. VAT in South Africa is administered through the Value Added Tax Act No. 89 of 1991 (hereinafter referred to as the VAT Act). The South African VAT system is based on VAT being payable at the destination of the goods or service which are supplied. This implies that VAT is only payable on the consumption of goods and services which take place in South Africa and on the importation of goods and services into South Africa. The initial place where these goods and services are supplied is not taken into consideration.

As a result of the above non-residents in some instances will be liable to register as VAT vendors and account for VAT even if they are not physically present in South Africa. In certain instances non-residents who conduct once-off transactions in South Africa, need to register as VAT vendors with the South African Revenue Service (SARS), where the single transaction comprises of various activities. This is due to the fact that the VAT system is consumption based.

Generally, a person who carries on an enterprise becomes liable to register for VAT where its taxable supplies exceeds or is likely to exceed R1 million in any 12 month period. This can result in non-residents becoming liable to register for VAT as a result of a single transaction, where their taxable supplies relating to that transaction exceed or is likely to exceed R1 million in a 12 month period.(Section 23 of the VAT Act).This would include the scenario where a non-resident company or person hosts a music concert. Although the concert will only take place once (single supply or transaction), various activities (either different shows or extensive preparation for the show) will take place. Where the concert's revenue (taxable supplies) will exceed the R1millionthresholdmentioned above as per the VAT Act, the non-resident may become liable to register for VAT in South Africa.

SARS previously indicated that a freelance artist must register for VAT purposes if his income (taxable supplies) exceeds R300000 (now R1 million) per annum, even if that artist receives only one amount in excess of this threshold. One therefore needs to take various requirements into consideration (General Written Ruling no 81).

Another practical example is where a non-resident exposition company hosts an exposition in South Africa and provides stand space for exhibition purposes. Although this may be a once-off event, the non-resident will become liable to register for VAT in South Africa when its taxable supplies made, exceeds the R1 million threshold. The VAT Act also contains certain other requirements which should be considered.

The examples leave serious administration implications which may act as an investment deterrent. The non-residents would also be required to deregister for VAT purposes, where their taxable activities in South Africa come to an end.

The obligation to register for VAT in South Africa is not dependent on the place from where the supply of goods or services is made since “T(t)he South African VAT system defines its jurisdictional reach based on a much wider concept, namely the place of the supplier’s business activity” (Niemand, de Swardt and Wiid, 2011:34).

The absence of place of supply rules in the South African VAT legislation impacts the determination of where a supply takes place and the VAT registration implications for non-residents. According to Rudolph (2007)¹ this is partially as a result of the wording of the definition of "enterprise" in section 1 of the VAT Act. This section provides that an enterprise is an *activity* which is carried on *continuously or regularly*, in or partly in South Africa.

Activity in South Africa can be interpreted as a physical activity in South Africa or merely a presence as a result of consumption in South Africa, and can potentially also relate to an economic activity. Schneider (2011)² points out that according to the term “activity” the meaning of economic activity can in certain instances draw a non-resident into the South African VAT net where the company makes use of a machine

¹Rudolph, EIR. 2007. Verbal communication with the author during 2007. Illovo.

²Schneider, FD. 2011. Verbal communication with author on 15 April and 13 May 2011. Johannesburg.

available to a South African Resident. Although the use of the machine may contractually be made available outside South Africa, as the agreements are signed outside South Africa, the use of the machine comprises of an economic activity in South Africa. Even though the non-resident may have no physical activity in South Africa, the economic activity could arguably be linked to South Africa which can result in the non-resident falling within the definition of enterprise with the resultant VAT registration liability.

The definition of enterprise in section 1 of the VAT Act includes an activity which is carried on *continuously or regularly*, in or partly in South Africa. Since the VAT Act does not define the phrase “continuously or regularly”, the intention of the legislator could have been to include activities which take place in various intervals or to include activities which are significant only.

The European Union (EU) implemented a VAT Directive (Directive no 2006/112/EC) (European Union, 2006) which generally provides that the place of taxation is determined by where the services are supplied, and the VAT is therefore payable at the place of the relevant supply. However, to fully understand and implement the specific treatment of VAT in the VAT Directive, one need to understand that the treatment of VAT of a specific supply depends not only on the nature of the service supplied but also on the status of the recipient of the service.

The South African VAT treatment can be contrasted to that of EU. The South African system is a so-called worldwide VAT system which, at the offset, pulls worldwide supplies of a Vendor into the net, irrespective of the place of supply.

In his budget speech of February 2006 by the previous Minister of Finance, Mr. Trevor Manuel mentioned that source of supply rules were soon to be introduced in South Africa. To date, however, SARS have not made any publicized progress in this regard.

SARS recently indicated that since South Africa does not have explicit place of supply rules, there is sometimes uncertainty as to whether the business activities of a non-resident are also conducted in South Africa. SARS indicated that the policy relating to non-resident businesses is *in the process of being reviewed*. SARS also mentioned that the current policies will remain in place until the review has been

completed and public notice has been given for the implementation of any changes (The South African Revenue Service, 2011:2).

1.1 RESEARCH QUESTION

This study aims to provide answers to the following questions:

1. To what extent does the South African VAT legislation make provisions for the place of supply rules?
2. Where it is found that South Africa has place of supply rules in place, are those rules sufficiently catered for?
3. Where it is found that South Africa does not have specific rules place of supply rules, why is that the case?
4. What is the general place of supply rules for certain African countries such as Botswana, Kenya and Madagascar and certain developed countries such as Australia, the European Union and New Zealand?
5. To what extent will it be possible to implement the place of supply rules of certain international community in to the South African VAT system?

1.2 RESEARCH OBJECTIVE

The objective of the research is to:

1. Perform an exploratory research by drawing a comparison between specific African countries, and specific developed countries which operate with VAT place of supply rules.
2. Compare the outcome of objective 1 (above) with South Africa's current VAT legislation.
3. Propose possible implementation of place of supply rules in South Africa.

1.3 GLOSSARY

Commencement Date: 30 September 1991, the date on which VAT was introduced in South Africa.

| | |
|------------------------------|---|
| Commissioner: | The Commissioner for and government official or representative in charge of the South African Revenue Service. |
| Company: | Any association, corporation, company, or close corporation, incorporated or deemed to be incorporated by or under any law in force in South Africa or a close corporation as defined in section 1 of the Income Tax Act. |
| Consumption: | The using, eating or drinking, destroying or devouring of something as well as the spending of for example money or time wastefully(The Oxford Minidictionary, 1991& Dictionary.com, Not dated). |
| Consumption Base VAT System: | VAT is imposed on domestic consumption of goods or services. Also refer to Destination Base VAT System. |
| Consideration: | The amount of a payment made or to be made for the supply of goods or services which includes VAT. |
| Customer: | A person who purchases goods or services from another also generally referred to as a buyer. |
| Destination Base VAT System: | VAT is imposed according to the destination of goods or services. Also refer Consumption Base VAT System. |
| Double Taxation Agreement: | An agreement between two countries to ensure that tax is not paid in both countries. A mutual arrangement which provides relief to a taxpayer to ensure that the taxpayer is not burdened with double tax on income in the resident and non-resident country. |
| Enterprise: | An enterprise of activity which is carried on continuously or regularly by any person in, or partly in South Africa in the course or furtherance of which goods or services are supplied to any other person for consideration, whether or not for profit, including any enterprise or activity |

carried on in the form of a commercial, financial, industrial, mining, farming, fishing, municipal or professional concern or any other concern of a continuing nature or in the form of an association or club (paragraph (a) of the definition of an enterprise in section 1 of the VAT Act).

| | |
|----------------------------|--|
| Exposition (Expo): | A large-scale public exhibition or show. |
| Exempt Supply: | A supply of goods or services which is exempt from VAT. |
| Export Country: | Any country other than the Republic of South Africa. |
| Export(ed): | The consignment or delivery of goods or services to a recipient at an address in an export country. |
| FIFA: | Federation of International Football Association. FIFA is the International Governing body for football. |
| Foreign Company: | Any company which is not a resident of the Republic of South Africa. |
| Foreign Investor: | An investor who is not a resident of South Africa. |
| Furtherance of Enterprise: | The act of conducting an enterprise that implies that the business is furthered or advanced. |
| GDP: | Gross Domestic Product. "The monetary value of all the finished goods and services produced within a country's borders in a specific time period, though GDP is usually calculated on an annual basis. It includes all of private and public consumption, government outlays, investments and exports less imports that occur within a defined territory" (Investopedia.com, Not dated). |
| General Written Ruling: | The Commissioner for SARS issued General Written Rulings to specific vendors which may be of general interest, and are published in the form of questions and answers to a specific scenario. The publication thereof |

does not create legislation, but serves as an explanation of the Commissioner's interpretation and application in specific circumstances. Although not enforceable by law, the publication thereof makes it binding on the Commissioner.

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| Goods: | Corporeal moveable things, fixed property, any real right in any such things or fixed property, and electricity. This excludes money, any right under a mortgage bond and any stamp form or card which has money value and has been sold or issued by the State for the payment of tax or duty levied (defined in section 1 of the VAT Act). |
| GST: | Goods and Services Tax. This is generally a value added tax, and not a sales tax (Dictionary.com, Not dated). |
| Importation: | The act, business, or process of importing goods or services into e.g. South Africa from a foreign country. |
| Imported Service: | A supply of services that is made by a supplier who is resident or carries on business outside South Africa to a recipient who is a resident of South Africa to the extent that such services are utilized or consumed in the South Africa otherwise than for the purpose of making taxable supplies (defined in section 1 of the VAT Act). |
| Imposition section: | Section 7(1)(a) is the imposition section in the VAT Act that enforces the application of VAT and indicates when VAT should be charged (section 7 of the VAT Act). |
| Income Tax Act: | The Income Tax Act of South Africa No. 58 of 1962. |
| Input Tax: | The tax charged under section 7 of the VAT Act by a vendor on the supply of goods or services made by that supplier. The consumer or vendor acquiring the goods or services is liable for the payment of this tax as it will be included in the consideration charged for the relevant |

supply made. Refer also to the tax payable by a vendor on the importation of goods by him. A Vendor is allowed to claim the tax so charged as input tax from SARS, to the extent that the relevant good or service is used to make taxable supplies, provided all relevant requirements as set out in the VAT Act, are met (defined in section 1 of the VAT Act).

| | |
|-----------------------------|--|
| Invest: | To put, for example, money to use, by the purchasing or expenditure in something offering potential profitable returns, such as interest, income, or appreciation in value (Dictionary.com, Not dated). |
| Invoice: | A document giving notice of an obligation to make payment (define in section 1 of the VAT Act). |
| License Fee: | A fee paid to a leading body for the privilege of being licensed to do something such as the selling of liquor or the using of a specific product and other. |
| Money: | Coins or paper currency which for example the South African Reserve Bank has issued in for example South Africa in accordance with the relevant Bank Act, which are in circulation and used (traded) by consumers in order to acquire goods or services from a supplier (defined in section 1 of the VAT Act). |
| Non-Resident: | A person who is not a resident of South Africa. |
| New Zealand Inland Revenue: | The governing body who administers taxes in New Zealand. |
| Open Market Value: | The consideration which the supply of goods or services would generally fetch if supplied in similar circumstances between a willing buyer and a willing seller in a normal arm's length transaction. |

| | |
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| Output Tax: | The tax charged under section 7 of the VAT Act in respect of the supply of goods and services by a vendor. The vendor issuing the tax invoice needs to account for this tax, by paying the output tax charged over to SARS (defined in section 1 of the VAT Act). |
| Person: | Any public authority, any municipality, any company, any body of persons (corporate or unincorporate), the estate of any deceased or insolvent person, any trust fund and any foreign donor funded project (defined in section 1 of the VAT Act). |
| Place of supply: | The location from where a supply is deemed to originate. |
| Recipient: | A person to whom a supply is made. |
| Republic: | In the geographical sense the territory of the Republic of South Africa and includes the territorial waters, the contiguous zone and the continental shelf referred to in the Maritimes Zones Act, 1994 (Act No. 15 of 1994) (defined in section 1 of the VAT Act). |
| Resident of the Republic (South Africa): | A resident as defined in section 1 of the Income Tax Act. In terms of the VAT Act, a person or company shall also be deemed to be a resident of South Africa to the extent that such a person or company carries on any enterprise or other activity in South Africa and has a fixed or permanent place in South Africa which relates to such an enterprise or activity (defined in section 1 of the VAT Act). |
| Royalty Payment: | A payment made by one party to another party for the continuing use of the other party's asset, which is in the form of intellectual property or a brand name. Royalties are normally agreed upon as a percentage of gross or net revenues derived from the use of an asset or a fixed price agreed upon (Wikipedia, 2011). |

| | |
|--------------------|---|
| SAICA: | The South African Institute of Chartered Accountants. SAICA serves the interests of the chartered accountancy profession and society, and upholds professional standards for accountancy. |
| Sale: | An agreement of purchase and sale and includes any transaction or act whereby or in consequence of which ownership of goods passes or is to pass from one person to another (defined in section 1 of the VAT Act). |
| Sales tax: | Tax charged on the receipts from sales by the seller of good or service, and usually added to the selling price payable by the final consumer. |
| SARS: | The South African Revenue Service. SARS is the governing body in South Africa, established and legislated to collect revenue and ensure compliance with tax law in South Africa. |
| Services: | 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 the definition of goods (defined in section 1 of the VAT Act). |
| Supplier: | The person supplying the goods or services to the consumer or recipient. |
| Supply: | The performance in terms of a sale, rental agreement, and instalment credit agreement and all other forms of supply, whether voluntary, compulsory or by operation of law, irrespective of where the supply is effected (defined in section 1 of the VAT Act). |
| Standard VAT Rate: | Vat calculated at the rate of 14%. |

| | |
|-----------------|---|
| Taxable Supply: | Any supply of goods or services which is chargeable with tax under the provisions of the VAT Act. This includes tax chargeable at the standard rate of 14% and VAT charged at the zero-rate (0%) VAT. |
| Threshold: | The VAT registration threshold in South Africa is currently set at R1million taxable supplies per year (defined in section 1 of the VAT Act). |
| Vendor: | Any person who is or is required to be registered under the provisions of the VAT Act (defined in section 1 of the VAT Act). |
| VAT: | Value-Added Tax. VAT refers to a form of indirect tax that is based on the value added to goods or services at each stage of production or distribution stage. |
| VAT Act: | The Value-Added Tax Act No. 89 of 1991 and used in South Africa as legislation to implement and administer VAT in South Africa. |
| VAT Rate: | The rate at which VAT is charged. In South Africa there are currently two taxable VAT rates, namely the standard rate and the zero rate. |
| Zero Rate VAT: | Vat calculated at the rate of 0%. |

1.4 LIST OF ABBREVIATIONS

| | |
|--------|---|
| FIFA: | Federation of International Football Association. |
| GDP: | Gross Domestic Product. |
| GST: | Goods and Services Tax. |
| SA: | South Africa. |
| SAICA: | The South African Institute of Chartered Accountants. |
| SARS: | The South African Revenue Service. |

VAT:

1.5 DELIMITATIONS

This study has certain limitations that are discussed below.

A limited audience may find the study beneficial. They include individuals or entities who are interested in tax (especially VAT) in South Africa. The nature of the study is of such a nature that the focus will specifically be to reach individuals from tax consulting firms such as BDO, Ernst & Young, KPMG and Price Waterhouse Coopers.

The feedback received from the questionnaire resulted in presentation of facts from only 3 African countries (i.e. Botswana, Kenya and Madagascar) which are included in the study. This limits the result in that only 3 of the many countries in Africa are represented in this study. Valuable information on other countries is excluded from the study, and may result in limited information reflected.

The questionnaire was forwarded to specific individuals. This can result in a one-sided opinion or answer received from the respondent, which may not necessarily be the correct answer or feedback on the treatment of specific transactions. The feedback can only be seen as an interpretation of the specific individual, and not necessarily the way the legislator of the specific country intended it to be interpreted.

Only 3 developed countries (i.e. Australia, the European Union and New Zealand) were selected and presented in the study, which can result in other developed countries' useful information not being used to draw a conclusion.

1.6 ASSUMPTIONS

During the study, certain assumptions were made. These assumptions are explained below.

The researcher assumes that the respondents on the questionnaire are experts in the field of VAT, and therefore presented the correct information for the questions asked. This assumption is based on the fact that they hold senior positions in the Indirect Tax departments in the organisations in which they are employed.

The researcher assumed that the information available on the internet, and from textbooks and articles, are from trustworthy sources and can be relied upon as such as it was presented and published by assumingly well-known sources and writers.

The researcher assumes that certain parties will specifically be interested in the proposed study. They include students, lecturers, SARS and SARS VAT officials, Tax departments of companies and National Treasury.

The researcher further assumed that the reader has a general knowledge of VAT and GST and has a basic knowledge of general VAT and GST principles. These principles are only explained and dealt with on a very high level.

1.7 SUMMARY

Chapter 1 provides the reader with a general background on the research question and the research objective of the study. The researcher identifies certain delimitations and makes the reader aware of certain assumptions that were made when the study was performed. Chapter 1 also explains certain terms used in the study.

In Chapter 2, the reader is introduced to the literature review of the study and will gain a better understanding of the general background of VAT place of supply rules. In this chapter, the background of the general treatment of VAT in South Africa as well as VAT place of supply rules in South Africa is explained.

Chapter 3 contains information on VAT place of supply rules in developed countries worldwide.

In Chapter 4 the reader will gain a better understanding of the research methodology followed by the researcher, which includes detail on certain terms that are explained and information on the questionnaire compiled by the researcher.

Chapter 5 focuses on feedback received from the questionnaire compiled by the researcher and presents the reader with information on VAT place of supply rules and the application thereof in African countries.

Chapter 6 summarised the findings of the study performed, and provides the reader with a conclusion regarding the application of place of supply rules in South Africa,

dealing specifically with a conclusion to the research questions asked and the research objectives of the study.

In the next chapter the study focus on the literature review and the background of the general treatment of VAT in South Africa as well as VAT place of supply rules in South Africa is discussed.

CHAPTER 2

2 LITERATURE REVIEW PART 1

In Chapter 1 the reader obtained a general background on the research question and the research objective of the study. Certain delimitations were presented and the reader was made aware of certain assumptions that were made. Chapter 1 further explained certain general terms referred to in the study.

In chapter 2, the reader will be presented with general facts on VAT/GST and place of supply rules. In this chapter, the researcher also focussed on the general treatment of VAT and VAT Place of Supply Rules for South Africa.

2.1 APPROACH

Supporting information was collated by utilizing electronic means such as the Internet as well as legislation, publications and articles relating to VAT and GST and South Africa. Information gathered from discussions with individuals was also utilised and presented in this study. This information is summarised and presented below.

2.2 GENERAL DISCUSSION ON VAT/GST AND PLACE OF SUPPLY

2.2.1 VAT and GST

Consumption based taxes like VAT and GST is an immediate tax which is levied on consumption (de Wet and Du Plessis, 2000). The difference between VAT and GST is that GST is levied against a consumer, not against an intermediate stage entity, whereas with VAT, everyone along the value chain pays VAT.

VAT is the value that is added to goods and services on consumption. VAT is therefore passed on from a buyer (or producer of goods and renderer of service) to a seller on “value added” to goods or services. In other words, VAT is an indirect tax and is levied on the value added in production during the different stages (Metcalf in Baker and Elliot, 1997:413 cited by De Wet and Du Plessis, 2000). VAT can further be interpreted as “a broad-based business tax imposed at each stage of the production and distribution process that, when applied nationally, is typically designed to tax final household consumption” (Tait, Ebel, and Minh Le, 2005: 461-464).

The VAT base is the final price of goods and services, inclusive of all wholesale and retail trade margins (Tait, Ebel, and Minh Le, 2005: 461-464). The VAT base is final domestic (or household) consumption when determining the GDP of a country.

GDP is generally used as an indicator to measure the economic health of a country, and to measure a country's standard of living (Investopedia.com, Not dated).

The formula for calculating GDP is as follow:

$$Y = C + I + G + (X - M)$$

With: Y = GDP, and

- C = Consumption which is normally the largest GDP component in the economy, consisting of private (household) final consumption expenditure.
- I = Investment.
- G = Government expenditure.
- X = Exports (Gross).
- M = Imports (Gross).

According to Schneider (2011)³ the VAT base can be determined with reference to the GDP of a country.

2.2.2 Place of Supply

According to de Wet and du Plessis (2000) “(f)or VAT purposes, the place where a supply is made is referred to as the place of supply and that is the only place where that particular supply is liable to VAT.” The jurisdiction in which the place of supply arises is therefore important to establish which rules applies.

Place of supply rules is used to determine the rate at which a specific supply should be taxed, whether a foreign business has a VAT enterprise in a specific country and should possibly be registered in that country for VAT purposes (Schneider, 2009).

Schneider (2011)⁴ is of the view that the relevance of place of supply rules can be explained by considering the following:

³Schneider, FD. 2011. Verbal communication with author on 15 April and 13 May 2011. Johannesburg.

1. International Trends: Internationally a number of countries have incorporated VAT place of supply rules in their legislation. Not having place of supply rules may impact a country's competitiveness.
2. Double Taxation or non taxation: Conflicting VAT place of supply rules may lead to VAT being imposed in both countries or in neither. Double Tax Agreements (DTA)'s exist to cater for this problem from an Income Tax perspective, but no similar signed agreements for VAT is in place.
3. Certainty: To establish where a supply originates from or exactly where the place of the supply is, can also be a difficult interpretational issue. One has to be very careful in establishing the place of the actual supply, in order to ensure that VAT is charged exactly where it should be. Well defined place of supply rules can address this difficulty.
4. VAT Registration liability: It can be possible that a person or entity will or will not have to register for VAT in a specific country as a result of its place of supply rules or lack thereof. Certainty needs to be established as to whether a non-resident then becomes liable to register for VAT in a country or not.

The current South African VAT legislation does not formally provide for place of supply rules. In South Africa, a supply can be subject to the payment of VAT even if the origin of the supply is not in South Africa. If the consumption of, for example services, takes place in South Africa, VAT can be payable thereon. One requirement for such a supply is that this activity or enterprise should be carried on continuously or regularly and that it is made in the course of furtherance of an enterprise which is carried on in or partly in South Africa.

The South African VAT Act is based on the principles of the New Zealand GST system. South Africa, however, did not include place of supply rules in its VAT legislation when VAT was introduced in 1991. South Africa was still isolated in the 1990's but since then it has expanded its economic and international exposure. This change in itself may be justification to consider introducing place of supply rules.

⁴Schneider, FD. 2011. Verbal communication with author on 15 April and 13 May 2011. Johannesburg.

Internationally, many countries, such as the United Kingdom (UK), Ireland, European Union (EU) countries like Belgium, Denmark, France, Germany, Greece, and others like New Zealand, Canada, Australia and some states in America (collectively referred to as sample countries), to name only but a few are countries that incorporated place of supply rules into their VAT or Sales Tax systems.

The place of supply rules for services as opposed to the rules for goods often differs. Various rules also exist to determine where supplies in these different countries take place.

2.3 SOUTH AFRICA: BACKGROUND

The South African VAT system seeks to tax the consumption of goods and services which take place in South Africa.

Subject to the exemptions, exceptions, deductions and adjustments provided for in the VAT Act, VAT is calculated at the standard rate of 14 per cent on the following:

1. The supply by any vendor of goods or services supplied in the course or furtherance of any enterprise carried on by him;
2. The importation of any goods into South Africa by any person; and
3. The supply of any imported services by any person.

(Section 7(1) of the VAT Act).

In some instances it is difficult to establish if the non-residents have an enterprise in South Africa. The term “enterprise” in the VAT Act is defined broadly and does not provide clarity in all situations. The term enterprise includes any enterprise or *activity* which is carried *on continuously or regularly* by any person in the Republic or partly in the Republic and in the course or furtherance of which goods or services are supplied to any other person for a consideration. This can be either for a profit or not and includes any enterprise or activity carried on in the form of a commercial, financial, industrial, mining, farming, fishing, municipal or professional concern or any other concern of a continuing nature or in the form of an association or club. (Paragraph (a) of the definition of an enterprise in section 1 of the VAT Act).

The VAT Act does not define the term *activity*. This creates uncertainty in determining whether an enterprise is being conducted in South Africa by non-residents. This, in

return, impacts on the decision as to whether non-residents should register as vendors in South Africa. Since “activity” is not defined in the VAT Act, the normal dictionary meaning will be used to clarify its true meaning. The Oxford Dictionary (Not dated) defines “activity” as:

- 1) “T(t)he condition in which things are happening or being done - busy or vigorous action or movement.
- 2) A(a) thing that a person or group does or has done - a recreational pursuit or pastime...”

The definition of an enterprise further contains the phrase “*continuously or regularly*”. Since the VAT Act does not define or clarify this phrase, one can revert to case law to determine its meaning.

The New Zealand Inland Revenue Authority interpreted continuously or regularly as follows:

- “1. Continuously means, the activity has not ceased in a permanent sense, or has been interrupted in a significant way.
2. The object and purpose of the physical break in activity, whether it is for rest, recreation, health and such like reason may be of importance in determining whether the activity is being carried on continuously.

Regularly means a steadiness or uniformity of action, or occurrence of action, so that it recurs or is repeated at fairly fixed times, or at generally uniform intervals, to be usual nature and character” (Case N27 (1991) 13 NZTC 3229).

The two words are therefore complimentary. Regularly means with repeated actions and continuous means on-going assignments.

Where an enterprise is being conducted in South Africa that enterprise may be liable to register for VAT purposes. Where supplies of a non-resident falls within the scope of section 7 of the VAT Act and the non-resident falls within the definition of “enterprise”, it may be liable to register and would be required to do so when its taxable supplies exceed the annual threshold of R1 million.

Where a foreign company receives income from South Africa for the use of its foreign brand, their marketing material, their licenses and other know-how the company may

arguably create a VAT registration liability. Where these foreign companies meet the annual registration threshold of R1 million they may be liable to register for VAT in South Africa.

SARS expressed the view that “the granting of the use in South Africa or any trade mark or intellectual property by a foreign enterprise over a period of time is regarded as the carrying on of an enterprise partly in South Africa for VAT purposes. Foreign enterprises that regularly receive royalties, franchise or agency fees are therefore required to register as vendors and levy VAT if their annual receipts in this regard exceed R300000” (now R1 million). (The South African Revenue Services 1999:2).

Place of supply rules may exclude these companies from VAT registration, as the place of supply would not be in South Africa but probably from outside South Africa. In effect, these foreign franchise owners will be taxed where the supply took place, and not where the goods or services are eventually consumed, as is currently the case. To promote direct foreign investment, one needs clarity on whether an activity is deemed to be in South Africa as a result of consumption or not.

It is further important for a growing economy like South Africa, to align its tax legislation with world-wide trends, in order to limit the complications relating to the paying of VAT or the registration for VAT. South Africa needs to make investment into the country as attractive as possible in order to support economic growth. Non-resident investors, who are required to register for VAT merely as a result of their goods or services being consumed in South Africa, may be discouraged from investing in South Africa. FIFA upon realising this problem implemented certain specific amendments to the VAT Act. These amendments were made specifically to accommodate certain entities taking part in the 2010 soccer world cup.

2.4 PLACE OF SUPPLY: SOUTH AFRICA

2.4.1 General

The South African VAT system essentially taxes final domestic consumption. South Africa also uses the destination based taxation, where VAT is levied at all stages of production. An input tax credit is allowed throughout the production and distribution chain to registered VAT vendors in South Africa, in order to ensure that only final consumption is taxed.

The VAT Act imposes tax in terms of section 7 of the VAT Act on following, at the standard rate (i.e. 14%) of VAT:

- The supply of goods and services by a vendor in the course of furtherance of any enterprise carried on by the vendor;
- The importation of goods into South Africa; and
- The supply of any imported services into South Africa.

VAT is also charged on the exportation of goods and services, but at zero-rate of VAT (i.e. 0%) provided certain requirements are met.

Although not formally introduced and labelled, the South African VAT Act has, to some extent, limited place of supply. These rules, however, do not cater for the specific requirements of the electronic era. The VAT place of supply rules are interwoven in the charging section by means of the definition of enterprise in section 1 of the VAT Act.

According to Schneider (2011)⁵, South Africa has inferred place of supply rules incorporated in its legislation (the VAT Act), which can be summarised as follows:

- The definition of enterprise contained in section 1 which contains enterprise or activity rules.
- The second proviso to the definition of enterprise in section 1 which indicates that any branch or main business of an enterprise which is permanently situated outside South Africa, shall be deemed to be carried on separate from the vendor if the branch or main business can be separately identified and have an independent accounting system.
- Section 7(1)(a) deals with the supply of goods and services in the course of furtherance of a vendor's enterprise.
- Section 7(1)(b) deals with the importation of goods into South Africa.
- Section 7(1)(c) deals with imported services.
- Section 8(9) provides that a vendor shall be deemed to supply goods or services in the course of furtherance of its enterprise if that vendor consigns or delivers goods to an address outside South Africa or provides services for the purpose of his branch or main business outside South Africa in the normal

⁵Schneider, FD. 2011. Verbal communication with author on 15 April and 13 May 2011. Johannesburg.

cause of his business and the requirements of the second proviso to the definition of enterprise are met.

- Section 11(1) deals with the zero rating of goods.
- Section 11(2) deals with the zero rating of services.
- Section 11(2)(k) refers to zero rates services physically rendered outside of South Africa.
- Section 11(2)(o) zero rates services referred to in section 8(9) where these are not supplied directly in connection with land or improvements thereto situated in South Africa, not being services supplied directly in connection with moveable property situated inside South Africa at the time that the services are rendered and not directly to a person who is in South Africa at the time that they are rendered.

2.4.2 Imported Services: Current Treatment

Section 7(1)(c) of the VAT Act specifically imposes VAT on the supply of any imported service by any person on or after the commencement date. The VAT Act defines “imported services” to create a “reverse charge” mechanism for services provided to recipients within South Africa from off-shore. Section 7(1)(c) of the VAT Act, imposes VAT on the supply of “imported services” (De Wet and Du Plessis, 2000).

Imported Services is defined to mean “a supply of services that is made by a supplier who is resident or carries on a 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” (Section 1 of the VAT Act).

A resident of the Republic is defined to mean “...a resident as defined in section 1 of the Income Tax Act: Provided that any other person or any other company shall be deemed to be a resident of the Republic to the extent that such person or company carries on in the Republic any enterprise or other activity and has a fixed or permanent place in the Republic relating to such enterprise or other activity” (section 1 of the VAT Act).

VAT is payable on imported services where the services are utilised or consumed in South Africa for private purposes or for purposes of making exempt supplies, i.e. “otherwise than for purposes of making taxable supplies”. The effect of this section is that an individual or a person who is not entitled to an input tax deduction needs to account for VAT on the imported service acquired. The definition of a resident in section 1 of the VAT Act also deems a person to be a resident of South Africa to the extent that that person is carrying on an enterprise in South Africa from a fixed place.

The value placed on an imported service is determined by taking into consideration the requirements of section 14(3) of the VAT Act. It is calculated as either the greater of the value of the consideration for the supply or the open market value of the supply. Where the supply of the imported services is made - if it had been made by a supplier in South Africa and would have been subject to the zero-rate or exempt - the receiver will not be liable to account for imported services VAT (section 14(5)(b) of the VAT Act).

In Vat Case 144 (2005), Judgment of the Cape Tax Court was delivered by Waglay wherein he concluded that: “The definition of ‘imported services’ excludes any supply for use or consumption by a South African recipient in making taxable supplies. This exclusion arises because a recipient of a service who has acquired the service for making taxable supplies will in any event be entitled to claim the attributable VAT as an input credit and offset it against the output tax. The effect of imposing VAT would therefore be neutral. If however, the recipient of the service in South Africa does not make taxable supplies he could not charge VAT and would therefore have no output tax against which the VAT payable for the service could be offset. In order to negative the advantage that a recipient of services will obtain where the services are VAT free because the services were obtained from a non resident supplier, VAT is levied on the local recipient of “imported services” in terms of s7(1)(c).”

As far as place of supply is then concerned in South Africa, local supplies, exported goods and services as well as the importation of goods do not impose significant interpretational difficulties, as the goods or services concerned are taxed in South Africa. However, this is not the case for interpreting the term “utilised” or “consumed” since neither of these terms is defined in the VAT Act.

The question then arises as to whether consumption is actually taking place in South Africa. Consumption is not defined in the VAT Act. The Oxford Minidictionary (1991) defines the term *consume* as “use up; eat or drink up; destroy (by fire), dominate by a feeling”. This indicates that the very nature of a service is that it is consumed the moment that the service is rendered. Once supplied, the service should in essence then be fully consumed. It therefore follows that the services cannot be “further” consumed subsequent to the actual supply thereof. Therefore, it seems as if the service is actually, not “really” consumed in South Africa, but rather abroad from where it is rendered. A ruling issued by SARS (discussed below), however, indicates otherwise.

A good example of the absence of place of supply, an explanation of the terms used and the subsequent treatment by SARS, is found in the General Written Ruling No 442, issued by SARS on 24 March 2005 and amended 31 March 2006 which was subsequently withdrawn on 1 August 2009.

“General Written Ruling No 442, issued by SARS on Imported Services – Foreign bank charges to RSA Residents.

Scenario - A South African resident invest monies abroad and incur fees, charges and/or commissions from the foreign financial institution or foreign agent on his investment.

Question - Is the South African resident liable to declare and pay VAT to SARS on the importation of services in terms of section 7(1)(c).

Answer - Yes. No consumption takes place in the country where the account is held. Consumption takes place in the RSA and the SA resident is liable for VAT on imported services in terms of section 7(1)(c). Accordingly, the SA resident will have to declare and pay VAT in South Africa in terms of section 14(1).

28/8/2-24 March 2005 and amended 31 March 2006.”

Binding General Ruling (VAT) No. 1 of 30 November 2006 and Binding General Ruling (VAT) No. 2 of 1 January 2007 was subsequently issued by SARS in this regard.

From a submission made by SAICA to SARS, it is interesting to mention that before SARS amended this specific ruling in 2006, the previous answer was as a matter of a fact, completely the opposite in that it read as follows:

Scenario - A South African resident invests monies abroad and incurs fees, charges and/or commissions from the foreign financial institution or foreign agent on his investment.

Question - Is the South African resident liable to declare and pay VAT to SARS on the importation of services in terms of section 7(1)(c)?

Answer - The fees, charges and/or commissions incurred by the South African resident in a foreign country are as a result of investment made abroad. The services received by the South African resident are consumed in the foreign country and are therefore not imported. Consequently, there is no VAT liability for the South African resident in terms of section 7(1)(c)." (SARS: 2005 and 2006, Arendse, 2006).

It could be argued that it either may have been SARS' intention to "accidentally" include a certain degree of place of supply in its initial answer, or alternatively "corrected" to completely exclude the trace of possible place of supply from this part of the legislation.

For something to be utilized, it must either be "used" immediately or used over a period of time. It could be argued that a service is used immediately, and not over an extended period of time. Based on this argument, utilization and consumption can be interpreted similarly.

If a service is therefore supplied to, for example, an individual or company (e.g. an opinion received from a foreign supplier), the service will be consumed or utilized immediately by the individual or company. The service will then, although supplied from abroad, be consumed or utilized in South Africa. Where it is argued that a service relates directly to property, (e.g. the servicing of a motor car which is located off shore), the service will be rendered to the actual "property" and the service is actually utilized and/or consumed outside of South Africa. Once the service to

example the car is completed, the service is fully consumed. The “service” clearly did not “cross” the border; only the vehicle did, once it was already serviced.

Although both the examples are services rendered, the one is rendered to an actual person or company whereas the other service is directly in connection with property. Both the services are rendered from an offshore source, but can arguably be treated differently, as a result of the meaning of “consumption” or “utilized”.

South Africa is the country where tax is based on where consumption takes place and not the “place” where the actual service is rendered or initiated from. Since the supply of the service is from a foreign source, it should arguably attract VAT in the country from which the services are rendered and not where it is consumed. The problem with this treatment is that it can result in double taxation. Where the service is rendered from a country which has place of supply rules dissimilar to South Africa double taxation could occur. The recipient of the service can be liable to pay for VAT in both countries. Although South Africa has various signed DTA’s in place, they mainly cater for double taxation of Income Tax, and none of them cater for VAT.

If place of supply rules were specifically incorporated in the South African VAT legislation, the above would possibly have been treated the same in that the place from where the supply was taking place, would be liable for the VAT, and not where the service is actually consumed.

2.4.3 Imported Service: Summary

Imported services, although not formally incorporated as a specific place of supply rule in the South African VAT legislation, is in essence applied by means of a reverse charge mechanism. Imported services VAT apply to supplies from a non-resident to a South African resident consumer. VAT is payable by the South African consumer on the part of the service that is not utilised for the making of taxable supplies in the course of the furtherance of its enterprise.

2.4.4 Telecommunications Services: Current Treatment

Telecommunications involves a wide range of possible services that is provided by transmitting and receiving signals and other data by radio, optical and electromagnetic means. Access to the internet and other information networks is, for

example, a telecommunication service. "...Telephone and other telecommunication services can be provided without a central fixed location for the transmission and receipt of signals. For example some services can be provided by satellite transmission" (Schenk and Oldman, 2007:69).

The effect of this is that a customer who, for example, purchases internet access services in America can use the service to receive e-mail messages while on a trip to, for example, South Africa. This can be done through a local telephone access number in Johannesburg. The user can even retrieve messages or e-mails through a cellular phone. This can create difficulties in terms of charging the VAT if place of supply rules are not implemented.

Place of supply rules do not only present a problem in South Africa, but also worldwide, as these rules are not update to keep up with the rapid growth in this industry. According to Schenk and Oldman (2007:69), "Most VAT regimes have fixed rules on the place where the supply takes place. In many countries, these rules were not modified to take into account the explosion of new telecommunication services."

Paragraph (b)(iv) of the definition of enterprise in section 1 of the VAT Act was anticipated to be amended to indicate that an enterprise includes the activities of any person who continuously or regularly supplies telecommunication services to any person who utilises such services in the Republic. This amendment was, however, never enacted. This amendment envisaged that any person who continuously or regularly supplies telecommunications services to any person who utilises such services in the Republic would be deemed to conduct an enterprise for VAT purposes in South Africa, even where the supplier is not a resident and has no permanent establishment or place of business in South Africa.

Subclause (1)(e) of The Explanatory Memorandum [on the Taxation Laws Amendment Bill, 1997] states that, although imported telecommunications services are covered by the provisions for imported services, this provision is introduced in recognition of the fact that the tax due on imported services is rarely brought to account. The section providing for the zero-rating of services that are physically rendered elsewhere was also amended to exclude the provision of telecommunications services supplied to any person who utilises such services in South Africa [Section 11(2)(k) of the VAT Act]. Since the equipment facilitating the

provision of the services (e.g. the satellite) may be situated offshore, telecommunications services do not qualify for zero-rating if they are utilised in South Africa, regardless of where they may be argued to be physically supplied.

According to the Explanatory Memorandum the main target is the so-called “call back operators”. A call back operator makes it possible to make cheaper international phone calls by utilising telecommunications equipment and infrastructure situated in other parts of the world. While these provisions have been legislated, an implementation date has not yet (May 1999) been announced.” (de Wet and du Plessis, 2000).

2.4.5 Telecommunications Services: Summary

Place of supply rules are not only a problem in South Africa, but worldwide, as these rules are not always diligently updated to keep up with economic changes.

In South Africa, it was proposed that the supply of telecommunication services be included in enterprise and since, for example, the satellite providing the signal for the service can be situated offshore, telecommunications services do not qualify for zero-rating if they are utilised in South Africa, regardless of where the service may be actually supplied from. These proposed amendments were never enacted.

2.4.6 Summary: South Africa

The South African VAT seeks to tax final domestic consumption. As a result, South Africa also utilizes the destination base principle, where VAT is levied at all stages of the production cycle. Although South Africa does not have specific sections in its legislation which deal with place of supply rules specifically, South Africa has certain inferred place of supply rules.

VAT on *Imported services*, for example, is in essence applied by means of a reverse charge mechanism and payable by the South African consumer on the part of the service that is not utilised for the making of taxable supplies in the course of furtherance of its enterprise.

Telecommunication services were proposed to be included as an enterprise for VAT purposes. Any person who therefore continuously or regularly supplies telecommunications services to any person who utilises such services in the South

Africa would have been deemed to conduct an enterprise for VAT purposes in South Africa, and VAT would subsequently have been payable in South Africa. This proposal was, however, never enacted.

In South Africa, a supply can be subject to the payment of VAT even if the origin of the supply is not actually from or in South Africa. If the consumption of, for example, the services, takes place in South Africa, VAT can be payable thereon.

The absence of specific place of supply rules in the South African VAT legislation therefore not only impacts the determination of where a supply takes place, but also the VAT registration implications for non-residents. This is partially as a result of the requirements of "enterprise" as defined in section 1 of the VAT Act. This section provides that an enterprise is an activity which is carried on continuously or regularly, and that is made in the course of furtherance of an enterprise in South Africa or partly in South Africa. Activity in South Africa can be interpreted as a physical activity in South Africa and arguably an economic activity in South Africa.

The VAT Act does not define the phrase continuously or regularly. In some instances SARS is of the view that a once-off transaction comprises an activity which is in fact carried on continuously. Various court cases favoured SARS' view.

SARS indicated in 2006 that "source of supply" rules will soon be introduced in South Africa. To date, however, nothing have been published or released for comment. In February 2011 SARS acknowledged the fact that since South Africa does not have explicit place of supply rules, there is sometimes uncertainty as to how the business activities of a non-resident are conducted in South Africa. SARS indicated that the policy related to non-resident businesses is *in the process of being reviewed*.

The introduction of place of supply rules could therefore be extremely valuable to determine the rate at which a specific supply should be taxed and secondly, to determine whether a foreign business has a VAT enterprise and should be registered for VAT purposes.

If place of supply rules did, however, form part of the South African VAT legislation, South Africa would be better positioned to align itself with its international trading partners. The implementation and application of place of supply rules might limit the complications and associated confusion that is unmistakably present when the

question arises whether to pay VAT or even to register for VAT. The implementation of place of supply rules may also limit difficulties which are experienced when trying to establish where the supply originates from as well as limit or eliminate potential double or non-taxation.

In chapter 2, the reader obtained a better understanding of VAT/GST and place of supply rules in general. In this chapter, the researcher focussed on the general treatment of VAT and the existence of VAT place of supply rules in South Africa.

In the next chapter, the researcher focuses on the general treatment of place of supply rules in developed countries. The focus is specifically on Australia, the European Union and New Zealand.

CHAPTER 3

3 LITERATURE REVIEW PART 2

3.1 PLACE OF SUPPLY: DEVELOPED COUNTRIES

In the previous chapter, the researcher focussed on the general treatment of VAT and the existence of VAT place of supply rules in South Africa. The researcher also provided the reader with a better understanding of VAT/GST and place of supply rules in general.

In chapter 3, the researcher focuses on the general treatment of place of supply rules in developed countries. The focus is specifically on the existence of place of supply rules and application thereof in Australia, the European Union and New Zealand.

3.2 APPROACH

Supporting information was collated by utilizing electronic means such as the Internet as well as legislation, publications and articles relating to the specific countries. This information gathered is summarised and presented below.

3.3 AUSTRALIA

3.3.1 *General*

The Australian General Sales Tax (“GST”) was introduced in 1999 by “A New Tax System (Goods and Services Tax) Act 1999” (Australian GST Act). The application and implementation of the GST system was effective from 1 July 2000.

GST generally applies to the following:

- The taxable supplies of goods and services: This is relevant for supplies that are connected with Australia. Under section 9-5 of the Australian GST Act a taxable supply is made if that supply is made for consideration in the course of the furtherance of an enterprise (business) that is connected with Australia and it is made by an entity or person who is registered for GST or who is required to be registered for GST.

- Reverse charge: If the supply of a thing other than goods or real property is either not connected with Australia, or is connected with Australia because of paragraph 9-25(5)(c) of the Australian GST Act, the supply is a taxable supply under section 84-5 of the Australian GST Act and subject to GST if the recipient is registered, or required to be registered for GST and the supply is made for consideration, and the recipient of the supply acquires the thing supplied solely or partly for the purpose of an enterprise that the recipient carries on in Australia, but not solely for a creditable purpose.
- Taxable Importations: This is on taxable importations of goods into Australia.

A supply is not a taxable supply to the extent that it is GST-free. In general, goods that are exported, or supplies of services or things other than goods or real property, that are for consumption outside Australia, are GST-free.

The Australian GST system is basically a territorial VAT system which has a unique set of place of supply rules. Territorial taxes follow the destination principle. The tax is only imposed on the supply or rendering of services that are consumed locally and is therefore determined by different place of supply rules.

The basic place of supply rules applied in their VAT system is currently based on the EU's basic rules. The place of supply is generally the place where the supplier has established his business or where the supplier has a fixed establishment from which the supply is made. Various exceptions and other rules exist (Laverick 1995:635).

Certain specific rules for place of supply are explained in the Goods and Services Tax Ruling GSTR 2000/31 (Goods and services tax: supplies connected with Australia). This document is a ruling for the purposes of section 105-60 of Schedule 1 to the Taxation Administration Act 1953 of Australia.

The actual connection with Australia is one of the important elements that are required to be satisfied before a supply can be treated as a taxable supply. Even though a supply of goods is connected to Australia if, for example, the goods are exported, that supply of goods may possibly be GST-free. Also, the importation of goods into Australia may be a taxable importation. Subject to certain GST rules, the importation of things other than goods, that are supplied from overseas for use in Australia are not taxable importations.

A taxable importation is only made if the goods are actually imported and entered for home consumption. A supply that is connected to Australia may contain a taxable supply as well as a taxable importation of the supplier and the GST on both supplies are payable by the supplier. However, in the case of creditable importation, the supplier is entitled to an input tax credit for the GST payable on that importation.

To better understand and apply the specific GST rules of Australia, one needs to gain a better understanding of certain terms and applications that are used in the legislation and rulings issued by the Australian Taxation Office. This will assist in establishing the specific VAT treatment of each transaction entered into. Some of these terms are discussed below.

Connected: Section 9-25 of the Australian GST Act indicates when a supply is connected with Australia. A supply of *goods* is “connected to Australia” where:

- The goods are delivered or made available in Australia to the recipient of the supply. Goods are delivered or made available in Australia if the goods are physically delivered or physically made available in Australia.
- The goods are being removed from Australia. Goods that are removed from Australia mean that the goods are physically taken out of Australia.
- The goods are brought to Australia and the supplier either imports the goods into Australia or installs or assembles the goods in Australia.

A supply of *real property* is connected with Australia if the real property or its related land (i.e. physical land) is situated in Australia. Real property is defined as any interest in or right over land or a personal right to call for or be granted any interest in or right over land or a license to occupy land or any other contractual right exercisable over or in relation to land.

Any supply of *anything other than goods or real property* is connected with Australia if the action (e.g. a service) is performed in Australia or the supplier makes the supply through an enterprise that the supplier carries on in Australia. The supply of, for example, a service will be connected to Australia even if the recipient of the supply is situated outside Australia. A supply of anything other than goods or real property may

be partly connected with Australia if it is partly done in Australia or the supplier makes the supply through an enterprise that the supplier carries on in Australia.

Enterprise: Section 9-20 of the Australian GST Act broadly defines an enterprise as an activity or series of activities done in a particular manner such as the running of a business. Although it is not a rule for a business or activity to be conducted in Australia for it to be classified as an enterprise, some supplies by a non-resident enterprise can be subject to GST.

For this purpose, an enterprise is seen to be carried on in Australia if it is carried on through a permanent establishment (“PE”) as defined in subsection 6(1) of the Australian Income Tax Assessment Act 1936 (“the Australian Income Tax Act”) or through a certain place that would be a permanent establishment if those specific parts of the definition of income tax definition did not apply.

Some of the specific place of supply rules for GST are incorporated in the Australian GST legislation and are summarized in Table 1 below.

Table 1 sets out specific GST rules applied on transactions entered into in Australia.

Table 1: Specific Place of Supply Rules: Australia

| Type | Treatment |
|---|---|
| <i>Telecommunication services</i> | Connected with Australia if the recipient of the supply will effectively use or enjoy the supply in Australia. |
| <i>Immoveable property</i> | Connected with Australia if the real property, or the land to which the real property relates, is in Australia. |
| Services of <i>consultants, lawyers, accountants</i> and other similar services | Connected with Australia to the extent that the service is performed in Australia. The supply of that advice or information is connected with Australia if it is prepared, created or produced <i>in</i> Australia. |



| Type | Treatment |
|--|---|
| <i>Services</i> | If the service is performed in Australia, the service is done in Australia and the supply of that service is connected with Australia. This is the case even if the recipient of the supply is outside Australia. |
| <i>The creation, grant, transfer, assignment or surrender of any right</i> | This will depend on how, in any given case, the creation, grant, transfer assignment or surrender is affected. As an example, if the right to use intellectual property is granted by the execution of a written contract, the grant of that right is done in Australia if that contract is made in Australia. Accordingly, the granting of the right is a supply that is connected with Australia. |

3.3.2 Summary

The Goods and Services Tax Ruling (2000) issued by the Australian Taxation Office, provides clarification on how GST is generally treated in Australia. The actual connection with Australia is one of the most important elements that are required to be satisfied before a supply can be treated as a taxable supply. The ruling incorporates specific place of supply rules in Australia and in particular, looks at when a supply of goods, real property, or things other than goods or real property, is connected with Australia. It indicates that a supply of goods that is connected with Australia may give rise to a taxable supply and a taxable importation. GST will therefore generally be payable in Australia, if the supply is connected with Australia.

(Niemand & Thembi, 2009 and Australian GST Act, 1999).

3.4 EUROPEAN UNION (EU)

3.4.1 General

The EU VAT Area (“the area”) is a region which consists of all of the EU Member States and certain other nations. These states and nations follow the VAT harmonization rules of the EU. This means that a “cylinder” is created in which certain place of supply rules are set forth. However, the countries in the area can, to a certain degree, decide how they want to apply these rules, and they do differ from state to state.

Generally, however, VAT in the EU is a broad based consumption tax that is levied on the value which is added to goods and services. It applies generally to all goods and services that are bought and sold for use or consumption in the Community. Therefore, if goods are sold for export or services are sold to customers abroad, it is normally not subject to VAT. Imports are also similarly taxed to keep the system fair for EU producers. This is so that they can compete on equal terms on the European market with suppliers that are situated outside the Union.(European Commission, 2010).

Generally, goods are only considered as imported or exported if they enter or leave the area. Because the VAT percentage also differs from country to country within the area, the treatment is also complicated. This is especially when, for example, an Internet-based reseller in one EU country sells to an EU customer in another EU country.

When, for example, goods or services are sold to a company across the border within the area, the buyer pays the sales country's VAT to the seller. It is also possible to register the transaction as an inter-company sale which will result in no VAT being collected (provided certain criteria are met). In the event that VAT was paid, the buyer can include this in its VAT account as if the VAT was paid in its own country (i.e. locally).

When, for example, goods or services are sold to a private person across a border within the area, the buyer usually pays the VAT to the seller in the sales country, and it does not pay any “local” VAT. If, however, the seller's annual sales of goods to the buyer's country exceed a specific threshold (which varies by country), the seller must

then instead charge VAT in the buyer's country. This treatment is commonly referred to as the distance selling rules.

To further understand the VAT rules and the relevant treatment of VAT in the EU better, for background purposes it is important to note the following:

On 11 April 1967 the first two VAT Directives were adopted in the EU. This established a general, multi-stage but non-cumulative turnover tax which replaced all other turnover taxes in the Member States of the EU. The first two VAT Directives' purpose was to lay down only the general structures of the system and left it to the various Member States to determine the extent of VAT treatment and to determine the various rate structures.

On 17 May 1977 the Sixth VAT Directive was adopted. This established a uniform VAT coverage in the EU. "The basic place of supply rules for business to business supplies of services will be taxed where the customer has established his business. If however the services are supplied to a fixed establishment of the recipient of the supply and the fixed establishment is situated at another location than where the business has been established, the supply is deemed to be made where the fixed establishment is. If the recipient of the supply has neither a place of establishment nor a fixed establishment, the place of supply is deemed to be where the recipient has his permanent address or where he/she normally resides.

The place of supply for business to consumer supplies will be the place where the supplier is established. If however the services are supplied from a fixed establishment of the supplier and the fixed establishment is situated at another location than where the business has been established, the supply is deemed to be made where the fixed establishment is. If the supplier has neither a place of establishment not a fixed establishment, the place of supply is deemed to be where the supplier has his/her permanent address or where he/she normally resides"(Theron, 2008).

On 1 January 2007, another change in the EU took place when the Sixth Directive was replaced by Directive no. 2006/112/EC ("the VAT Directive") (European Union, 2006). The VAT Directive combines the various provisions into one piece of legislation, to provide a clearer and more logical overview of EU VAT legislation that

is currently in force. The aim of this VAT Directive is to ensure that the VAT contributed by each of the Member States to the Community's own resources can be calculated. It still, however, allows the Member States to utilise its many possible exceptions and allows for deviations from the standard VAT coverage.

VAT on services is generally paid at the place where the service has been supplied. This will most often, but not always, be where the service supplier is established. The seller will in those cases account for VAT on his services in the Member State where he is established, applying the VAT rate of that specific country. Depending on the nature of the service, however, VAT may need to be paid in another Member State than that where the supplier is established. As an example, this is in cases where services are connected to immovable property; transport of passengers or goods; cultural, artistic, sporting, scientific, educational, and entertainment services. From 1 January 2010, a new set of rules have been introduced to ensure that VAT on services will better accrue to the country of consumption (European Union, 2008).

Since the place of taxation is generally determined by where the services are actually supplied, it is important to remember that the VAT treatment does not only depend on the nature of the service supplied but also on the status of the customer to whom the services is rendered. A distinction must therefore be made between a taxable person (i.e. a company, enterprise or business) and a non-taxable person (i.e. a private individual) who is the final consumer. The concept of a taxable person includes anyone who carries out an economic activity, even if that person is not identified for VAT purposes. It is important to note that this also includes a non-taxable legal person identified for VAT purpose (Article 43 of Directive no. 2006/112/EC (2006)).

Only once the exact nature of the service and the status of the customer or consumer are known can the place where the services are supplied be correctly determined. The supply of services between a business to business is in principle taxed at the buyer's place of establishment, while services supplied from to business to consumer (i.e. private individuals) are taxed at the supplier or seller's establishment.

Since the VAT Directive rules are also based on supplies to non-taxable persons vs. taxable persons, and also classified as supplies being made to the community vs. outside the community, special exceptions to the general rules for the VAT Directive apply, in certain instances.

Some of the specific place of supply rules for VAT are incorporated in the EU legislation and are summarized in Table 2 below (European Commission, 2010).

Table 2 sets out specific VAT rules applied on transactions entered into in the EU.

Table 2: Specific Place of Supply Rules: European Union

| Type | Treatment |
|---|---|
| <i>Telecommunication</i> services to a non-taxable person outside the Community | The place where the recipient is established or has his permanent address or usually resides. |
| Services in connection with <i>immoveable property</i> | VAT is payable at the place where the immoveable property is located. |
| <i>Radio and television broadcasting</i> services to a non-taxable person outside the Community | The place where the recipient is established or has his permanent address or usually resides. |
| <i>Advertising service</i> to a non-taxable person outside the Community | The place where the recipient is established or has his permanent address or usually resides. |
| <i>Electronic</i> services to a non-taxable person who is established in a Member State or has its permanent address or usually reside in a Member State | The place of supply is the place where the non-taxable person is established, or where he has his permanent address or usually resides. |
| <i>Electronic</i> services supplied by a taxable person who established his business outside the Community or has a fixed establishment from which the service is supplied, or who, in the absence of such place of business or fixed establishment, has his permanent address or usually resides outside the Community | The place of supply is the place where the non-taxable person is established, or where he has his permanent address or usually resides. |



| Type | Treatment |
|--|---|
| <i>Electronic services to a non-taxable person who is outside the Community</i> | The place where the recipient is established or has his permanent address or usually resides. |
| <i>Services of consultants, engineers, consultancy firms, lawyers, accountants and other similar services, as well as data processing and the provision of information to a non-taxable person outside the Community</i> | The place where the recipient is established or has his permanent address or usually resides. |
| <i>Transportation of Passengers</i> | The place where the transport takes place, but proportionate to the distance covered. |
| <i>Transport of goods (other than the inter-Community transport of goods to non-taxable persons)</i> | The place where the transport takes place, but proportionate to the distance covered. |
| <i>Ancillary transport services such as loading, unloading, handling and similar activities supplied to non-taxable persons</i> | The place where the services are physically carried out. |
| <i>Services by intermediaries</i> | The place where the underlying transaction has been supplied by applying the normal rules in the 6th Directive. |
| <i>Restaurant and catering services other than those physically carried out on ships, aircraft and trains during the section of a passenger transport operation effected within the Community</i> | The place where the services are physically carried out. |

Interesting enough, the realization of the single market in 1993 resulted in the riddance of controls at fiscal frontiers. To achieve this, the Commission proposed moving from the pre-1993 "destination based" system, where VAT is effectively charged at the rate of VAT applicable where the buyer is established, to an "origin based" system, with VAT being charged at the rate in force where the supplier is established. This was, however, not acceptable to the Member States as the range of VAT rates was too diverse and there was a sufficient mechanism to redistribute VAT receipts to represent the actual consumption.

Therefore, until the conditions were right the Community adopted the Transitional VAT System which maintains different fiscal systems but without border line controls. The intention is still eventually to have a common system of VAT where VAT is charged by the seller of goods, the so-called origin based VAT system. The transitional system is an origin or source based system for sales to private persons who can buy goods or services anywhere in the EU and take the goods home without having to pay VAT again.

There are some exceptions to this general rule that are in force. One example of this exception is for transactions that takes place between different taxable persons. The VAT on these transactions is generally still destination based (European Commission, 2010).

3.4.2 Specific EU Countries

Since the specific application and rules for all the countries which form part of the EU, differs to a certain degree, it is difficult to set forth one set of place of supply rules for the EU. The application of general basic place of supply rules for specific countries in the EU can be summarised as follows:

- In Germany goods or services are generally only taxable if they are supplied in Germany (Breucha, Ermel, Hanssens, Jenkins, Krewald, Laverick, Muir, Somers, Tatarowicz, Vassalakis, & Wood, 1995:131).
- In France VAT is generally only chargeable, if the goods or service are supplied in France (Breucha *et al* 1995:111).

- In the United Kingdom (UK), VAT is generally charged on goods and services which are supplied in the UK (Breucha *et al*/1995:304).
- In Ireland, the place where the services are supplied is generally the place where VAT is chargeable. If the services are supplied by a supplier who has an establishment in Ireland, this will be deemed to be the place of the supply. (Breucha *et al* 1995:166)
- In Belgium the supply of goods and services is generally subject to VAT only if it is supplied in Belgium (Breucha *et al*/1995:56).
- In Denmark, taxable supplies which are made in Denmark are generally subject to VAT (Breucha *et al* 1995:74).
- VAT is generally chargeable in Greece, if at the time that the tax become payable, these goods are located in Greece. When a service is being rendered, VAT is generally chargeable in Greece, if the supplier of the service has established his business in Greece or has a fixed establishment from which the service is supplied (Breucha *et al* 1995:143).

3.4.3 Summary

The specific application and rules for all the countries which form part of the EU, differs to a certain degree from country to country and it is therefore difficult to set forth one set of place of supply rules for the EU as a whole. However, it appears from the above that, in general, VAT is charged where the recipient is located or the service is physically rendered. For sales to private persons the VAT system in force is generally an origin or source based system. Transactions that take place between different taxable persons are generally destination based.

3.5 NEW ZEALAND

3.5.1 General

GST was introduced in New Zealand on 1 October 1986 at a rate of 10%. On 1 July 1989 it was increased to 12.5%. Recently on the 1st of October 2010, the rate was further increased to 15% (Wikipedia, 2011).

GST is charged in New Zealand on the supply of goods and services, by a registered person in the course or furtherance of a taxable activity carried on by that person, by reference to the value of that supply (section 8(1) of the New Zealand Goods and Services Tax Act (141/1998)).

Generally, certain supplies are zero rated for GST purposes. Some of these supplies include copyrights and patents applied outside New Zealand, domestic transport of household goods, exported goods, goods situated outside New Zealand at the time of the supply, services performed outside New Zealand, services supplied to non-residents outside New Zealand, certain imported services and the transportation of goods and passengers to and from New Zealand (New Zealand Inland Revenue Department, 2011).

According to Schneider (2000a and 2000b) the place of supply of goods is deemed to be in New Zealand if the supplier is a resident of New Zealand. The physical place of the actual supply has no relevance. Goods are defined as all personal or real property. Should the supply be made by a non-resident of New Zealand, the place of the supply of the goods will be deemed to be in New Zealand if those goods supplied are in New Zealand at the time that the supply is made. Similarly the place of supply of a service by a non-resident of New Zealand will only be in New Zealand if the services are physically performed in New Zealand. For an activity to be classified as a service, the service must benefit the recipient in some way or another.

Following from the above, the general place of supply rule in New Zealand indicates that a supply is deemed not to be made at the place of the actual supply, but at the residence of the supplier. If the supplier therefore resides in New Zealand, this will be the place of the supply, and GST will subsequently be payable there. A supply is also deemed to be made in New Zealand if the goods are in New Zealand at the time of the supply, or if the service is physically rendered in New Zealand (Breucha *et al* 1995:715).

Section 8(1) of the New Zealand GST Act (141/1998) indicates that goods and services shall be deemed to be supplied in New Zealand if the supplier is a resident in New Zealand, and shall be deemed to be supplied outside New Zealand if the supplier is not a resident of New Zealand.

A resident for New Zealand GST purposes means a resident as determined in accordance with sections YD 1 and YD 2 of the New Zealand Income Tax Act 2007 No 97 (as at 1 February 2011), Public Act. A person is also specifically deemed to be resident in New Zealand to the extent that that person carries on, in New Zealand, any taxable activity or any other activity, while having a fixed or permanent place in New Zealand which relates to that taxable activity or other activity. A person will also be deemed to be a resident for New Zealand GST purposes if that person is an unincorporated body and the body has its centre of administrative management in New Zealand (defined in section 2 of the New Zealand GST Act 141/1998).

A taxable activity can be explained as an activity that is carried out continuously or regularly by a business, trade, manufacturer, professional, association or club. It includes any activity that supplies goods and services (taxable supplies) for consideration whether for a profit or not (New Zealand Inland Revenue Department, 2010).

3.5.2 Summary

New Zealand has a general place of supply rule relating to the place of supply for goods and services. This rule is set out in section 8(1) of the New Zealand GST Act (141/1998). This section indicates that goods and services shall be deemed to be supplied in New Zealand (i.e. place of supply) if the supplier is a resident in New Zealand. GST will subsequently be payable in New Zealand on these transactions. A supply shall also be deemed to be supplied outside New Zealand if the supplier is not a resident of New Zealand. The general place of supply rule in New Zealand therefore indicates that a supply is deemed not to be made by the place of the actual supply, but by the residence of the supplier.

3.6 SUMMARY: DEVELOPED COUNTRIES

In Australia, the actual connection with Australia is one of the most important elements that need to be satisfied before a supply can be treated as a taxable supply. The general place of supply rule applied in Australia is that a supply of goods which is connected with Australia may give rise to a taxable supply and a taxable importation. GST will therefore generally be payable in Australia, if the supply is connected with Australia.

In the European Union, although to a certain degree the application per country differs, the general place of supply rules for a supply to a business is that VAT is charged where the recipient is located or the service is physically rendered (destination based). Where a supply to a private person takes place, the place of the supply is based on the origin or source of the supply (origin or source based system).

In New Zealand the general place of supply rule indicates that goods and services shall be deemed to be supplied in New Zealand (i.e. place of supply) if the supplier is a resident in New Zealand. A supply shall also be deemed to be supplied outside New Zealand if the supplier is not a resident of New Zealand. The general place of supply rule in New Zealand therefore indicates that a supply is deemed not to be made by the place of the actual supply, but by the residence of the supplier.

In chapter 3, the researcher focused on the general treatment of place of supply rules in developed countries. The focus was specifically on the existence of place of supply rules and application thereof in Australia, the European Union and New Zealand.

In the next chapter, the researcher focuses on certain African countries to determine whether place of supply rules are incorporated in the relevant legislation of these countries.

CHAPTER 4

4 PLACE OF SUPPLY: AFRICAN COUNTRIES

In the previous chapter, the researcher explored whether place of supply rules are incorporated in certain developed countries' legislation and to what extent these countries apply place of supply rules. The focus was specifically on Australia, the European Union and New Zealand.

In chapter 4, the researcher explores whether place of supply rules are incorporated in certain African countries' legislation and to what extent these countries apply place of supply rules.

4.1 APPROACH

A questionnaire was prepared and forwarded to individuals responsible for the VAT/GST functions in the respective Ernst & Young offices of the relevant African countries. In addition, certain supporting information was collated by utilizing electronic means such as the Internet as well as publications and articles relating to the specific countries. This information gathered is summarised and presented below.

4.2 BOTSWANA

4.2.1 *General*

Botswana changed its sales tax system from GST to VAT in 2002. Since the Botswana VAT system is therefore still in its infancy, there are currently many grey areas. Botswana applies general principles for the treatment of VAT as they do not have specific place of supply rules incorporated in the legislation. The VAT is based on the destination principle in that VAT will be paid where consumption takes place.

The following supplies are generally zero-rated for VAT purposes in Botswana: Exports, supplies made to non-residents, goods exported to non-residents (if they are consigned by a Botswana supplier), transportation of goods exported (this also includes ancillary transport services to the transportation of the goods from a place in Botswana to another place in Botswana. This will be the treatment where a supplier that transports the exported goods also supplies the services), temporary imported

goods for subsequent export as well as the consignment or delivery of goods from a resident to a non-resident.

Goods and services consumed in Botswana are taxed at standard VAT rate, which changed from 10% to 12% in April 2010. Supplies made to residents are therefore generally subject to the standard rate of VAT unless specifically exempted or zero rated in the legislation. The time of supply is on receipt of payment or the issuing of an invoice, whichever occurs earlier.

The Botswana VAT legislation and interpretation of general provisions contained in this legislation provides for specific VAT treatment on certain transactions. The VAT treatment for some of these specific transactions is explained below:

On the installation or assembly of imported goods which are situated in Botswana, no specific rules are legislated. The general rule applied by Botswana in this regard is that if it is a project which is carried on for a considerable period, the entity carrying on the activity will be considered to be carrying on a taxable supply and will therefore be required to register for VAT in Botswana.

The consignment (or delivery) of goods from a non-resident to a resident is subject to VAT at the port of entry of these goods.

Where immovable property is located in Botswana and both VAT and transfer duty is payable on the sale of the property, the lower of the two will be waived. Transfer duty is included in the definition of 'input tax' as set out in the Botswana VAT legislation, in instances where transfer duty was paid instead of VAT.

Where a foreign company (non-residents) has a once off event or transaction in Botswana (e.g. Music event or Exhibition), the non-resident is generally considered not to have a taxable activity or enterprise in Botswana. No taxable activity in Botswana will result in the non-resident not being liable to register and account for VAT. The interpretation of resident and taxable activity or enterprise needs to be carefully considered in order to apply this treatment.

The importation of services is included in the definition of imports as set out in the Botswana VAT legislation. The importation of services for the purposes of making taxable supplies is not a supply for Botswana VAT purposes. This is interpreted in

such a way that the importation of services for the making of non-taxable supplies is subject to VAT. (Banda, 2009⁶).

4.2.2 Summary

Botswana does not have specific place of supply rules incorporated in its legislation. Botswana applies general principles for the treatment of VAT. The general principle is destination based in that VAT will be paid where consumption takes place.

4.3 KENYA

4.3.1 General

In Kenya, VAT is generally charged at the standard VAT rate of 16% on taxable supplies made (unless the supply is an exempt supply of goods or services) and charged at the VAT rate of 0% on exportation of taxable goods or services.

VAT becomes due and payable at the earlier of 1) the time of the supply of the goods or the services, 2) when a certificate is issued for the supply of the service by a consultant (i.e. architect, surveyor, consultant), 3) an invoice is issued in respect of the supply or, 4) payment is received for all or part of the supply.

The Kenya VAT legislation specifically defines the terms such as “supply”, “sale” and “services”. Sale specifically refers to the sale of goods whereas the services mean anything other than goods. In 2008, the then Kenyan minister of Finance, Amos Kimunya, issued a regulation (i.e. Legal Notice No.78: The Value Added Tax (Amendment) Regulations (2008)) on behalf of the Kenya Revenue Authority. Section 20(1) of this Regulation specifically refers to services that are deemed to be supplied in Kenya. Generally, where a supply is made to a resident - unless it is a supply of exempt goods or services - VAT at the standard rate of 16% is charged.

The legislation further defines “services exported out of Kenya” to mean that a service is provided for use or consumption outside Kenya, whether performed inside or outside Kenya or both inside and outside Kenya. In general, goods exported to a non-resident are charged with 0% VAT - unless it is supply of exempt goods or services - provided that there is evidence of the said exportation.

⁶Banda, J. 2009. Electronic (e-mail) communication with the author during 2009. Johannesburg.

“Service imported into Kenya” is by definition a service provided by a non-resident outside Kenya who is not required to register for VAT in Kenya. This can also be a service provided by an export processing zone enterprise for use or for consumption in Kenya. This will be the application whether or not the service is provided from outside or from inside Kenya or both inside and outside Kenya.

Where transactions are entered into between two businesses, both entities can claim input tax on taxable supplies made against any output tax payable by them, whereas for transactions between a business and a consumer, the end consumer will not be entitled to claim input tax incurred on such supplies.

Where a non-resident company conducts a once-off event or transaction in Kenya; for example, a music event or exhibition, the service is treated as an imported service and the reverse charge mechanism applies. VAT is payable by the importer of the service.

Although Kenya does not have specific sections incorporated in its legislation that relates to place of supply rules, the legislation makes provision for treatment of certain specific transactions, which can be summarised in Table 3 below.

Table 3 sets out specific VAT rules applied on transactions entered into in Kenya.

Table 3: Specific Place of Supply Rules: Kenya

| Type | Treatment |
|--|---|
| <i>Transportation services</i> rendered in respect of goods exported to a non-resident and the transportation ends outside Kenya | Deemed to have been supplied outside the country. |
| The <i>installation or assembly of goods</i> that are imported into and situated in Kenya | Treated as a local supply and is taxed accordingly. |
| <i>Goods temporarily imported for a subsequent export</i> (provided that there is evidence that the goods have been re-exported) | Subject to duty reduction provided under the Customs Act. |



| Type | Treatment |
|--|---|
| The <i>consignment or delivery of goods</i> from a non-resident to a resident | Importation and VAT is payable by the importer of the goods. |
| The <i>consignment or delivery of goods</i> from a resident to a non-resident | Export and VAT is charged at 0% on exportation of taxable goods. |
| <i>Immovable property</i> situated in Kenya, and a service is rendered in connection with this immovable property | Local supply and taxed as such. |
| <i>Telecommunication</i> services rendered to non-residents in connection with receiving a signal or service in Kenya for radio television, phone or other communication service | Local supply and taxed as such. |
| <i>Advertising</i> services rendered to a non-resident | Local service if the impact of the advertisement is in Kenya. If the impact of the advertisement is, in a foreign country, it an exported service and zero rated. |
| <i>Electronic</i> services rendered to a non-resident | Local supply if the consumption of service is in Kenya. If the consumption is in a foreign country, then it is an exported service and zero rated. |

(Mbogo and Kaniaru, 2009⁷).

⁷Mbogo, C. & Kaniaru, R. 2009. Electronic (e-mail) communication with author in 2009. Johannesburg.

4.3.2 Summary

In Kenya, the VAT treatment applied is mostly based on the nature of the goods supplied or the service rendered. Kenya follows specific VAT rules incorporated in its legislation for certain transactions. In certain instances the legislation relies on the place where the supply actually takes place, but in most other instances, the VAT treatment is based on the place where the consumption of the supply is made.

4.4 MADAGASCAR

4.4.1 General

“Madagascar” refers to the territory of the Republic of Madagascar and its territorial waters.

Generally, a transaction that relates to the supply of goods or services to residents is charged with VAT at the standard rate of 20%. Operations performed in Madagascar are generally subject to VAT. An operation is considered to be performed in Madagascar if the operation is a sale that is carried out under the conditions of delivery of the good in Madagascar. In instances where a service is delivered, an operation is considered to be performed when it is materially completed and/or are consumed there or, if the services provided cannot be located materially, at the time that the service is rendered, the right transferred or the object rented are used or exploited in Madagascar.

Specific place of supply rules is contained in article 06.01.09 of the Madagascar Code Général des Impôts (i.e. General Tax Code) (“the Code”). In this regard, article 06.01.09.bis of the Code indicate that “anyone who does not have an institution in Madagascar and completing taxable operations there must request the Ministry in charge of the tax regulation to authorise a representative living in Madagascar, and pay the payable value added tax. Failing that, the tax is deducted and paid to the Tax Collector in charge of the territory by the party to which the service is effectively rendered and materially executed in Madagascar.

The VAT treatment of specific transactions in Madagascar can be summarised in Table 4 below.

Table 4 sets out specific VAT rules applied on transactions entered into in Madagascar.

Table 4: Specific Place of Supply Rules: Madagascar

| Type | Treatment |
|---|---|
| <i>Transportation of goods</i> within Malagasy territorial waters | Subjected to VAT at the standard rate of 20%. |
| <i>Transport of people and goods</i> by means of air and sea, to or from abroad | Not subject to VAT. |
| <i>Installation or assembly of imported goods</i> situated in Madagascar | Subject to VAT at the standard rate of 20%. |
| <i>Goods temporarily imported for subsequent export</i> | VAT cannot be levied during a period of 12 months (extensible with another 6 months) an assurance or in certain instances, a bond has to be provided. |
| <i>Consignment or delivery of goods</i> from a non-resident to a resident | Charged at the standard VAT rate of 20%. |
| <i>Goods exported</i> to non-residents | Deemed an export, no VAT is levied. |
| <i>Consignment or delivery of goods</i> from a resident to a non-resident | No VAT is levied. The operation is deemed as an export. |
| <i>Immovable property</i> situated in Madagascar | No VAT is levied. |
| <i>Telecommunication services</i> (i.e. transmission of data), rendered to non-resident | No VAT applies. |



| Type | Treatment |
|--|-----------------|
| <i>Advertising services</i> , rendered to non-resident | No VAT applies. |
| <i>Electronic services</i> rendered to non-resident | No VAT applies. |
| <i>Consulting services</i> (i.e. lawyers, accountants, engineers, general consultants etc.) rendered to non-resident | No VAT applies. |

Where a non-resident company conducts a once-off event or transaction in Madagascar such as a music event or exhibition, the service rendered by this non-resident, for VAT purposes is treated with the “reverse charge VAT”. A service provided by a non-resident entity within the Malagasy territory without a permanent establishment is liable to pay VAT, although from the non-resident perspective, the operation is deemed to be an export operation (article 06.01.09 al.2 of the Code). Therefore the “reverse charge” applies. The non-resident appoints a local representative in Madagascar. Where there is no local representative, the beneficiary of the service will be appointed as the default representative. The local representative or beneficiary, whichever applicable, has to declare and pay the VAT on behalf of the non-resident. The VAT is due at the moment that the beneficiary settles the account that is due. VAT at the standard rate of 20% will apply to these transactions. (Andriamiarisatrana, 2009⁸).

4.4.2 Summary

Madagascar has specific place of supply rules incorporated in its legislation under the General Tax Code. It is, however, evident that their rules are written in such a way that if an operation is performed in Madagascar, it will be subject to VAT in Madagascar. Therefore, in general it appears that Madagascar adopts the consumption base tax system for levying VAT rather than the actual place where the supply takes place.

⁸Andriamiarisatrana, A. 2009. Electronic (e-mail) communication with author in 2009. Johannesburg.

4.5 SUMMARY: AFRICAN COUNTRIES

Botswana applies general principles for the treatment of VAT as they do not have specific place of supply rules incorporated in its legislation. The VAT is based on the destination principle in that VAT will be paid where consumption takes place.

Kenya follows specific VAT rules incorporated in its legislation for certain transactions. The VAT treatment applied is mostly based on the nature of the goods supplied or the service rendered. In most instances, the VAT treatment is based on the place where the consumption of the supply takes place. In other instances the legislation relies on the place where the supply actually takes place.

Madagascar generally adopts the consumption base tax system for levying VAT rather than the actual place where the supply takes place. Although Madagascar have specific place of supply rules incorporated in its legislation it is written in such a way that if an operation is performed in Madagascar, it will be subject to VAT in Madagascar.

In this chapter, the researcher explores whether place of supply rules are incorporated in certain African countries' VAT legislation and to what extent these countries apply these rules.

Chapter 5 deals with the methodology followed by the researcher and provide the reader with a better understanding of the research design implemented by the researcher. It also focuses on the collection of data presented and the structuring of the research project as a whole.

5 RESEARCH METHODOLOGY

Chapter 4 explored whether place of supply rules are incorporated in certain African countries' legislation and to what extent these countries apply place of supply rules.

In the next chapter, the reader will be presented with theory on exploratory research and the methodology followed by the researcher. This chapter provides the reader with a better understanding of the research design implemented and focus on the structuring of the research project.

5.1 RESEARCH APPROACH

5.1.1 Qualitative Approach

Research can be either Qualitative or Quantitative in nature. According to QSR international (2011), Qualitative research investigates more the 'why' in a project than the 'how'. This is mainly achieved by analysing mostly unstructured information gathered through interviews, survey responses, and electronic communication etc. Quantitative research rely more on statistics and numbers to achieve potential results. According to Experiment Resources (2009), the primary aim of Qualitative Research is to provide the reader with a detailed description on the topic whereas Quantitative Research focuses more on statistical figures to explain the researched topic.

The research method applied by the researched is therefore a Qualitative approach as facts gathered from interviews, a questionnaire and factual information are presented rather than a statistical representation of figures and numbers. The way in which the Qualitative Research was applied is explained next

5.1.2 Exploratory Research

According to Leedy and Ormond (2005) "(r)esearch is a systematic process of collecting, analyzing, and interpreting information (data) in order to increase our understanding of the phenomenon about which we are interested or concerned". This research took the form of an exploratory research project.

Exploratory is an adjective “relating to or involving exploration or investigation” (Oxford Dictionaries, Not dated).

Research is “the systematic investigation into and study of materials and sources in order to establish facts and reach new conclusions” (Oxford Dictionaries, Not dated).

Exploratory Research “...allows the marketer to gain a greater understanding of something that s/he doesn’t know enough about. For example, just because we know that 3G phones exist, it doesn’t necessarily mean that we understand how they work. Exploratory research can help in this instance. Differing mainly in design from descriptive research, exploratory research is used principally to gain a deeper understanding of something. The design is far more flexible and dynamic than that of descriptive research”. (DJS Research Ltd, Not dated).

According to McDaniel and Gates (2009) “Exploratory research may be conducted to obtain greater understanding of a concept or to help crystallize the definition of a problem. It is also used to identify important variables to be studied. Exploratory research is preliminary research, not the definitive research used to determine a course of action”. It is further explained as “preliminary research conducted to increase understanding of a concept, to clarify the exact nature of the problem to be solved, or to identify important variables to be studied.” In order to complete Exploratory Research, McDaniel and Gates (2009) is of the opinion that “the end of exploratory study comes when the marketing researchers are convinced that they have found the major dimensions of the problem. They may have defined a set of questions that can be used as specific guides to a detailed research design. Or they may have developed a number of potential ideas about possible causes of a specific problem of importance to management. They may also have determined that certain other factors are such remote possibilities that they can be safely ignored in any further study. Finally, the researchers may end exploration because they feel that further research is not needed or is not presently possible due to time, money, or other constraints.”

Exploratory research is therefore a process of collecting and collating information, and using the information gathered in order to gain a better understanding of the subject matter.

5.2 RESEARCH DESIGN

According to the United States Department of Justice (Not dated) research design is "A plan of what data to gather, from whom, how and when to collect the data, and how to analyze the data obtained." The main objective of research design is therefore to use for example, research questions and convert this into a workable project. It can be seen as a design plan for a research project to determining how information will be gathered in order to present this in a workable format that can ultimately be used in one's research (Wikipedia, 2011).

The research design for this study comprises of two components: The literature review and a questionnaire

5.3 LITERATURE REVIEW

5.3.1 General

A *literature review* is "a body of text that aims to review the critical points of current knowledge including substantive findings as well as theoretical and methodological contributions to a particular topic. Literature reviews are secondary sources, and as such, do not report any new or original experimental work" (Wikipedia, 2011).

The benefits of performing a literature review can be summarised as follows (Leedy and Ormond 2005:64):

- It can provide the researcher with new ideas, perspectives and approaches.
- It can inform the researcher of other publications or researchers who performed work in the same field.
- It can provide the researcher with information on how other researchers handled methodologies and design issues.
- It can provide the researcher with other sources of data which was previously unknown by the researcher.
- It can introduce the researcher to measurement tools which other researchers developed and tested.

5.3.2 Objective of the Literature Review

According to a web supplement of the George Washington graduate course in research methods and applied statistics presented by The School of Public Policy and Public Administration, the goals of a literature review is to incorporate and provide a summary of what is known in a specific area and also to illustrate how a current research project can link to previous researches performed (George Washington University, Not dated).

From the above, the ultimate objective of a literature review is to bring the researcher up to date with information that is currently available on the specific topic. It can also provide the researcher with additional information of what can potentially be researched further.

5.3.3 Compiling the Literature Review

The first part of the research design comprised of a literature review. This part of the research design focussed on information compiled for South Africa and developed countries. This part mainly relied on information available on the selected countries and articles published by known authors. The information gathered about these countries is reflected under the chapter that deals with the Literature review Part 1 and 2 and include the following countries: South Africa, Australia, the European Union and New Zealand.

5.3.4 Data Collection

The information gathered and utilised for South Africa and the developed countries, consisted of legislation and publications which explained certain place of supply rules and its application in more detail. The information was further collected by means of utilising the Internet as well as by means of the relevant legislations of the countries explored and discussions held with people on the various countries. The data collection hinged on the concentration of articles, journals and publications made available by writers on this topic and the information provided by the various governments or relevant revenue authorities of each country.

The study relied on consultation, and utilised articles and publications by the following people who were exceptionally supportive. They discussed and supplied extremely relevant and useful information:

1. BDO South Africa (Johannesburg) – Christo Theron (Partner).
2. BDO South Africa (Johannesburg) – Elsa Rudolph (Associate Director - Indirect Tax, previously from Ernst & Young).
3. Ernst & Young (Johannesburg) – Charl Niemand (Indirect Tax Partner - Africa).
4. KPMG South Africa (Johannesburg) – Ferdie Schneider (Director – Indirect Tax).
5. Stephen Steyn – Indirect Tax Senior Manager – Private Capacity.

The study, in as far as general and the South African information presented is concerned, relied on the writer's knowledge and experience in the general VAT field in addition to consultations, discussion and articles published by some of the above individuals. The study also made use of SAICA publications and presentations to SARS and information received from directors, associate directors, senior managers and managers responsible for the Indirect Tax function of consulting firms such as BDO, Ernst & Young and KPMG. The South African VAT Act, publications and articles were also utilised. In addition, generally, various publications and several textbooks regarding worldwide taxation was explored and utilised for additional information presented.

The University of Pretoria also provided the opportunity to utilise the library on campus from which relevant information (i.e. books, journals and articles) was retrieved.

5.4 QUESTIONNAIRE

5.4.1 General

The questionnaire was invented by Sir Francis Galton in the late 1800s. He was a British anthropologist, explorer and statistician. He created this tool to gather information from people who he was studying (“eHow”, Not dated and Wikipedia, 2011).

A *questionnaire* is designed to obtain specific information and comprises of a list of survey or research questions that is asked to respondents. The main aim of a

questionnaire is to collect suitable data and to make this data comparable and changeable to analysis. Its purpose further is to minimise unfairness and asks questions in an appealing and diverse manner (BusinessDictionary.com, Not dated).

The market intelligence group (Not dated) defines *questionnaire* as “This contains a group of questions and is used as an investigative market research tool in order to gain information from a respondent.”

Questionnaires are in essence a fairly economical way for a researcher to gather data from a potentially large number of respondents. It can sometimes be the only *feasible* way to analyse data in that you reach a large number of respondents. A questionnaire needs to be well-designed in order to gather useful information that can be used effectively. (Emerald Research & Solutions, Not dated).

The main advantages and disadvantages of a questionnaire can be summarised as follows (eVALUEd, 2006):

Advantages:

- They are easy to analyse;
- At a minimal or no cost, a number of respondents can be contacted;
- The administration thereof is easy;
- Most respondents are familiar with the format of a questionnaire.
- It is easy to complete;
- All information collected is presented in the same manner;
- The analysis of the information is easy; and
- The respondent has a reasonable time to “think” about their feedback.

Disadvantages:

- Once the information is gathered the respondents cannot be approached again, for example, to ask specific questions inadvertently not posed originally;
- The number of responses obtained are not always sufficient;
- People interested in the subject are more likely to respond which can result in the conclusion or result being in favour of the topic under review;
- Certain questions can be ignored;
- Questions can be misinterpreted; and

- Follow-up research may be required to investigate the specific topic further.

A questionnaire therefore mainly consists of a number of questions created by the originator of the questionnaire that leaves the respondent with either a choice of different answers, or allows the respondent to provide the creator of the questionnaire with specific answers to the questions given.

5.4.2 Objective of the Questionnaire

The objective in compiling this questionnaire was to make use of relevant areas of VAT which are normally dealt with in South Africa. VAT consultants are generally aware of difficulties within the South African VAT legislation and of the potential areas wherein specific place of supply rules can potentially be applied to ease the application of VAT on certain transactions. This experience was therefore used to guide the researcher to compile and include specific questions on certain areas that can potentially result in a certain degree of place of supply to be implemented in South Africa.

Publications on the subject was also used – for example, presentations by SAICA to SARS which included specific areas of VAT that can potentially lead to place of supply rules being included in the South African VAT legislation. These presentations were used to compile specific questions on specific areas of VAT to determine the different treatment applied by other countries.

5.4.3 Formulating the Questions

A questionnaire was compiled and discussed with Rudolph (2007)⁹. The previous study leader, Potgieter (2009)¹⁰ approved the questionnaire. The questionnaire was then forwarded to the potential respondents via e-mail. All outstanding responses were followed up by the researcher on a weekly basis. Based on the feedback received on the questions included in the questionnaire, the final conclusion included in this project, was prepared.

⁹Rudolph, EIR. 2007. Verbal communication with the author during 2007. Illovo.

¹⁰Potgieter, D. 2009. Electronic (e-mail) communication with the author during 2009. Johannesburg.

Refer to Annexure A for a copy of the questionnaire forwarded to the respondents and Annexure B for a summary of the feedback received from the respondents.

5.4.4 Target population

A questionnaire was prepared and forwarded to a target population which consisted of representatives in the relevant African countries. The study's focus was on management and senior management responsible for the VAT consulting function of mainly Ernst & Young in African countries. Where insufficient or incomplete feedback was received from the questionnaire, the publications and relevant legislation sufficed in order to complete the information presented in this study. The questionnaire was forwarded to relevant people known by the writer and included the following people:

1. Ernst & Young Botswana - Josephine Banda (Associate Director - Tax Services)
2. Ernst & Young Kenya - Catherine Mbogo (Director - Tax and Legal) assisted by Ruth Kaniaru (Senior Advisor - Tax)
3. Ernst & Young Madagascar – Andry Andriamarisatrana (Senior Manager)
4. Ernst & Young Mozambique - Ismael Faquir (Partner) assisted by Lucio Guente (Manager)
5. Ernst & Young Uganda – Francis Louis Kibuuka (Manager - Assurance)
6. Ernst & Young Zimbabwe – Rameck Masaire (Director - Tax Advisory)

From the 6 questionnaires forwarded to the individuals mentioned in the African and surrounding countries above, feedback was received from Botswana, Kenya & Madagascar. This information gathered from the respondents is presented in Chapter 4 of this study.

5.5 SAMPLING METHOD

5.5.1 External Validity

Representative sample: This method of sampling is such that one can utilize already working systems from different sources and test the comparisons between the various sources. A conclusion relating to the group as a whole can potentially be drawn by the result arrived at after comparing the different sources. The result can imply that various systems which are implemented elsewhere, combined into one set

of place of supply rules, can possibly be the most accurate, effective, valid and reliable set of rules for possible implementation in South Africa.

Replication in different context: If various researchers and governments (i.e. tax authorities) have tested the implementation of this place of supply rules, and all of them arrive at relatively the same conclusion, it can be argued that it must be viable to implement such rules. The study investigated the options available to South Africa and aimed to correlate this with already implemented solutions from other countries.

5.5.2 Sample size

African Countries – Questionnaire: The target population for the questionnaire included countries serviced by Ernst & Young. Feedback was based on the information received from the questionnaire forwarded. The reason for using the questionnaire on this part of the research is that there is not as much information available on these countries as, for example, on New Zealand and Australia.

Developed Countries – Literature Review: A country such as New Zealand on which South Africa's VAT rules were mainly based, was used as a target country to make this much more relevant for correlation between New Zealand and South Africa. The EU was selected, as many countries in Europe form part of the EU. Australia was chosen as it gives a fair presentation of another continent with which South Africa also has economic relations.

The main focus area for the developed countries is the various countries' legislation, interpretation, application, publications and documents such as textbooks as well as written and published articles. The reasoning behind this approach was that most of the information is readily available from these countries, and the systems implemented seem to be working well for them economically. The legislation and systems which are currently utilised in the sample countries are also already well-established and efficient. The study specifically looked at these countries' treatment in terms of transactions with non-residents to a certain degree the VAT registration requirements and specifications with regard to transactions where the goods or services are not supplied in the country, but only consumed in these countries.

5.6 DATA COLLECTION AND APPLICATION

The aim in utilizing the information gathered for the research was to find countries which have already implemented place of supply or similar rules in their legislation and draw a relevance “correlation” between these countries and South Africa.

5.6.1 Steps followed for the research:

1. Developed Countries and South Africa - Collection of data (e-mail, internet, textbooks, publications, legislation, case law and consultations with key people).
2. African Countries - Preparation and forwarding of questionnaire.
3. Analysis of data and highlighting of all the important information.
4. Preparation of detailed description of each country’s current rules by analysing the relevant individual countries legislation, case law, notes from discussions and responses to questionnaire gathered.
5. Preparation of South African current treatment and general chapters.
6. Combine and / or summarise all the information per country
7. Conclude and summaries general findings.
8. Final research project presented.

5.6.2 Purpose

The purpose of this study was to assess the existence of provisions or applications of place of supply rules in South Africa. The aim was further to establish whether certain African and other developed countries have VAT place of supply rules in their legislation and to what extent such rules are applied in these countries. By doing this the possibility of establishing place of supply rules in South Africa could be explored further. The purpose of gathering information from other countries and to compare each country’s information is to establish whether the information available can potentially be applicable and relevant to implement similar rules in the South African VAT legislation.

5.6.3 Process

The research was based on application of law and systems in place in selected countries. Where place of supply rules have been introduced in certain of these

countries, it was expectantly structured and changed over time to result in the best possible system for application.

The process involved the exploration of specific areas of VAT and the proposition of possible implementation in South Africa. These already structured rules from other countries can hopefully assist and be adjusted in such a way to apply in South Africa.

5.6.4 Basis and Approach of Study

The study identified specific countries (i.e. sample countries) which formed the basis of the research. The African countries' study utilised the information received from the questionnaire. South Africa as well as the developed countries' information presented was gathered from various references to case law; legislation of these countries along with articles and publications as well as consultations with individuals. This ensured that all the data collected was supported by tried and tested systems which could be relied upon.

In this explorative study, the approach was one of triangulation. This means that multiple countries' data were utilised in the hope that all the information lead to one solution, which would support the hypothesis. Although this is mainly a form of quantitative research, the approach can be used in qualitative research as well, in that the study utilised a mixed-method design by collecting both quantitative and qualitative data for arising at a single research solution (Leedy and Ormond 2005:97).

5.6.5 Collection of Information

The study made use of direct discussions and consultations, publications, articles, legislation, internet searching, library and e-mails. Ernst & Young have individuals in offices across the world to which e-mails were forwarded in the various tax departments. Information was requested pertaining to the specific place of supply rules, examples, opinions and any other relevant information in the specific countries. Searches on the internet were performed to obtain references to specific textbooks and electronic publications, and the researcher uses various textbooks and other publications.

The advantage of discussions and most electronic data sources was that all the information gathered was recent and up to date. The disadvantage, however, was that the people from which the information were obtained, did not always understand the extent of the research as communication and language were problem areas. It was also a lengthy process, as people do not always have the time to assist with projects like these.

The advantage of the textbooks is that it is published works that are freely, readily and immediately available, and is to a certain degree more reliable information, in that people researched and tested the facts and the subject in much more detail than would have been the case with just a normal opinion. The disadvantage, however, is that some of the textbooks were written some time ago, and can be out-dated.

To overcome this difficulty, reliable channels were used (such as Ernst & Young) to discuss certain issues and obtain the most reliable information. As far as the textbooks are concerned, the information's relevance was tested by cross-checking some of the facts with other publications which are more up to date. Discussions with people in the industry were also helpful in this regard.

The information received from the questionnaire was focussed only on the African countries, and as a result it is more relevant because the questionnaire garnered information explicitly concerning the actual application of a specific area of VAT in the various countries. Information on the rest of the world was gathered by other means such as consultations, discussions, internet, textbooks, publications and various articles on these countries.

5.6.6 Measurement

A document was prepared that explained the content of the research(e-mail), and a questionnaire was compiled in this regard, which was forwarded to the persons in the various African countries. In discussions it was mentioned what the research was about and the desired outcome. The answers received from the various sources were compared to other reliable sources utilised by the researcher.

5.7 DATA ANALYSIS

Every country was considered individually and all the information was combined from the case study (African countries) and textbooks, internet and other sources mentioned previously (developed countries) into one document per country. This document contained some of the rules which are currently used.

For the African countries, a spread sheet attached in Annexure B was prepared. All the information received, based on the above, was slotted into one document that made a comparison of all the various African countries' information possible. The treatment in Africa could then be compared with that of South Africa. For the developed countries, the general application of certain areas of VAT was included in the analysis per country. This was used to compare to what is currently available in respect of Africa and more specifically, South Africa.

The above approach assisted in comparing the application and equitability of similar potential rules in South Africa.

Chapter 5 focused on certain theoretical aspects of the exploratory research performed. The reader was presented with the methodology that was followed by the researcher and gained a better understanding of the research design applied.

In the next chapter, the researcher concludes the findings on: An Explorative Study: Place of Supply Rules for Value-Added Tax in South Africa.

CHAPTER 6

6 CONCLUSION

In the previous chapter the reader was presented with the methodology that was followed by the researcher and gained a better understanding of the research design implemented. Certain research terms were explained in more detail to the reader. The researcher also focused on providing the reader with more detail on the application of the data collected.

In chapter 6, the researcher concludes the findings of the explorative study performed.

6.1 INTRODUCTION

The context of the research is understandable, easy to read, and useful. The intention is to incentivise SARS to consider introducing place of supply rules in South Africa. This can potentially be achieved by combining all the systems and legislation of various countries and standardising it for possible implementation in South Africa.

The initial aim was to use the information gathered per country and create one set of rules for South Africa. The initial thoughts were that place of supply rules are one set of rules which every country uses and that these rules are compiled by some “template”. It was soon realised that every country interprets and applies various rules differently, and all countries compile different rules based on their specific needs. However, although the rules may differ to a certain degree, the main principle still applies, which indicates that the place from where a supply is made is generally the place where the VAT/GST is charged.

Surprisingly, not as many countries as initially thought have *set* place of supply rules incorporated in a specific section in their legislation. It is mostly rather incorporated in the normal VAT/GST legislation as a “general rule” and supported by interpretation documentation dealing with specific areas. It was noted that the application of specific rules is therefore rather set out in publications of interpretation on the matter rather than in the actual legislation.

The application or incorporation of specific place of supply rules in South Africa may arguably not be such a difficult process. Although a few sections in the VAT Act may

be impacted, it may be much easier to implement and apply if some sections are amended and a general “place of supply” rule is incorporated. The interpretation of specific transactions can then rather be explained by means of an interpretation note or similar publication by SARS rather than to “re-write” the whole VAT Act.

6.2 SUMMARY

One of the most important reasons for introducing VAT place of supply rules is that they standardize or simplify the international VAT treatment by VAT systems with international trading partners. It further limits the complications and confusion that arise when deciding whether to pay VAT or register for VAT. It also limits difficulties to establish where a supply originates from in order to determine the correct VAT/GST treatment. It can also limit or eliminate potential double or non-taxation.

In countries such as Botswana and Madagascar VAT is generally paid where consumption takes place. Kenya also generally applies the consumption principle but in certain instances the country relies on the actual place of the supply to determine the VAT treatment, depending on the nature of the goods or services supplied.

In Australia, a supply needs to be connected to the country, to be taxable there, whereas with New Zealand a supply shall be deemed to be supplied in New Zealand if the supplier is a resident of New Zealand.

In the European Union, the general place of supply is that VAT is charged where the recipient is located or the service is physically rendered but can also be source based, depending on the type of transaction entered into.

South Africa does not have specific sections of place of supply rules, but applies certain inferred place of supply rules. The general VAT rule is that VAT is payable where consumption takes place. For South African legislation to be in line with international trends, it should investigate and determine whether place of supply rules should be introduced in its VAT legislation. This can be achieved by possibly applying one of the following solutions:

- Introduce a certain degree of place of supply rules for specific transactions and the specific treatment thereof. The problem, however, with this approach is that the impact that this may have on so many sections in the VAT Act, is immense,

and can result in increased administration. Due to the impact, it may result in not all the relevant sections in the VAT Act being amended or the necessary sections being inserted which can potentially lead to additional interpretation and application complications.

- A better approach may be to introduce a general “place of supply rule” as a separate section in the VAT Act. This may arguably result in the least administrative disruption. It is therefore suggested that this approach rather be followed than trying to introduce the rules per transaction entered into. An interpretation note or VAT guide that deals with specific transactions and scenarios can be compiled and issued by SARS to explain the specific section. This will also provide clarity on exactly how the rule should be applied to transactions in general and to specific transactions.

Introducing place of supply rules in South Africa, either as one section dealing with a “general rule” or by means of specific sections dealing with specific transactions, will enable the supplier and consumer to determine whether a person should register for VAT in South Africa, clarify where a supply takes place, at what rate VAT should be charged, and minimise confusion as to the application of specific VAT treatment of specific transactions. It will also equip South Africa to better align itself with its international trading partners. This can potentially increase direct foreign investment into South Africa as the administrative burden that currently lies with foreign investors (e.g. VAT registration etc.) will be limited. It will also eliminate or at least limit the possibility of double or non-taxation that can arise.

Where the effect of introducing place of supply rules result for example, in the non-resident still being liable to register as a vendor in South Africa, at least the reasoning behind it will be more clear and sensible.

The definition of enterprise contained in section 1 of the VAT Act provides that an enterprise is an activity which is carried on continuously or regularly, in or partly in South Africa. The meaning of activity as it is used in this phrase results in a lot of confusion for the interpreter. Activity can be interpreted as a physical activity or merely a presence as a result of consumption in South Africa. It can even relate to an economic activity carried on in South Africa. The interpretation of the term economic activity can in certain instances draw a non-resident into the South African VAT net,

as the use of an asset comprises an economic activity being carried out in South Africa. Even though the non-resident may have no physical activity in South Africa, the economic activity could arguably link to South Africa which can result in the non-resident falling within the definition of enterprise with the resultant VAT registration liability.

Part of the definition of enterprise in section 1 of the VAT Act indicates that an activity needs to be carried on *continuously or regularly*, in or partly in South Africa. Since the VAT Act also does not define the phrase “continuously or regularly”, the intention of the legislator could have been to include activities which take place in various intervals or to include activities which are significant only.

It is therefore suggested that the term “activity” is clarified, as it currently relates to an activity being carried on in or partly in South Africa. If, as a result of place of supply rules, one can determine that an activity is not in South Africa, the enterprise will subsequently also not be conducted in South Africa and the non-resident will not be liable for VAT registration in South Africa (as the definition currently reads). This can be achieved by defining the term “activity” in section 1 of the VAT Act to clarify exactly what an activity means and when an activity takes place in South Africa.

In the researcher’s view, South Africa will not only benefit economically from introducing place of supply rules, in that it promotes investment in South Africa, but it will also simplify interpretation of the VAT registration requirements for non-resident investors. People or entities tend to refrain from entering into difficult processes and rather opt for easy accessible, hassle-free investment opportunities. To minimise or even completely rule out the fact that foreigners do not invest in South Africa, as a result of this registration liability, South Africa should seriously consider the implementation of VAT place of supply rules.

As mentioned earlier, even if the introduction of these rules can only clarify the meaning of activity contained in the definition of an enterprise per the VAT Act, South Africa will already have taken a step in the right direction. As far as a constant changing environment such as tax in South Africa is concerned, implementation of these rules may not be that easy, and a number of issues need to be dealt with prior to the successful possible implementation. In the long run, however, the

implementation of place of supply rules will benefit not only non-residents, but also South Africa.

6.3 CRITICISM ON THE STUDY

The questionnaire was too long and had too many irrelevant questions. The questionnaire needed to focus more on specific areas rather than covering all areas with one questionnaire. The respondents were bombarded with too many facts and questions which in the end did not really assist in getting to one answer.

More research could have been done on the topic prior to generating the questions included in the questionnaire. This would have assisted in compiling more structured questions rather than including so many questions in a questionnaire in the hope that this will lead to one general answer. The manner in which one structures the questions needs to be more carefully considered as this will have an immense impact on the result.

The study could have been extended to more developed as well as African countries in order to make it more relevant worldwide rather than focusing only on 6 countries in total. The feedback from more countries would have resulted in more comparable feedback in that more countries are considered to arrive at a potential implementation solution.

The study could have focused on specific limited transactions, for example the treatment of VAT Place of Supply Rules for telecommunications only. The study focused on the VAT treatment of different transactions and one could have explored a specific area in each country more in depth to gain a more profound understanding of the treatment of specific transactions. This would have enabled the researcher to make a better suggestion regarding the recommended implementation of specific rules on specific transactions, rather than suggesting a general rule.

6.4 FURTHER STUDIES

A further investigation as to the nature and extent of the implementation of these rules will definitely be beneficial. The researcher therefore suggests that one of two approaches is explored:

- Perform an in-depth study on the treatment of specific transactions, and the potential of implementing specific rules for specific transactions. This can entail the exploration of implementing specific rules or alternatively just a more in depth analysis of how the VAT legislation in South Africa can be amended to provide for the implementation of these specific rules.
- Alternatively the exploration of a general rule in the VAT legislation can be the basis of a new study. The construction and application of this rule can be explored further in order to implement a general rule for VAT place of supply. A study as to the interpretation and application of this general rule by means of an interpretation note issued can also be explored and investigated.

Since the administration associated with implementing place of supply rules in South Africa can potentially be extremely disruptive, the question arises as to whether the administrative burden will outweigh the benefits associated with implementing these rules. Further studies to this extend and the related costs are therefore also suggested.



ANNEXURE A

An Explorative Study: Place of Supply Rules for Value-Added Tax in South Africa

| General Questions: Question | Option / Description of Question | Yes | No | Comments / Description / Explanation |
|---|---|-----|----|--------------------------------------|
| 1. Sales Tax / Value Added Tax System in country | VAT | | | |
| | GST | | | |
| 2. General rules in terms of place of supply. Describe shortly. | Existence of General rules | | | |
| 3. Specific provisions or sections in your legislation for "Place of Supply" rules in your country, or are the rules incorporated in different sections in the legislation? | Specific sections in legislation | | | |
| | Incorporated in different / various sections in legislation | | | |
| 4. Do you adopt the rules of the 6th directive? | 6 th Directive | | | |
| 5. Do you have rules for supplies of "business to business" and/or "business to consumer" and if so, how do they differ? | Business to Business | | | |
| | Business to Consumer | | | |
| | Difference | | | |

| Goods and Services Questions: Question | Option / Description of Question | Yes | No | Comments / Description / Explanation |
|---|----------------------------------|-----|----|--------------------------------------|
| 1. Do you have specific place of supply rules for goods and services respectively? How do they differ in general? | Goods | | | |
| | Services | | | |
| | Difference | | | |

| Specific Rules (Ad-hoc Transactions): Question | Option / Description of Question | Yes | No | Comments / Description / Explanation |
|--|---|-----|----|--------------------------------------|
| 1. Do you have specific rules for the supply of goods and services for the following: Explain shortly. | Supply to Non residents | | | |
| | Supply to Residents | | | |
| | Goods exported to non-residents | | | |
| | Transportation services rendered in respect of goods exported to non-resident | | | |
| | Installation or assembly of imported goods which are situated in your country. | | | |
| | Temporary imported goods for subsequent export | | | |
| | Consignment (or delivery) of goods from a non-resident to a resident | | | |
| | Consignment or delivery of goods from a resident to a non-resident | | | |
| | Immovable Property situated in your country | | | |
| | Telecommunication (i.e. transmission of data) to non-residents | | | |
| | The supply of telecommunication services to a non-taxable person outside the Community. | | | |



Annexure A - Questionnaire

An Explorative Study: Place of Supply Rules for Value-Added Tax in South Africa

| Specific Rules (Ad-hoc Transactions): Question | Option / Description of Question | Yes | No | Comments / Description / Explanation |
|--|---|-----|----|--------------------------------------|
| 1. Do you have specific rules for the supply of goods and services for the following: Explain shortly. | The supply of radio and television broadcasting services to a non-taxable person outside the Community. | | | |
| | Advertising services to non-resident The supply of advertising service to a non-taxable person outside the Community. | | | |
| | Electronic services to non-resident The supply of electronically supplied services supplied (1) to a non-taxable person who is established in a Member State or who has its permanent address or usually reside in a Member State (2) by a taxable person who has established his business outside the Community or has a fixed establishment from which the service is supplied, or who, in the absence of such place of business or fixed establishment, has his permanent address or usually resides outside the Community. | | | |
| | The supply of electronically supplied services to a non-taxable person outside the Community. | | | |
| | Consulting services to non-residents (i.e. lawyers, accountants, engineers, general consultants etc.) | | | |
| | The supply of the services of consultants, engineers, consultancy firms, lawyers, accountants and other similar services, as well as data processing and the provision of information to a non-taxable person outside the Community.. | | | |
| | Transportation of Passangers | | | |



Annexure A - Questionnaire

An Explorative Study: Place of Supply Rules for Value-Added Tax in South Africa

| Specific Rules (Ad-hoc Transactions): Question | Option / Description of Question | Yes | No | Comments / Description / Explanation |
|--|---|------------|-----------|---|
| 1. Do you have specific rules for the supply of goods and services for the following: Explain shortly. | The supply of the transport of goods (other than the inter-Community transport of goods to non-taxable persons. | | | |
| | Ancillary transport services such as loading, unloading, handling and similar activities supplied to non-taxable persons. | | | |
| | Supply of services by intermediaries. | | | |
| | The supply of restaurant and catering services other than those physically carried out on board ships, aircraft and trains during the section of a passenger transport operation effected within the Community. | | | |
| Once-off / Other Specific Questions: Question | Option / Description of Question | Yes | No | Comments / Description / Explanation |
| 1. What is the VAT/GST treatment in terms of foreign companies which has once off event or transaction in your country (e.g. Music event (Artists) or Exhibition) specifically with regard to VAT / GST registration for these entities? | Non-resident – Once off event or transaction in your country (Registration for VAT / GST) | | | |
| 2. Do you have a "reverse charge" section for imported services? Describe shortly | Imported Services | | | |

ANNEXURE B



| Specific Rules (Are These Transactions?) | Options / Description of Question | Yes | No | Comments / Description / Explanation | Yes | No | Comments / Description / Explanation | Yes | No | Comments / Description / Explanation | |
|--|--|-----|---|---|-----|--|---|-----|----|---|--|
| 1. Do you have specific rules for the supply of goods and services for the following: Explain shortly. | Supply to non-residents | | | There are no specific rules for supply of goods and services to non-residents but the taxpayer under the section concerning where supplies to non-residents are generally zero-rated subject to certain conditions. | | | It should be supply of exempt goods or services, VAT should be charged | | | NO VAT WILL APPLY to non-resident only as defined in the Section 1(a)(2)(b) of the Domestic Revenue and that members accredited to the taxpayer as a diplomatic or consular officer or consular representative are exempt from VAT. The supplier will not consider VAT on such supplies, hence Section 1(a)(2)(b) should still have to provide the supplier a non-VAT application certificate as a justification for such an exemption. OTHERWISE PLEASE REFER TO ANSWER TO GENERAL QUESTION 2. | |
| | Supply to residents | | | Not as such they are generally subject VAT at standard rate unless specifically exempted or zero-rated. The time of supply is either receipt of payment or issue of an invoice. | | | It should be supply of exempt goods or services, VAT should be charged | | | VAT applies | |
| | Goods exported to non-residents | | | This is covered under the zero-rating section and states that the goods exported to non-residents can only be zero-rated if they are consigned to the overseas supplier. | | | It should be supply of exempt goods or services, VAT should be charged if provided there is evidence of exportation. | | | VAT should be levied as the operation is deemed as an export | |
| | Transportation services rendered in respect of goods exported to non-residents | | | Transportation of goods exported from Botswana is zero-rated including land/air/sea transport services accompanying the goods, bus services in Botswana to another place in Botswana as long as the services are supplied by the same supplier transporting the exported goods. | | | Where transportation outside Kenya the transport services shall be deemed to have been supplied outside the country. | | | Transportation of goods within Malagasy territorial waters are subjected to VAT otherwise. The air and sea transport of goods and goods in sea boats are not subject. | |
| | Involvement in assembly of imported goods which are returned to your country | | | There are no specific rules but the general rule is that a person who processes for a considerable period, not specified originally and causes a lot of problems (goods that will be considered to be on-going or a taxable supply and therefore required to register for VAT) otherwise there are no specific rules. | | | Involvement in assembly of imported goods in Kenya to achieve supply and should be taxed accordingly. | | | VAT applies | |
| | Services rendered outside to subsequent export | | | Yes this is covered under the section on zero rating and there are zero-rated. | | | If Kenya determines that the goods have been re-exported, then there is duty remission provided under Customs Act. | | | VAT could be not levied during a period of 12 months (extendable to 6 months) a commitment and sometimes a bond may be provided. | |
| | Intergovernmental services to a non-resident or a resident | | | Subject to VAT at the port of entry. | | | Yes in an exportation and VAT should be paid by the importer. | | | VAT applies | |
| | Exportation or delivery of goods from a resident to a non-resident | | | Yes this is covered under the section on zero rating and there are zero-rated. | | | This is an export and VAT should be charged in the non-supply of the goods. | | | VAT should be levied as the operation is deemed as an export | |
| | Services physically delivered to your country | | | Specific sections are below: -Where both VAT and transfer duty is levied on the sale of the assets the lower of the two will be levied. -The division of legal fee includes transfer duty which was paid instead of VAT is stated above. -The supply of immovable property/lease can be levied either in a registered or unregistered or when payment is made in whole or in part. | | | Services rendered in connection with immovable property is situated in Kenya is a taxable supply and should be taxed as such. | | | VAT should be levied | |
| | Telecommunication (i.e. transmission of data) to non-residents | | | No specific rules covered under the general rules | | | Services rendered in connection with receiving a signal or services for the supply of telecommunication, radio, television or any other communication services or for the person receiving the signal or services in Kenya is a taxable supply and should be taxed as such. | | | VAT applies PLEASE REFER TO ANSWER TO GENERAL QUESTION 2. | |
| | The supply of telecommunication services to a non-resident person outside the Community. | | | | | | | | | | |
| | The supply of radio and television broadcasting services to a non-resident person outside the Community. | | | | | | | | | | |
| Advertising services to non-resident | | | No specific rules covered under the general rules | | | If the impact of the advertisement is in Kenya, it is a local service. If the impact is in a foreign country, it is an export service. | | | | VAT applies PLEASE REFER TO ANSWER TO GENERAL QUESTION 2. | |
| The supply of advertising services to a non-resident person outside the Community. | | | | | | | | | | | |
| Electronic services to non-resident | | | No specific rules covered under the general rules | | | If the consumption of services is in Kenya, it is a taxable supply and hence should be taxed accordingly. If the consumption is in a foreign country, then it is an export service. | | | | VAT applies PLEASE REFER TO ANSWER TO GENERAL QUESTION 2. | |

| Specific Rules (Are These Transactions?) | Options / Description of Question | Yes | No | Comments / Description / Explanation | Yes | No | Comments / Description / Explanation | Yes | No | Comments / Description / Explanation | |
|--|--|-----|----|---|-----|----|---|-----|----|---|--|
| 1. Do you have specific rules for the supply of services for the following: Explain shortly. | The supply of telecommunication services (i.e. transmission of data) to a non-resident person outside the Community. | | | | | | | | | | |
| | The supply of telecommunication services to a non-resident person outside the Community. | | | | | | | | | | |
| | The supply of radio and television broadcasting services to a non-resident person outside the Community. | | | | | | | | | | |
| | Advertising services to non-resident | | | No specific rules covered under the general rules | | | If the impact of the services is in the exportation country outside Kenya, it is an exportation of a service. If the services are to be enjoyed in Kenya, it is a taxable supply and should be taxed as a non-resident only. | | | VAT applies IF AND ONLY IF ANSWER TO GENERAL QUESTION 1 | |
| | The supply of the services of construction, engineering, consultancy firms, lawyers, accountants and other similar services, as well as data processors and the provision of information to a non-resident person outside the Community. | | | | | | | | | | |
| | Transportation of passengers | | | | | | | | | | |
| | The supply of the transport of goods (other than for their Community transport of goods for non-resident purposes) | | | | | | | | | | |
| | Air/other transport services such as loading, unloading, handling and similar activities performed for non-resident purposes | | | | | | | | | | |
| | Supply of services by intermediaries | | | | | | | | | | |
| | The supply of maintenance and related services other than those physically carried out on board ships, aircraft and other aircraft or in a passenger transport operation effected within the Community. | | | | | | | | | | |



| Specific Rules/Advice Transactions/Flowchart | Option / Description of Question | Botswana | | KENYA | | MADAGASCAR | |
|--|---|----------|----|---|----|------------|--|
| | | Yes | No | Yes | No | Yes | No |
| 1. Do you have specific rules for the supply of goods and services for the following: Explain shortly. | | | | | | | |
| Supply to non-residents | There are no specific rules to supply goods and services to non-residents but this is covered under the section on credit where supplies to non-residents are generally not subject to certain conditions. | | | Unlikely to supply or exempt goods or services, VAT should be charged | | 1 | 1. VAT will apply to which extent only as defined in the letters included in diplomatic mission and their members accredited to Madagascar as a diplomat or officer under a specific regime that control them from VAT The supplier will not mention VAT on each invoice, hence the non-resident client will have to provide the supplier a non-VAT application certificate as a justification for work for administration CITIZENSHIP PLEASE REFER TO ANSWER TO GENERAL QUESTION 2. |
| Supply to Residents | Not as such they are generally subject VAT of standard rate unless specifically exempted or zero rated. The rate of supply is either concept or payment or issue credit invoice | | | Unlikely to supply of exempt goods or services, VAT should be charged | | 1 | VAT applies |
| Goods imported to non-resident | This is covered under the section on zero rating and states that the goods imported to non-residents can only be zero rated if they are exempted by the Customs Authority | | | Unlikely to supply of exempt goods or services, VAT should be charged at 0% provided there is evidence of exemption. | | 1 | VAT should be levied as the operation is deemed as an export |
| Transportation services provided in respect of goods imported to non-resident | Transportation of goods imported from Botswana is zero rated including airfreight, transport services of transporting the goods from airport in Botswana to another place in Botswana as long as the services are supplied by the same supplier, transporter throughout the route. | | | Where no exemption is available foreign the tax equal amount shall be collected from taxes supplied outside the country. | | 1 | The operation or goods within Madagascar is not within the jurisdiction of VAT whereas the air and sea transport of goods and goods or from abroad are not subject. |
| Installation or assembly of imported goods which are situated in your country | There are no specific rules but the general rule is that a project which goes on for a considerable period, not specified intentionally and causes a lot of problems (those that will be considered in the coming in a health in early and therefore required to register for VAT) otherwise there are no specific rules. | | | Installation or assembly of property situated in Kenya is a local supply and should be based accordingly | | 1 | VAT applies |
| Temporary imported goods for subsequent export | Yes this is covered under the section on zero rating and these are zero rated. | | | If there is evidence that the goods have been re-exported, then there is duty remission provided under Customs Act | | 1 | VAT could be not levied during a period of 12 months (extendable to 6 months) a commitment was sometimes a bond have to be provided |
| Engagement (or delivery) of goods from a non-resident to a resident | Subject to VAT at the port of entry. | | | This is an importation and VAT should be paid by the importer | | 1 | VAT applies |
| Engagement or delivery of goods from a resident to a non-resident | Yes this is covered under the section on zero rating and these are zero rated. | | | This is an export and VAT should be charged a 0% on exportation of taxable goods | | 1 | VAT should be levied as the operation is deemed as an export |
| Immovable Property situated in your country | Specific sections as follows: - Where both VAT and transfer duty is payable on the sale of the property the lower of the two will be levied - The definition of land for real estate transfer duty which was paid instead of VAT is stated above The supply of immovable property is covered under the general rule of registration with the register or when payment is received whatever is earlier. | | | Service rendered in connection with immovable property situated in Kenya is a local supply and should be based on such | | 1 | VAT should be levied |
| Telecommunication (i.e. transmission of data) to non-residents | No specific rules covered under the general rules | | | Service rendered in connection with receiving a signal or service for the supply of telecommunication, broadcast or any other communication service where the service requires the use of services in Kenya is a local supply and should be based on such | | 1 | VAT applies PLEASE REFER TO ANSWER TO GENERAL QUESTION 2. |
| The supply of telecommunication services to a non-taxable person outside the Community | | | | | | | |
| The supply of radio and television broadcasting services to a non-taxable person outside the Community | | | | | | | |
| Advertising services to non-resident | No specific rules covered under the general rules | | | If the impact of the advertisement is in Kenya, it is a local supply. When impact is in a foreign country, it is an exported service | | 1 | VAT applies PLEASE REFER TO ANSWER TO GENERAL QUESTION 2. |
| The supply of advertising services to a non-taxable person outside the Community | | | | | | | |
| Electronic services to non-resident | No specific rules covered under the general rules | | | If the conclusion of service is in Kenya, it is a local supply and hence should be based accordingly If the communication is in a foreign country, from it is an exported service | | 1 | VAT applies PLEASE REFER TO ANSWER TO GENERAL QUESTION 2. |

| Specific Rules/Advice Transactions/Flowchart | Option / Description of Question | Botswana | | KENYA | | MADAGASCAR | |
|---|---|----------|----|---|----|------------|---|
| | | Yes | No | Yes | No | Yes | No |
| 1. Do you have specific rules for the supply of goods and services for the following: Explain shortly. | | | | | | | |
| The supply of electronically supplied services to non-residents (i.e. lawyers, accountants, engineers, general consultants etc.) | No specific rules covered under the general rules | | | If the benefit of the service is derived outside Kenya, it is an exportation of a service If the benefits are to be enjoyed in Kenya, it is a local supply, whether or not the recipient is a non-resident | | 1 | VAT applies PLEASE REFER TO ANSWER TO GENERAL QUESTION 2. |
| The supply of the services of consultants, engineers, consultancy firms, lawyers, accountants and other intermediaries, as well as any processing and the provision of information to a non-taxable person outside the Community. | | | | | | | |
| Transportation of Passengers | | | | | | | |
| The supply of the transport of goods over air or air-sea or sea-land transport of goods to non-taxable persons. | | | | | | | |
| Air and sea transport services such as seaway, air-sea, air-sea and air-sea services supplied to non-taxable persons. | | | | | | | |
| Supply of services to intermediaries. | | | | | | | |
| The supply of international air-sea services (i.e. those that are physically land and sea) and air-sea and air-sea during the section of a passenger transport operation located within the Community. | | | | | | | |

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