A SOUTH AFRICAN PERSPECTIVE ON VALUE-ADDED TAX ON INTERNATIONAL MOBILE TELECOMMUNICATION SERVICES

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Received: July 2015

Accepted: October 2015

Abstract

The purpose of the article is to explore the VAT practices of mobile telecommunication service providers in South Africa. First, literature dealing with the general VAT principles in South Africa such as the VAT Act No. 89 of 1991 and that of other countries was considered, where after the Melbourne Agreement, which specifically deals with the VAT on international telecommunication services, was considered. As the provisions of the general VAT principles as portrayed in the VAT Act (89/1991) and those of the Melbourne Agreement differ, the tax managers at three major South African telecommunication service providers were interviewed to determine which principles they apply in practice. From the interviews conducted, it was clear that South African telecommunication service providers apply the principles of the Melbourne Agreement and levy VAT at 14% on international telecommunications services provided to its customers and VAT at 0% to foreign network operators for services rendered to non-residents while in South Africa. This is, however, contrary to the normal VAT principles that a service is zero-rated when a service is exported and consumed outside of South Africa and VAT levied at 14% when the service is provided to a non-resident present in South Africa at the time the service is rendered.

Keywords

Place of supply, telecommunication services, value-added tax, international roaming, Melbourne Agreement, cellular phone, double taxation

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1. INTRODUCTION

'The more things change, the more they remain the same', goes the famous quote by Jean-Baptiste Alphonse Karr (in Bartlett & Kipfer, 1994:443). Cellular phones may have changed the world of telecommunication, but what has remained the same is that governments still want their rightful share of income from the supply of these telecommunication services. Before cellular phones were used, it was easy to determine the location for the supply of telecommunication services, as the user of a telephone had a fixed phone and a billing address in the taxing country (Pataki & Urbach, 1996:91). Hence, it was therefore not too difficult to determine governments' rightful share of income from suppliers of telecommunication services operating in their jurisdiction.

This situation was complicated by the introduction of mobile phones. Today, mobile phones are an integral part of people's lives and because of international mobility it is difficult to accurately determine where the supply of the telecommunication service actually takes place (The Organisation for Economic Co-Operation and Development (OECD), 2006:1). As the location where the telecommunication service is supplied determines the tax jurisdiction in which taxes may become payable, depending on that jurisdiction's tax laws, there is a risk that the user may be taxed more than once in different jurisdictions. This is also very relevant to value-added tax (VAT) imposed on telecommunication services. To be able to determine in which tax jurisdiction the VAT must be paid, it is important to determine the place where the telecommunication service is provided. Because of the complexity of telecommunication services where customers travel out of their country of residence, significant problems arise due to the application of different rules that the different countries apply. When transactions are entered into in various countries, it is important to determine which country will levy the VAT on the supply. The possible uncertainty and different interpretations of the legislations could result in the consumer paying taxes in both countries. The OECD suggested that uniform consumption tax rules be designed for these services (OECD, not dated (a):5).

The Melbourne Agreement (International Telecommunications Union (ITU), 1989) emerged to 'promote efficient operation and harmonious development of telecommunications across jurisdictions' (DePasquale & Varley, 2011:4). The intention of this agreement is to ensure that VAT is not levied more than once on the same transaction, and thus it has a specific provision relating to the levying of tax on telecommunication services provided. There are, however, inconsistencies in the real-world application of the VAT provision contained in the Melbourne Agreement (Paltridge, Otuka and Dias-Pines, 2009:52). Some countries are party to the Melbourne Agreement, yet they still have specific provisions relating to telecommunication services in their VAT legislation. If the VAT legislation of a country does not adequately address the place of supply and the provision of the Melbourne Agreement is not consistently applied, a government could lose its rightful share of income or double taxation could arise. The VAT Act (89/1991) in South Africa does not have any provisions relating specifically to the supply of telecommunication services. South Africa is, however, party to the Melbourne Agreement. Nevertheless, there is still the risk that service providers follow the general VAT principles and not the Melbourne Agreement.

2. PURPOSE STATEMENT

The main problem prompting this study is that the South African VAT Act (89/1991) regulates the imposition of VAT on affected transactions, which include VAT-able transactions in the telecommunications environment. However, South Africa is party to the Melbourne Agreement

(1989), which prescribes a different set of rules on the imposition of VAT on international telecommunication services, specifically mobile telecommunication services. Hence, there are two possible sources of authority that could be applied in determining the VAT levied on international telecommunication services.

The purpose of this study is to explore the VAT practices of mobile telecommunication service providers in South Africa. This was done by examining, amongst other things, the South African VAT Act (89/1991) and the Melbourne Agreement, and by conducting interviews with tax managers from South African telecommunication service providers.

3. THEORY

The OECD is an organisation which tries to harmonise global systems (OECD, not dated), especially harmonising tax treatment when it comes to cross-border activities with countries that apply different rules to determine tax liabilities. The OECD developed guidelines for VAT (in some countries known as Goods and Services Tax (GST)) to address inconsistencies and to prevent double taxation where there are inconsistencies in the application of VAT to international trade (OECD, 2013). However, not all countries are party to the OECD, and thus should these countries transact with each other, differences in the treatment of VAT could still arise.

EY (2014) published an article on the VAT guidelines issued by the OECD to assist users with the application of these guidelines. Although they discuss the destination principle, it does not specifically address telecommunication services. Paltridge *et al.* (2009:46-47) researched the international mobile roaming in the OECD area and stated that different countries levy VAT on different transactions. There are two types of users: outbound users, which refers to residents of that country with a subscriber identity module (SIM) card of that home country and travelling abroad in another country; and inbound users, which refers to foreigners holding SIM cards of their home country operators and roaming in another country. Some countries do not levy VAT on inbound or outbound users (such as Australia), while other countries levy VAT on both inbound and outbound users (such as Chile and India). Spain levies VAT on outbound users only, while Japan and Canada levy VAT on specific inbound users. Hence, it is evident that this could result in double taxation being levied, or no VAT being levied at all.

Jitsing and Stern (2008:7) did a study on VAT practices in the Southern African Customs Union countries and suggested possibilities of harmonisation. However, the only reference made specifically to VAT on telecommunication services was that in many countries telecommunication services are exempt from VAT due to the difficulty of assessing the value added at each stage of the production of these services.

In South Africa, detailed studies have been done on place of supply rules relating to e-commerce (Johnson & Pienaar, 2013) and interactive gambling (Rourke, 2012) by South African authors. Johnson and Pienaar (2013:71) concluded that the current South African VAT Act (89/1991) does not appear to deal effectively with the VAT treatment on transactions concluded in the virtual world. Rourke (2012:iv) concluded that South Africa does not have legislation that is specific enough to ensure that no uncertainty exists as to where the place of supply is when a non-resident interactive gambling supplier provides interactive gambling services to South African residents. It is expected that, similar to the above-mentioned topics, there is uncertainty as to the VAT treatment of telecommunication services, as it is very different in nature to normal services rendered. These factors have, therefore, been the reason for this research. Studies have been done

on place of supply rules, focusing on the general principles of place of supply and considering the place of supply of telecommunication services, but only on a purely theoretical basis (Schneider, 2000).

The main theoretical constructs that underpin this study which need to be clarified are international mobile roaming and place of supply rules as they relate to VAT. In addition, it is also necessary to examine the general VAT principles from the VAT legislation in South Africa and to clarify the intention and the provisions of the Melbourne Agreement.

3.1 International mobile roaming

Sutherland (2010:2) states that international mobile roaming is when a resident of one country visits another country and is able to use the same SIM card in the visited country to communicate using the cellular phone, without having to change his or her phone number. For instance, when a cellular phone is used, it will automatically detect the cellular networks of the service providers available at that location. If this location is in the home country of the cellular user, it will select the service provider that supplied the SIM card. When a customer visits a foreign country, the cellular handset will detect only the networks available in that country.

The ITU (2008:4-5) explains the process as follows: 'There are always signalling communications between the visited and the home operator when roaming, even when the call is routed inside a visited country'. Therefore, if a visitor attempts to make a call, the visited country's network operator searches to identify who the home country's network operator is. In order for roaming to occur, there has to be a roaming agreement between the home country and the visited country's network operators. If an agreement between the two operators is in place, the visited network operator communicates with the home network operator to ensure whether it should allow the customer to roam or not. This would mean, therefore, that the customer has to arrange with his or her home network operator to allow roaming services before the customer visits the foreign country. Once the visited network receives positive confirmation that it can allow the customer to roam, it 'creates a temporary subscriber record for the device. The home network updates its information to indicate that the subscriber is using the host network to ensure that any information sent to that device will be correctly routed'. Depending on the type of call, calls 'are routed by visited and/or international transit and/or any fixed or mobile and/or home networks'. The visited network will calculate its international mobile roaming charges by keeping a record and details of all calls made. The home operator is then billed by the visited operator for the charges incurred. This would be at the wholesale price. The home operator would then, in turn, charge the customer for the international roaming services at the retail price (ITU, 2008:4). It has to be kept in mind that satellites move around the world and that the signals do not travel from the one country from where the call is made directly to the country in which the call is received. The signal may pass through various countries' networks first before it reaches its final destination. Thus, determining the exact place of supply is onerous, as it affects a number of countries.

3.2 Place of supply

Since the location where the service is rendered could determine the jurisdiction in which VAT is levied, a supplier should be able to determine the actual place of supply. Tait (1988:371) defines place of supply of services as 'Where the service is "rendered," or, as a secondary alternative, the usual place of residence of an individual supplying the service or the company where the supplying

country is legally incorporated'. From this definition it is apparent that place of supply can be at one of a few different places, such as at the place where the service is rendered (location of the consumer), or where the person or company supplying the service is located. However, in the case of mobile telecommunications services, there is a resident country supplier as well as an international supplier of the telecommunication network in the country that the user visits. In addition, there could also be suppliers of networks in other countries, depending on the networks used to transfer the call between the person making the call and the person receiving the call.

3.3 VAT legislation in South Africa

The current VAT legislation of South Africa needs to be explained to provide clarity on the general principles which might be applied by service providers firstly on the foreigner visiting South Africa and using the South African operators' networks, and secondly on the resident visiting a foreign country and using that country's networks.

There are specific sections in the South African VAT Act (89/1991) that deal with the responsibility of a person or company to register as a VAT vendor in South Africa as well as other sections that regulate the imposition of VAT. These sections are as follows:

Section 1: Definition of an enterprise in accordance with the VAT Act (89/1991): Not only local suppliers are required to register as VAT vendors when they supply services, either partly or wholly in South Africa in excess of the current threshold of R1,000,000. Foreigners supplying goods or services in excess of the threshold should also register for VAT in South Africa. The place of supply of these foreign entities could be argued to be in South Africa, although they do not have a physical presence in South Africa. According to Niemand, De Swardt and Wiid (2011:35), the requirement that a person registers as a vendor is not dependent so much on where the supply of the service is made, but rather on 'the place of the supplier's business activities'. The difficulty though is to determine whether an activity is being carried on, or not. The Act does not provide a definition of activity. Furthermore, determining the actual place of supply of telecommunication services is problematic, as it could pass through a number of networks in a number of countries in order to connect the call.

Section 7 of the VAT Act (89/1991), *inter alia*, states that output VAT must be levied by a vendor on the supply of services by him or her in the furtherance of any enterprise carried on by him or her in the Republic. According to the definition, this would suggest that if a non-resident regularly supplies services to persons in South Africa, the non-resident may have to register as a VAT vendor. De Wet and Du Plessis (2004:279) stated that if any person, even if he or she is a non-resident, supplies telecommunication services to anyone who utilises such services in the Republic, that person is deemed to be carrying on an enterprise and should thus register as a VAT vendor in South Africa.

Section 9 of the VAT Act (89/1991) provides for time of supply rules and section 10 for value of supply rules, but the major problem that arises with telecommunications services is deciding which country has taxing rights in respect of VAT. Du Toit (1999:21) noted that South Africa does not have specific place of supply rules as were incorporated into the legislation of the European Union (EU) countries. Place of supply rules have been built into the other sections of the South African VAT law, such as the zero-rating of supplies, when services are rendered to persons outside the Republic. Where the EU's basic rule for place of supply focuses more on the location of where the supplier is located, South African legislation focuses on a combination of where the service is

rendered as well as where the recipient of the service is located. This could result in double taxation.

With international mobile roaming services it is difficult to ascertain at which rate VAT should be levied, as this is dependent on the place of supply. Should it be zero-rated, as is the case when a service is exported and consumed in another country (section 11(1)(a) of the VAT Act 89/1991); or should it be charged at 14% as consumption takes place in the Republic of South Africa through the local networks and the home supplier is located in the Republic (section 7(3)(a) of the VAT Act 89/1991)? Should additional VAT be accounted for when a service is imported (section 7(1)(c) of the VAT Act 89/1991), as is the case when a person visiting in South Africa uses the mobile telecommunication services provided by a foreign provider but also the networks in South Africa?

Section 11(2)(l)(iii) of the VAT Act (89/1991) states that a service to a non-resident may be zero-rated provided that the service is not rendered to this person when he or she is physically located in South Africa. The assumption, thus, based on this section, is that should a foreigner visit South Africa and make a call using his home country's operator's SIM card, the South African service providers would invoice his home country's operator with an amount inclusive of VAT at 14%, as the foreigner was physically present in South Africa when he used the South African networks.

Section 11(2)(k) of the VAT Act (89/1991) states that a service may be zero-rated if the services are physically rendered elsewhere other than in South Africa. It needs to be determined where the service is physically rendered (where the place of supply is), in order to determine whether the supply can be zero-rated or not. The difficulty with telecommunication services, however, is that there are different views in different countries as to where the place of supply would be, owing to the nature of the service. The person making the phone call may be physically present in another country, but the signal passes through the networks in South Africa. The assumption is thus that if a South African resident visits a foreign country and he makes a call from there using his South African SIM card, his consumption of the service mostly happens in that foreign country and thus when the South African service provider invoices this resident for the call, it should be at an amount inclusive of VAT at 0%.

In an attempt to address the issue of telecommunication, the VAT Act (89/1991) was amended in 1997 to include 'the activities of any person who continuously or regularly supplies telecommunication services to any person who utilizes such services in the Republic' as part of the definition of an enterprise to ensure that non-residents supplying telecommunication services to residents of the Republic are liable for VAT. However, this amendment to the Act will only come into effect from a date to be proclaimed. Since 1997, no date has yet been proclaimed. Thus, as it never came into effect, it is assumed that these non-resident suppliers are still not registering as VAT vendors in South Africa.

It can be concluded that South Africa does not have specific VAT provisions relating to the supply of telecommunications services and thus the general provisions should be applied by service providers.

3.4 Melbourne Agreement

Due to the differences in application of VAT in different countries, the ITU (1989) drew up regulations referred to as the Melbourne Agreement to 'promote efficient operation and harmonious development of telecommunications across jurisdictions' (DePasquale & Varley, 2011:4). In December 2012, the 'Final Acts World Conference on International Telecommunications' was drawn up (ITU, 2013), with the purpose of replacing the treaty of 1988

for those parties that have signed both treaties (ITU, 2015). However, if a signatory to the 1988 treaty did not sign the 2012 treaty, they are still bound by the 1988 treaty. South Africa has signed both of these treaties.

It is assumed that this agreement supersedes the South African VAT Act (89/1991), as this agreement is a form of a double tax agreement. The ITU (2013:1) accepts that 'while the sovereign right of each State to regulate its telecommunications is fully recognized, the provisions of the present ... Regulations ... complement the Constitution and the Convention of the International Telecommunication Union, with a view to attaining the purposes of the International Telecommunication Union in promoting the development of telecommunication services and their most efficient operation while harmonizing the development of facilities for worldwide telecommunications.' It could therefore happen that countries that are party to the agreement, including South Africa, apply the rules of their own country and not those of the Melbourne Agreement.

Section 42K of the new agreement (ITU, 2013:7) states that 'Where, in accordance with the national law of a country, a fiscal tax is levied on collection charges for international telecommunication services, this tax shall normally be collected only in respect of international services billed to customers in that country, unless other arrangements are made to meet special circumstances.' This therefore alludes to the fact that where a foreigner visits South Africa and uses South African networks, the South African telecommunication service provider will bill the foreign network provider at an amount inclusive of VAT at 0%. The foreign operator can then recharge this amount to his customer at a price inclusive of VAT. Similarly, where a South African resident visits a foreign country and makes calls from there, the South African operator would receive a bill from the foreign network operator at a price inclusive of VAT at 0% and would then invoice its customer at a price inclusive of VAT at 14%. This is therefore in direct contrast to the normal VAT principles of the South African VAT Act (89/1991).

Although 111 countries are currently party to this agreement, there are more countries in total in the world, which again indicates that there could be differences in the VAT application when dealing with these other countries (ITU, 2013: v-vii). Even though this agreement is in place, there is scope for differences in interpretation of the provision by the various signatories, and each country still has its reservations (ITU, 2013: 33-105). The countries dealing with each other may also perhaps not both be parties to this agreement. Paltridge *et al.* (2009:52) commented that the intention of the Melbourne Agreement 'was that no taxation should be imposed by one country's operator(s) in relation to wholesale supplies of cross border voice and data services.' However, it has been concluded by experts that this provision of the Melbourne Agreement is inconsistently applied by the various countries because of the reservations made and the different interpretations of the applicable section (Paltridge *et al.*, 2009:52). Thus, double taxation could still arise.

4. RESEARCH DESIGN AND METHODOLOGY

The research is exploratory and does not use statistical hypothesis testing – it is qualitative and adopts an interpretive orientation. The main objective of the research was to test the theoretical constructs in the 'real world', as explained by Leedy and Ormrod (2005:133).

The research falls within the ambit of post-positivism, as the objective was not to gather facts and to measure any pattern in their occurrence (a quantitative method of analysis), but rather to

investigate the phenomenon in a real-world context (a qualitative method of analysis) (Easterby-Smith, Thorpe & Lowe, 1991:23).

The research commenced with a literature review to establish the theoretical constructs that underpin the research. This was followed by empirical research that used, as a research strategy, self-administered questionnaires, followed up with semi-structured interviews, to collect relevant data from the three existing mobile service providers in South Africa. There are five service providers in South Africa. However, one of them was still a new market entrant when data was being collected, and thus was not interviewed, as its market share was insignificant. The other network provider is a virtual network operator, which means that it does not use its own networks, and was therefore also excluded from the study. The data collected from three major service providers was deemed sufficient for the purposes of this study. This primary data represented a snapshot of a participant's situation at a particular point in time, making the research a cross-sectional study (Saunders, Lewis & Thornhill, 2007:148).

The self-administered questionnaires comprise closed-ended questions, and these were distributed by e-mail to the senior tax managers of the participating mobile service providers in South Africa. Meetings were later scheduled with these tax managers. Active participation was required from them in order to determine whether they, in practice, apply the provisions of the VAT Act (89/1991) or the Melbourne Agreement. The purpose of the meetings was for the researcher to clarify their responses on the questionnaire and to further explore their VAT practices using open-ended questions.

An inherent risk of the research was that bias on the part of the researcher may have played a role on the interviewees' responses, especially where an interviewee did not fully understand the complexity of the phenomenon under investigation. However, this influence on the part of the research enhanced rather than reduced the accurate recording of the real-world VAT practices of the service provider.

5. RESULTS

The first part of the article deals with the research of available literature dealing with provisions for levying VAT. First, the VAT Act (89/1991) in South Africa was analysed to determine which sections could be applicable. It was determined that there are sections dealing with the general principles for levying VAT, such as the time and value of a supply, but none of these sections relate specifically to the provision of international telecommunication services. It was also determined that there is the Melbourne Agreement of 1988 (ITU, 1989), which was recently replaced with the Regulations signed in Dubai in 2012 (ITU, 2013), to which 111 countries are party. The purpose of this agreement is to 'promote efficient operation and harmonious development of telecommunications across jurisdictions' (DePasquale & Varley, 2011:4). What is unclear from the literature that was analysed, however, is that some countries, while being party to the Melbourne Agreement, still have specific provisions relating to how to levy VAT on telecommunication services in their country's acts. It was also determined that there are inconsistencies in the application of the provision of this Regulation. Therefore, if countries apply different rules to the levying of VAT, this could result in double taxation. In addition to this, it is unclear from just examining the literature whether South African telecommunication service providers apply the rules of the VAT Act (89/1991), or those of the Melbourne Agreement.

Therefore, interviews were conducted with the tax managers of the telecommunication service providers to gain a clearer understanding of which rules they apply to determine the VAT levied on the provision of international telecommunication services. It was evident from the interviews that the main act or regulation applied in calculating the VAT on international telecommunication services does not come from the VAT Act (89/1991), but comes from paragraph 6.1.3 of the Melbourne Agreement, which reads: 'Where, in accordance with the national law of a country, a fiscal tax is levied on collection charges for international telecommunication services, this tax shall normally be collected only in respect of international services billed to customers in that country, unless other arrangements are made to meet special circumstances' (ITU, 1989:11).

TABLE 1 presents a summary of the cases presented to the tax managers in the questionnaires and interviews with their responses as well as the relevant section from the VAT Act (89/1991) and the adherence to the provision in the Melbourne Agreement. All three managers gave the same responses to these closed-ended questions.

TABLE 1: Summary of questions and responses by tax managers of telecommunication service providers in relation to the general VAT principles and the Melbourne Agreement

VAT Act (89/1991)	*Question*	*Response – What happens in practice*	*Melbourne Agreement*
Not applicable.	When a foreigner visits South Africa and uses your network, who do you invoice for this service provided?	The foreigner's home operator.	Not applicable.
S11(2)(l)(iii): If a non-resident is in the Republic when the service is rendered, the service cannot be zero-rated.	What rate of VAT do you levy on this invoice?	0% VAT is levied on this invoice.	The practical application is in terms of the Melbourne Agreement.
Not applicable.	When your customer visits another country and makes a call from there to any country, how is the invoicing done?	The foreign network operator would send us an invoice for the services rendered to our customer. We would then, in turn, issue an invoice to our customer for this service rendered by the foreign network operator which was billed to us.	Not applicable.
Not applicable.	What percentage of VAT do the foreign network operators levy on the invoices issued to you?	It depends on the country. Some countries do levy VAT at their applicable VAT rate, whereas others levy VAT at 0%. In certain instances this VAT paid to the foreign	Levying VAT at a rate other than 0% is not in terms of the Melbourne Agreement, which suggests that only the home country operator should levy

VAT Act (89/1991)	Question	Response – What happens in practice	Melbourne Agreement
		operators may be claimed back. However, if the reclaim is unsuccessful, this results in the local network operator, as well as the customer, paying VAT on the same service.	VAT on the transaction.
S11(2)(k): When the services are physically rendered elsewhere than in the Republic, the supply is zero-rated.	At what rate do you levy VAT on the invoice issued to the customer for this recharge?	VAT is levied at 14% on the invoice to the customer.	The practical application is in terms of the Melbourne Agreement.
Not applicable.	Is there a difference in the VAT treatment whether the call is made by the visitor to his or her home country, the country he or she is visiting or a third country, which is not his or her home country or the country he or she is visiting?	No, the treatment is the same.	Not applicable.
Not applicable.	Does it make any difference to the VAT treatment whether or not the operators in the different countries belong to the same group (i.e. the home country operator and visiting country operator is MTN)?	No, it does not make a difference.	Not applicable.

Source: Author's summary with interview responses

From TABLE 1 it is evident that the place of consumption is ignored; the actual place of billing (supplier's location) determines the VAT charged on the international mobile roaming transactions for South African telecommunication service providers. Although this is how all the South African telecommunication service providers seem to account for the VAT on transactions, based on the Melbourne Agreement, it was mentioned by a respondent on one of the open-ended questions that South African VAT law is in fact following a more destination-based approach, which means that VAT should be levied where the goods or services are consumed. The rules applied in practice for levying VAT on telecommunication services, therefore, are not the same as the general VAT principles in the VAT Act (89/1991).

Some respondents referred to South African VAT legislation and the applicability thereof to the telecommunication services provided:

- *Section 11(2)(l)(iii) of the VAT Act (89/1991):* A service to a non-resident can be zero-rated provided that the service is not rendered to this person when he is physically located in South Africa. This section can, therefore, not be applicable to telecommunication services, as the non-residents are visiting South Africa and are present in South Africa at the time these services are provided to them. VAT should thus be levied at 14% on this supply. In practice, their home country operators are, however, still charged for the services rendered with VAT at 0% by the South African operators, which is in terms of the Melbourne Agreement. The respondent was of the opinion that there is no clear guidance in section 11 regarding the place of supply. The burden of proof remains with the supplier to prove why a rate of 0% is applicable. In the case of telecommunication services, it would be because South Africa is a party to the Melbourne Agreement, which promotes that VAT is levied only in the home country.
- *Section 11(2)(k) of the VAT Act (89/1991):* A service can be zero-rated if the services are physically rendered elsewhere than in South Africa. As noted from the table above, this is in contrast to the Melbourne Agreement and what happens in practice. The argument by the respondent in favour of SARS not allowing telecommunication services to be zero-rated from South African operators to their customers was that even though the customer is located outside South Africa when visiting a foreign country and utilising these services, there are still voice channels passing through the equipment located in South Africa. Therefore, 'one leg' of the transaction still passes through South Africa.

To sum up, it can be said that although South African VAT legislation does not have specific place of supply rules nor specific rules regulating the provision of international telecommunications services, the South African telecommunication service providers apply the specific tax rule relating to telecommunication services from the Melbourne Agreement. When a South African resident on a South African mobile network visits a foreign country, the foreign network operator charges the South African network operator a price inclusive of VAT at any percentage (0% or that country's applicable VAT rate). The South African network operator then levies this charge to the citizen at a price inclusive of VAT at 14%. This is however contrary to the general VAT principles, where VAT is levied at 0% should a person consume a service when he or she is not located in South Africa.

6. DISCUSSION AND CONCLUSION

The purpose of the article is to explore the VAT practices of mobile telecommunication service providers in South Africa. From the literature it is evident that different countries have different legislation, and that not all countries have place of supply rules incorporated therein; nor does it necessarily have specific provisions relating to the levying of VAT on international telecommunication services. Some countries deem the place of supply to be where the consumer is located, while others deem the place of supply to be where the supplier of the service is located. The effective use and enjoyment, therefore, also differ from country to country depending on whether the use depends on the supplier or the consumer. Furthermore, it was determined that although some of the countries have specific provisions in their country's legislation relating to the levying of VAT on international telecommunication services, they are party to the Melbourne Agreement and thus it is uncertain why they have these specific provisions.

Interviews were conducted in a South African context to determine whether the telecommunication service providers apply the general VAT principles as contained in the VAT Act (89/1991), or the rule contained in the Melbourne Agreement. From the interviews conducted, it was clear that South African telecommunication service providers apply the principles of the Melbourne Agreement. They zero-rate the supply of international roaming services to foreigners who visit South Africa in terms of the Melbourne Agreement. This is however contrary to the normal principles in the VAT Act (89/1991), which provides that a service is subject to VAT at 14% if it is rendered to a non-resident who is in South Africa at the time the service is supplied. In the case where a resident customer visits a foreign country and is located outside of South Africa at the time the call is made to any country, the home operator levies VAT at 14% for these international roaming charges. This is, therefore, contrary to the normal VAT principles that a service is zero-rated when a service is consumed outside of South Africa. It may be argued, however, that the foreign network operators still 'contact' the home country operators to ensure that the customer may roam, but the bulk of the service is rendered by the foreign operator and the resident is not in South Africa at that time.

The contribution of this article is thus to clarify that although South Africa does have a VAT Act, because it is party to the Melbourne Agreement, telecommunication service providers apply the rule in terms of the Melbourne Agreement to determine the applicable rate of VAT to be levied on international telecommunication service transactions.

Since some countries are party to the Melbourne Agreement and yet have specific provisions in their VAT Acts relating to the levying of VAT on telecommunication services provided, and due to the inconsistent application of the provisions of the Melbourne Agreement, further research may be done by investigating the case in other countries to determine whether they apply the principles of their VAT Act or those of the Melbourne Agreement.

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