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AN EVALUATION OF THE SOUTH AFRICAN VALUE ADDED TAX ON ELECTRONIC GOODS AND SERVICES

Dissertation submitted in partial fulfilment of the requirement for a

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Declaration

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Abstract

With the advent of and expansion of the internet, the fourth industrial revolution came into being. This revolution is characterised by simplified by transactions that take place through cyberspace, whereby companies do not need any physical facilities to run profitable organisations. This shift from physical trade to internet-based transactions is called E-commerce. The threat of E-commerce on the loss of revenue by governments did not go unnoticed by the tax authorities across the world. For that reason, South Africa has introduced the Electronic Regulations of 2014 in order to allow for the VAT levying on of E-commerce entities, particularly the ones base outside the Republic. This dissertation analytically evaluates the South African VAT approach on E-commerce.

Table of Contents

Chapter 1

Introduction

Chapter 2

The Challenge facing SARS in relation to the administration of VAT of E-commerce

Chapter 3

VAT/GST Guidelines of the Organisation for Economic Co-operation and Development (OECD) and their Relevance for the South African Tax Model

Chapter 4

Comparative Analysis of the South African VAT System with some BRICS Countries

Chapter 5

Recommendations

Chapter 1

Introduction

1. Research Problem

In South Africa, Value Added Tax, commonly referred to as VAT is the biggest source of indirect tax income. 'Indirect' signifies that VAT is levied on goods and services rather than directly on income or profits. Fuel levy as well as customs and excise duties are also other forms of indirect taxes. Until April 2014, the South African Revenue Services (SARS) did not have VAT regulations to levy tax on foreign suppliers of online goods and services. As a result, the local buyers or consumers of online goods and services had to carry the burden of the then one sided regulations. However, while the move to collect VAT from foreign online vendors is commendable, one ought to enquire as to how SARS will tackle the enforceability of these regulations on traders based elsewhere in the world. This dissertation evaluates the viability, challenges and complications of the South African VAT regulations on electronic goods and services.

2. Assumptions

2.1. The South African VAT regulations ought to apply to both local and foreign vendors of electronic goods.
2.2. Foreign vendors of online goods and services must equally comply with the same standards of VAT submission as their local counterparts.
2.3. SARS will prosecute foreign violators of VAT submission on the same terms and conditions as the local vendors of electronic goods and services.
2.4. Collection of VAT from online goods and services does not disadvantage online traders as compared to traditional vendors.

3. Research Questions

3.1. Is collection of VAT from foreign traders of electronic goods justifiable?
3.2. How will SARS ensure compliance of VAT submission by foreign online traders?

3.3. How will SARS enforce VAT regulations on foreign suppliers of electronic goods and services?

3.4. What are the complications of collection of VAT revenue from online goods and services?

4. Study Objectives and Limitations

The levying of VAT on electronic goods and service serves as proof that the law shifts with the advancement of human activities. Therefore, it is not hard to understand that the move to collect tax from electronic goods and services is motivated by the exponential growth of E-commerce transactions since the advent of internet. This work seeks to evaluate the complications involved in the process of administration of VAT. The evaluation will involve the analysis of the possible scenarios in the input and output mechanism of VAT in the production and distribution chain of goods and services. It is also important to understand how the exceptions that apply to ordinary goods and services will apply to the transactions in electronic goods and services. Although this work will often draw comparison on ordinary VAT, this work focuses mainly on the taxation of the sale and purchase of electronic goods and services by both local and foreign vendors.

5. Motivation

5.1. Background

South Africa introduced the VAT system in 1991; and that was more than 40 years since France implemented the first VAT system in 1948.[1] The Value-Added Tax Act, hereinafter referred to as "the Act", replaced the General Sales Tax (GST) in 1991 as the indirect form of taxation on goods and services.[2] The topic at hand looks at how the

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1 Botes MC *VAT: An Introduction* (2016) p 1.

2 See Silver M *Deloitte VAT Handbook* (2017) 3. As Da Silva puts it, the implantation of VAT "was of far greater importance than that of GST in 1978" because "a far broader range of goods and services are taxed under the VAT than was the case under the GST system." This author also observes that the other

VAT regulations have shifted to square up with the fourth industrial revolution that came up with digitization of goods and services, even more specifically, the imposition of VAT on foreign vendors. It is fair and reasonable to hold that South African is one of the first movers in the imposition of VAT on non-resident E-commerce traders in comparison to its BRICS partners and other comparable or even much developed regions across the world. South Africa introduced VAT regulations on non-resident online traders in April 2014 whereas the European Union (EU) implemented the same in January 2015.[3] India only did so with its GST system in July 2017.[4]

In comparison to developed countries, E-commerce in South Africa is still in its blooming stage.[5] However, the observation that the South African E-commerce is still in its nascent stage does not necessarily mean that it is insignificant for VAT purposes. The growth of the South African E-commerce is characterised as "a move away from creating large stores to small online shops focused on particular niche products."[6] The large stores are "hosted on large international platforms that offer the opportunity to

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downside of GST was that it was "introduced at a much lower rate of 4% as opposed to the 10% rate at which VAT was implemented.

[3] See EU Directorate-General's Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services that enter into force in 2015. Council Implementing Regulation (EU) No 1042/2013, p 3. Available on: https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/vat/how_vat_works/telecom/explanatory_notes_2015_en.pdf. Accessed on 19 February 2018.

[4] See KPMG International Survey *VAT/GST treatment of cross-border services* (2017) p 52. Available on: https://assets.kpmg.com/content/dam/kpmg/xx/pdf/2017/11/ess-survey-13-nov-17.pdf. Accessed on 19 February 2018.

[5] United Nations Industrial Development Organisation (UNIDO), *Inclusive and Sustainable Industrial Development Working Paper Series WP 18 | 2017*. National Report on E-commerce development in South Africa, p 1. Available on: https://www.unido.org/sites/default/files/2017-10/WP_18_2017.pdf. Accessed on: 19 February 2018.

[6] United Nations Industrial Development Organisation (UNIDO), (2017) p 1. See note 5 above.

reach a large market as well as access to payment gateways."[7] As such SARS is applauded for implementing VAT on electronic goods before the sector becomes complex. That said, it will be demonstrated in this work that the complications that SARS faces in terms of the administration of VAT on electronic goods and services are also experienced in developed countries. These complications usually include tax evasion, fraud, identity verification, money laundering and other forms crimes. This dissertation is stimulated by the growing need for SARS and other tax collectors across the world to fortify their VAT systems in order to ensure effective compliance and administration in order to square up with the commercial expansion due to technological advancement, particularly the internet.

5.2. Literature Review

"Electronic commerce is the ability to perform transactions involving the exchange of goods and services between two or more parties using electronic tools and techniques."[8] In the words of Panigrahi and Sarangi, "[t]he rapid pace of growth of the E-commerce industry is not only indicative of the increasing receptiveness of the public but has also brought to the fore the issues" that the legal systems across the world have been faced with.[9] The receptiveness of the public towards E-commerce is a reliable indicator of how fast the internet has become a necessity for households,[10] even here in South Africa. The revenue collectors, SARS in the case of South Africa, have also moved swiftly to cover the ground so as not to lose the VAT income collectable against internet based enterprises. As a result, some analysts feel that in the quest by authorities to understand the distribution and consumption of online goods

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7 United Nations Industrial Development Organisation (UNIDO), *Inclusive and Sustainable Industrial Development Working Paper Series WP 18 | 2017*. National Report on E-commerce development in South Africa, p 10.

8 Richard A. Westin, *International Taxation of E-commerce*, (2000), p 10. Kluwer Law International, The Haque, The Netherlands.

9 Panigrahi P and Sarangi SK Legal and Taxation Issues in Online Marketing in India- A Case Study. *International Journal of Scientific Engineering and Applied Science (IJSEAS)* – Volume-2, Issue-1, (January 2016) p5.

10 Panigrahi and Sarangi (2016) p 50.

and services, “the analysis should extend more broadly to ensure a deeper understanding of the nature of E-business as it is today, and as it will develop tomorrow.”[11] These analysts observe that for an effective VAT collection from E-commerce businesses, the examination of their tax approach and policy “should not be confined to, or dominated by, the now more comfortable topics of whether an e-merchant has a permanent establishment, how income from online transactions should be characterized and where consumption of goods and services delivered electronically takes place.”[12] This is an observation supported in this work, that the E-commerce tax issues “should be considered in the context of a broader study evaluating the total impact of e-transformation on business productivity, supply chain, economic cycles and sector differences.”[13] In other words, it is submitted that the process of VAT collection should incorporate techniques that promote E-commerce while ensuring effective compliance.

For the purposes of VAT collection on electronic goods and services, South Africa sets the said goods and services in various categories.[14] These categories are as follows:

- Educational services
- Games and games of chance
- Internet-based auction services
- Miscellaneous services
- Subscription services

These Regulations as contained Notice 221, published in Government Gazette No 37489, may be understood as aiming to shift the burden of VAT compliance to non-

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11 Lau C and Halkyard A From E-commerce to E-business Taxation, *Asia-Pacific Tax Bullitin International*, (January 2003), p 2.

12 Lau and Halkyard (2003) p 2.

13 Lau and Halkyard (2003) p 2.

14 See Notice 221, published in Government Gazette No 37489, 28 March 2014. These Regulations are called *Electronic Services Regulations* and they amend the following Acts: the Value Added Tax 89 of 1991, the Taxation Laws Amendment Act 17 of 2017 and the Electronic Communications and Transactions Act 25 of 2002.

resident suppliers of digital goods and services. These regulations which facilitate the collection of VAT from electronic goods and services, apply in the supply of the said goods and services in the course of furtherance of an enterprise carried on by a person from a place in an export country –

(a) to a recipient that is a resident of the Republic; or

(b) where any payment to that person in respect of such electronic goods and services from bank registered or authorized in terms of the Banks Act 94 of 1990.[15]

Despite the good intentions of these regulations, it should be noted that shifting the VAT burden of compliance to foreign suppliers of goods and services compound the already existing complications that the tax administration of on-line business is already faced with.[16]

E-commerce is "fast becoming the norm rather than the exception of conducting transaction worldwide."[17] In other words, South Africa is no exception when it comes to the exploration of opportunities as well as the challenges presented by E-commerce. One of the challenges faced by the tax authorities is that, "[i]n E-commerce, neither physical presence nor physical delivery of goods and services is necessary."[18] With the presence of cyberspace based business, there is also a jurisdictional conundrum when it comes to enforcement and compliance. Business as done entirely through the internet is continually stimulating more technological production of goods and services.

As a result, it is submitted that tax authorities need to develop new Information Technology (IT) solutions or models in order to ensure effective VAT compliance by

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15 See Regulation 2(2) in Notice 221.

16 Basu S, International Taxation of E-commerce: Persistent Problems and Possible Developments, *Journal of Information, Law & Technology* 24th October 2008. Available on: http://go.warwick.ac.uk/jilt/2008_1/basu. Accessed on 24 July 2018.

17 Agrawal K and Agrawal N, Impact of E-commerce on Taxation, International Journal of Information and Computation Technology Volume 4, Number 1 (2014), p 99.

18 Agrawal and Agrawal (2014), p 99.

digital businesses.[19] In the case of South Africa, it is also inevitable that SARS develops the legal framework to address the jurisdictional challenges that may aris as a result of the enforcement of Electronic Services Regulations.[20]

The effective collection of VAT from foreign suppliers of digital goods and services inevitably requires multilateral cooperation among tax authorities. Lack of the anticipated cooperation by tax authorities in other legal systems, could hamper SARS's efforts to ensure effective administration of VAT on foreign merchants that supply digital goods and services into South Africa. In emphasis of the view above, Richard Doernberg *et al* hold that:[21]

> "*Administrative and enforcement difficulties caused by electronic commerce place additional limitations on the exchange of information mechanism under tax treaties and the cross border collection of taxes. The exchange of information between tax authorities has been considered by the OECD to be the best way of fighting non-compliance in cross-border transactions. Effective exchange of information depends on whether the tax administration of a treaty country possesses the relevant information and whether that information can be used in the other country (…). Electronic commerce not only makes it harder for tax authorities to determine the correct tax liabilities of their tax payers, it also makes the collection of tax more difficulties.*"

There is hope that multilateral cooperation will bolster the governments' confidence "with their information technologies to collect, use and disclose tax information", and also aid in "seeking heightened connections with the technology services, including networked databases" shared among governments.[22] However, on the view of reliance on multilateral cooperation among authorities, it is observed that, some national governments "have been reluctant to fully embrace new digital technologies to promote tax information

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19 Agrawal and Agrawal (2014), p 99 – 100.

20 See footnote 12 above.

21 Richard L. Doernberg *et al*. *Electronic Commerce and Multijurisdictional Taxation* (2001), p 391.

22 Cockfield A, *et* al. *Taxing Global Digital Commerce*, (2013), p 516.

exchange and to meet other challenges presented by enhanced regional and global economic integration."[23] In light of the above observation, one can submit that SARS may need to explore unilateral policy mechanisms in order to obtain online sales information emanating from outside of South African borders. However, SARS may need to ensure that such mechanisms do not undermine the multilateral efforts in development.

So far, SARS bases its tax collection principles on the source of the product being from South Africa or the main residence of the business being South Africa. As a result, there is a question as to the approach applicable to E-commerce business. In terms of case law, the mere fact that non-residents who operate online purposefully avails themselves for the privilege of doing business in a country, means that they are within the reach of the tax authorities of that state.[24] One can submit that the above cited case law carry the spirit of the Electronic Services Regulations. These Regulations purport to collect VAT from non-residents who supply electronic goods and services to a South African based consumer or buyer, thus availing themselves to SARS.

6. Research Methodology

This dissertation is a critical evaluation that presents the challenges that the South African tax authority, SARS, faces in relation to the collection of VAT from online traders that are non-residents. The evaluation also draws comparisons between the mechanisms adopted by SARS and those utilized in other countries. This work does not aim to delve deeper into the technical formulas that SARS uses to compute VAT returns, rather it critically assesses the policies as well as the law that apply to the collection of taxation from online sales. The evaluation aims at highlighting the strength and weaknesses of the approach that SARS

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[23] Cockfield A, *et al*. (2013), p 516.

[24] See *Compuserve Inc. v Patterson* 89 F.3d 1257 (6th Cir. 1996). This is a case decided in the Ohio State (United Stated of America).

utilizes to ensure VAT compliance by digital businesses that are non-residents of South Africa.

7. Structure

- **Chapter 1 – An Introduction**

This chapter provides an introductory background to the history of the South African indirect taxation, specifically the VAT system. In this chapter, definitions of basic concepts are also presented and the approach to the entire dissertation is outlined.

- **Chapter 2 – The Challenges facing SARS in Relation to VAT on E-commerce**

The collection of VAT presents daunting administrative tasks for SARS, even in the traditional exchange of goods and services. Chapter 2 critically assesses the challenges that SARS faces in terms of the enforcement of VAT compliance against E-commerce traders, particularly businesses that are non-residents.

- **Chapter 3 – Comparative Analysis of the South African VAT system with some BRICS Countries**

Chapter 3 compares the South African model of VAT practice with those of other countries. The comparison is limited to some BRICS partners to South Africa, specifically Brazil, India and China.

- **Chapter 4 – Comparative Analysis of the South African VAT system with other Countries**

The quest to collect taxation from E-commerce is a global phenomenon. Chapter 4 presents a comparative evaluation of the South African VAT system in E-

commerce against that of other countries across the worlds which have similar policies in place.

- **Chapter 5 – Recommendations and Conclusion**

Having outlined the challenges that undermine the efforts to collect VAT from E-commerce here in South Africa and globally, this chapter presents some recommendations that could serve to close the loopholes in the current mechanisms. Chapter 4 also presents concluding remarks over the entire dissertation.

CHAPTER 2

The challenges facing SARS in relation to the administration of VAT on E-commerce

1. Introduction

There are various challenges that E-commerce present to the tax authorities across the world. These challenges are often more complicated in the context of VAT as an indirect form of taxation. In the words of Kirti and Namrata Agrawal, some of the conceptual challenges thrown by E-commerce are stem from the underlying principles that inform approach taxation policies.[25] In the context of the complications of "the worldwide nature of E-commerce", it is indisputable that digital transactions muddle "the issue of 'jurisdiction' which is a principle tenet of taxation."[26] As already indicated in Chapter 1, E-commerce also challenges traditional tax laws and policies given that some companies can exist entirely in cyberspace.

One level of the challenges brought about by E-commerce involves intellectual property issues whereby users are "finding loopholes to not only easily duplicate material but also mislead other users."[27] On this level, it is not difficult to understand that SARS faces bigger problems in relation to tax avoidance and evasion by the E-commerce vendors. In other words, the efforts to collect VAT from digital transactions can easily be undermined by the sophisticated traditional problems in the E-commerce sector. This chapter looks at the expansion of E-commerce sector in South Africa in the light of the challenges that this expansion breeds against SARS policies and efforts to collect VAT from digital transactions.

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25 Kirti Agrawal and Namrata Agrawal, Impact of E-commerce on Taxation. *International Journal of Information and Computation Technology*, Volume 4, Number 1 (2014), p 100.

26 Agrawal and Agrawal (2014), p 100.

27 Dibakar Panigrahi and Susil Kumar Sarangi. Legal and Taxation Issues in Online Marketing in India – A case Study, *International Journal of Scientific Engineering and Applied Science* (IJSEAS) – Volume-2, Issue-1, January 2016, p 50.

2. Analysis of E-commerce Challenges

2.1. Challenges for the Destination based Principle

VAT can be administered in terms of either the origin of goods and services or the destination of same. “An origin-based tax is one which taxes value added within the country irrespective of where the consumption takes place” whereas a “destination-based tax imposes tax in the country in which consumption takes place.”[28] SARS administers VAT on the basis of the system of destination based, consumption type and invoice filing.[29] The consumption nature of the South African VAT system means that in the chain of its production, a vendor subtracts the tax price of the goods or services purchased from the tax price of the goods or services sold.[30] The invoice filing mechanism simplifies the computation of VAT to the effect of only comparing the figures of the input and output invoices than calculating the added value on individual items.

In practice, SARS bills VAT on imports at the rate of 15% as of 1 April 2018 whereas all exports are zero rated.[31] In this context, the destination based principle definitely creates incorrigible problems for SARS as far as digital transactions are concerned. Since electronic or digital goods and services can be bought, used or enjoyed online, how will SARS determine that the recipient or the producer received the goods or services within the South African borders? If the local recipient of goods or services pays through a different digital means other than a registered or authorised bank in South African, how will SARS ensure VAT compliance in this regard? Can SARS accurately determine the location of the recipient of electronic goods or services? If there is a time lag between the payment of goods or services and the delivery of same,

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28 K. Huxmann and P. Haupt. *The Hedron Guide to Value Added Tax*, (1991), p 1. See also section 7(2) of the Value-Added Act 89 of 1991.

29 Huxmann and Haupt, (1991), p 1.

30 Huxmann and Haupt, (1991), p 2.

31 Section 11(1)(i) read together with paragraphs (a), (b) and c of the definition of “exported” in section 1 of the Act. Further see section 7(1)(c) of the Act.

when is VAT due? Surely these problems are worth discussing much further, specifically in the light of SARS's VAT policy on E-commerce transactions.

As mentioned in Chapter 1, SARS's destination based approach aims at establishing VAT liability at the point of receipt, namely within the Republic.[32] Such electronic goods or services must be supplied "in the course or furtherance of enterprise carried on by a person from a place in an export country." [33] In this context, the Electronic Services Regulations further state that the recipient of goods must be a "resident of the Republic;" or payment for such goods or services must be facilitated through a Bank "registered or authorised in terms of the Banks Act 94 of 1990."[34] It is assumed that the recipient of the electronic goods or services (particularly if it's an enterprise) within the Republic, will pay VAT inclusive price for the imported goods. The difficult part in these Regulations is that they are not clear on how they treat the differences in VAT percentages paid by the recipient in the foreign country and one due to SARS. In other words, the formulation of these Regulations may still create problems for online traders in the case of foreign suppliers of electronic goods and services who reside in countries that have no bilateral relations with South Africa for tax purposes. However, it is submitted that the destination based principle is an appropriate approach of SARS's VAT policy particularly in view of the enforcement of tax compliance.

2.2. The Jurisdictional Challenges

The discussion on bilateral relations triggers a curious inquiry on how SARS tackles jurisdiction related problems such as discovery of information, law enforcement and prosecution. In terms of the Electronic Services Regulations, a South African resident who enjoys digital goods or services is also liable for VAT submission even if such a resident accesses the goods while outside the borders of South Africa or elsewhere in the world. The catch in such an instant is that the South African recipient of electronic

[32] See Electronic Services Regulations.

[33] See Regulation 2(2) of the Electronic Services Regulations.

[34] See Regulation 2(2) of the Electronic Services Regulations.

goods or services pays for them through a bank registered or authorised in South Africa.

The question arises as to what happens where the recipient of electronic goods or service is a subsidiary or a branch of a foreign entity. Since the subsidiary would receive goods or services for use in South Africa, it is expected to file VAT returns. In order to recuperate tax on any foreign entity in such instances, the tax authority can use the legal "procedures on foreign banks, for the bank's own records, by serving" the local "branch of that bank, or subsidiary or parent of the entity" in the country, for avoiding tax compliance.[35] However, the authority of local courts will always fall short in the case of E-commerce entities that exist entirely in the cyberspace. Where an entity carries all its business affairs through the internet, the subsidiaries of such entities can always access goods online, for use within the country, which are paid for through a foreign bank that may not be authorised or registered in South Africa. In the light of this challenge, SARS needs to contrive innovative systems in order to close the loopholes that could be used by liable entities to avoid VAT submission. However, it is clear that this problem is unlikely to prevail where the online entity is a subsidiary of a traditional trader with physical infrastructure.

2.3. Whether Supply is to Business or Private Consumer

One of the difficulties in the characterisation of E-commerce, particularly in relation to the place of supply of goods and services, is whether the recipient of those goods is a business or a private consumer. "Business-to-business commerce includes a broad range of intercompany transactions, including wholesale trade as well as company purchases of services, resources, technology, manufactured parts and components, and capital equipment."[36] Business-to-business E-commerce is commonly referred to as B2B E-commerce. The sales of goods from E-Merchant to a private consumer is referred to as Business-to-consumer (B2C) and "describes activities of business

[35] Richard, A. Westin. *International Taxation of E-commerce*, 2000, p 511.

[36] David Lucking-Reiley and Daniel F. Spulber, Business-to-Business Electronic Commerce *Journal of Economic Perspectives*, 2000, p2.

serving end consumers with products and/or services."[37] It goes without any say that transactions within the two categories of E-commerce setups, present different challenges to the tax authorities, particularly in the light of the principle of location of recipient of electronic goods or services.

In the words of Walter Hellerstein, "[I]t is not B2B or B2C sales of tangible products effectuated through electronic networks but rather B2B and B2C sales of digital products that raise novel and difficult questions for the VAT."[38] B2B transactions forms a larger portion of taxable sales in E-commerce, hence tax authorities need to conduct accurate inspection of digital trade. As Nir Kshretri and Nikilesh Dholakia affirm, "[c]ompared to business-to-consumer (B2C) E-commerce, business-to- business (B2B) E-commerce is larger, growing faster and has less unequal geographical distribution globally."[39] In the light of the above authors' observations, it is submitted that VAT administration of B2B E-commerce will definitely pose more complicated problems for SARS.

Hellerstein argues that jurisdiction related problems will most likely be posed by B2C E-commerce because the tax authority may not have authority over an individual consumer.[40] In this author's perspective, in practical situations, "unless the taxing authority has jurisdiction over the seller, it will not be able effectively to administer a consumption tax on B2C digital transactions."[41] However strong Hellerstein's argument is, it still fails to capture the complications brought about by B2B transactions in which both the digital supplier and distributer exist entirely online and with payments tendered though a means or intermediaries not registered or authorised in South Africa. The

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37 Vinod Kumar and Gagandeep Raheja, Business to Business (B2B) and Business to Consumer (B2C) Management.

38 Walter Hellerstein, Electronic Commerce and The Challenge for Tax Administration, *United Nations Ad Hoc Group of Experts on International Cooperation in Tax Matters* (2001), p

39 Nir Kshretri and Nikilesh Dholakia, Determinants of the Global Diffusion of B2B E-commerce, *Electronic Markets* Vol. 12 No 2, (2002) p 120. Available on: www.electronicmarkets.org. Accessed on: 12 April 2018.

40 Hellerstein (2001), p 32.

41 Hellerstein (2001), p 32.

essence of rigorously investigating the nature of E-commerce setups is so that SARS can effectively collect VAT from this sector. As already argued above, an online distributor can receive goods or services for consumption in South Africa as a subsidiary of a supplier who ordered and paid for such goods from elsewhere in the world. The subsidiary can further avoid VAT submission by making payments to be effected by the holding entity which operates from elsewhere in the world. These are some of the challenges that B2B E-commerce poses to SARS's place of consumption principle.

2.4. The Challenge of Cyber Crime

The advancement of business through internet has not been without challenges, particularly in relation to cybercrime. For as much as crime has often been an obstruction between the tax authorities and the tax payer in traditional business, the trend will definitely be experienced in the case of E-commerce. According to Leena's definination, "[c]yber crime is the threat caused by the criminal or irresponsible actions of computer users who are taking advantage of the widespread use of computer networks."[42] The problem of cybercrime can substantially mislead both the tax collector to the degree that the process of tax administration is deemed entirely flawed. As Leena puts it, cyber crime jeopardises the "safety and quality of most business information systems, and thus makes the development of effective security methods a top priority."[43] However, it should be noted that most of criminal activities that are advanced through cyber resources will take the form of traditional crimes such as theft, fraud, forgery and unauthorised access to classified SARS information. Fraud, which is SARS's biggest challenge comes in the form of identity theft, email phishing scams and VAT refund forgery.

In its 2014/2015 Annual Report, SARS affirm that it stepped up "defences against cybercrime and online fraud, in the 2014/15 financial year, by creating a cyber-

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42 N. Leena. Cyber Crime Effecting E-commerce Technology, *Oriental Journal of Computer Science & Technology*, Vol. 4(1), (2011), p 210.

43 Leena (2011), p 210.

intelligence group. The group will monitor SARS' IT security infrastructure, investigate threats and incidents and conduct security audits."[44] As proof that SARS's ICT systems are constantly under criminal challenges, the report states as follows:

> "*To combat the escalating threat of cybercrime, the security monitoring and management of SARS networks, servers and devices have been strengthened. More than 182 000 viruses on servers and work stations were blocked and removed during the year under review. A further 195 000 network intrusions were repelled and more than 1 300 phishing sites, which illegally use the SARS brand and image, were shut down. During the 2014/15 financial year, more than 70.2 million emails were routed across the SARS network. Around 6.7 million were spam, had to be blocked and removed, and more than 114 000 contained viruses that were nullified."*[45]

Despite SARS's emphasis on its strengthened ICT systems, the E-commerce VAT vendors also carry the responsibility to evade cybercrime. As it will be seen in the cases discussed below, SARS's VAT system faces the challenge of fraud from its registered VAT vendors as representatives of their corporate entities. It is most likely that such criminal activities could take advantage of entities entirely based in cyberspace.

3. Discussion of Case Law in terms of the Challenges in VAT administration

This section focuses on the analysis of the Court decisions that relate to the challenges discussed in this chapter. The decisions discussed pertain to the problems faced by SARS in the VAT division, particularly from the tax and criminal law approaches. However, the discussion of the matters that were decided in the criminal court are restricted to the elements that relate to VAT administration and enforcement.

3.1. *Metcash Trading v C:SARS*

[44] SARS 2014/2015 Annual Report, page 51.

[45] SARS 2014/2015 Report, page 51.

In *Metcash*,[46] the Court observed that the provisions of the VAT Act make it possible to build an efficient system of taxation and to guard against eroding an already poor tax morality. In this matter, SARS alleged that the applicant had submitted VAT return based on fictitious transactions. The applicant requested suspension of the payment of tax pending resolution of the dispute. SARS rejected the applicant's request in terms of sections 36, 40(2)(a) and s 40(5). Before the Court, the applicant argued that these sections violated its constitutional right for access to courts as contained in section 34 of the Constitution of the Republic of South Africa 1996. In summary, the above sections provide that a VAT vendor's obligation to pay cannot be suspended by any appeal or pending decision of a court of law and that the commissioner can proceed to take steps against failure to comply with these provisions. It follows that SARS paid the VAT returns that resulted from these alleged fictitious transactions.

The Court noted that it was unfair and unreasonable for SARS to request the substantiation of the VAT refund after the fact. In other words, SARS did not detect or flag any suspiciousness of these alleged fictitious transactions prior to the refund in dispute. These decision highlights that SARS's VAT collection system is prone to fundamental errors. Since these errors occur in the context of physical filing and invoicing, it is imperative that the integrity of the system is fortified to handle the obstacles brought about by digital transactions.

3.2. *Malan v S*

In *Malan*,[47] the accused was charged and convicted on multiple counts of fraud against SARS in the form of failure to register for and submit VAT in terms of section 58(c), read together with section 23(1)(a) of the VAT Act 89 of 1991. Section 58(c) states that: Any person who fails to apply for registration as required by section 23 shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not

[46] [2000] 3 All SA 318 (W).

[47] *Malan v S* (A217/2012) [2013] ZAWCHC 93; 2013 (2) SACR 655 (WCC).

exceeding 24 months. For a complete comprehension of how this offence is formulated, section 23(1)(a) states as follows:

> *Every person who, on or after the commencement date, carries on any enterprise and is not registered, becomes liable to be registered - at the end of any month where the total value of taxable supplies made by that person in the period of 12 months ending at the end of that month in the course of carrying on all enterprises has exceeded R300 000.*

At some point the accused managed to convince SARS that her Close Cooperation was not operating and that it was receiving the VAT threshold amount of less than R300 000 as set out in section 23(1)(a). It took more than five years for SARS to be aware of this vendor's failure to comply with VAT submission. In the light of the challenges that SARS still faces with regard to traditional VAT compliance, against entities that have physical infrastructure, it is submitted that more E-commerce VAT avoidance could worsen the strife for the tax collector. Once more, it is submitted that SARS will need to strengthen the techniques it uses to detect tax evasion and avoidance, particularly in terms of online traders.

3.3. *S v Moosagie and Another*[48]

In case, the court highlighted that VAT, as a self assessment system is predicated on honesty and integrity. The co-perpetrators in this case were convicted in the Eastern Cape High Court on multiple counts of VAT fraud through false tax returns, forgery of tax invoices, conducting enterprises through a pattern of racketeering activities, corruption and money laundering. Based on the details in the judgment, these perpetrators would fabricate transactions with the actual existing suppliers, without their consent, for purchasing assets that are to be utilised for purposes of their business activities. The VAT amount on which SARS was prejudiced totalled to approximately R5 000 000 in a period of two years.

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[48] *S v Moosagie and Another* [2012] ZACPEHC 31.

The audit evidence presented by SARS before the Court highlighted that there were many incoherent documents submitted to SARS in the course of claims for VAT returns. Despite the fact that SARS eventually detected the suspicious activities carried on by these perpetrators, it is concerning that the institution continued to pay towards such claims before serious inspection was mounted on. In other words, the earlier SARS can act on the initial signs of suspicious criminal activities, the earlier the innocent names of the businesses wrongfully used can be spared. Consequently, the state resources would be saved and a clear message could be sent to other potential perpetrators in their plotting stages. It is submitted that in the context of E-commerce, delay on mounting inspection by SARS could lead to much bigger amounts of monies being fraudulently processed against the national revenue as the digital world operates more rapidly than the physical one.

3.4. *S v van der Linde*[49]

Van der Linde was convicted on more 257 counts of fraud and forgery of which most of them related to false VAT returns. He managed to defraud SARS of approximately R 30 000 000 in the form of VAT claims under the names of entities that did not even operate at all. His auditing firm, which was recorded to be overseeing all accounting records of his fraudster entities, facilitated the smooth payment of the said false VAT returns. As in most VAT fraud related matters, the perpetrator forged supplier invoices. The perpetrator, along with his partners that had turned into state witnesses at the times of the trial, were all foreigners who bought goods at an export price without any VAT on the purchase price, go to the border to and bring the goods back into South Africa and sell them at a VAT inclusive price.[50] As time went by, the scheme would simply just falsify VAT invoices without any goods sold.

In the light of the facts of this case, there seem to be huge loopholes through which SARS gets defrauded through VAT returns, let alone the problem of detecting VAT evasion and avoidance. The concern in this context is that these loopholes are most

[49] [2016] 3 All SA 898 (GJ).

[50] See para 45 of *van der Linde* case.

likely to be used by many foreign E-commerce fraudsters through falsified online transactions. In other words, while the move to tax online trading is encouraged, it would seem that the SARS system is not secure enough to detect falsified invoices at the earliest stages of fraudulent VAT returns. The fact the SARS VAT system is an indirect self-assessment system leaves a lot of discretion to potential VAT vendors to evade registration and submission.[51] This observation was also upheld in *Contract Support Services (Pty) Ltd & others v C:SARS*.[52] In *Contract Support Services* the Court held that:

> "*The liability to pay VAT in terms of section 28(1) of the VAT Act is based upon a self assessment. The amount payable must be the correct amount owing. The obligation to pay VAT exists independently of any assessment.*"

In view of the above commentary by the Court, SARS relies on the information submitted by a VAT vendor that indeed his sales are above the threshold for VAT registration. It is submitted that this lack of authoritative enforcement from SARS's position could weaken the efforts to collect VAT from the much technically complicated E-commerce sector.

3.5. *Triptomania Twee (Pty) Ltd and Others v Connolly and Another*[53]

This is a case that is even more applicable to E-commerce because it involves import and sale of Microsoft licenses of which some can be sold online. Even more so, the sales involved trade in dollars and rands as well as the need to compute correct VAT submissions to SARS. In the *Triptomania Twee* case, the applicants in representation of Source Com, an entity which imported Microsoft products, instituted an action against the respondents in which they alleged that the respondents, during their employment under the said entity, falsely recorded bogus VAT entries due to the supplier Microsoft. Source Com would then claim VAT returns on imported goods for which no tax was paid to Microsoft as a foreign entity. The respondents gained through these fraudulent claims in the form of bonuses and increased remuneration in the

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51 See para 10 of *van der Linde* case.

52 [1999] 3 SA 1133. At 1134 G – H.

53 [2002] ZAWCHC 46; [2003] 1 All SA 374 (C).

expense of the company which had to pay back the excess VAT returns to SARS after investigations. Although the applicants lost the matter due to their failure to discharge their onus to prove the said allegations, the records in this case indicate that online trade with foreign suppliers has complicated VAT implications. It is therefore of utmost importance that SARS systems are equipped with the fluctuations between various currencies against the Rand so as to curb off possible VAT fraud in E-commerce transactions.

4. Conclusion

The move by SARS to levy VAT tax from online transactions is highly commended as the approach by tax authorities across the world has always evolved with the developments in trade in order to find new channels of generating national revenue. In this context, SARS utilises the place of consumption as the point from where VAT should be collected. In this chapter, it was observed that charging VAT for online transactions between suppliers based in a foreign country and the recipient, who pays for digital goods or services for use within South Africa, has challenges of its own. These challenges are viewed in the context of the fact that VAT administration itself is a complex form of tax as it is inherently indirect.

The challenges that stem from the destination based principle point to the fact the some online entities exist entirely in cyberspace. In other words, SARS need to develop a specific mechanism of detecting the recipient of online goods or services that are for consumption or production use within the Republic. The mere fact that the website or digital platform used to purchase the goods or services is registered in South Africa does not mean that the goods are received here in South Africa. To close the above loophole, SARS's approach is to inspect as to whether the payment for such goods is effected through a bank registered or authorised to do business in South Africa. However, as critically set out in this chapter, some entities can use their holding online entities to pay for goods or services through a foreign bank, and in that case the sub-entity in South Africa will only have open access to the online resources to further business here in South Africa. These types of loopholes breed temptations as in the

case of *Triptomania Twee*, by the representatives of the online entities, to falsify VAT invoices for digital supplies for which they did not pay VAT. Furthermore, this type of challenges neutralise SARS's goal to have the foreign suppliers of digital goods carry the burden of VAT wherein it may eventually be reflected as liability by the local recipient. In such instances, where SARS's sharpness is neutralised, the temptation to defraud the institution through falsified VAT returns would become easy to put in motion.

In view of SARS VAT policy, it is not clear how the jurisdictional challenge will be carried out in the case where the eventuality is that the final VAT liability lies with the recipient in a foreign country despite being paid for through a bank registered in South Africa. It was noted above that SARS will definitely be able to utilise the authority of the local courts to enforce compliance against VAT evading or avoiding entities that have subsidiaries with physical infrastructure in South Africa. It is also not clear how SARS aims to differentiate collection of VAT from B2B trade and B2C transactions. The problems related to jurisdiction also trigger the need to discuss cybercrime related challenges.

The challenges of cybercrime come in the form of theft, fraud, forgery and unauthorised access to classified SARS information. These challenges were fully observed in the cases of *Malan, Moosagie and Another*, and *van der Linde*. While it is undisputed that SARS is continuously putting an effort to curb off falsified VAT returns, it is also true that VAT fraud against SARS still continue at an alarming rate as observed in the above mentioned cases. However, it is worth noting that the conviction rate of VAT fraud cases against SARS is impressive. In conclusion, it is imperative that SARS's approach to levy VAT from online trade is cognisant of the challenges discussed in this chapter in order to enhance effective collection of revenue from VAT.

Chapter 3

VAT/GST Guidelines of the Organisation for Economic Co-operation and Development (OECD) and their Relevance for the South African Tax model

1. Introduction

In Chapter 2, it was argued that the South African VAT approach for online transactions will definitely require bilateral relations with other countries. It follows that relations among states for taxation purposes can take multilateral formation. This multilateral formation will undoubtedly facilitate information exchange, eliminate duplication or absence of tax on transactions and strengthen transnational E-commerce. The OECD is an international body that formulates guidelines that simplify, *inter alia*, relations among states for VAT concerns. The OECD "concerns itself with the promotion of policies that will improve the social and economic well-being of people around the world. It provides a forum for governments to work together, share experiences, and seek solutions to common problems."[54] Although South Africa is not a member state of the OECD,[55] it is understood that the latter's guidelines are influential in shaping the former's VAT approach in line with international standards, particularly in relation to E-commerce.[56] That said, it has to be noted that South Africa is one of the key partners of the OECD. This Chapter critically evaluates the extent of the influence of the OECD guidelines on South Africa's policy towards taxation of transnational digital goods and services.

2. The History of the OECD

54 Stephanus Phillipus van Zyl. *The Collection of Value Added Tax on Online Cross Border Trade on digital Goods*. Doctoral Thesis, University of South Africa (2013), p 231.

55 Information about member states is available on: https://www.oecdwatch.org/oecd-guidelines/oecd. Accesed on: 12 June 2018.

56 Van Zyl (2013), p 231.

The OECD was established in 1948 in the aftermath of World War II in order to ensure sustainable peace across the globe by encouraging "cooperation and reconstruction" among all its members and non-members.[57] The Convention to the OECD was signed by its signatories in Paris in 1960. This Convention was followed by both the Supplementary Protocol No.1, "which concerns participation by the European Community in the work of the Organisation", and the Supplementary Protocol No. 2 "which sets out the Privileges and Immunities enjoyed by the Organisation".[58] There is a separate policy for Bilateral Privileges and Immunities Agreements which was concluded between the OECD and the countries that have become Members since 1960 as well non-members.[59] The source referred to in footnote 5 also indicate that there are currently 35 member countries that are party to the Convention. These members regularly are interdependent "to identify problems, discuss and analyse them, and promote policies to solve them".[60]

It is reported that since the creation of the OECD, the wealth of the United States of America, as measured by Gross Domestic Product per capita, has grown by almost three folds within five decades.[61] The expansion of the economies of some BRICS members, particularly China, Brazil, and South Africa, have uplifted these countries to also emerge as key global players as a result of the sound partnership with the OECD.[62] In view of the above outlined historical facts, it is justifiable to hold that all members and partners of the OECD have made progress in their economic objectives and policies. Furthermore, it is fair to hold that these members and partners have a sustainable multilateral forum in the OECD which facilitates the resolutions of economic problems and blunders.

3. The Evolution of the OECD Policies on the Taxation of digital Supplies

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57 Information available on: http://www.oecd.org/about/history/. Accessed on 15 May 2018.

58 Information available on: http://www.oecd.org/about/oecd-convention.htm. Accessed on 25 May 2018.

59 http://www.oecd.org/legal/privileges-immunities-agreements.htm. Accessed on 25 May 2018.

60 Information available on: http://www.oecd.org/about/history/. Accessed on 25 May 2018.

61 Information available on: http://www.oecd.org/about/history/. Accessed on 12 June 2018.

62 Information available on: http://www.oecd.org/about/history/. Accessed on 12 June 2018.

The first move by the OECD with regard to the taxation of E-commerce commenced in 1998 through a conference held in Ottawa, the capital of Canada.[63] In that conference, the OECD developed a taxation proposal called Ottawa Taxation Framework. In this framework, the OECD proposed that countries should develop their domestic legislation to incorporate VAT on electronic goods and services.[64] As per the Report by the South African National Treasury, the said Framework emphasized the need to ensure that VAT is "as neutral and equitable as possible for vendors".[65] In other words, this Framework advised for an efficient and effective VAT system in which all taxpayers are treated fairly and impartially. It goes without a say that this Framework directed members to ensure certainty and fairness in their domestic laws in relation to VAT. Legislative certainty and fairness require tax rules to be "simple and clear to understand"[66]. However, there are no records that indicate material and practical impact of the said Framework on the domestic legislation of the OECD members and its partners.

In 2006, the Ottawa Taxation Framework was revisited by the OECD Committee on Fiscal Affairs (CFA).[67] As a follow up on the Ottawa Taxation Framework, the CFA launched a project to develop a guideline relating to the International VAT/GST Guidelines.[68] It follows that the intention of the said Guidelines was to engage the

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63 Refer to *Draft Explanatory Memorandum: Regulations prescribing electronic Services for the Purpose of the Definition of "Electronic Services" in Section 1 of the Value Added Tax, 1991*, (2018), p3.

64 Refer to *Draft Explanatory Memorandum: Regulations prescribing electronic Services for the Purpose of the Definition of "Electronic Services" in Section 1 of the Value Added Tax, 1991*, (2018), p3.

65 Refer to *Draft Explanatory Memorandum: Regulations prescribing electronic Services for the Purpose of the Definition of "Electronic Services" in Section 1 of the Value Added Tax, 1991*, (2018), p 2.

66 Refer to *Draft Explanatory Memorandum: Regulations prescribing electronic Services for the Purpose of the Definition of "Electronic Services" in Section 1 of the Value Added Tax, 1991*, (2018), p 2.

67 Refer to *Draft Explanatory Memorandum: Regulations prescribing electronic Services for the Purpose of the Definition of "Electronic Services" in Section 1 of the Value Added Tax, 1991*, (2018), p 2.

68 Refer to *Draft Explanatory Memorandum: Regulations prescribing electronic Services for the Purpose of the Definition of "Electronic Services" in Section 1 of the Value Added Tax, 1991*, (2018), p 2.

OECD members and partners to reach a practical agreement in relation to VAT on E-commerce. As per the Report by the National Treasury, part of the objectives of the said Guidelines was to refocus on the principles set out in the Ottawa Taxation Framework. As it is clear that the discussion of the CFA was centred on electronic commerce across borders, it is not difficult to assume that this point of the conference was aimed at seeing concerned countries agree on effective taxation of foreign suppliers of electronic goods and services. Only the CFA forum that engaged many countries across the world, gave an effect of the introduction of taxation of foreign suppliers of digital goods and services. In South Africa, the above stated taxation was incorporated into the VAT Act as Electronic Services Regulations in 2014.

4. The OECD's influence on SARS's VAT policy on E-commerce

In 2013, the South African Minister of Finance, Pravin Gordhan, specified that taxation of digital goods would form part of the measures that would be introduced with the aim of protecting "the tax base and limit the scope for tax leakage and avoidance".[69] Indeed as highlighted in the preceding chapters, the Ministry of Finance introduced the Electronic Services Regulations in July 2014. These Regulations brought the taxation of digital goods and services in line with the OECD regulations, and thus amending the VAT Act.[70] It is inevitable to understand the extent of influence that the incorporation of the OECD guidelines had on the position held by SARS prior to July 2014 in relation to VAT in the E-commerce sector.

4.1. South Africa's VAT Position prior to the incorporation of the OECD Guidelines

Before South Africa decided to incorporate the OECD guidelines into its VAT policy, the approach used was that of the reverse-charge mechanism on imported digital

[69] Refer to the Budget Speech (2013), p 23.

[70] Liza Coetzee and Marisca Meiring, Value-added tax on imported electronic services: a critical evaluation of the newly enacted South Africa legislation, *Journal of Economic and Financial Sciences*, (2015), p 29.

goods and services.[71] In this mechanism, the South African purchaser of digital supplies from a non-vendor foreign supplier for final consumption had to account for the VAT on the purchase".[72] As the new Electronic Services regulations outline, these supplies include items such as e-books, e-music, e-movies, computer software or mobile applications. Before July 2014, the foreign supplier of digital supplies was thus not compelled to be a registered VAT vendor for South African tax purposes. As Coetze and Meiring impartially observe, "[a]part from many practical issues surrounding the self-assessment nature of this mechanism, another major concern was that it made locally supplied goods and services less competitive."[73] In the light of the above author's observation, it is clear that the South African suppliers of electronic services had to account for the total burden of VAT locally, while their foreign counterparts enjoyed tax free flow of goods into the country. By observation alone, it became quite obvious that foreign goods and services were more affordable than the South African ones. The absence of foreign taxation tilted in favour of foreign supplies, and as a result had a detrimental impact against the competitiveness of the local suppliers.

The abovementioned detriment towards effective VAT collection was noted by various Ministries of Finance across the world. In one of its reports, the South African National Treasury notes that the reverse charge mechanism created an over dependence or "heavy reliance on recipients declaring VAT on imported services in South Africa" as well as in many other jurisdictions across the world. [74] The said reliance was "problematic since it could not be monitored for compliance and collection purposes".[75] As the report by the National Treasury suggests, by its very nature, the reverse charge mechanism restricted VAT compliance to local legislation. So each country relied on its

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71 Coetzee and Meiring (2015), p 29.

72 Coetzee and Meiring (2015), p 29.

73 Coetzee and Meiring (2015), p 29.

74 Refer to *Draft Explanatory Memorandum: Regulations prescribing electronic Services for the Purpose of the Definition of "Electronic Services" in Section 1 of the Value Added Tax, 1991*, (2018), p3.

75 Refer to *Draft Explanatory Memorandum: Regulations prescribing electronic Services for the Purpose of the Definition of "Electronic Services" in Section 1 of the Value Added Tax, 1991*, (2018), p3.

own legislation to try and solve the problems that came with digital imports, thus creating loopholes for tax avoidance as a result of poor inspection. Given these points where authoritative inspection of compliance to tax regulations is weak, violation is stimulated, which subsequently leads to an irreparable loss of revenue.

4.2. South Africa's VAT Position after the incorporation of the OECD Guidelines

The National Treasury outlines that from 2012, the OECD started focusing on the taxation challenges brought about by the so called Base Erosion and Profit Shifting (BEPS). [76] It was outlined that the BEPS "not only constituted a serious risk to tax revenues, but also to the tax sovereignty and tax fairness for both OECD countries and non-member countries".[77] However, after 2012 most OECD members and partners already had effective regulatory mechanisms around the taxation of cross border physical goods and services.[78] So it is clear that the organisation was more concerned with the loopholes brought about by the cross border electronic trade and how the said trade could negatively impact on VAT as one of the sources of public revenue. It is thus unsurprising that South Africa's formulation of Electronic Service Regulations is substantially stimulated and influenced by the OECD guidelines. This stimulation is due to the strong partnership between South Africa and the OECD.

As highlighted in Chapter 1, it has to be noted that South Africa and other few countries had already moved to implement the OECD recommendations as early as 2014 before the latter could release its final guidelines in 2017. It follows that the countries that brought their VAT regulations in line with the OECD guidelines acted on the OECD's earlier reports and meetings among members and partner countries.

4.2.1. The Purpose of Electronic Service Regulations

[76] Refer to *Draft Explanatory Memorandum: Regulations prescribing electronic Services for the Purpose of the Definition of "Electronic Services" in Section 1 of the Value Added Tax, 1991*, (2018), p 2 – 3.

[77] Refer to *Draft Explanatory Memorandum: Regulations prescribing electronic Services for the Purpose of the Definition of "Electronic Services" in Section 1 of the Value Added Tax, 1991*, (2018), p3.

[78] Refer to *Draft Explanatory Memorandum: Regulations prescribing electronic Services for the Purpose of the Definition of "Electronic Services" in Section 1 of the Value Added Tax, 1991*, (2018), p3.

The National Treasury's Notice R221 indicates that these regulations that brought the VAT Act in line with the OECD requirements apply to "those services that are electronic services for the purposes of the definition of electronic services in section 1(1)" of the VAT Act 89 of 1991.[79] The meaning of electronic services was amended after the Minister of Finance informed the public through his budget speech in 2018. The current meaning of 'electronic services' as intended by the current regulations is confined to the services that are taxable in terms of the specifications of these regulations".[80] It thus follows that the objective of the Amendment Regulations proposed in 2018 is to broaden the scope of the applicability of these Regulations to encompass various services as listed and defined in the VAT Act 89 of 1991. The Regulations specify that the provision of these 'services' is characterised by facilitation through "an electronic agent, electronic communication or the internet for any consideration".[81] It is submitted that if these amendments do not reduce the uncertainty regarding the administration of VAT, they could distort trade agreements between foreign and local traders and thus impact negatively on the growth of E-commerce. However, one can be justified to believe that the continuous revision of these Regulations for the purposes of aligning them with the OECD guidelines would positively stimulate E-commerce in South Africa.

4.2.2. Persons or Entities required to register for VAT South Africa

As already outlined above, prior to 2014 the foreign supplier of digital goods and services was not required to register as a VAT vendor in South Africa. However, the current position requires a foreign person or entity to register for VAT submission in the Republic. Regulation 2 of Electronic Services prescribes the following conditions to characterise persons or entities liable to register as VAT vendors:

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79 See Regulation 2(1) of the Electronic Services Regulations of 2014.

80 See Budget Speech (2018), 12. Also see Refer to *Draft Explanatory Memorandum: Regulations prescribing electronic Services for the Purpose of the Definition of "Electronic Services" in Section 1 of the Value Added Tax, 1991*, (2018), p 3.

81 See *Draft Explanatory Memorandum: Regulations prescribing electronic Services for the Purpose of the Definition of "Electronic Services" in Section 1 of the Value Added Tax, 1991*, (2018), p 5.

1. A person or entity supplying electronic goods or services into the Republic from a place in an export country; and
2. Such person or entity is conducting an 'enterprise' in the Republic, as defined in section 1(1) of the VAT Act;

In terms of the OECD International VAT / GST Guidelines at least two of the following further circumstances should be present to further prove that the said person or entity is conducting business or 'enterprise' in the Republic:[82]

(a) The recipient of the electronic services is a resident of the Republic;
(b) Any payment made to the supplier in the export country (for the supply of the electronic goods or services) originates from a bank registered or authorised in South Africa, in terms of the Banks Act 94 of 1990;
(c) The recipient of those electronic services has a business, residential or postal address in the Republic; and

3. Within any consecutive 12-month period, the total value of the taxable supplies made by that foreign person or entity in the Republic must exceed R50 000.[83]

The threshold of R50 000 is exclusive to foreign suppliers of digital goods and services. This threshold, which is an obligatory registration limit, "means that foreign suppliers of electronic services are not subject to similar taxation thresholds and registration requirements as South African suppliers of similar services".[84] The current VAT registration threshold for South African suppliers is 1000 000.[85] It is submitted that the strict threshold of R50 000 could hamper foreign traders in the small and medium sector from venturing into the South African market. As such, it is suggested that the threshold should be revised in favour of trade expansion between South Africa and

[82] See OECD, *Mechanisms for the Effective Collection of VAT/GST: Where the Supplier is not located in the Jurisdiction of Taxation*, 2017, Chapter 2. Also Refer to Regulation 2 of the Electronic Services Regulations 2014.

[83] See section 178 of the Taxation Laws Amendment Act 31 of 2013.

[84] Coetzee and Meiring (2015), p 38.

[85] See section 23 of the Value Added Tax 89 of 1993 as amended.

foreign E-commerce enterprises. Some authors are of the view that a uniform threshold should apply to both foreign and local suppliers of digital goods and services.[86]

So far, it is clear that South Africa's decision to adopt the destination of goods or services approach is substantially modelled by the OECD's VAT guidelines on digital transactions. This approach eliminates the tax burden on local producers. It is submitted that this approach further lessens the opportunities for fraudulent claims by the local tax vendor as the input tax claims are easily traceable under the foreign suppliers' output records.

4.3.3. The Definition of Enterprise

One of the adjustments brought about by the Regulations in relation to electronic trade is the meaning of 'enterprise'. Not only does the meaning of enterprise include the 'electronic services', but it also seems to be one of the highlights that indicate South Africa's willingness to bring its tax regulations in line with the OECD guidelines. Prior to the 2014 Regulations, the VAT Act define 'enterprise' as:

> "[*A*]*ny 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, whether or not for profit, including any enterprise or activity carried on in the form of a commercial, financial, industrial, mining, farming, fishing or professional concern or any other concern of a continuing nature or in the form of an association or club*."[87]

The definition goes on to specify the activities that could be deemed to be 'enterprise' and those that could not be deemed so. However, the meaning of 'enterprise was amended to include the supply of electronic services by a person in an export country to a recipient who is a resident in the Republic of South, and with the payment for such services being effected through a bank registered in the

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86 Coetzee and Meiring (2015), p 38 – 40.

87 See section 1 of the Value Added Tax 94 of 1991.

Republic or authorised in terms of the Banks Act 91 of 1990.[88] It is submitted that this amendment is adequately worded to provide clarity for foreign suppliers of electronic services to be able to self-evaluate for the purposes VAT registration.

4.2.4. The Meaning of electronic Services

The Electronic Services Regulations inserted the definition of 'electronic service' into section 1 of the Value Added Tax 89 of 1991 as amended. The inserted definition states that electronic services, "means those electronic services prescribed by the Minister by regulation in terms of this Act."[89] This definition came into effect on 1 April 2014. As already stated above, these electronic services must strictly be supplied by means of "any electronic agent, electronic communication or the internet for any consideration."[90] An electronic agent "means a computer program or an electronic or other automated means used independently to initiate an action or respond to data messages or performances in whole or in part, in an automated transaction."[91] Electronic communication refers to a communication effected through exchange of information by means of digital or data messages.[92] In terms of Taxation regulations, internet "means the interconnected system of networks that connects computers around the world using the TCP/IP and includes future versions thereof."[93] In view of the above outlined definitions, it is clear that the Electronic Services Regulations also created a strong interlink between Taxation laws and laws governing electronic communication and transactions.

The electronic services in discussion are categorised in five headings. These headings are as follows: educational services, games and games of chance, internet-based auction services, miscellaneous services and subscription services. These categories are briefly discussed below.

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88 See section 165(1)(e)(vi)(aa) and (bb) of the Tax Laws Amendment Act 31 of 2013.

89 See section 165 of Taxation Laws Amendment Act 31 of 2013.

90 See Regulation 3 of the Electronic Services Regulations 2014.

91 See section 1 of the Electronic Communications and Transactions Ac 25 of 2002.

92 See section 1 of the Electronic Communications and Transactions Ac 25 of 2002.

93 See section 1 of the Electronic Communications and Transactions Ac 25 of 2002.

4.2.5. A Brief Discussion of the Categories of electronic Services

4.2.5.1. *Educational Services*[94]

This category of services encompasses digital importation of the following:

(a) distance teaching programme;

(b) educational webcast;

(c) internet-based course;

(d) internet-based education programme;

(e) webinar.

The Regulations take an exception where the foreign supplier of the above digital services is regulated by an educational authority in that country of export.

4.2.5.2. *Games and Games of Chance*[95]

This involves the supply of any electronic game, including any: internet-based game; or multiplayer role-playing game; interactive game. Interactive games could be: game of chance; game where the result is influenced by the skill of the player; or game which is a combination of chance and skill. This category further includes electronic betting or wagering, where such electronic betting or wagering constitutes acceptance of a bet or wager on: the outcome of a race; or any other event or occurrence.

4.2.5.3. *Internet-based auction services*[96]

These services refer to the supply of an internet-based auction service facility.

4.2.5.4. *Miscellaneous Services*[97]

This category refers to the supply of any of the following:

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94 See Regulation 3 of the Electronic Services Regulations of 2014.

95 See Regulation 4 of the Electronic Services Regulations of 2014.

96 See Regulation 4 of the Electronic Services Regulations of 2014.

97 See Regulation 4 of the Electronic Services Regulations of 2014.

(a) **E-book**, which for the purposes of this regulation means, any: digitised content of any book; or electronic publication.

(b) **Film**, which for the purposes of this regulation means, any: broadcast not simultaneously broadcast over any conventional television network in the Republic; documentary; home-made video; live streaming performance; movie; music video; program; television series; or video clip, and any right to view any item listed in this regulation.

(c) **Images**, which for the purposes of this regulation means, any: desktop theme; photographic image; pictorial image; or screensaver, and any right to view any item listed in this regulation.

(d) **Music**, which for the purposes of this regulation means, any: audio clip; broadcast not simultaneously broadcast over any conventional radio network in the Republic; jingle; live streaming performance; ringtone; song; or sound effect, and any right to listen to any item listed in this regulation.

(e) **Software**, including: application software; system software; or plugins and any update to any software listed in this regulation.

4.2.5.5. *Subscription Services*

For the purposes of these Regulations, subscription services include subscription to any of the following: blog; journal; magazine; newspaper; games; internet-based auction service; periodical; publication; social networking service; webcast; webinar; web site; web application; or web series.

In addition to the definition of educational services regulated by the export country, the regulations also exclude telecommunications services. The regulations are not clear regarding the role of these categories in relation VAT administration. However, it only makes sense that these categories could guide SARS as to which type of E-commerce a foreign supplier is practising. Furthermore, these categories could facilitate the

development of statistics and record keeping regarding the growth of E-commerce in South Africa.

5. Conclusion

This Chapter presented a critical evaluation of the influence of the OECD VAT guidelines on South African's regulations on digital transactions. Prior to the formulation of the new regulations in line with the OECD guideline, the reverse mechanism was utilised in South Africa. This mechanism meant that foreign suppliers of digital goods and services do not register and pay for local VAT. So the South African supplier or producer carried the burden of taxation. After the Regulations came into force in 2014, the foreign supplier of digital goods and services is obliged to register and pay VAT in South Africa for the goods enjoyed or used in the Republic. In other words the recipient of such goods must be in South Africa, or the payment for the goods must be facilitated through a bank registered or authorised in South Africa. It was also noted that the foreign supplier of digital goods or services must carry an enterprise or business in the Republic. The threshold for the registration VAT submission is R50 000 for the said foreign suppliers whereas the threshold for local suppliers is R1000 000. It was held in this Chapter that the strict threshold against foreigners could be a hamper against foreign traders, and that perhaps this threshold should be reviewed in favour digital trade expansion. In conclusion, the E-commerce VAT policies are expected to be revised and refined going forward by the OECD members and partners.

CHAPTER 4

Comparative Analysis of the South African VAT system with some BRICS Countries

1. Introduction

In the preceding Chapter, it was outlined that the administration of VAT is a process that involves cooperation among jurisdictions. Indeed the OECD facilitates the cooperation and formulates guidelines by which members and partners adjust their domestic tax regulations. It goes without a say that the said adjustment simplifies the availability of international VAT requirements. This adjustment further helps the formulators of domestic regulations to eliminate double taxation or double non-taxation, particularly in relation to VAT on cross border digital supplies.

As already indicated in Chapter 2, the role of the OECD goes beyond the formulation of VAT guidelines. The OECD also facilitates the discussion of economic problems and solutions among its members and partners. As such, it is not difficult to be convinced that the formulations of VAT regulations, among various countries, are most likely to be similar due to the substantial influence of the OECD guidelines. This Chapter evaluates the VAT regulations of some BRICS countries compared to those of South Africa. The specific BRICS countries that will be discussed are Brazil, India and China.

2. The Taxation of digital Goods and Services in Brazil

More like in South Africa, E-commerce is rapidly growing in the big cities that are dominantly urban by nature. “In Brazil, most distribution centres of online stores are located in the Southeast, mainly in São Paulo and Rio de Janeiro.”[98] The complications in relation to taxation on E-commerce in Brazil are rooted in the tax law that regulates VAT. The value added tax is regulated by the so called in Portuguese, *Imposto sobre*

[98] Monique Poggiali de Sousa, *The Challenges of VAT on E-commerce in Brazil: Lessons learned from the United States*, The Institute of Brazilian Issues – The George Town University: Minerva Program (2014), p 6.

Circulação de Mercadorias e Serviços (ICMS). Loosely, this would translate to Taxation on the Movement of Goods and Services. The ICMS imposes different tax rates depending on whether a transaction takes place between parties within a state or based in different states. The rate does also depend on a type of good or service.[99] It also appears that the Brazilian tax on goods and services is categorised at the municipal, state, regional and federal levels.[100]

The rate that is applicable at the regional level among the South and Southeast states is 7% whereas 12% is applicable among states in the North, Northeast and East central regions.[101] 18% is the applicable rate for transactions within the state.[102] On the face of it, the Brazilian approach on value added tax is very complicated because it has many differentiating categories. These categories are most likely to open many loopholes for avoidance and evasion. In comparison to the South African system that applies a flat rate, the South African approach is more preferred.

3. The Regulation of indirect Tax on E-commerce in India

The Indian Software and Services industry accounts for 16% of that country's overall exports with approximately US$ 1.6 billion in investments.[103] E-commerce employs more than 500,000 members of the Indian population.[104] At this rate, the Indian E-commerce industry is considered the fastest growing sector in India.[105] With this brief statistics, it is clear that India is one of the key role players when with respect to digital trade. Given the strong commercial ties between South Africa and India, particularly through BRICS, it is thus very significant to draw comparative analysis of the approaches with the regard to VAT on E-commerce between the two countries.

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99 De Sousa (2014), p 4.

100 Information available on: https://www.valortributario.com.br/tributos/icms/.

101 Information available on: https://www.valortributario.com.br/tributos/icms/.

102 Information available on: https://www.valortributario.com.br/tributos/icms/.

103 The eComTaxpert Group, Taxation of Electronic Commerce in India: presented to Central Board of Direct Taxes, India, (2002), p 1.

104 The eComTaxpert Group (2002), p1.

105 The eComTaxpert Group (2002), p1.

3.1. Principles underlying the Indian indirect Tax

The Indian approach with regard to indirect taxes in base on the following policies: [106]

- Neutrality of taxation of E-commerce with reference to traditional commerce;
- Integrity of tax base through constant monitoring of trade flows, changes in technology and business practices; and
- International consensus while protecting the national interest.

To some significant extent, this approach echoes Adam Smith's four canons of taxation. Smith proposes that a good taxation system should contain at least the following principles:

a. Equity;
b. Certainty and Simplicity;
c. Convenience;
d. Cost-effectiveness and Efficiency.[107]

Smith's canons are also traceable in the values that form the policy of SARS. In other words, the Indian tax policy shares a lot in common with that of South Africa. The values that SARS operate on are as follows:[108]

- **Integrity:** the collection of taxation has to be guided by values and having an ability to demonstrate moral judgement and doing the right thing consistently;

- **Accountability:** in the process of the collection of tax, the revenue collector must assume responsibility for actions, products, decisions and policies within the scope of employment position;

- **Transparency:** the administration of tax has to full (complete), accurate and timely disclosure of information or a clear, unhindered honesty in the way SARS does business;

- **Fairness:** the tax collecting approach must consist of just and reasonable treatment in accordance with acceptable rules and free from favouritism and bias;

- **Respect:** the revenue collector has to be considerate to the bill of rights, law of general policy as well as international laws applicable in the Republic;

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106 The eComTaxpert Group (2002), p 4.

107 See Beric Croome *et al* (2013), p 10 – 11.

108 See SARS Annual Report 2016 – 2017, p12.

- **Honesty:** the relationship between SARS and the taxpayers must be upright, truthful, sincere and free from deceit or fraud;

- **Trust:** the taxpayers must be assured about the accuracy of tax administration such that they can have a firm belief in the reliability, truth or ability of the entire system.

Based on the above principles, the Indian indirect tax administration is wired around the ambition to integrate these countries' respective national economies into the global economy.[109] As outlined in chapter 3, the South African policy of tax administration is also modelled around the integration of international standards through the incorporation of OECD guidelines. That said, it is safe to maintain that the genetic traits of the indirect tax of the two countries are traceable to the international standards and approaches.

The current rate of Indian GST varies from 5% to 28% depending upon the category of goods and services, the general rate of tax being 18%.[110] It goes without a say that at 15%, the South African VAT is significantly lower than that of India. It appears that the GST differentiates between the amount of goods or services consumed.

3.2. The Indian Laws governing indirect Tax

The Indian indirect tax is regulated through the Central Goods and Services Act 12 of 2017 (CGST). The CGST is the equivalent of the South African VAT. The taxation of digital goods and services is also regulated through the CGST. The CGST defines the E-commerce and E-commerce operator in sections 2 (44) and (45) respectively. These definitions are outlined as follows:

- **E-commerce:** means the supply of goods or services or both, including digital products over digital or electronic network.
- **E-commerce operator:** means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

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[109] The eComTaxpert Group (2002), p 5.

[110] Information available on: http://taxsummaries.pwc.com/ID/India-Corporate-Other-taxes. Accessed on 12 September 2018.

Section 9(5) regulates the approach with regard to how the E-commerce would account for taxation. This section also leaves operational technicalities with respect to the administration of E-commerce taxation to the discretion of Council. The CGST applies to the rest of India expect for in the state of Jammu and Kashmir. Although the Indian CGST is similar to that of South African VAT, there is a significant difference with regard to clarity on the law governing indirect tax. In the case of South Africa, although the Minister of finance is given discretion with regard to the guidelines applicable on the taxation of E-commerce, there is definite explanation of how the Regulations operate. Section 24 the Indian CGST provides that Council for taxation has the discretion to notify the foreign supplier of liability to register as the tax vendor without. Unlike the South African Electronic Services Regulations, it is not clear from CGST as to whether the place of origin of digital services or the destination of same is applicable. It is submitted that lack of clarity from the position of the primary source of the law such as an Act may create administrative challenges for the tax regulators, tax payers and the courts. Therefore, the South African position is preferred in this regard. However, it seems that the positions of both India and South Africa are more simple and practical as compared to that of Brazil.

4. The Chinese Indirect Tax on E-commerce

China is one of the biggest players in the digital economy.[111] In 2015, one of the major online traders, Alibaba recorded sales of USD 14.3 billion on the so called Singles Day.[112] With China being the biggest economy in the world, non-taxation of the E-commerce economy would mean great loss of revenue. The Chinese government took notice of the taxation revenue that could be generated from cross border E-commerce

[111] KPMG, VAT and the Digital Economy in China, 2016. Available on: https://assets.kpmg.com/content/dam/kpmg/pdf/2016/04/vat-and-digital-economy-in-china.pdf. Accessed on: 13 September 2018.

[112] 'Alibaba Singles' Day sales reach $14.3 billion, smashing record', Bloomberg News, 10 November 2015, https://www.bloomberg.com/news/articles/2015-11-10/why-alibaba-is-having-singles-day-in-beijing-for-first-time. Accessed: 13 September 2018.

and introduced the new regulations on 8 April 2016.[113] China Briefing reports as follows:

> "*According to the April 8 New Policy, consumers purchasing goods through CBEC, the electronic information of which can be accessed by the customs, need to pay import taxes including tariffs, value added tax (VAT), and consumption tax (if applicable), though single transactions under RMB 2,000 (around US$317) and yearly transactions under RMB 20,000 (US$3,170) enjoy a temporary zero percent tariff rate and reduced import VAT and CT rates charged at 70 percent of the taxable amount under the general trade*."[114]

According to the article by China Briefing as cited above, tax exemptions are no longer available. Prior to 8 April 2016, the Chinese indirect tax on cross border E-commerce was administered as follows:[115]

- the taxation model focused on reasonable quantity of goods or services for personal use;
- the goods or services would be treated as personal parcels subject to parcel tax at rate of 10 %, 20 %, 30 %, and 50 %, depending on the type of goods.
- the parcel tax was exempted if the payable tax amount was lower than RMB 50 (US$7.91).

Compared to the tax models of South Africa and India, the Chinese model seems to be more complicated because although it is transaction based, it is also intensive on the amount of goods or services consumed. What simplifies the South African tax model on E-commerce transactions is that it applies a flat rate without focusing on the amount

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113 China Briefing, from Dezan Shira and Associates, Cross Border E-commerce in China: Regulatory Updates and Trends, 10 May 2018. Availabe on: http://www.china-briefing.com/news/cross-border-E-commerce-china-regulatory-updates-trends/. Accessed on 13 September 2018.

114 China Briefing, 18 May 2016.

115 China Briefing, 18 May 2016.

of electronic goods or services consumed. This flat rate approach makes it easy for SARS to determine the amount of due to or by the vendor, and it makes administration and enforcement easier.

5. Conclusion

This Chapter briefly compared the South African VAT model on E-commerce with that of other BRICS partners, specifically Brazil, India and China. The Brazilian model of indirect tax on goods and services is complicated by the fact that it has many differentiating categories. The Brazilian tax on goods and services is categorised at the municipal, state, regional and federal levels. The Indian GST approach applies different rates between 5% to 28%, seemingly depending on the amount of goods or services consumed or purchased. Similarly, the Chinese VAT on cross border E-commerce applies different rates based on the amount of goods or services. It is not clear how the countries that apply consumption tax based on the amount of goods or services evaluate such quality when it comes to digital items. However, it is submitted in this chapter that the South African flat rate of 15% on cross border digital goods and services is administratively simple and practical as compared to that of its BRICS partners discussed herein.

CHAPTER 5

Recommendations and Conclusion

1. Introduction

In conclusion, the expansion of trade through internet, made many countries realize the potential loss of income as businesses move their traditional over the counter trade to online transactions. South Africa has also noted down the need to move with the international standards and introduced the Electronic Regulations published in 2014. These Regulations seek to specifically reduce the tax burden on the local purchaser of digital goods and services to the foreign seller of same. That said, the need to collect revenue from the digital economy means that the VAT policy needs to be formulated in a manner that addresses all the dynamics concerning the internet. The primary point of the challenges of digital trade is that traditional tax laws and policies are severely exposed in that some companies can exist entirely in cyberspace. Other problems include jurisdiction, avoidance and criminal activities. While these Regulations seem to be clear enough policy wise, it is not clear what administrative measures SARS has put in place to counter these challenges with regard to the collection of VAT from E-commerce. In this chapter, some recommendations are suggested as to how the revenue collector could address the loopholes that connected to digital trade.

2. Improving Tax Compliance

As seen in chapter 2, SARS seems to be still having problems with monitoring VAT avoidance even within the traditional transactions that are based on the physical exchange of goods and services. The challenge of avoidance and evasion are rooted in the practice that VAT registration is voluntary. “Voluntary compliance is made possible by the trust and cooperation between tax authority and taxpayer.” The voluntary registration approach can add to administrative hardships in that SARS only relies, to some substantial extent, on external reports for potential tax avoiders. It is

suggested that SARS should put in place measures to tackle the movement of digital transactions in order to hold foreign entities accountable.[116]

3. Rigorous elimination of falsified Claims against SARS

As per cases discussed under chapter 2, there are many claims against SARS which go on for many years undetected. These claims cause substantial loss of revenue against SARS if the perpetrators terminate their fraudulent activities un-arrested. In 2015, SARS officials discovered an organised operation that costed SARS more than R39 million in fraudulent claims.[117] Most of these fraudulent claims are based on the physical submission of invoices and other supporting documents. It is not clear how SARS would deal with fraudulent activities surrounding digital transactions that are more rapid and could involve complicated electronic networks to cheat the tax system. It is suggested that SARS need to employ intensive electronic systems to ensure effective VAT compliance by digital vendors. It goes without saying that effective compliance would lead to maximum collection of revenue from the E-commerce economy.

4. Conclusion

This dissertation explored the South African new Electronic Services Regulations that aim at governing VAT administration on digital transactions, particularly on foreign sellers of goods and services to the recipient based in the Republic. These Regulations are formulated in line with the OECD guidelines. The levying of VAT on electronic goods and services against foreign entities serves as proof that the law shifts with the advancement of human activities. The move to collect tax from electronic goods and services against emphasize the extent to which globalisation has availed information sharing to the extent that countries can collect revenue on its foreign citizens. This also

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116 Nasiruddin Ahmed, Improving Tax Compliance in Bangladesh: A Study of Value-Added Tax (VAT), IGS Working Paper Series No. 11/2013, p 3.

117 Information available on: https://www.news24.com/SouthAfrica/News/Over-R39m-paid-out-in-fraudulent-VAT-refund-scheme-20150918. Accessed on 28 September 2018.

serves to prove that multilateral relations on policy development have intensified over the years.

The South African VAT on E-commerce is based on the destination principle, meaning that tax is collectable from transactions in which the purchaser is based in South Africa. The challenges that stem from the destination based principle point to the fact that some E-commerce entities have no physical place of operation. In other words, SARS need to develop a specific mechanism of detecting the recipient of online goods or services that are for consumption or production purposes within the country. It may cause an administrative strain for SARS to determine that goods or services purchased through a website or digital platform registered in South Africa are indeed received within the Republic.

Prior to the formulation of the new regulations in line with the OECD guideline, the reverse mechanism was utilised in South Africa. The reverse mechanism did not require foreign suppliers of digital goods and services to register and pay for local VAT. So the South African purchasers carried the total burden of VAT. After the Regulations came into force in 2014, the foreign supplier of digital goods and services is obliged to register and pay VAT in South Africa for the goods or services enjoyed or used in the Republic. In other words, the recipient of such goods must be in South Africa, or the payment for the goods must be facilitated through a bank registered or authorised in South Africa.

Compared to some of its BRICS partners, specifically Brazil, India and China, the South African VAT model on E-commerce, is more simplified. The Brazilian model of indirect tax on goods and services is complicated by the fact that it has many differentiating categories. The Brazilian tax on goods and services is categorised at the municipal, state, regional and federal levels. The Indian GST is determined on the amount of goods or services consumed or purchased. Similarly, the Chinese VAT on cross border E-commerce applies different rates based on the amount of goods or services. Although the South African E-commerce VAT has its own challenges, its flat rate of 15% is more preferred. However, South Africa still needs to deal with the

problems of compliance and fraudulent claims in order to establish an effective administration on VAT collection.

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