

Tax & Legal Alert
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New VAT rules for non-resident e- Services suppliers

A summary of the key aspects

During his 2024 Budget address to the National Assembly, Finance and National Planning Minister, Honourable Dr. Situmbeko Musokotwane noted that the growing digital economy presents an opportunity for Zambia to further expand the tax base and collect more revenue from non-resident suppliers. Accordingly, improving Valued Added Tax (“VAT”) collection and facilitating compliance in the digital economy remains an important focal point of government’s strategy.

In view of this, on 26th February 2024, the Value Added Tax (Cross Border Electronic Services) Regulations, 2024 were published introducing new rules that require non-resident suppliers of Cross Border Electronic Services (“e-Services”), both Business-to-Business (“B2B”) and Business-to-Consumer (“B2C”) transactions, to register online under the Simplified Registration Regime administered by the Zambia Revenue Authority (“ZRA”) for the purpose of accounting for VAT. In a press release of 21st March 2024, the ZRA indicated that the requirement to levy VAT on e-Services under the new rules is effective from 1st April 2024.

Introduction

On 26th February 2024, the Value Added Tax (Cross Border Electronic Services) Regulations, 2024 (“the regulations”) were published introducing new rules, that apply to both B2B and B2C transactions for non-resident suppliers of e-Services in Zambia.

In a press release of 21st March 2024, the Tax Authorities, the ZRA, indicated that the requirement to levy VAT on cross-border e-Services under the new rules is effective from 1st April 2024.

Details

Prior to 1st January 2024, it was a mandatory requirement for non-resident e-Services suppliers to appoint a local and independent tax agent (“Tax Agent”) to discharge their VAT obligations, including the requirements to charge output tax, issue valid tax invoices, submit tax returns and make payments by the due dates.

However, even though the rules made it mandatory for non-resident suppliers to appoint a Tax Agent, the compliance levels were extremely low and in practice, this was mainly at the instigation of the B2B consumers due to the input tax benefits and the shift of the legal incidence from the local importers of the services. Therefore, the collection of VAT on e-Services was generally on B2B transactions.

In view of the above, as part of a series of measures to address the VAT issues associated with the digital economy, the government has introduced new rules that require non-resident suppliers of e-Services to register online under the Simplified Registration Regime (“SRR”) administered by the ZRA for the purpose of accounting for VAT.

In cases where the non-resident suppliers are unable to register under the SRR, they have the option to appoint a Tax Agent for the purpose of accounting for the VAT. This appointment is subject to approval by the Commissioner General of the ZRA. The Tax Agent is held jointly and severally liable with the principal by Law for non-compliance unless the Commissioner General of the ZRA determines otherwise.

The salient features of the new rules on cross-border e-Services are as follows:

1. Definitions

- An electronic service is a service provided or delivered on or through the internet, electronic or digital network; and
- Cross-border electronic services are electronic services supplied in Zambia by a supplier who is resident or carries on business outside Zambia.

2. Imposition

The Tax applies to specific services listed in the regulations noted below:

- Streaming services including films, television shows, music, games, sporting, political, cultural, scientific and entertainment events, video on demand and podcasts;
- Software services including software drivers, website filters, firewalls, virtual private network services, banner blockers and the provision of after sale services at a consideration, software updates, software version upgrades and other software support services;





- Downloadable digital content including computer and mobile applications, electronic books, films, television shows, music, games, podcasts, images and text;
- Website-related services including website supply, web hosting, and remote maintenance of programs and equipment;
- Subscription-based media including news services, magazines, weather or travel reports and virtual playgrounds;
- Search engines and automated help desks services, including customizable search engine services;
- Electronic data management services, including online warehousing, file sharing and cloud storage services;
- Online presence services including advertising services and services providing or supporting a business or personal presence on an electronic network such as a website or a webpage;
- Online market services linking the supplier to the customer including the right to put goods or services up for sale on an online market; and
- Data monetization including sales, licensing or any other form of monetizing data generated from a user's activities.

3. Exemptions

The following supplies are exempt from the new rules:

- Broadcasting and telecommunication services;
- Physical media including read-only memory compact disks, floppy disks and similar tangible media;
- Physical audio or video media including compact disks, audio cassettes, video cassettes and digital video disks;
- Physical game media such as games on a read-only memory compact disk; and
- Professional services such as advice from lawyers and financial consultants to clients by electronic mail.

4. Place of supply rules

Cross border e-Services are subject to VAT in Zambia where the recipient of the services is in Zambia. In determining whether the recipient of the services is in Zambia, the Commissioner General of the ZRA shall consider the satisfaction of any of the following criteria:

- The recipient is resident in Zambia; or
- Whether the payment proxy, including credit card or debit is made from a bank registered under The Banking and Financial Services Act No. 7 of 2017; or
- The payment to the supplier of the services is made from a bank registered under The Banking and Financial Services Act No. 7 of 2017; or
- Whether the access proxy, including internet address, the billing or home address, or mobile country code of the subscriber identification module card of the recipient is in Zambia.

5. Tax rate

The standard rate of 16% applies on supplies of cross-border e-Services made by non-residents.

6. Input Tax

Suppliers of cross-border e-Services are not allowed to claim or deduct input tax. However, a recipient of the cross-border e-Services is allowed to claim or deduct the input tax incurred.

7. Administration

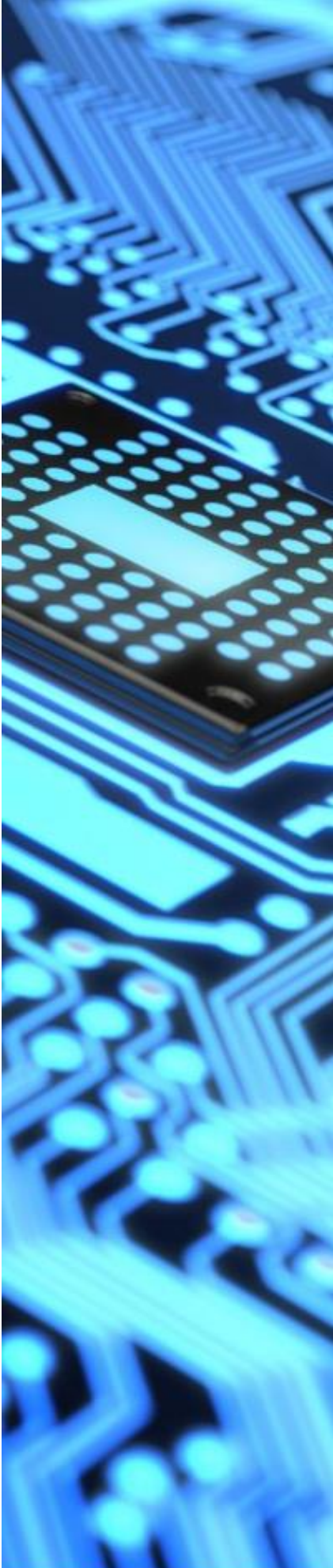
- Suppliers of cross-border e-Services can register for VAT using the link <https://portal.zra.org.zm/login>. The intermediaries of e-Services such as platform or online marketplace operators are deemed to be the suppliers of the e-Services and required to register as well.
- Registered suppliers are required to issue simplified invoices that contain the following mandatory features:
 - Name of supplier;
 - Taxpayer Identification Number (TPIN) of the supplier;
 - In the case of B2B transactions, TPIN of the customer;
 - Date of supply;
 - Total amount charged on the invoice exclusive of tax;
 - The total tax charged;
 - The exchange rate; and
 - A description of the services supplied.
- The invoices must be in Zambian Kwacha (“ZMW”) using an exchange rate provided by the ZRA as determined by the Bank of Zambia (“BoZ”).
- Returns are due for filing with the ZRA on or before the 25th day of the following month.
- Payments of the Tax are also due on or before the 25th day of the following month. Payments must be made directly in the ZRA account at BoZ in the local currency, the Zambian Kwacha, or any other currency determined by the Commissioner General of the ZRA.
- The records and accounts of a non-resident supplier of e-Services can be kept in a location outside Zambia and must be made available to the ZRA on demand for inspection.

Penalties

The following non-compliance penalties apply:

- Late registration for VAT attracts automatic penalties consisting of ten thousand fee units (ZMW300.00) for each month the supplier remains unregistered after meeting the registration threshold (currently of ZMW800,000.00).
- Late submission of a return attracts a penalty of ZMW300, or 1/2 % (0.5%) of the tax payable (whichever is greater) for each day that the return is not submitted.





- Late payment of VAT attracts a penalty of 1/2% or (0.5%) of the tax due for each day the VAT is unpaid.
- Interest is chargeable for each month or part of a month that a payment is overdue and is charged at the Bank of Zambia discount rate plus 2%.

Where a repayment return or a 'nil' return is made late, late submission penalties are still chargeable.

Deloitte commentary

Further guidance will be required in respect of the following matters:

- The treatment of supplies of cross-border e-Services made between 1st January 2024 and 31st March 2024. This is on the backdrop that the amendments to the VAT Act came into effect from 1st January 2024, however, the Regulations were only published on 26th February 2024 with an effective date announced by the ZRA of 1st April 2024;
- Confirmation that services that are specified as exempt from VAT and zero-rated under the VAT (Exemption) Order, 2014 and VAT (Zero-Rating) Order, 2014, respectively, when supplied electronically (- examples include online betting, gaming and lotteries, health services, educational services, downloadable educational materials, and financial and insurance services provided by non-resident e-Services suppliers) retain their status; and
- Whether the provisions of the VAT (Electronic Invoicing System) Regulations, 2023 that require taxable suppliers to use the Electronic Invoicing System, Smart Invoice, to issue invoices and record transactions will apply to non-resident e-Services suppliers.

How do we support?

- Advising you with the aim of helping you understand how the Law on cross border e-Services may affect your business going forward and options available to you;
- Assistance with the process of registering with the ZRA under the Simplified Registration Regime;
- End-to-end support to be compliance-ready including support with the filing of monthly returns and processing of tax payments and receipting; and
- Training your staff to fully understand changes to the tax regime.

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