Dear Sir/Madam

SUBMISSION: DRAFT BGR ON ELECTRONIC SERVICES SUPPLIED VIA INTERMEDIARIES

Introduction

1. Thank you for affording the South African Institute of Chartered Accountants VAT subcommittee (a subcommittee of the National Tax Committee) the opportunity to provide our feedback and inputs on the above matter.

2. Below are our comments. You are welcome to contact us should you wish to clarify any issue.

Background

3. The supply of electronic services as defined in section 1(1) of the VAT Act by a person from a place in an export country, constitutes an enterprise for VAT purposes as defined under paragraph (b)(vi) of the definition of ‘enterprise’ in section 1(1) of the VAT Act.

4. The application of the rules in practice represents challenges where multi-layer supply chain arrangements are in place before the electronic services are supplied to the final recipient.

5. We welcome the clarity provided in the draft BGR.
6. **Submission**: It is submitted that the definition of ‘intermediary’ be extended to specifically include principal to principal supplies of electronic services before the supply of such services are made to the final recipient. This will avoid potential uncertainty with regards to the ambit of intermediaries.

7. **Grammatical correction**: The definition of ‘intermediary’ is stated as meaning “…a person who facilitate …” It should read “… means a person who facilitates…..”, as indicated by the addition of an “s” into the word “facilitate”.

8. **Submission**: It is submitted that bullets (1) and (2) be combined. Essentially bullets (1) and (2) deal with the same issue; if the supplier of the electronic services is not required to register as a VAT vendor, it will also not be required to account for any output tax. The fact that the bullets are currently reflected as two separate outcomes creates the impression that the draft BGR deals with two separate issues.

9. **Paragraph titled ‘rulings’ - page 3**: Paragraph 2 under heading 4 (top of page 3 of the draft BGR) currently reads “An electronic services supplier…will not be required to register or account for output tax ….”

10. **Submission**: It is submitted that the wording be changed to “… will not be required to register [as a vendor] or account for output tax …”

11. **The R50 000 registration threshold - page 3**: In the second paragraph of page 3 of the draft BGR, it is stated that the electronic services supplier is required to register and account for VAT on all supplies of electronic services not made via an intermediary’s platform where these supplies at the end of any month are in excess of R50 000.

12. What is unclear is the period over which the R50 000 threshold requirement will be applied in practice. For instance, must it be determined every month, or on a cumulative basis (similar to the way the R1 million registration threshold is applied)? If a potential vendor supplies electronic services (other than via an intermediary’s platform) for a consideration below R50 000 every month, will such a person not be required to register?
13. **Submission**: It is submitted that clarity be provided in this regard.

**Conclusion**

14. In our opinion this is an important step towards resolving the challenges associated with the supply of electronic services and VAT. This will remain a work-in-progress. SAICA will assist SARS in any way we can to be part of finding practical solutions for these challenges.

Yours sincerely

Christo Theron  
CHAIRMAN: VAT Sub-Committee

Pieter Faber  
PROJECT DIRECTOR: Tax