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Applying tax laws is a tricky proposition in cyberspace

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Unprecedented tax issues in respect of e-commerce must be addressed to develop viable solutions to new taxing problems, writes Anne Bardopoulos

TECHNOLOGY has dramatically affected taxation and the way in which it is imposed. Rapidly increasing e-commerce transactions and the unconstrained development of technology are forcing the traditional world of tax, commerce and international trade to meet unprecedented challenges.

The development of the internet has expedited globalisation, which in turn has compounded taxation. Unprecedented tax issues in respect of e-commerce may be seen as pertaining to the next-generation taxing regime. It is therefore imperative that the e-commerce environment and the laws relating to it be examined.

Indeed, ignorance of the virtual world precludes reaching effective solutions in the field of e-commerce. If this world is not understood, it may be difficult to develop viable solutions to new taxing problems. Technology has created a broader way of thinking than taxation has embraced. Continuously applying restrictive tax principles within a limitless environment will result in a loss of government revenue.

E-commerce has not affected value-added tax (VAT) laws to the extent it has income-tax laws, but has led to an exponential increase in cross-border transactions in respect of which tax laws need to be adjusted. But what does this mean for the average consumer who is, for instance, buying a book from Amazon.com in the US that is posted or downloadable content such as music, movies, games and software?

Consumers may not be aware that they are subject to VAT on such transactions. They may also be taxed on a transaction by two countries, resulting in double taxation on one purchase.

The imposition and collection of VAT on goods bought over the internet may, to a large extent, be controlled better than the purchasing of services. Goods usually have to go through customs, and VAT can be collected by a post office when a parcel is collected. While there are concerns with respect to the online purchasing of goods, the more prevalent issues relate to the supply and purchasing of services over the web.

Unfortunately, while tax jurisdictions apply similar principles and concepts with respect to VAT, there are differences that hinder the effective, fair and equitable application of VAT globally.

An example is the application of "place of supply rules" to provide clarity on where a product is considered to have been supplied and, therefore, subject to VAT. South Africa lacks such rules, which often creates uncertainty about whether a product is subject to VAT and when a foreign supplier is considered to be carrying on an enterprise for VAT purposes in South Africa.

To place this matter in context for the average consumer, South Africa applies the "reverse-charge mechanism" with respect to imported services — those acquired from a non-resident business, consumed in South Africa and not bought for purposes of making taxable supplies subject to VAT. In terms of this mechanism, the South African consumer must account for the VAT on such a purchase.

This means that when consumers download software, music, movies and so forth from foreign suppliers, they must account for the VAT on the supplied products. For example, if South African consumers download songs from the US iTunes store, they should go to the South African Revenue Service and pay the VAT in accordance with the general exemption that applies to imported services of up to R100 per transaction.

The broadened scope and obligation placed on non-registered consumers to account for output tax on imported services is generally not enforced, however, as the administrative costs are both unrealistic and impractical.

But while no statistical studies have been found on the ensuing loss of revenue, it may prove to be a large loss for South Africa and for other jurisdictions globally. It is evident that the South African government is aware of this problem, as shown by the finance minister's proposal in his 2013-14 budget speech to require non-resident

e-commerce businesses that supply goods or services in South Africa to register for VAT.

Furthermore, complexities also exist with respect to supplies between businesses, between businesses and governments and a combination of these, which, if left unaddressed, will lead either to a loss of government revenue or to double taxation. This hinders globalisation and affects South Africa's global economic position in this new virtual world.

Governments should align their VAT principles, descriptively defined as the harmonisation of VAT, which will allow them to collect VAT more efficiently and reduce double taxation. It will also create a more equitable playing field for suppliers by ensuring that foreign suppliers are not granted an economic advantage over local ones.

Taxing solutions should not be rigidly tailored to current technology operations and systems. Continuing changes and advancements in technology make such an endeavour futile, and only an indirect tax such as VAT may work within this virtual world.

• *Bardopoulos was awarded her PhD in commercial law from the University of Cape Town in 2012. She wrote her thesis on technology and taxation.*

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