

**DRAFT BINDING GENERAL RULING (VAT)**

DATE:

**ACT : VALUE-ADDED TAX ACT NO. 89 OF 1991**  
**SECTION : SECTIONS 7(1)(a), 23(1A) AND 72**  
**SUBJECT : ELECTRONIC SERVICES SUPPLIED VIA INTERMEDIARIES**

***Preamble***

For purposes of this ruling –

- **“BGR”** means a binding general ruling issued under section 89 of the Tax Administration Act No. 28 of 2011;
- **“electronic services supplier”** means a non-resident supplier of electronic services;
- **“intermediary”** means a person who facilitate the supply of electronic services supplied by an electronic services supplier and who is responsible for inter alia issuing invoices and collecting payment for the supply;
- **“recipient”** means a recipient of electronic services supplied by an electronic services supplier;
- **“Regulation”** means the Regulation published as Government Notice R221 in *Government Gazette* No. 37489 dated 28 March 2014 prescribing electronic services for the purpose of the definition of “electronic services” in section 1(1) of the VAT Act;
- **“section”** means a section of the VAT Act;
- **“VAT”** means value-added tax;
- **“VAT Act”** means the Value-Added Tax Act No. 89 of 1991; and
- any other word or expression bears the meaning ascribed to it in the VAT Act.

**1. Purpose**

This BGR sets out circumstances and conditions under which an –

- electronic services supplier is not required to register as a vendor in the Republic; or
- electronic services supplier will not be required to account for output tax for the supply of electronic services facilitated by intermediaries; and
- intermediary is required to account for output tax in relation to the supply of electronic services by an electronic services supplier to a recipient.

## 2. Background

Electronic services suppliers supply electronic services to recipients using various platforms.

The electronic services supplier typically enters into an agreement with an intermediary, whereby the intermediary makes its platform (for example, the intermediary's website) available to the electronic services supplier to facilitate the supply of electronic services to customers.

## 3. Application of the law

### *Registration*

The term "electronic services" is defined in section 1(1) to mean those electronic services prescribed by the Minister in a Regulation.

The supply of the aforementioned "electronic services" by a person from a place in an export country, constitutes an "enterprise" as defined under paragraph (b)(vi) of the said definition, where at least two of the following circumstances are present:

- The recipient is a resident of the Republic;
- Any payment to the electronic services supplier in respect of such supply originates from a bank, registered or authorised in terms of the Banks Act No. 94 of 1990; and
- The recipient has a business, residential or postal address in the Republic.

## 4. Ruling

Having regard to the manner in which electronic services suppliers and intermediaries may conduct their business in respect of the supply of electronic services *via* an intermediary's platform, an arrangement is made in terms of section 72 whereby an electronic services supplier is not required to register as a vendor where the following conditions are met:

- (a) It only supplies electronic services via an intermediary's platform;
- (b) The intermediary is a registered vendor in the Republic;
- (c) The electronic services supplier and the relevant intermediary enter into a written agreement confirming that the intermediary will –
  - (i) account for VAT on the supply of the electronic services supplied *via* its platform;
  - (ii) be liable for the payment of the VAT in respect of the supply of the said electronic services;
- (d) The intermediary will retain accounting records, as envisaged in section 29 of the Tax Administration Act No. 28 of 2011 for the supply of electronic services by the electronic services supplier falling within this arrangement; and
- (e) The intermediary, by entering into this arrangement accepts that it is liable for any outstanding taxes of the electronic services supplier in respect of the supply of the said electronic services as made *via* an intermediary's platform.

An electronic services supplier, registered or required to register as a vendor for the supply of electronic services, will not be required to register or account for output tax on the supply of electronic services made *via* an intermediary's platform provided that the conditions set out above are met.

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.

This ruling does not deal with the intermediaries' entitlement to deduct input tax attributable to the electronic services supplier, including irrecoverable debts contemplated in section 22(1).

This ruling constitutes a BGR issued under section 89 of the Tax Administration Act No 28 of 2011.

#### **5. Period for which this ruling is valid**

It is intended that this BGR will apply from 1 April 2015, to those electronic services suppliers who has supplied electronic services *via* an intermediary's platform, until it is withdrawn, amended or the relevant legislation is amended.

To the extent that this BGR does not provide for a specific scenario regarding the electronic services intermediaries, vendors may apply for a VAT ruling or VAT class ruling in writing by sending an e-mail to **VATRulings@sars.gov.za** or by facsimile to 086 540 9390. The application should consist of a completed VAT301 form, a clearly motivated application and must comply with the provisions of section 79 of the Tax Administration Act No. 28 of 2011 excluding section 79(4)(f), (k) and (6).

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