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Do South Africa's e-commerce VAT rules measure up to international trends and OECD guidelines?

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Orientation: The taxability of e-commerce transactions have been the subject of many studies to protect governments from Value-Added Tax (VAT) erosion, illegal recovery and fraud.

Research purpose: This study critically analyses the challenges posed by e-commerce transactions in South Africa's *VAT Act*. Recommendations are made for amendments to the *VAT Act* to improve rules to effectively tax e-commerce transactions occurring in South Africa.

Motivation for the study: Globally, including in South Africa, enforcing relevant VAT legislation to target output tax collections and input tax credits from e-commerce transactions aptly remains a challenge.

Research approach/design and method: By integrating qualitative literature reviews and comparative synthesis, this study employed a comparative legal methodology. VAT levied on e-commerce transactions in South Africa is compared to the Organisation for Economic Co-operation and Development's guidelines as well as New Zealand's and Australia's Goods and Services Tax legislations.

Main Findings: While the South African *VAT Act* aligns with international best practices on the use of intermediaries, there are some differences as detailed in the study.

Practical/managerial implications: To align with international trade counterparts, the South African *VAT Act* should differentiate between business-to-business and business-to-consumer sales. A provision concerning the place of consumption for bundled goods should be included in the *VAT Act*. The *VAT Act* should contain a provision that allows bad debts to be claimed on cash sales made instead of total sales made.

Contribution/value-add: This study harmonises South African VAT legislation with international best practices within the context of continual advancement of e-commerce transactions.

Keywords: business to business (B2B); business to consumer (B2C); e-commerce; goods and services tax (GST); Organisation for Economic Co-operation and Development (OECD); South African Revenue Service (SARS); value-added tax (VAT).

Introduction

Digitalisation has impacted almost every aspect of our daily lives over the last two decades. Our communication, consumption of products, and businesses are all impacted by the internet, from websites and mobile applications to social media and online shopping. With the evolution of smartphones, chatbots have replaced traditional web-based electronic commerce (e-commerce) transactions (Kasilingam 2020; Raza & Khan 2022). Millennials are especially eager for using chatbots as they can interact with a chatbot through a chat interface by using written or verbal statements (Kasilingam 2020).

Chatbots are used in most standard e-commerce transactions to order pizzas, deliver flowers, or book flights as well as in information-procurement services for various products such as healthcare, food recipes, mortgage, and so on (Raza & Khan 2022). It is expected that chatbots will not only dominate mobile commerce and online shopping applications but will also dominate marketing in the future, and as they can be integrated into messaging apps such as WhatsApp, Facebook, and Skype, they are expected to replace mobile applications used for online shopping (Kasilingam 2020; Raza & Khan 2022). Although chatbots have been around for many years, their popularity is on the rise because of the rise of artificial intelligence and the internet of things (Kasilingam 2020).

Apart from the use of chatbots, other emerging technologies, such as advanced robotics, 3D printing, cryptocurrencies, and open government data are already part of the mainstream economy and have been around for several years (Organisation for Economic Co-operation and Development [OECD] 2015, 2020). Also, connectivity is already ubiquitous and enormous amounts of data are generated hourly by continually connected users and devices (Cockfield 2013; Kasilingam 2020). The emergence and frequent evolution of digitalisation, in particular, have been constantly changing the way people communicate and interact (De Swardt & Oberholzer 2006; Raza & Khan 2022).

Over the years, digitalisation has not only brought changes but has also fostered innovation (Choi, Whinston & Stahl 1997). To protect governments from eroding indirect-tax bases that result in value-added tax (VAT) erosion, illegal recovery and fraud, a lot of research has been carried out on the taxability of e-commerce through consumption taxes and possible solutions. Electronic commerce is rapidly changing the way companies conduct their business and business is becoming more global as private organisations and consumers trade commercially over the internet while digital multinational enterprises (MNEs) such as Google, Tiktok, Netflix, Spotify, and Snapchat provide digital content to customers (Manzoor 2010; Raza & Khan 2022). These MNEs directly market to customers because customers provide their personal data to the MNEs free of charge (Manzoor 2010; Raza & Khan 2022).

Globally, compared with traditional brick-and-mortar stores, expansion into e-commerce has reached new heights in the last few years as retailers are repeatedly seeking expansion within their businesses online (Deloitte South Africa 2014; OECD 2020). This is largely because of the fact that international markets trading on internet platforms are now more accessible to retailers, and e-commerce poses a lower-risk expansion method but with a potential for faster penetration into new markets (Deloitte South Africa 2014). A large factor in the expansion in the past 2 years has been an unexpected consequence of the coronavirus disease 2019 (COVID-19) pandemic (OECD 2020). The pandemic resulted in government-imposed lockdowns worldwide with an attempt to significantly reduce physical contact among individuals, which enhanced the reliance consumers placed on e-commerce purchases (OECD 2020).

This shift to online platforms is predicted to have long-term effects on e-commerce outlasting the duration of the pandemic, as anecdotal evidence from the Chinese severe acute respiratory syndrome epidemic in the early 21st century indicates that the virus was a main contributor of the digital revolution for the Chinese retail sector (OECD 2020). Nearly two decades later, Chinese e-commerce constitutes over half of global internet retail sales and their rate of expansion of e-commerce was the fastest worldwide, reaching approximately 44%, while the UK had a rate of growth of 27.7% and the USA 14.5% (Buchholz 2021). This may indicate that the shift to online platforms may be sustained long into the future (OECD 2020).

The relevance of e-commerce in the Republic of South Africa (RSA) is discussed next, followed by an explanation of the challenges that e-commerce poses to taxing authorities and concluding on the importance of this study.

The relevance of e-commerce in Republic of South Africa

As a result of the COVID-19 pandemic and the government-imposed lockdowns that were influenced by the transmission rates, e-commerce expanded rapidly in RSA since early 2020 (My Broadband 2020). As physical contact between individuals was minimal, online shopping presented a convenient solution and e-commerce surged during what was a watershed moment for companies with no online presence to launch e-commerce platforms (My Broadband 2020). The CEO of PriceCheck, the South African ('SA') product and financial services platform, that compares prices and products from different merchants and links consumers directly to the merchant's website, stated in early 2020 that online clicks for merchandising have increased in excess of 50% since lockdown restrictions brought about by the coronavirus disease were imposed (My Broadband 2020).

Interestingly, Daniel (2020) reports that e-commerce accounted for just 2% of all retail transactions in RSA as of November 2020. Despite this relatively low figure, market and consumer data predict that approximately 30 million SAs will switch to online shopping by 2024 (Daniel 2020). In order for this statistic to be realised in the SA market, hurdles must be overcome, such as lowering the cost of data as well as expanding internet coverage and quality (Daniel 2020). Another contributor to the relatively low rate of 2% mentioned here can be explained by a recent report by the South African Police Service (SAPS) relating to an ominous rise in courier hijacking across the country, targeting high-value deliveries (Business Tech 2021). In spite of the given concerns, e-commerce is likely to become more prevalent in the coming years as it is a vastly untapped market with potential (Daniel 2020).

The tax challenges of e-commerce

With the use of the internet and various software, goods and services can be exchanged digitally without the requirement of physical presence in the countries where the goods and services are provided. E-commerce transactions can be categorised into two categories: direct e-commerce and indirect e-commerce. Both of these categories are explained further in the text.

Indirect e-commerce allows customers and e-retailers to use the internet as a means of providing information, ordering products, and perhaps paying for them online (Jones & Basu 2002). Indirect e-commerce is characteristically identified by

the use of traditional channels of delivery such as border posts and customs to deliver a physical good or service (Hargitai 2002). Basically, in an indirect e-commerce transaction, tangible goods are ordered electronically, and this is the only digitalised part of the transaction; the goods are then produced at a manufacturing facility, shipped to wholesalers, and boxed for retailers to deliver to the customer and this represents the non-digitalised part of the transaction (Hargitai 2002; Jones & Basu 2002). The result is that the final consumer walks away with a paid for (and taxed) item as the consumer was charged VAT or sales tax by retailers, who remitted these taxes to taxing authorities (Jones & Basu 2002).

Conversely, a direct e-commerce transaction makes full use of the virtual marketplace during every phase of the commercial activity, including delivery, which unlike indirect e-commerce does not take place via postal service or commercial courier, but occurs online (Alexiou & Morrison 2004; Hargitai 2002). In a direct e-commerce transaction, the goods or services are usually digital content, digital media, an online game, information and data in digital format or a digital solution. Ordinarily, in a direct e-commerce transaction, physical presence is no longer a determining factor for nexus in the digital economy of direct e-commerce as transactions are conducted online without physical presence. Consequently, direct e-commerce raises the problem of shipping without customs clearance, which raises the potential for erosion of sales tax and consumption taxes such as VAT.

An e-commerce retailer typically adopts an e-commerce business model so that they can maximise their revenue earning potential (Wienclaw 2021). While an e-commerce business model can be both versatile and effective as it integrates with other business aspects such as sales and marketing, there are many advantages of using e-commerce business models such as opening the business up to a larger market as well as minimising operational costs associated with traditional brick-and-mortar stores (Wienclaw 2021). Despite these advantages, companies and individuals can exploit tax differences between countries, or even evade taxation as direct e-commerce business models make cross-border movements of goods, capital, and labour less transparent. As a result, traditional tax rules are ineffective in addressing the issue of direct e-commerce business models.

Considering these developments, governments are legitimately concerned about the erosion of their indirect tax bases because of e-commerce's ability to go unnoticed or undetected by tax revenue authorities. While the challenge is not a new one and has been around since the inception of e-commerce, there still currently remains a challenge in enforcing relevant tax legislation to accommodate digitalisation both in RSA and globally (OECD 2020). Cockfield (2013) argues that some enterprises are participating extensively in the economic life of a jurisdiction without having a taxable presence. Consequently, tax authorities on a global scale are being forced to identify the value created by digital and virtual businesses who engage in e-commerce transactions, determine how that value should be taxed, where that value should be taxed, how legislation should be amended, and how it should be enforced. As a result, this study analyses the challenges brought about by digitalisation of e-commerce transactions to SA VAT rules and makes recommendations on modifying SA VAT rules to address the consumption taxation of e-commerce transactions effectively.

Importance of this study

Traditional business activities have three most perilous traits that are important to achieving commercial success and these are 'location, location and location' (Watako 2012). By contrast, e-commerce is not constrained by geographical boundaries and the location of the business is not as important (Watako 2012). Unlike tangible goods that are physically transferred from one country to another through border posts, electronic services supplied via electronic communication (e-communication), or the internet, can go undetected by tax revenue authorities (Marais & Bouwer 2019). In this way e-commerce poses a severe threat to VAT erosion, illegal recovery, and fraud.

Using traditional indirect tax rules, it is necessary to establish a connection or nexus between the country and the consumption of the good or service for that country to levy consumption taxes on it (De Wilde 2015). To illustrate, a consumer would not pay VAT to a foreign tax revenue authority for a good which is purchased and consumed in a local country. For example, a consumer who purchases and consumes a burger at a corner café in a small SA suburb will not pay the VAT to the Brazilian tax revenue authority.

The term 'nexus' describes an important connection between several parts of a system or a group of items, and in VAT legislation, it describes the connection between the good or service and the country in which the good or service is consumed (De Wilde 2015). The main connecting factors entitling a country to impose VAT on a good or service is the connection of that country and the person who consumes the good or services, that is source-based taxation (De Wilde 2015). The issue, however, is that companies traditionally had a physical presence or nexus in a jurisdiction where they are subject to taxation, but in today's digital economy, e-commerce permits access to final consumers without necessarily having such a presence (De Wilde 2015).

Nowadays, even the smallest of merchants can reach the same global market as colossal conglomerates with the ability of e-commerce when compared with traditional marketing methods (Watako 2012). The growth of e-commerce has been phenomenal around the world and Watako (2012) has argued that the deepening of globalisation and associated technological and institutional developments are creating conditions that may lead to the industrial countries, especially developing countries, being unable to sustain high levels of taxation.

While e-commerce presents many benefits such as how using the internet as a competitive advantage allows an e-commerce

retailer to increase employee productivity, improve the efficiency and effectiveness of its business processes, and improve customer interaction (De Wilde 2015), there are many challenges that are brought about and these need to be addressed. Given the widespread prominence of e-commerce, it is inexcusable that the SA *VAT Act* does not define the term e-commerce and no publicly available case law clarifies its meaning. In contrast, the OECD defines an e-commerce transaction as the trade or procurement of goods or services over computer networks, software and information technologies using methods designed specifically for receiving or placing orders (OECD 2013). Transactions are characterised by the ability to purchase such goods or services over computer networks, the web, extranet or electronic data interchange, but not necessarily the subsequent distribution of goods or rendering of services (OECD 2013). The OECD definition specifically excludes telephonic, facsimile, and human-generated e-mails as e-commerce (OECD 2013).

With e-commerce's unrelenting expansion, the OECD's Working Party No. 9 on Consumption Taxes has indicated a dire need to develop more forward-thinking tactics for collecting VAT and Goods and Services Tax (GST) worldwide, with particular focus on online sales to consumers (OECD 2019). Consumers use e-commerce as a remote method of transaction that requires little to no physical contact yet still allows them to be able to access the products they require (OECD 2020). Firms use e-commerce as an alternative sales method and also to operate many positions remotely (OECD 2020). Policymakers must ensure that e-commerce delivers for all parties, especially in light of the recent COVID-19 crisis (OECD 2020).

By March 2020, RSA's e-commerce base had gradually grown (Thenga 2020), and it continues to grow. In response to the COVID-19 outbreak, the SA government imposed a country-wide lockdown and e-commerce transactions surged (Thenga 2020). Aluwani Thenga, a Rand Merchant Bank analyst, has projected that e-commerce transactions in South Africa will experience a staggering growth rate of 150% by the year 2025, reaching a total value of around R225 billion. This trend is largely attributed to the shift in consumer behaviour that was catalysed by the COVID-19 pandemic in 2020 (Thenga 2020).

Because of the increasing use of the internet and delivery systems, it is important that the provisions governing e-commerce transactions under the SA *VAT Act* remain up to date. Along with addressing the different aspects of e-commerce (OECD 2017), VAT provisions should avoid creating barriers to trade or distorting the functioning of the digital economy (Marais & Bouwer 2019b).

The next section discusses the method used to collect data for this study. This is followed by a discussion and analysis of how RSA's VAT rules compare with the OECD Guidelines, the New Zealand (NZ) GST legislation, and Australian GST provisions relating to the taxation of e-commerce. Next, recommendations to enhance RSA's VAT rules based on the shortcomings identified in the discussion and analysis section are presented. Finally, a conclusion is provided, as well as recommendations for future research.

Method

In this study, a comparison was drawn to determine if there are any areas in RSA's existing VAT regulations relating to the taxation of e-commerce transactions that have not been addressed when compared with international best practices, specifically the OECD's guidelines and the GST legislations of two Commonwealth nations such as NZ and Australia.

The study's research design was a comparative legal approach that was achieved through a qualitative desk review (Van Hoecke 2015). The design was suitable as the study's intention was to learn and obtain a better understanding of other national legal systems with the aim of enhancing the domestic national legal system and promoting harmonisation of the law (Van Hoecke 2015). An integrative literature review was used to achieve the study's purpose of interrogating and comparing the existing provisions in RSA's *VAT Act* relating to e-commerce with:

- the OECD's 2017 publication of *International VAT/GST Guidelines*
- the OECD's 2019 publication of *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales*
- the current Australian GST provisions concerning e-commerce trade
- the current NZ GST provisions involving e-commerce exchanges.

An integrative literature review is a form of research where past theoretical or empirical literature are reviewed to gain more comprehensive knowledge of a particular phenomenon. The method used for this research is similar to the method used by Watako (2012) who used a qualitative desk-based approach to identify challenges and weaknesses in the existing VAT law of Kenya in the indirect taxation of e-commerce. In his study, Watako (2012) compared Kenyan VAT rules with the European Union VAT rules and Indian VAT rules relating to e-commerce transactions.

While this study mirrors Watako's study, it is unique as it makes an important theoretical contribution to literature on SA VAT rules by harmonising SA VAT legislation with international best practices within the context of continual advancement of e-commerce transactions. This study augments the myriad of existing literature on the international challenges in collecting consumption taxation from e-commerce transactions as it focusses on specific transactions, namely business-to-business (B2B) supplies and business-to-consumer (B2C) supplies; supply of bundled products; bad debts from e-commerce transactions and supply of low-value import parcels. For each of these specific transactions, the study compares SA's VAT treatment with the OECD guidelines, the Australian GST rules, and the NZ

GST rules. Shortcomings are identified and recommendations are proposed for each transaction that is not suitably taxed by SA VAT rules.

Prior studies have focussed on the legal challenges of taxing e-commerce arising from the cross-border nature of e-commerce transactions (Watako 2012). This study is unique as it comprehensively examines the definition of e-commerce, distinguishing between B2B and B2C transactions, analysing the bundling of products, exploring the challenges surrounding the importation of low-value parcels, assessing bad debts for foreign suppliers, and delving into the liability of e-commerce platforms to collect, evaluate, and remit taxes. Each of these issues poses specific challenges that require careful consideration and analysis. In addition to the OECD publications and the GST legislations, the study also collected secondary data from journal articles, published studies including dissertations, legislation, and books.

The Australian GST provisions were elected as a comparative VAT regime because of its success in raising $269 million Australian Dollars from 1500 self-registered offshore suppliers in the 2017–2018 tax year, which exceeded the forecasted revenue of $150 million Australian Dollars (Walpole 2020). To strengthen the validity of the comparison, NZ was elected as an additional comparative country because RSA, Australia, and NZ belong to the Commonwealth, which is an organisation of 54 autonomous and equal countries (The Commonwealth 2013).

Beyond their memberships and the fact that their legislations are in English, their VAT/GST systems are similar in many regards (Datt, Nienaber & Tran-Nam 2017). The similarities evident are likely because of the SA VAT system and Australian GST being modelled after NZ's GST model, resulting in similar tax bases, tax rates, and registration thresholds in the three countries (Datt et al. 2017). Moreover, NZ and Australia both tax e-commerce transactions primarily through GST, which is comparable to the SA VAT mechanism (Walpole 2020). Furthermore, the comparison of the SA, Australian, and NZ VAT regimes in relation to e-commerce is not unique to this research as it has previously been performed by Walpole (2020) and Walpole and Stiglingh (2017).

Discussion and analysis

The discussion and analysis section are split into four main parts. Firstly, the discussion elaborates on how RSA introduced e-commerce transaction into its *VAT Act*. Secondly, there is a detailed discussion on the definition of 'electronic services' in the SA *VAT Act*. Thirdly, the definition of 'electronic services' is compared with NZ's definition of 'remote services' and Australia's definition of e-commerce. Lastly, the study presents a discourse on the more technical differences by focussing on the difference in the three jurisdictions in the treatment of B2B and B2C. The OECD guidelines are used as a benchmark to identify any shortcomings. Other technical aspects evaluated in the comparison are the treatment of bundled supplies, bad debts in an e-commerce transaction, and the treatment of imported low-value parcels.

Introduction of e-commerce into South African indirect tax legislation

The rapid expansion of the e-commerce sector has highlighted the importance of legislation adequately addressing these e-commerce transactions. In 1994, the Katz Commission Report into Taxation was tasked with reviewing the tax system in RSA to consider the impact of e-commerce (SAICA 2000). The report observed that RSA's tax base can be eroded when consumers use electronic means to contract, advertise, and even deliver goods and services (The Davis Tax Committee 2014). In addition, the report found that e-commerce was a global issue and that RSA would respond when the world economies formalised policies to address e-commerce (SAICA 2000).

South Africa's e-commerce has grown since then. To develop legislation on e-commerce in RSA, a Green Paper on E-commerce was released in 2000, indicating that SA law was inadequate to address e-commerce issues (The Davis Tax Committee 2014). To facilitate and regulate e-communications and transactions, RSA enacted the *Electronic Communications and Transactions Act* (*ECT Act*) in 2002 (ECT Act 25 2002). Even though certain provisions in the *ECT Act*, if complied with and effectively enforced, might alleviate some of the problems associated with e-commerce identification, e-commerce transactions are not subject to taxation under the *ECT Act* (Bornman & Wassermann 2018; Olivier & Honniball 2013). In this regard, the *SA VAT Act* should be considered.

In September 1991, RSA introduced VAT to replace its GST regime (Go et al. 2005). These rules were aimed at traditional brick-and-mortar business models as RSA introduced these VAT rules before the widespread use of the internet and digital technology (Xaba 2017). To illustrate, prior to 01 June 2014 the *SA VAT Act* did not have a place of supply rule that determined where a supply, whether in the form of an e-commerce transaction or not, to SA customers by foreign suppliers took place and as a result the taxing rights could not be determined (Badenhorst & Moodaley 2019). In addition, up until 2014, consumers were required to reimburse the South African Revenue Service (SARS) for the VAT on imported e-commerce services and goods and this was highly impractical (Palmer 2014). To address this, the SA tax authority, being SARS, promulgated rules governing the importation of goods obtained through electronic transactions in 2014 (Xaba 2017). The definition of electronic services is thus discussed.

In 2014, the SA tax authority, SARS, in conjunction with RSA's National Treasury promulgated new VAT regulations regarding e-commerce. The term 'electronic services' (e-services) is defined in the *SA VAT Act* and relevant suppliers of e-services to SA residents now meet the registration thresholds contained in section 23 of the *SA VAT Act* (Palmer 2014). The registration requirement imposed that

the purchasing consumer pays for these e-services from a bank account registered in RSA (Palmer 2014). The question that then arises is: when should an e-service provider register as a SA VAT vendor?

Initially in 2014, foreign suppliers were required to register for VAT at the relevant month-end where the whole value of taxable supplies generated exceeded R50 000 over a 12-month time span (Palmer 2014). This registration threshold was low and brought many small foreign suppliers into the SA VAT net, and this posed a problem as SARS had difficulty in enforcing registration because many of these small suppliers were unaware of this amendment (Palmer 2014). Subsequently, in 2019 the threshold for registration as a VAT vendor for e-services suppliers was raised to R1 million over a 12-month time span (Badenhorst & Moodaley 2019).

The changes to the registration threshold were not the only changes made in the SA *VAT Act* that affected e-commerce transactions. There have been other changes made that have broadened the scope of the definition of e-services.

In 2014, direct e-commerce transactions were brought into the ambit of the SA VAT system. The definition of e-services was stratified into specific sub-categories, namely education, games and games of chance, internet-based auction services, miscellaneous services including e-books, audio-visual content, still images, and music and subscription services (Louw & Botha 2014). The definition stated that these services are to be concluded 'by means of an electronic agent, 'e-communication, or the internet' (Louw & Botha 2014). This definition was further amended in 2019 and the ambit of e-services has now been expanded significantly so that more transactions are included in the tax net of e-services (Badenhorst & Moodaley 2019).

In the next section, the definition of e-services is compared with the equivalent definitions contained in the NZ GST legislation and the Australian GST legislation. The objective of the comparison is to identify the scope of transactions that are regulated by the VAT/GST legislation in each jurisdiction.

Comparing RSA's definition of e-services with NZ's definition of 'Remote Services' and Australia's so-called 'Netflix tax'

Section 1 (1) of the SA VAT Act currently states that e-services are those e-services that are prescribed by the minister in the relevant regulation. The regulation that is referred to in the definition is 'Regulations Prescribing Electronic Services for the Purpose of the Definition of "Electronic Services" in section 1(1) of the *Value-Added Tax Act* 89 of 1991', Government Notice 429 of 18 March 2019, which states that 'electronic services' are 'any services supplied by means of an electronic agent, e-communication, or the internet for any consideration'.

Although the definition clearly includes e-communication, there is some ambiguity regarding whether information or advice sent through electronic mail (e-mail) meets the definition of an e-service (Badenhorst & Moodaley 2019). E-communication is defined in section 1 of the *ECT Act* as a communication via data messages. In the *ECT Act*, data messages are defined as data generated, sent, received, or stored by electronic means, including voice and records. Accordingly, e-mails containing advice or information may qualify as e-communications under the *VAT Act* (Badenhorst & Moodaley 2019). However, the National Treasury released an explanatory memorandum in March 2019 describing the regulations governing e-services for *VAT Act* purposes (National Treasury 2019). According to this memo, VAT will be levied on services provided with 'minimal human intervention' (National Treasury 2019:5). As an example, the memorandum states that legal advice sought by a SA resident from a non-resident person outside RSA via email will not be considered e-services (National Treasury 2019). In this context, however, it is important to observe that the explanatory memorandum has no legal status (Badenhorst & Moodaley 2019). It may be necessary for SARS to issue a Binding General Ruling to clarify the policy outlined in the given memo (Badenhorst & Moodaley 2019).

In the *SA VAT Act*, e-services do not include regulated education services, telecommunications or e-services between companies if the supplier-company is a non-resident that supplies the services exclusively for the consumption of the consumer and a company resident in RSA. Although telecommunication services are excluded from the definition, it is unclear what they are. The *VAT Act* refers to 'telecommunication services' as defined in section 1 of the *ECT Act*, however the *ECT Act* does not define this term (Badenhorst & Moodaley 2019). The omission may have been because of an oversight on the part of National Treasury since the draft regulation of November 2018 defined 'telecommunications services' as relating to the transmission, emission, or reception of signals, writing, images, sounds, or information of any kind by a telecommunication system, excluding the content of telecommunications (KMPG South Africa 2018). In addition, SARS published a Frequently Asked Questions (FAQ) document that defines 'telecommunication services' nearly identically and includes internet access, videophones, mobile phones and fixed telephones as telecommunication services (SARS 2019).

Unlike RSA that refers to 'electronic services', the NZ legislation describes e-commerce transactions as cross-border 'remote services' supplied by non-resident suppliers in an electronic marketplace as defined in section 60C (Walpole & Stiglingh 2017). On 01 October 2016, section 8B was promulgated in the *NZ GST Act* and is to be read with the amended definition of 'remote services' in section 2 of the *NZ GST Act*. 'Remote services' are defined in section 2 of the *NZ GST Act* as referring to a service that at the time at which it is performed has no bearing to a physical place of performance and the location of the recipient. According to the NZ Internal Revenue, 'remote services' can include digital content such as e-books, movies, TV shows, music, games, apps, software, online gambling services, website design, as well as legal,

accounting, insurance or consultancy services (New Zealand Inland Revenue 2021a).

The NZ definition is similar to the interpretation of e-services in the *SA VAT Act*, which also includes e-books, games, and music (Louw & Botha 2014). The similarity comes through as the SA National Treasury published Government Gazette No. 37489, Government Notice Regulation 221 which stratified e-services into specific sub-categories, namely 'education, games and games of chance, internet-based auction services, miscellaneous services including e-books, audio-visual content, still images, music and subscription services' provided by suppliers such as E-bay, Apple, Netflix, Amazon and Google (Louw & Botha 2014). Similar to the NZ definition of 'remote services', *SARS* (2019) further clarified that e-services are services that are automated so that there is minimal intervention by humans and the service is instead dependent on information technology. Furthermore, an amendment to the definition of e-services now includes services such as cloud computing and computer software (Badenhorst & Moodaley 2019).

Despite the similarities, there are a few differences. In terms of section 8B (2) of the *NZ GST Act*, a supplier is required to treat the recipient of 'remote services' as a resident of NZ if two of six requirements are met. This contrasts with the *SA VAT Act*, which requires two of three requirements to be met as per the definition of enterprise in section 1(1) of the *SA VAT Act*. The six requirements of NZ are contrasted to the three requirements of RSA in Table 1.

Prior to 30 June 2017, Australia's *GST Act* was limited to taxable importations in section 13-5 for goods with a value exceeding Australian Dollar (AUD) 1000 with no specific regard for imported goods under AUD 1000, services, and digital products (Dorevitch 2019a). From 2017 to 2021, the exchange rate between the AUD and the SA Rand has ranged from a weakened rate of 1 AUD: 9.06 ZAR on 23 February 2018 to a strength of 1 AUD:12.62 ZAR on 07 August 2020 (Oanda Currency Converter 2022). The AUD 1000 threshold thus ranges between ZAR 9060 and ZAR 12 620.

TABLE 1: A comparison of New Zealand's (NZ's) requirements to Republic of South Africa's requirements for taxable supplies of e-services.

NZ section 8B (2) requirements	SA enterprise definition requirements for e-services
Billing address is in NZ	SA residential, business or postal address
Internet protocol address or another geolocation method of the device used by the recipient indicates that the person is in NZ.	Not applicable
Banking details including bank account used for payment is from NZ.	Paid from a SA bank account
Mobile country code of the international mobile subscriber identity stored on the subscriber identity module card indicates that the recipient is from NZ.	Not applicable
Location of the recipients fixed landline, which is used to receive the service indicates that it is from NZ.	Not applicable
Other commercially relevant information	Not applicable
Not applicable	Recipient is a resident of RSA

NZ, New Zealand; RSA, Republic of South Africa.

Australia, unlike RSA and NZ, implemented VAT rules on e-commerce much later. Australia's GST base was amended on 30 June 2017 to include imported services and digital products (Dorevitch 2019a). The colloquially dubbed 'Netflix Tax' applies if such imported services or digital products are taxable supplies, which will depend on whether the supply is connected with the 'indirect tax zone' (ITZ), which means in Australia (Dorevitch 2019a).

In terms of Australia's GST section 9-25(5), 'supplies of anything else' are defined as a supply of anything other than goods and real property situated in Australia if two requirements are met: Firstly, 'anything else' is performed in Australia and secondly, the supplier makes the supply through an enterprise carried on in Australia. If neither of the previous two requirements apply, then the two conditions are that the 'anything else' should be a right or option to acquire another thing and the supply of the other thing should be connected to Australia. An example of the latter is when a holiday trip to a town in Australia is supplied by a non-resident travel operator.

A supply will also be a supply of 'anything else' if two requirements are met: Firstly, the entity is not registered or if the entity is registered it must have acquired the 'anything else' for private purposes (Dorevitch 2019a). Secondly, the recipient is an Australian consumer as defined in section 9-25(7) of the Australian GST legislation (Dorevitch 2019a). An Australian consumer is an entity who is a resident of Australia (other than an entity that is an Australian resident solely because the definition of Australia in the Income Tax Assessment Act [ITAA] 1997 includes the external territories) (Dorevitch 2019a). To aid foreign suppliers in determining whether a consumer is an 'Australian consumer', the safe harbour rules were created (Dorevitch 2019a). These rules require foreign suppliers to either use business systems to support or take reasonable steps to establish if their customers are 'Australian consumers' (Dorevitch 2019a). These rules are summarised in Table 2.

The business systems criteria mirror the two of six requirement criteria of the NZ GST provisions and to a certain but limited extent the two of three requirement criteria of the *RSA VAT Act*.

To summarise, all three countries require the billing address to be in the resident country and the recipients bank account to be from a local bank account. In contrast, only Australia and NZ require the IP address, mobile phone subscriber identity module (SIM), and geolocation software to be in the resident country. Republic of South Africa does not have these requirements, instead South Africa requires the recipient to be a resident of RSA as per the domestic legislation. Furthermore, only NZ considers other commercially relevant information.

In the next section, the more technical aspects of the VAT/GST legislation are discussed. The differences and similarities in the taxation of B2B, B2C, bundled products,

TABLE 2: Australia's safe harbour rules.

Business systems	Reasonable steps
Business systems/processes may provide suppliers with sufficient evidence to surmise that the consumer in question is not an 'Australian consumer', thus that consumer may be deemed a non-Australian consumer.	Once suppliers have taken reasonable steps to obtain evidence over whether they believe their customers are 'Australian consumers' or not, suppliers may treat their customers as such. (This belief is not required to be correct if reasonable steps have been taken).
Examples of information that may provide suppliers with sufficient evidence: • Internet protocol (IP) address • The origin of correspondence • Billing address of recipient • Location of recipient's bank • Mobile phone subscriber identity module (SIM) • Tracking/geolocation software • Recipient's country selection.	Information required to have taken 'reasonable steps' (not all is required): • The level of interaction you have with the recipient. • The type of personal information that a recipient usually shares. • The difficulty and costs involved for you in taking steps. • The expected reliability of the information.

bad debts, and importation of low-value parcels in the different jurisdictions are highlighted.

A comparison of the distinction between business-to-business and business-to-consumer

Globalisation has increased cross-border transactions in recent years, causing the various VAT/ GST regimes to interact (OECD 2017). Many countries have instituted unilateral consumption tax measures on e-commerce transactions, resulting in a greater risk of double indirect taxation and, in some cases, unintentional consumption tax relief for suppliers in the form of input tax credits or VAT refunds (OECD 2017). The OECD (2017) has since published International Value Added Tax/GST Guidelines to promote co-operation between jurisdictions to resolve the issues mentioned here. Jurisdictions are incentivised to implement the principles presented by the OECD as consistent interaction may assist in combatting barriers in business operations, impeding economic development and distorting competition (OECD 2017).

In the context of VAT/GST, the destination principle refers to consumption tax only being levied on the final consumption that occurs within the taxing jurisdiction (OECD 2017). This principle creates a neutral stance for taxpayers in the context of international trade by prescribing that exportations be taxed at a zero rate, while imports may be taxable according to that jurisdiction's corresponding consumption tax rate (OECD 2017).

In order for the 'destination principle' to work in maintaining the VAT system's 'neutrality' in international trade, there must be rules that define the place of taxation (OECD 2017). These rules should be prescribed in order to cater to both B2C supplies, which concern taxing the ultimate consumer, as well as B2B supplies, which concerns the staggered VAT-collection approach and the question of where to tax the eventual consumption (OECD 2017). However, in terms of multi-jurisdictional trade for services and intangibles it becomes more challenging to prescribe place of supply rules because of the fact that there are no clear border controls as there are for international trade (OECD 2017). The OECD's ultimate goal is to promote a unilateral and consistent approach for the place of taxation regarding global trade concerning services and intangibles in order to mitigate ambiguity, compliance, and administration costs and revenue risks (OECD 2017). Two different approaches are prescribed by the OECD when applying the 'destination principle' and these approaches are different because of the supplies having differing objectives as shown in Table 3.

TABLE 3: Differences between business-to-business supplies and business-to-consumer supplies.

Differences	B2B supplies	B2C supplies
Method of collection	Staged process	Final tax burden is on the consuming customer
Objective	To assist with the imposition of a tax burden on the ultimate customer in the suitable jurisdiction, rather than the businesses involved.	Prediction of the place where the ultimate consumption of the service or intangible will take place.
Assumptions	The supplier and consumer are recognised as businesses.	The consumer is not perceived as a business but seen as is the end user.

In addition to the given distinctions, there are differences in the mechanisms for enforcement and collection of VAT in different tax regimes (OECD 2017). The OECD urges jurisdictions to publish comprehensive guidance on how suppliers can determine if their customer is a business or not (OECD 2017). Requiring suppliers to obtain relevant documentation may be an effective way of establishing their status, such as VAT registration numbers, company tax identification numbers etc. (OECD 2017). Where suppliers have reasonably and in good faith attempted but are unable to determine this status, the customer may be presumed to not be a business and B2C rules shall be applicable thereafter (OECD 2017).

Business-to-business supplies are taxed in the country where the consumer is situated, according to OECD Guideline 3.2 (OECD 2017). In this way, the customer's jurisdiction is established as the location of its permanent business presence (and usage), thereby promoting neutrality and 'the destination principle' (OECD 2017). In terms of inputs related to making these global supplies, the supplier is entitled to claim a complete input tax credit, however, there should be no VAT in the originating jurisdiction for that supply (OECD 2017). Guideline 3.3 goes on to clarify that certain consumer's identities can ordinarily be established with reference to the 'business agreement' as this agreement reflects the underlying supply (OECD 2017). The OECD describes B2C supplies as more 'straightforward' than the B2B counterpart as described here, with the objective of B2C supplies being the taxation of the final consumer in their relevant jurisdiction where the supply is consumed (OECD 2017).

Business-to-business transactions are taxed the same way as B2C transactions under the *SA VAT Act* (Badenhorst & Moodaley 2019). It is stated in the explanatory memorandum

titled 'Regulations prescribing electronic services for the purpose of the definition of "electronic services" in section 1(1) of the *value-added tax act*, 1991' that no distinction has been made between B2B and B2C purchases to ensure fair treatment of non-residents and locals (National Treasury 2019). The reasoning provided is, however, redundant, as services provided by non-resident suppliers to SA businesses will not be subject to VAT under the 'imported services' definition (Badenhorst & Moodaley 2019). The SA tax revenue authority, SARS, also does not generate excess revenues from B2B transactions, as domestic businesses can claim input tax on e-services purchased if they are VAT vendors, and if they are not VAT vendors, the end supplier will pay VAT on the e-services. Moreover, SARS may have difficulty enforcing VAT on cross-border transactions in the future because of this decision, as it is contrary to international trends (Grimm & Kruger 2018). Furthermore, the Davis Tax Committee's Final Report on VAT recommended that B2B and B2C supplies should be separated for VAT purposes (The Davis Tax Committee 2018).

Comparatively, the Australian GST distinguishes between B2B and B2C transactions. While B2B customers can provide their GST number, all other customers are considered to be B2C (RSM 2018). Business-to-consumer consumers are charged GST by suppliers, while B2B consumers are required to self-assess GST per relevant reverse charge rules (RSM 2018). In NZ, however, unless the consumer provides evidence of their GST registration or a NZ business number, NZ GST considers B2C supplies to be made to the ultimate customer (i.e. B2C) (Trombitas 2019).

A comparison of the SA to the Australian and NZ approaches can be found in Table 4, where the former does not acknowledge whether the consumer is using supplies for private use or for business purposes, while the latter applies a 'reverse charge mechanism' to supplies partially credited by GST-registered businesses to the receipt of supplies, compared with domestic customers who do not reverse charge (Walpole 2020). In Australia and NZ, the approach is aligned with OECD recommendations (OECD 2017).

The OECD recommends that B2B and B2C supplies are distinguished. This distinction should be considered in the SA VAT to promote the destination principle. In the application of distinguishing B2B supplies, the tax authority, SARS, should publish comprehensive guidance on how suppliers can determine if their customer is a business or not (OECD 2017).

A comparison of bundling of products

In the context of bundling of products or consolidated product sales, these are bundled products with a different 'substance', for example, digital products or services ordered alongside tangible, corporeal goods (Radia 2013; OECD 2003). Because of the differences in tax bases and tax rates between these different products, bundling has become a source of contention for taxpayers and tax administrators (OECD 2003). Different places of supply rules or differences in how tangible or intangible goods may be taxed result in complications when multiple jurisdictions are entitled to the tax part of the bundle of digital products or services. In contrast to 'piecemeal changes', that is, changes that happen gradually, usually at irregular intervals, and are probably not satisfactory, result in conflicting approaches by jurisdictions and subsequent tensions, the OECD recommends that consumption taxation of these bundled products is included 'uniformly', that is does not vary, but is even and regular throughout, consumption tax rules (OECD 2003).

From a SA perspective, Question 20 of the SARS FAQ Guide provides clarity on how bundled products affect a 'group of companies'. To understand the guidance, we need to first understand the SA perspective of e-commerce transactions in a group of companies. As a matter of SA law, the supply of services by an electronic agent, e-communication, or the internet for a consideration by a company based in an export country (non-resident company) to a company based in RSA (resident company) is excluded from the concept of e-services in RSA (SARS 2019). For this to apply, both non-resident and resident companies must be in the same group of companies (SARS 2019). Furthermore, the non-resident company itself must supply the services exclusively for the resident company's consumption (SARS 2019).

The SARS FAQ Guide example 6 presents the facts of a non-resident company contracting with a third-party non-resident supplier to provide internet-based data services to the group of companies (SARS 2019). Data services are provided to each subsidiary for a single consideration by the non-resident company bundled with services it physically performs in RSA (SARS 2019). Providing e-services in RSA continuously and regularly qualifies the non-resident as an 'enterprise' (SARS 2019). In the event its taxable supplies exceed the threshold for registration, the non-resident is required to register for VAT (SARS 2019).

TABLE 4: A comparison of the value added treatment of business-to-business and business-to-consumer supplies in Republic of South Africa, Organisation for Economic Co-operation and Development guidelines, New Zealand and Australia.

Country	VAT treatment
RSA	No distinction has been made between these two types of supplies. These supplies are treated and taxed in the same manner (Badenhorst & Moodaley 2019).
OECD	Because of the differing objectives of B2B and B2C supplies, the OECD recommends that these supplies should be treated differently (OECD 2017).
NZ	B2B and B2C supplies are distinguished. Suppliers are presumed to make B2C supplies, unless the consumer provides evidence that the supply is B2B (Trombitas 2019).
Australia	B2B and B2C supplies are distinguished. B2B customers are GST registered and can provide their GST number, while all other customers are considered as B2C (RSM 2018).

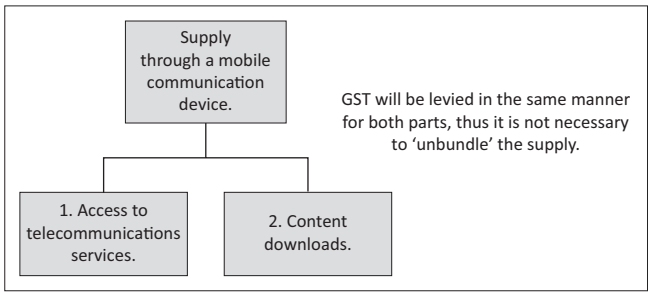
Note: Please see the full reference list of the article, Loffstadt, A., Ndlovu, J. & Padia, M., 2023, 'Do South Africa's e-commerce VAT rules measure up to international trends and OECD guidelines?', *Journal of Economic and Financial Sciences* 16(1), a815. https://doi.org/10.4102/jef.v16i1.815, for more information.

RSA, Republic of South Africa; OECD, Organisation for Economic Co-operation and Development; NZ, New Zealand.

Another example is a non-resident company providing internet-based data services and certain accounting services to its wholly owned subsidiaries situated in RSA, even though the services are neither electronic or physically performed in the Republic (SARS 2019). A single consideration is charged for these bundled services (SARS 2019). As these services are provided by the non-resident company itself, for consumption by the resident companies, they are not considered e-services (SARS 2019). Here, the SARS FAQ further elaborates on bundles of e-services with physical services performed within the Republic for a single consideration by stating that in the case of a single consideration for a bundle of e-services and other services (such as accounting services) that do not take place in the Republic, the consideration should be assigned appropriately to the particular matters as per the guidance in section 10(22) of the *SA VAT Act* (SARS 2019). Thus, the e-services will be standard-rated supplies for VAT, while the remaining services will not be subject to VAT (SARS 2019).

Unlike RSA's GST legislation, NZ's GST legislation does not address bundled goods and services. Figure 1 illustrates how Australian GST applies to bundling of telecommunications services (OECD 2003). By establishing that the place of taxation and consumption are one and the same, telecommunications services are simply taxed in the same way as other services (OECD 2003).

Table 5 summarises the OECD's recommendation that 'uniform' consumption tax rules should be applied to bundled products, but there does not seem to be any consistent approach taken by RSA, NZ, or Australia. The VAT treatment of bundled goods is more uniform under section 10(22) of *the SA VAT Act* than other jurisdictions, but conflicting approaches with respect to bundled goods remain. It may also be more appropriate and neutral to tax bundles in the place of consumption, as Australia does. Hence, SA VAT provisions can benefit from section 10(22), as well as adding an amendment regarding the place of supply.



GST, Goods and Services Tax.

FIGURE 1: Bundling of telecommunication services in Australia (OECD 2003).

A comparison of bad debts

Credit card fraud is one of the pressure areas for e-commerce retailers worldwide (Yu & Wang 2009). Credit cards provide consumers with an interest-free loan for a limited time period (Yin & Song 2011). With the increasing popularity of the use of credit cards as the mode of payment for online sales, the risk of digital credit card fraud has increased considerably (MarisIT Credit Services 2021). Furthermore, by using rewards programmes, banks can encourage consumers to frequently make online purchases so that their cards do not become 'sleeping cards' or even 'dead cards', that is remain unused (Yin & Song 2011). As soon as a customer no longer services their debt and defaults thoroughly, this becomes a credit card fraud case (Yin & Song 2011).

Online banking, application and subscription services are all susceptible to credit card fraud, including cloned credit cards and compromised smartphones (MarisIT Credit Services 2021; Yu & Wang 2009). Fraudsters steal the identity of victims who are unaware of this fact, or they use a variation of their own identity to create fraud, or they create fake account details to conduct online transactions (MarisIT Credit Services 2021).

Because of the prevalence of credit card fraud in online marketplaces, robust safety and security measures are crucial for e-commerce buyers and sellers (Yu & Wang 2009). This is especially true as fraudsters are constantly coming up with new ways to con both people and online systems designed to detect credit card fraud (Yu & Wang 2009). According to MarisIT Credit Services (2021), 20% of bad debts arise from digital credit card fraud and 50% of bad debts stem from e-commerce transactions when no payment has been received but the goods or services have been provided. It is, therefore, reasonable to expect that the design and implementation of a VAT/GST liability regime for digital platforms should factor in the threat of credit card fraud.

In some jurisdictions, bad debts are handled differently with suppliers receiving an output tax credit for taxes paid over to tax authorities on such supplies if international debtors fail to pay (OECD 2003). However, in some jurisdictions, this relief is not consistent, making it very difficult for suppliers to obtain this benefit (OECD 2003). Because of the high volume

TABLE 5: A comparison of value added tax treatment of bundled products in Republic of South Africa, Organisation for Economic Co-operation and Development guidelines, New Zealand and Australia.

Country	VAT treatment
RSA	Only mentioned in the context of 'groups of companies' in the SARS FAQ document. The single consideration will be attributed to the respective matters to determine the appropriate VAT levied as per s10(22) (SARS 2019).
OECD	The OECD recommends including the taxation of these bundled products in 'uniform' consumption tax rules, rather than 'piecemeal changes' that result in conflicting approaches by jurisdictions and subsequent tensions (OECD 2003).
NZ	No mention of the treatment of bundled product sales.
Australia	Mentioned in the context of telecommunications services. The place of taxation is deemed to be place of consumption (OECD 2003).

Note: Please see the full reference list of the article, Loffstadt, A., Ndlovu, J. & Padia, M., 2023, 'Do South Africa's e-commerce VAT rules measure up to international trends and OECD guidelines?', *Journal of Economic and Financial Sciences* 16(1), a815. https://doi.org/10.4102/jef.v16i1.815, for more information.

SARS FAQ, South African Revenue Services Frequently asked questions; VAT, value added tax; RSA, Republic of South Africa; OECD, Organisation for Economic Co-operation and Development; NZ, New Zealand.

of credit card transactions that carry a greater risk of going bad in comparison with ordinary physical transactions, this is particularly prevalent within the setting of e-commerce transactions (OECD 2003). In the light of this, the OECD encourages jurisdictions with more stringent output tax credit requirements to reduce the requirements for recognising the burden of bad debts on e-commerce suppliers (OECD 2003). As a possible solution to this burden on suppliers, the OECD recommends that authorities tax e-commerce suppliers on cash-received sales rather than total sales made (OECD 2003).

In RSA, a debt written off as bad by a vendor for accounting purposes may qualify for VAT relief under section 22 of the *VAT Act* (KPMG 2020). If a vendor transfers trade receivable on a non-recourse basis, the deduction cannot be claimed, whereas if a recourse basis is used, the deduction can only be claimed if the debt is written off after it is transferred back to the vendor (PwC 2021).

Similarly, in Australian terms, suppliers who account for GST on a non-cash basis may claim a decreasing adjustment for bad debts if a taxable sale has been made and GST has been paid on that sale, no consideration (partly or in whole) has been received for the sale, and the debt has been written off as irrecoverable or the debt has been outstanding for more than 12 months (Australian Taxation Office 2021). It is not possible to write off a debt as 'bad' if it has been forgiven or offset against other debts (Australian Taxation Office 2021).

The given provisions are similar to those of NZ. A NZ supplier may make a credit adjustment if a debt is written off (partially or fully) as bad after a supply has been made and accounted for (New Zealand Inland Revenue 2021b). There is no need to submit documentation supporting the write off; however, the steps taken to recover the debt must be documented (New Zealand Inland Revenue 2021b). If GST is used in the payment basis and the supplier does not receive payment for a debt written off, no deduction can be claimed as GST was not included on any returns (New Zealand Inland Revenue 2021b).

As can be seen in Table 6, RSA, NZ, and Australia are in line with OECD recommendations. In all jurisdictions, vendors may apply to pay VAT/GST on a payments or cash basis and the recovery of VAT/GST is not subject to incredibly stringent processes, sufficient evidence must just be provided to the relevant taxation authorities.

A comparison of imports of low-value parcels

Imported 'low-value parcels' are VAT/GST exemption thresholds for exempting online sales of goods with a value below the threshold, where the applicable thresholds are defined by the tax authorities for the relevant jurisdiction (OECD 2019). According to the OECD (2019), the importation of the 'low-value parcels' from online sales is a major VAT/GST issue. In many jurisdictions, these parcels are treated as VAT/GST exempt (OECD 2019), which has become a source of contention for tax and customs authorities worldwide. It was justified at first because the administrative costs exceeded the VAT/GST collected from these packages; however, the volume of these packages imported has resulted in a negative impact on domestic retailers and tax authorities (OECD 2019).

There are no provisions in the *SA VAT Act* pertaining to the importation of 'low-value parcels/goods', despite section 13 governing importation, timing, and value. As compared with NZ, foreign suppliers of low-value goods to NZ customers may be liable for GST as of early December 2019 (New Zealand Inland Revenue 2019). For GST purposes, low-value goods are physical goods (excluding tobacco and alcoholic beverages) with a value of less than NZD 1000. Transport and insurance costs are excluded. These rules apply to consumers who import low-value goods into NZ and are not GST registered or are GST registered but use the goods entirely for their own purposes (New Zealand Inland Revenue 2019).

Prior to recent changes in Australian legislation, imported goods valued at less than AUD 1000 were exempt from the GST regardless of whether they had any connection with Australia. However, under the new rules, low-value goods that are produced in Australia can now qualify for "connection with Australia" status and be subject to the GST (Dorevitch 2019b). Because of the amendments made, the importation of low-value goods constitutes a taxable supply in the event that all the following conditions have been met:

- The goods are low-value goods (i.e. goods have a customs value of below AUD 1000).
- Sold to a consumer (entity or person that is not an Australian GST-registered business).
- Supplier brings goods to Australia.
- Supplier is registered or required to be registered for GST (refer to registration requirements mentioned below).

TABLE 6: A comparison of the value-added tax treatment of bad debts in Republic of South Africa, Organisation for Economic Co-operation and Development guidelines, New Zealand and Australia.

Country	VAT treatment
RSA	There is VAT relief for bad debts available in RSA under section 22, of the *VAT Act* for standard-rated supplies where debt becomes irrecoverable by a vendor for accounting purposes (KPMG 2020).
OECD	Authorities should consider less stringent recovery on debts gone bad or allowing e-commerce suppliers to be taxed on cash-received sales compared with total sales (OECD 2003).
NZ	Suppliers may make a credit adjustment in the period that the debt became irrecoverable if the supply was accounted for originally. (New Zealand Inland Revenue 2021b).
Australia	If GST is accounted for on a non-cash (invoice) basis, a supplier may claim a decreasing adjustment for that bad debt if certain requirements have been met (Australian Taxation Office 2021).

Note: Please see the full reference list of the article, Loffstadt, A., Ndlovu, J. & Padia, M., 2023, 'Do South Africa's e-commerce VAT rules measure up to international trends and OECD guidelines?', *Journal of Economic and Financial Sciences* 16(1), a815. https://doi.org/10.4102/jef.v16i1.815, for more information.

GST, Goods and Services tax; VAT, value added tax; RSA, Republic of South Africa; OECD, Organisation for Economic Co-operation and Development; NZ, New Zealand.

TABLE 7: A comparison of the value-added tax treatment of imports of low-value parcels in Republic of South Africa, Organisation for Economic Co-operation and Development guidelines, New Zealand and Australia.

Country	VAT treatment
RSA	There are no particular provisions in the SA VAT concerning the importation of 'low-value parcels or goods'. Section 13 of the *SA VAT Act* governs the importation of goods, the timing and value of VAT.
OECD	A possible solution to issues with imports of low-value parcels being assigning the liability for VAT/GST onto platforms by giving them the ability to collect, assess and remit tax (OECD 2019).
NZ	Foreign suppliers may be responsible for GST if the consumer imports low-value goods to NZ and is not GST registered or is GST registered and the goods are entirely for personal use. If an online marketplace is GST registered or required to be GST registered, it is responsible for GST sales made to merchants through that platform if the sale represents a sale of low-value goods. (New Zealand Inland Revenue 2019).
Australia	The supply of low-value imported goods can qualify to have a 'connection with Australia' and be responsible for GST if all the applicable obligations have been met (Dorevitch 2019b).

Note: Please see the full reference list of the article, Loffstadt, A., Ndlovu, J. & Padia, M., 2023, 'Do South Africa's e-commerce VAT rules measure up to international trends and OECD guidelines?', *Journal of Economic and Financial Sciences* 16(1), a815. https://doi.org/10.4102/jef.v16i1.815, for more information.

GST, goods and services tax; VAT, value added tax; RSA, Republic of South Africa; OECD, Organisation for Economic Co-operation and Development; NZ, New Zealand.

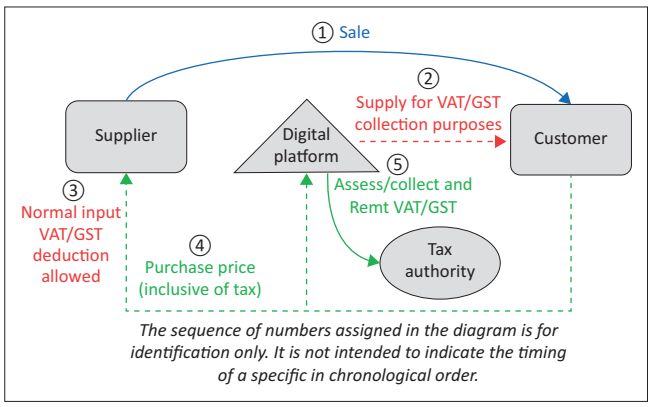
- Goods are neither GST-free nor input-taxed.
- Goods are neither tobacco nor alcoholic beverages (Dorevitch 2019b).

Table 7 compares the VAT treatment of imports of low-value parcels in RSA to the OECD guidelines, NZ GST legislation, and Australian GST legislation.

As indicated in Table 7, there are no specific provisions for 'low-value parcels/goods' in RSA as section 13 governs the VAT on all importations of goods regardless of their value. For lower valued items that are imported, the OECD recommends using platforms (intermediaries in RSA) to shift the responsibility to foreign suppliers and possible non-compliance. As a result, this may ensure compliance with SA VAT, which may not have been taxed if the foreign supplier failed to register.

A comparison of liabilities of platforms to collect, assess, and remit

According to the OECD's 2015 Base Erosion and Profit Shifting Action 1, the VAT/GST collection methods from low-value parcels can be improved so that tax authorities can reconsider their exemption thresholds for the purposes of improving efficiency (OECD 2019). Certain digital platforms can collect VAT/GST, making them ideal platforms for tax authorities to impose a liability for online tax collection (OECD 2019). A digital platform may be liable for the tax due on online sales alone; on behalf of the underlying supplier using that platform to conduct online sales or jointly and severally with that supplier for the tax due on online sales (OECD 2019). Figure 2 presents an example of how such a regime may function.



Source: OECD, 2019, *The role of digital platforms in the collection of VAT/GST on online sales*, p. 23, OECD Publishing, Paris

VAT, value added tax; GST, goods and services tax.

FIGURE 2: Use of digital platforms.

In RSA, SARS defines an 'intermediary' as someone who facilitates the supply of e-services by a non-resident supplier and who is responsible for issuing invoices and collecting payment (SARS 2019). Platforms and online marketplaces are synonyms of 'intermediaries', and the registration requirements set out here apply to both resident and non-resident intermediaries (SARS 2019). The provision of e-services by overseas providers through an intermediary may not be subject to VAT registration in RSA (Masina & Muthayan 2019). Moreover, section 54(2B) of the *VAT Act* became effective from 01 April 2019 and it provides for a non-resident supplier of e-services to appoint an intermediary VAT vendor in RSA to act as its agent. Effectively, section 54(2B) allows the non-resident supplier to supply the electronic service to the intermediary who is regarded as making the supply to residents in lieu of the non-resident principal (Marais & Bouwer 2019).

In contrast, 'online marketplaces' are electronic platforms where foreign suppliers sell goods and services to NZ customers, or low-value goods that New Zealanders buy and import to NZ (New Zealand Inland Revenue 2021a). If an online marketplace is GST registered or required to be GST registered, it is responsible for GST sales made to merchants through that platform if the sale represents a sale of low-value goods by an overseas merchant to a NZ consumer, and the online marketplace or merchant facilitates the delivery (New Zealand Inland Revenue 2021a). In NZ, foreign suppliers of remote services must register for GST if their total supplies of goods and services to NZ consumers exceed or are expected to exceed NZD 60 000 in the coming year (New Zealand Inland Revenue 2021a). A 'total supply' includes all sales to NZ consumers who are subject to GST, including low-value goods (costing NZD 1000 or less), online services, digital products, and delivery, insurance, and fee services for foreign suppliers (New Zealand Inland Revenue 2021a).

Contrasting this to Australia, the Australian Tax Authority uses electronic distribution platforms (EDPs) to simplify compliance and administration by shifting the liability from the consumer to the EDP in order to reduce the risk of non-compliance with GST on low-value imports, services, and digital products (Dorevitch 2019a). The legislation supports

the OECD's recommendation to use digital platforms for assessing, collecting, and remitting taxes, attempting to address previously presented legal and practical difficulties when developing a statutory framework that uses EDPs (Walpole 2020). Electronic distribution platforms operators are responsible for collecting GST for supplies if the supply is made through an EDP, if the supply is subject to EDP rules, and if none of the exceptions apply. In Australia, a foreign supplier with an expected or actual turnover of AUD 75 000 or more is required to register for GST (Dorevitch 2019c). Supplies that are not 'connected with Australia' may be ignored under section 188-15(3)(a). Suppliers may also ignore GST-exempt supplies under section 188-15(3)(d).

As shown in Table 8, RSA, NZ, and Australia are all in line with the OECD's recommendation to use digital platforms to collect, assess, and remit tax in comparison to purely relying on foreign supplier's registration. Thus, there is no difference in treatment of this issue and no recommendations are made in terms of RSA's treatment of intermediaries.

Conclusion and recommendations

Initially, the implementation of VAT on e-services intended to tax foreign suppliers of e-services provided to SA consumers (Badenhorst & Moodaley 2019). The most recent amendment to the definition of e-services in the *SA VAT Act* broadened the scope of e-services significantly. Although the gap that was in the tax net has been addressed, there are certain areas of the legislation that still need revision for the SA mechanism of VAT on e-commerce transactions to function effectively and efficiently.

The OECD recommended guidelines – NZ GST as well as Australian GST all have very prescriptive and comprehensive guidelines/legislation concerning VAT/GST on e-commerce transactions. The most recent NZ and Australian GST amendments have closely followed the guidelines that the OECD set in their 2015 publication of 'International VAT/GST Guidelines'. As shown in Table 9, a shortcoming of the SA VAT rules is that lower-value imports of goods may not have output tax (VAT) levied if the overseas supplier, out of ignorance or intentionally, fails to register as a SA VAT vendor, despite meeting the relevant registration requirements. To address this shortcoming, the SA VAT system could benefit from shifting the consumption tax liability onto intermediaries.

Based on a comparison of the *SA VAT Act* with the recommended OECD guidelines and NZ and Australian GST, a few areas are evident that are not addressed by the *SA VAT Act*. The SA approach does not acknowledge whether the consumer is using the supply for private use or for trade purposes for businesses, whereas the Australian and NZ legislation applies the 'reverse charge mechanism' to the receipt of supplies that are partially creditable by GST-registered businesses, compared with domestic customers who do not reverse charge (Walpole 2020). As shown in Table 9, it is evident that the lack of a distinction between B2B and B2C supplies is contrary to OECD recommendations. The approach by Australia and NZ are aligned with OECD recommendations (OECD 2017). This study recommends that RSA may benefit from the delineation between the two supplies, which promotes neutrality and destination principles.

TABLE 8: A comparison of the liabilities of platforms to collect, assess and remit value-added Tax in Republic of South Africa, Organisation for Economic Co-operation and Development guidelines, New Zealand and Australia.

Country	VAT treatment
RSA	Intermediaries must register for VAT if requirements are met. Foreign suppliers may not need to register as the intermediary will 'facilitate the supply' and pay the VAT (SARS 2019).
OECD	Digital platforms present an ideal responsible platform to assist in collecting tax for online sales that these platforms facilitate (OECD 2019).
NZ	Online marketplaces are platforms which foreign suppliers trade on (specifically low worth goods) and are responsible for GST on sales made (New Zealand Inland Revenue 2021a).
Australia	EDPs are used to assist with simplifying compliance by shifting the liability away from the consumer because of high risks of non-compliance with e-commerce trade (Dorevitch 2019a).

EDP, electronic distribution platform; VAT, value-added tax; RSA, Republic of South Africa; SARS, South African Revenue Service; OECD, Organisation for Economic Co-operation and Development; NZ, New Zealand; GST, goods and services tax.

TABLE 9: A summary of recommendations.

Transaction	Shortcoming	Recommendation
B2B and B2C supplies	RSA's VAT rules do not promote rules, which are internationally accepted and aligned with the destination principle.	A distinction should be considered in SA VAT to promote the destination principle and to align with international trade counterparts. Alternatively, a practice note to this effect should be issued.
Supply of bundled products (e.g., supply of an online game with physical delivery of branded merchandise)	Tensions and conflicting treatments between jurisdictions can result in other issues.	SA VAT provisions may benefit from section 10(22) as well as possibly adding an amendment deeming the place of supply for tax purposes to be the place of consumption.
Bad debts (e.g., credit card fraud related to the online purchase of a good results in the e-commerce retailer not receiving payment for goods delivered).	There is a risk that the SA tax revenue authority, SARS, may lose tax revenue from increased input tax credits claimed for bad debts related to credit card fraud.	To prevent the impact of credit card fraud, it is recommended that the SA VAT rules change to tax only cash-received sales from e-commerce transactions as opposed to total sales made.
Imports of low-value parcels (e.g., a non-resident supplier provides an electronic service below the threshold and no VAT is levied as the value of the single supply is below the registration threshold, but there is no regulation over total supplies made)	There is a risk that lower-value imports of goods may not have output tax (VAT) levied if the overseas supplier, out of ignorance or intentionally, fails to register as a SA VAT vendor, despite meeting the relevant registration requirements.	Although no specific rules for lower-value importation of goods exist, the SA VAT rules could benefit from shifting the liability from foreign suppliers onto intermediaries. Such an amendment to the SA VAT rules could assist in enforcing compliance with the current *SA VAT Act*. Currently, lower-value importation of goods, which may not be taxed if the non-resident supplier fails to register as a SA VAT vendor if applicable.
Liability of platforms for tax	No shortcomings have been identified.	No recommendation. Treatment is in line with OECD recommendations.

B2B, business-to-business; B2C, business-to-consumer; VAT, value-added tax; SA VAT, South African VAT; RSA, Republic of South Africa; SARS, South African Revenue Service; OECD, Organisation for Economic Co-operation and Development.

According to Section 10(22) of the *SA VAT Act*, if a bundled consideration relates to both taxable and non-taxable supplies, it will be attributed accordingly. Although this provision promotes a uniform approach to bundled products, the OECD highlighted the fact that tensions and conflicting treatments between jurisdictions can result in other issues. Table 9 shows that the *SA VAT Act* may benefit from a provision that promotes uniformity internationally, such as Australia's provision deeming the place of supply and consumption to be one and the same for taxation purposes.

Table 9 summarises the recommendations made by this study. According to Table 9, no amendments are recommended for the relevant *SA VAT Act* provisions concerning intermediaries as their treatment is aligned with that of the OECD.

It can be concluded that, although the *SA VAT Act* addresses certain issues and challenges that the OECD has recognised and recommended, there are still areas that need to be addressed and amendments can be made. The amendments may assist SARS in complying with foreign suppliers, neutrality and the destination principle, as well as demonstrating support for the internationally regarded OECD recommended guidelines.

Potential future research areas include bundled products and how tax can be collected on them effectively. There may also be research into how B2B supplies can be distinguished for VAT in a way that is beneficial to all parties involved. In RSA, further investigation may be conducted on intermediaries and their effectiveness in collecting VAT.

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The authors have declared that no competing interest exists.

Authors' contributions

A.L. was involved in the initial write up of the article and in the data collection. J.N. was involved in the second write up of the article, making revisions to the article, and in writing up the literature review and the theoretical framework. M.P. was involved in supervising the article and in developing the problem statement.

Ethical considerations

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Data availability

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