



Tax Alert

VAT Cross Border Electronic Services (VAT CBES) Regulations, 2024

January 2025

The Value Added Tax (Cross Border Electronic Services) Regulations became effective on 1 January 2024. This implementation followed the budget pronouncements made in September 2023 by the Honourable Minister for Finance and National Planning, aimed at enhancing revenue mobilisation through the taxation of non-resident suppliers in the growing digital economy. The VAT CBES Regulations mandate that non-resident suppliers of cross border electronic services to recipients in Zambia must register and effectively account for VAT in Zambia.

In this tax alert, we highlight the provisions of the VAT CBES Regulations and the compliance considerations that non-resident suppliers need to take into account to meet the VAT requirements in Zambia.

The VAT Act defines “cross border electronic services” as electronic services supplied in the Republic by a supplier who is resident or carries on business outside the Republic

Introduction

The accelerated use of technology in the African continent has led to a high consumption of digital services within the African countries. This presents both an opportunity in terms of opening up the African economies to foreign investment in the technology space and a challenge for the revenue authorities on how to seal any tax leakages from potential taxable supplies in the digital economy.

Accordingly, there is exerted effort from revenue authorities the world over and specifically within Africa, to enact laws for non-resident suppliers to account for Value Added Tax (“VAT”) on the supply of digital services aimed at widening the tax base within the fast-growing digital economy.

In Zambia, the VAT (Cross Border Electronic Services) Regulations herein referred to as (“VAT CBES Regulations”) became effective on 1 January 2024. This implementation followed the budget pronouncements

made in September 2023 by the Honorable Minister for Finance, aimed at enhancing revenue mobilisation through the taxation of non-resident suppliers in the growing digital economy.

Published on 26 February 2024 as Statutory Instrument 18 of 2024, the VAT CBES Regulations seek to operationalize the collection of VAT on cross border electronic supplies as defined in the VAT Act, 1995 as amended (“the VAT Act”).



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The VAT Act defines “cross border electronic services” as electronic services supplied in the Republic by a supplier who is resident or carries on business outside the Republic. The definition of “electronic services” was amended to mean “services provided or delivered on or through the internet, electronic or digital network.”

The history of VAT on digital economy in Zambia

In 2019, the definition of electronic services was introduced by the VAT amendment Act No 14 of 2019 which came into effect on 1 January 2020 to mean “a service capable of delivery of data across multiple electronic commerce platforms”.

In this regard, VAT was applicable on the provision of electronic services in Zambia where that service is performed, undertaken or utilised in Zambia or the benefit of the supply is for a recipient in Zambia (could either be an individual or an incorporated entity) regardless of whether the provider of the service has a place of business in Zambia or the service is paid for outside Zambia.

The VAT Act confers powers on the Commissioner-General (CG) of the Zambia Revenue Authority (“ZRA”) to appoint a tax agent; a resident in Zambia to account for tax on behalf of an electronic service provider. However, the operationalisation of the VAT on such services remained a challenge primarily owing to the lack of clarity on the onerous requirements to comply with the legislation.

For instance, lack of additional guidance on the nature of supplies that would be regarded as electronic services (as was defined in the VAT Act) created uncertainty identifying eligible non-resident suppliers that would be required to account for VAT in Zambia.

Prior to 1 January 2020, imported services (including electronic services) were subject to VAT Reverse Charge (VAT RC) i.e. where VAT was not charged in the country of origin of the service. Input VAT was not claimable by the Zambian recipient of the service unless the foreign supplier appointed a duly VAT registered local



tax agent to account for VAT on their behalf. Where no local tax agent was appointed, the VAT RC became a cost to the customer in Zambia.

The VAT CBES Regulations have, inter alia, sought to provide the much needed clarity on:

- the nature of electronic supplies subject to VAT;
- the VAT registration threshold;
- a simplified VAT registration regime for non-resident suppliers; and
- clear exclusion of cross border electronic services from VAT RC regime.

Implementation consideration for non-resident suppliers

- VAT registration threshold:** a non-resident supplier must register for VAT under the simplified registration regime if it meets the annual threshold of ZMW 800,000 (approximately *USD 30,604) or ZMW 200,000 (approximately *USD 7,651) in any consecutive 3 months.
- Types of services covered:** non-resident suppliers offering cross border electronic services

(as defined in the VAT Act) to recipients in Zambia in Business to Business (B2B), Business to Customer (B2C) and Business to Government (B2G) transactions should register.

- Exclusion of VAT CBES from VAT RC requirements:** as mentioned above, the reverse charge VAT mechanism does not apply to CBES as provided in Section 8 of the VAT Act. Where non-resident suppliers are unable to register under the simplified registration framework, they are required to formally seek approval to appoint a local tax agent. Such an approval will be at the discretion of the CG. The guidance from ZRA is that eligible suppliers of CBES should first explore the simplified VAT registration mechanism before seeking the approval to appoint a VAT agent who would be required to adopt the requirements under VAT RC in order to comply.
- Penalties for non compliance:** In order to encourage non-resident suppliers to register, upon CG's approval, a waiver of late registration penalty will be

granted. This is currently ZMW 4,000 (approximately *USD 153) for each standard tax period (calendar month) the supplier remains unregistered after qualifying for the registration threshold.

Whilst the VAT CBES Regulations are effective from 1 January 2024, the ZRA has guided that non-resident suppliers should effectively start filing the VAT returns from 1 April 2024

We wish to point out that generally VAT penalties in Zambia are punitive in nature given that they accrue daily as follows:

- **Late submission** - ZMW 400 or 0.5% of the tax payable, whichever is greater, for each day that the return is not submitted;
- **Late payment** - 0.5% of the tax due for each day the VAT is unpaid; and
- **Interest** - chargeable at the Bank of Zambia discount rate plus 2% for each month or part month that a payment is overdue.

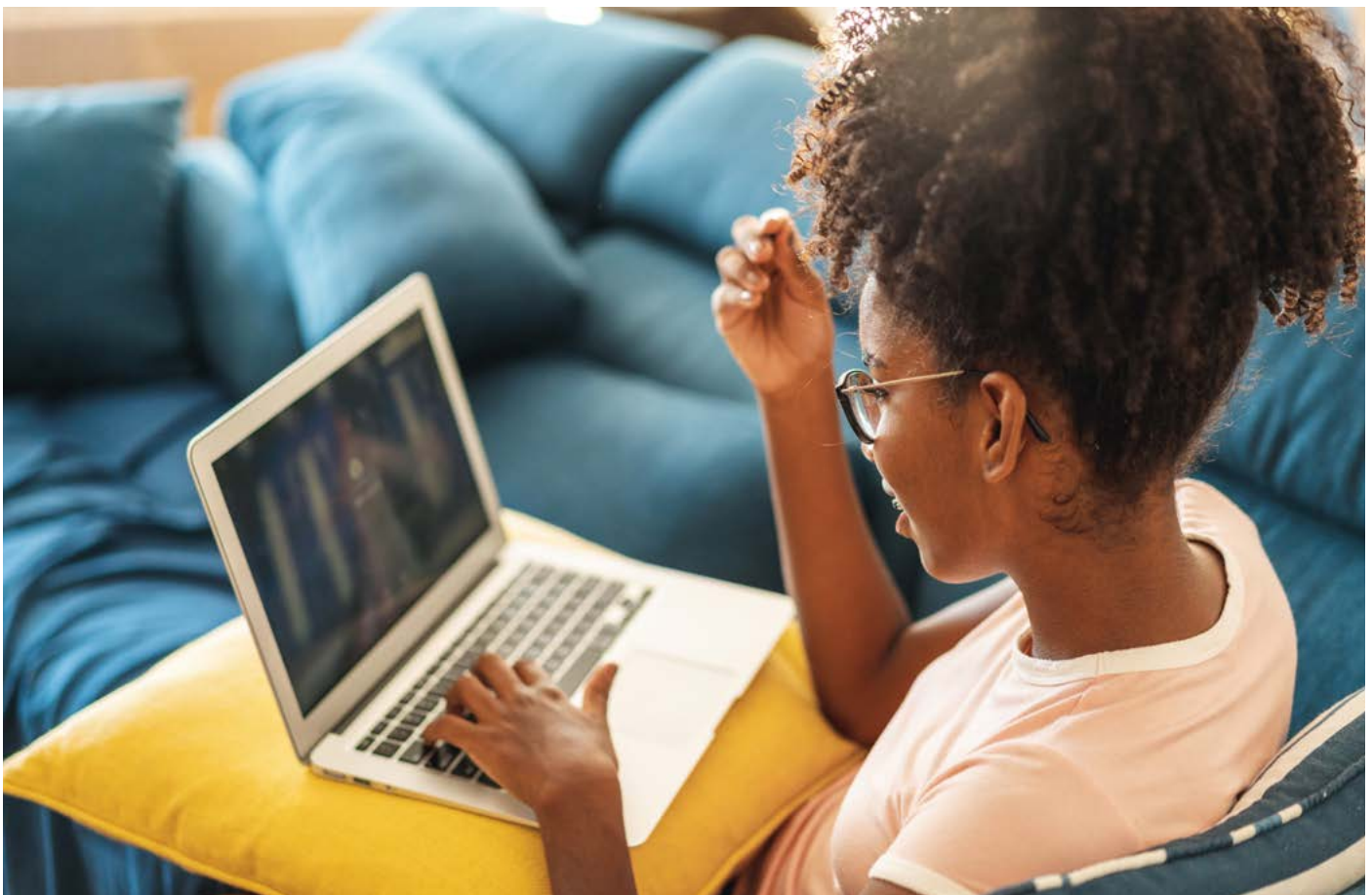
- e. **Transitional measures:** As mentioned above, whilst the VAT CBES regulations effectively came into force on 1 January 2024, the ZRA has given guidance that non-resident suppliers should start complying from 1 April 2024. However, ZRA has not published formal guidance on whether and how such eligible non-resident suppliers can mitigate additional non-compliance risk for the period between 1 January 2024 and 31 March 2024.

As such, there is also a compliance risk for the periods prior to 1 January 2024 that should also be given consideration in the strict interpretation of the VAT legislation for this period.

Accordingly, non-resident suppliers who seek to register for VAT CBES in Zambia should consider liaising with the ZRA regarding these potential risks to agree on the best action for purposes of maintaining tax records in the event an audit is conducted in future.

Further, there could be an option to explore the Voluntary Tax Disclosure process in order to voluntarily disclose any unpaid principal tax and submit an application for waiver of the attendant penalties and interest. We wish to point out that the approval of the requested waiver is subject to the discretion of the CG.

We have analysed below the key provisions of the VAT CBES Regulations that non-resident suppliers of CBES should take note of.



Analysis of key provisions of the VAT CBES Regulations

Regulation	Our Comments
Regulation 3: <ul style="list-style-type: none"> Includes list of taxable supplies under the purview of CBES and exemptions 	<p>The list of taxable cross-border electronic services provided by the ZRA is not exhaustive but suggestive. It forms a basis upon which taxpayers may make reference to determine whether or not they fall within the definition of a non-resident supplier of CBES.</p> <p>The exemptions list provided is also not exhaustive as generally supplies that are exempt from VAT under the VAT Exemption Order would also be exempt even though they qualify as CBES.</p>
Regulation 4: Includes provisions under the simplified VAT registration mechanism including: <ul style="list-style-type: none"> Issue of Taxpayer Identification Number (TPIN) Appointment of local tax agent as specified under Section 8 of the VAT Act 	<p>The simplified VAT registration framework is a welcome move that would ease the administrative compliance burden for non-resident suppliers.</p> <p>Tax Online 2 platform is ZRA's integrated online platform designed to facilitate various electronic services for taxpayers, including e- registration, e-filing and e-payment.</p> <p>Specifically configured to facilitate registration under the simplified regime, Tax Online 2 offers a straightforward registration process for non-resident suppliers, requiring the submission of the Certificate of Incorporation of the entity being registered and contact details.</p> <p>Where a non-resident supplier is unable to register under the simplified registration mechanism, such a supplier should request approval from the CG to appoint a local tax agent.</p> <p>Non-resident suppliers are required to register effectively from 1 April 2024. Failure to register on time may result in late penalties and interest, with penalties up to ZMW 4,000 (approximately *USD 153) for each tax period unregistered, or imprisonment for up to 12 months, or both.</p> <p>Please note that the CG can also assess taxes that should have been paid during the period that the taxpayer qualified for registration but did not register accordingly. Additionally, penalties and interest as noted above can also be assessed.</p>
Regulation 5: <ul style="list-style-type: none"> Issuing of simplified invoices; exemption from electronic invoicing requirements Permanent Establishment implication in Zambia 	<p>Non-resident suppliers are not required to comply with Zambia's electronic invoicing requirements. Instead, they must issue simplified invoices with specific features as outlined in Regulation 5(1) of the VAT CBES Regulations and Gazette Notice 314 of 2024 such as the supplier's name, TPIN, customer's name and TPIN (for B2B or B2G transactions), date of supply, amount charged exclusive of tax, total tax charged, exchange rate used, and a description of the services supplied. The value and tax must be converted to Zambian Kwacha using the appropriate exchange rate provided by the ZRA.</p> <p>The simplified registration framework does not trigger a permanent establishment under the Income Tax Act, 1996 (as amended).</p> <p>This means that the non-resident supplier would not have to account for Corporate Income Tax on any profits realised from Zambia from the supply of CBES. Similarly, CBES supplies are not subject to Withholding VAT requirements as per ZRA guidance.</p> <p>This notwithstanding, it may be important for non-residents to consult on whether they could be exposed to other tax compliance risks in Zambia depending on the nature of their business operations.</p>
Regulation 6: <ul style="list-style-type: none"> Claim to input Tax 	<p>Non-resident suppliers cannot claim or deduct input tax on CBES. However, recipients of CBES in Zambia can claim input tax subject to the provisions of the principal VAT Act.</p>
Regulation 7 and 8: <ul style="list-style-type: none"> Accounting for and payment of VAT 	<p>The non-resident supplier or the appointed local tax agent must submit a VAT return on or before the 25th day of the month following the end of the month in which the services were rendered.</p> <p>Payment of VAT liability is also due on or before the 25th day of the month following the end of the month in which the services were rendered can be settled in Zambian Kwacha or one of the major convertible foreign currencies, such as USD, EUR or GBP among others.</p>
Regulation 9: <ul style="list-style-type: none"> Record keeping requirements 	<p>Records and accounts may be kept outside Zambia but must be available to the CG on demand.</p> <p>The general guidance under the principal VAT Act is that a taxpayer should maintain tax records for six years or such longer period as the Commissioner General may, by administrative rule, prescribe.</p>

* We have taken into account the FX rate of ZMW 26.14

Conclusion

In our view, whereas the publication of VAT CBES Regulations, 2024 has brought more clarity on imposition of VAT on cross border electronic services, there are some complexities posed by the digital economy away from the 'brick and mortar' VAT environment that ought to be considered by the ZRA to ensure smooth enforcement of compliance with the VAT legislation.

The absence of consensus across Africa on the taxation of digital services also increases the compliance burden especially for the big established technology companies with a footprint in many of the African countries. We are aware that over 15 countries in Africa have implemented legislation for non-

resident suppliers to account for VAT on digital services where each jurisdiction has nuanced compliance requirements for VAT compliance ([make reference to the VAT in Africa guide on digital services](#))

How we can help you

We are cognisant of the increased compliance burden for non-resident suppliers. Our team of tax experts will be happy to provide guidance and assistance in complying with the VAT CBES Regulations in Zambia as outlined below while still leveraging on the strength of our network across Africa on the developments that you will need to take note of.

- Review of your company's operations in Zambia and advice on the interpretation of the VAT

CBES legislation as it applies to the company;

- Registration of eligible non-resident suppliers under the simplified registration framework;
- Monthly VAT CBES compliance support;
- Liaising with ZRA on any matter within the VAT CBES compliance requirements; and
- Where appropriate and upon proper evaluation, we may also serve in the capacity of a local tax agent for purposes of VAT CBES compliance.

Kindly get in touch with any of our experts listed herein or your usual contact at PwC to discuss further the information on this tax alert.

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