

## I. Ecommerce Forum of SA Introductory Remarks to the Davis Commission on Tax,

II. 24 Aug 2015

Good afternoon ladies & gentlemen

The Ecommerce Forum of Southern Africa is in the process of being set up by leading players in the ecommerce space. We plan a public launch in early November.

The Forum's creation was prompted by a number of challenges which ecommerce merchants face in SA today, as follows:-

- 1) There is an important issue of trust – ecommerce is new to SA. There is no tradition of mail order, and both consumers & potential merchants often express a lack of trust in how it works – this is particularly true where **payment systems & delivery** are concerned.
- 2) There is a need for relevant research on the size & functioning of ecommerce in SA. It is worth noting that the SA research company, Worldwide Worx, estimates that SA ecommerce will reach 1% of retail turnover next year. One of the largest payment systems has said that it has over 1,000 ecommerce merchants as clients. We are therefore seeing a healthy growth, which we expect to continue over the next decades.<sup>1</sup>
- 3) Regulatory & tax issues – as your kind invitation today shows, there are specific issues which ecommerce faces, and which the Forum plans to address with government in the future.
- 4) Finally, there is a pressing need for education and training for ecommerce merchants in Southern Africa. In particular, ecommerce offers great advantages for rural producers and start-ups in the townships which need to be encouraged.

In brief, as you can see, the Forum has a number of important objectives once it is up & running.

Today we can only express some broad points as we have not yet had the opportunity to sit down and discuss government's plans on ecommerce & tax. But we greatly welcome this meeting as an opportunity to start a dialogue with the Commission, and we thank you very much for the invitation.

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<sup>1</sup> In comparison, the largest ecommerce market is in Europe, where ecommerce is estimated to have grown to €423.8 bn in 2014, 43% of that being for services & 57% for goods. The forecast for 2015 is € 477 bn. Over 229 million European households use ecommerce. Source GfK

The views expressed today are mine, taken from my long experience of ecommerce in Europe & elsewhere. I was one of the International Chamber of Commerce's representatives to the OECD in the late 1990s & early 2000s when it started to study ecommerce. I was also a member of the Global Business Dialogue on ecommerce (GBDe) and I have given evidence to a large number of European, American, South American, and Asian government bodies on both ecommerce, and privacy issues over the last 20 years – although I must confess that I am more nervous today as I have never found myself in this position of having to give evidence before a Commission on Tax!

The very first item of discussion must be the definition of ecommerce. We believe that a good definition of ecommerce is:-

*"... the buying and selling of goods and services, or the transmitting of funds or data, over an electronic network, primarily the internet and mobile telephony. These business transactions occur either business-to-business; business-to-consumer; consumer-to-consumer, or consumer-business."*<sup>2</sup>

It is obvious that digitalisation has shortened distances between people & the things they want to buy/use. Digitalisation has increase the mobility of companies enormously. Big Data & The Internet of Things is continuing this process. It is also clear that this is a **global** phenomenon, which requires a **global** approach.

Ecommerce offers SA many opportunities to export & create wealth, but we must recognise and try to rectify a number of challenges:-

- 1) There is a serious lack of relevant skills in the workforce (this is a global issue). We must address these scarce skills by educating the young and upskilling the existing workforce. Using tax breaks, etc, wisely should contribute to solve this problem;
- 2) There is also a serious lack of access to funds to launch start-ups. Funding today is both scarce & fragmented. Again, a wise approach to taxation could help overcome this barrier;
- 3) Finally, there is an uncertainty, both by merchants & consumers, on the taxation of ecommerce (part of the lack of trust issue we mentioned earlier). Both ecommerce merchants & consumers are confused as to the point of taxation and the rate of taxation. This is the central point for today's meeting. The key must be, we suggest, **transparency**.

Although many countries have developed ecommerce over the last two decades, the SA is relatively new to ecommerce. However, we are fortunate that it is only now that there is a global political will to come to any agreement on the challenges of taxation & ecommerce, with, for example, the G20/OECD BEPS initiative & the Europe Union's 2014 Report of the Commission Expert Group on Taxation of the Digital Economy. SA therefore will benefit together with the main players in new taxation agreements for ecommerce & digital services<sup>3</sup>. SA is, of course, on the fast track to implement the OECD's international tax proposals in 2016. We will not lag behind our international competitors in ecommerce, and, we believe, that will encourage SA enterprises to be active in both national and international marketplaces.

As the EU Expert Group report of last year stated – digitalisation can be seen as both a solution and an opportunity *"to create a better tax administration and to develop less burdensome tax compliance rules, both for direct and indirect taxation"*. The Report went on to point out that there is

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<sup>2</sup> Source: TechTarget.

<sup>3</sup> Please note - not all digital services are ecommerce related.

a "... need to reduce the compliance burden, ie a clear understanding of the applicable law and ease of payment of taxes ..." particularly to encourage start-ups & SMEs.

These are wise words, which are as applicable here as they are in the EU. Just as the EU is dealing with cross-border trade within the EU & from third countries, so too will come the day (& it is not far off) when SA will need to consider its trade partners in BRICS & SADC and its trade with other third countries in terms of ecommerce taxation.

### **The Tax Issues**

As I have stressed earlier, the Forum is still in the process of forming & has not had the opportunity to prepare an opinion on ecommerce & tax. This meeting is therefore an exploration of the issues & should not be taken as our position on taxation.

We do believe that there is a need to review the traditional **definitions of goods and services** in the consumption tax arena. In some jurisdictions digital goods are seen as goods, and other cases digital goods are seen as services. The definitions needs to be clear on whether digital goods are considered a service. At present the treatment of 'goods' and 'services' in our VAT Act and other tax jurisdictions acts differ. It would seem advisable to look at how best to clarify the present differences. This is also an issue that the wording of the G20/OECD BETS should clarify.

As the members of the Commission are well aware, there are a number of different elements to ecommerce taxation. We would ask your indulgence if we list these, simply as a point of discussion.

- 1) VAT
  - 1.1) On goods ordered by consumers on line (BtoC);
  - 1.2) On goods ordered by a company on line (BtoB);
  - 1.3) On the access to the supply of electronic services (BtoC);
  - 1.4) On the access to the supply of electronic services (BtoB);
  - 1.5) On digitally delivered services (other than electronic services) (BtoC);
  - 1.6) On digitally delivered services (other than electronic services) (BtoB);
  - 1.7) On multi-dimensional services, such as search engines, social networks (mostly BtoB).
- 2) Duties (including VAT) on goods imported to SA for ecommerce.
- 3) Corporation taxes on ecommerce companies operating in SA.
- 4) Other taxation issues including auctions, consumer to consumer, tax on IP, online gambling.
- 5) Taxation on virtual currencies (Bitcoin, etc).

We feel that it is important to be quite granular when looking at some of these issues.

#### **A. VAT**

Internationally the move towards taxation at the point of delivery/consumption has become the main objective of the new taxation agreements, such as G20/OECD's BETS.

This makes it much more transparent for ecommerce merchants in both business-to-consumer (BtoC), and business-to-business (BtoB). And also for the consumer, who should not be forgotten. Having a transparent amount which needs to be paid, and which is easy to be calculated makes a national, or international, purchase of a good or service that much simpler.

It is of concern that one notes that the DTC does not agree with OECD on utilising the old **reverse charge mechanism** that was in the VAT Act for B2B transactions. The compulsory registration of businesses for the provision of services needs to be discussed further, especially in a group context, as this is placing an administrative burden on tax administrators and business alike, with very little

added value. If the DTC does not differentiate between B2B and B2C transactions, as the OECD recommends, then DTC might consider providing an exemption for group company transactions. But, it must be noted that this will make the administration system more cumbersome – exemptions never simplify a system and have hidden costs and pitfalls.

We really do wish to stress that transparency in taxation is, in our view, extremely important for both the consumer & business. As the EU Report last year pointed out *“Complex, uncoordinated and fragmented tax regulations make it extremely burdensome, particularly for small companies and start-ups ... and create a barrier for innovative technologies to spread rapidly”*. We concur with this view.

## **B) Duties on Goods Imported for National ecommerce**

How best can registration of a company which is supplying goods and/or services to the SA by ecommerce be best achieved? This is particularly in the case of a foreign supplier who is dealing with very small quantities/values.

As the Commission is aware, in the EU these small suppliers are exempt from registering in Member States if the value of their transactions are below €35 - 100,000 (depending on the state). This rule, which is under review, is both good & bad – good because the cost of registering & doing the required administrative work can often exceed the profit margin for a small importer; bad because in some market places a small competitive edge is all that is needed to overcome a home-grown competitor. There is a fine balance needed here and this is an issue we would like to raise with you at subsequent meetings. Maybe a SADC or AU approach could be sought?

There are other issues as well, such as “portability of tax” – a new concept. This occurs in both B-to-B and B-to-C when a cellphone, tablet or pc is being used in another country – let us say that a SA businessman travels to Maputo and while there buys software for his tablet – whose tax applies? These are issues which digitalization raises which were not particularly important previously. They can easily start to create non-tariff barriers (NTBs) to trade which will not ultimately benefit neither governments, nor society/the citizen.

For SA with its 14% VAT rate, there are obvious opportunities in the regional context<sup>4</sup>. However, perhaps we should not go down that route.

A word of concern should be made here that customs does not always follow the 14% VAT rule for consumers who have purchased from international ecommerce platforms. From my own personal experience, there appears to be two variations – 1<sup>st</sup>, that customs values the product at the cost it is sold in SA and then adds VAT, which is clearly incorrect where VAT has already been paid in the country of origin; or 2<sup>nd</sup>, that it applies an arbitrary amount claiming this to be a “customs duty”.

These approaches, in our view, are counterproductive because they can attract the same treatment for our ecommerce exports to other countries, and they reduce the competitive spirit, by making the SA citizen less likely to be able to buy products which are unavailable in the SA market. There is a body of work by trade economists, which, in my view, clearly prove that both fiscal barriers and NTBs in the digital economy will cause serious adverse effects to national economies by preventing economic agents from functioning correctly, reducing the levels of education, and encouraging those with scarce skills to leave the country.

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<sup>4</sup> See, for example, the 2012 study on VAT in the SADC countries by Puseleto Letete.

## C Virtual Currencies

Lastly, much progress has been made in a short period to address the concerns of the traditional payments methods for a digital economy – but very little has been done about addressing the actual virtual economy – where **virtual currency** is used to acquire virtual goods and services. And whilst the consensus is that this is still a very small segment of the global economy, it will grow, particularly with the greater use of mobile (“mcommerce”). This is also especially important when considering that Tax Jurisdictions are encouraged to supply clear and concise guidelines as to what is considered *usual residence* - and more often than not the banking account details/ presence is used as an indicator of where the person is resident. If the virtual economy grows – how will one address these concerns, when virtual currencies, such as *Bitcoins*, is, by its very nature, difficult to link to a jurisdiction?

### Conclusion

To conclude, we would like to thank the Commission very much for today’s invitation, and for its interest in ecommerce. As I stressed at the outset, the Forum is at its start-up phase, and therefore was unable to give a formal response at this meeting. However, we hope to be able to return to you in the next couple of months to open the discussions to other important tax issues. We very much hope that this is the start of a productive dialogue.

To sum up – I believe that the Forum would like to discuss with you in more detail:-

- How the Forum sees ecommerce in all its different aspects developing over the next decade;
- Transparency of taxation, & the avoidance, where possible, of exemptions to the G20/OECD BETs agreement;
- A clarification of the definitions of digital services & of goods;
- Taxation residence for overseas ecommerce companies importing into SA & the level of VAT-free allowed;
- The other taxation issues raised by ecommerce, including the use of corporate taxes to encourage greater use of ecommerce;
- Finally, the issue of virtual currencies.

Thank you very much

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