Cross-Border Digital Services:

A critical assessment of the non-resident digital services VAT regime in South Africa

Introduction

South Africa was among the first jurisdictions on the African continent to introduce VAT on cross-border digital services, initially doing so in June 2014 and substantially widening the net through revised electronic services regulations that took effect in April 2019. The policy rationale was clear: as consumers increasingly purchased streaming, software, and other digital products from offshore suppliers, a growing slice of consumption was escaping VAT entirely, distorting competition with domestic suppliers and eroding the revenue base.

More than a decade on from the original rules, and several years after the 2019 expansion, this article will explore whether the initial policy intent has translated into effective and comprehensive revenue collection. The answer, examined below, is that while the legislative framework is commendable and broadly fit for purpose, meaningful compliance and enforcement gaps persist. These gaps are likely to widen as the digital economy grows and new digital products are introduced and consumed unless targeted reforms are considered.

The legislative framework: An overview

The Value-Added Tax Act 89 of 1991 (the VAT Act), read in conjunction with the iterative electronic services regulations of 2014, 2019, and 2025, requires non-resident suppliers of "electronic services" to South African consumers to register as vendors once their taxable supplies exceed the standard mandatory registration threshold. Crucially, following the formal promulgation of the Rates and Monetary Amounts and Amendment of Revenue Laws Act 3 of 2026, this compulsory registration threshold was significantly elevated from R1 million to R2.3 million per annum, effective 1 April 2026.

The "closed-list" definition of electronic services in the 2014 regulations was broadened considerably by the "open-list" definition of electronic services in the 2019 regulations which included all services supplied by means of an electronic agent, electronic communication or the internet for any consideration.

An additional exclusion from the definition of electronic services was introduced by the 2025 regulations regarding services supplied by a non-resident person from an export country, solely to VAT-registered vendors in the Republic. The intent behind this "business-to-business" (B2B) exclusion is that foreign suppliers providing specialised services exclusively to other South African corporate entities will not be deemed to be conducting an enterprise in South Africa and are thus absolved from the friction of registration. However, this relief must be applied with caution. The explanatory memorandum to the 2025 regulations and prevailing interpretive practice indicate that the statutory use of the word "solely" is absolute, and does not operate as an apportionment mechanism. A single supply of electronic services to an unregistered entity or a private end-consumer can invalidate the exclusion, forcing the non-resident supplier to register and account for output VAT on all subsequent South African supplies, including those made to registered corporate vendors. Given the automated nature of borderless digital checkouts and the technological difficulty in verifying localised VAT registration numbers in real-time, this strict standard poses an ongoing operational risk for foreign suppliers seeking to rely on the B2B exclusion.

Several features of the framework are worth noting for purposes of this analysis:

- The regime now targets business-to-consumer (B2C) supplies. The exclusive supply of electronic services by a non-resident to South African VAT-registered businesses is excluded from the VAT regime. However, to the extent that the South Africa business acquires electronic services from a non-resident for private, exempt, or other non-taxable purposes, it must self-account under the imported services provisions of section 7(1)(c) of the VAT Act, which is a separate and, as discussed below, significantly under-enforced mechanism.
- A "South African consumer" is determined by three indicators: the South African residency of the recipient, the payment originating from a South African bank and the business, residential or postal address of the recipient being within South Africa. Although these are more reliable indicators than the IP address or SIM card information of the consumer, given the multitude of transactions and the inability to verify certain information (such as the residency of the recipient) the electronic services supplier acts in good faith on the available data.
- Since 2019, where a non-resident supplier uses an electronic platform or marketplace as an intermediary, liability to account for VAT may shift to that intermediary under certain circumstances.
- Although non-residents can forward their VAT registration application to a specific e-mail address, the VAT registration process within SARS appears to be the same as the process for residents with no special dispensation provided for the suppliers of electronic services.
- Compliance by non-residents to register for VAT and thereafter submit returns and make payments is mostly voluntary although subtle changes have been made which will be discussed below.

The compliance picture: What do we actually know?

SARS does not publish data on the number of non-resident vendors registered for VAT under the electronic services regime, nor on the amount of VAT collected from this category. This lack of information is potentially a concern since neither Parliament, nor the profession can meaningfully assess whether the regime is working.

Whilst one is confident that the large, consumer-facing global platforms such as Netflix, Spotify, Meta, Google, Apple, and similar household names are broadly compliant since these entities have sophisticated tax functions, operate in multiple VAT jurisdictions globally, and have commercial reputations to protect, it is submitted that the compliance challenge lies elsewhere.

The range of digital services is vast and growing. SaaS platforms, niche subscription services, online coaching and education providers, AI-powered tools, adult content platforms and offshore gambling sites collectively represent significant turnover directed at South African consumers. Many of these suppliers are unlikely to be registered with SARS, and the practical risk of detection is negligible given the current enforcement architecture. Comparative data from more mature regimes supports this concern. The European Union, whose VAT on digital services regime pre-dates South Africa's, has found persistent non-compliance among smaller and medium-sized non-resident suppliers despite its sophisticated One Stop Shop (OSS) registration mechanism.

VAT rate volatility and the constitutional context

A further layer of complexity affecting the compliance picture is the recent uncertainty surrounding the standard VAT rate itself. Global digital services vendors rely on automated pricing engines, ERP systems and localised billing gateways. These systems require certainty regarding jurisdictional tax rates to function compliantly and avoid customer billing disputes.

In the 2025 Budget Speech, the Minister of Finance announced a staggered increase in the national VAT rate to 15.5% and eventually 16%, relying on the provisional executive taxing power in section 7(4) of the VAT Act. The announcement required compliant non-resident platforms to recalibrate billing systems for South African transactions at short notice. Following political opposition and an urgent court application, the Minister withdrew the proposed increases in April 2025. Digital platforms then had to roll back their systems to the 15% baseline and manage potential billing discrepancies.

The executive mechanism that permitted this episode was subsequently struck down. On 5 March 2026, a full bench of the Western Cape High Court delivered judgment in Democratic Alliance v Minister of Finance and Others (2025/045530) [2026] ZAWCHC 102, declaring section 7(4) unconstitutional and invalid on the basis that it amounted to an impermissible delegation of legislative power to the executive. The Court suspended the declaration of invalidity for 24 months to afford Parliament an opportunity to remedy the constitutional defect, and the order has been referred to the Constitutional Court for confirmation. The legislature subsequently promulgated the Rates and Monetary Amounts and Amendment of Revenue Laws Act 3 of 2026, which formally prevented the increase of the rate announced in the 2025 budget and confirmed the standard VAT rate at 15%. While the stabilisation of the rate is welcome, the episode highlights the administrative friction that may deter voluntary compliance. When the rate-setting mechanics of a jurisdiction are subject to sudden executive alteration and subsequent withdrawal, the perceived operational and fiduciary risk of engaging with that jurisdiction's tax framework increases, potentially driving marginal foreign suppliers further from the registered base.

Enforcement challenges: Why the gaps persist

Identification and detection

SARS faces a fundamental structural challenge of having no automatic mechanism to identify non-resident suppliers who have crossed the registration threshold but have not registered as a VAT vendor. There is no equivalent in South African law of the EU's DAC7 Directive, which requires digital platforms to report data on sellers using their platforms to tax authorities, or the OECD's Model Reporting Rules for Digital Platforms. Without this pipeline of third-party data and the ability to conduct joint cross-border audits, SARS must rely on voluntary compliance or resource-intensive ad hoc enquiries.

Legal protection and the safe harbour for suppliers

This relates to legal protection for suppliers who act in good faith on available data but reach the wrong conclusion. South African VAT law does not contain an explicit safe harbour for non-resident digital services suppliers who misclassify a supply based on the indicators available to them at the time of the transaction. This contrasts with the EU's VAT regime, which provides that where a supplier relies on two non-contradictory pieces of evidence pointing to a customer location, the supplier is not liable for VAT in another jurisdiction. The absence of an equivalent safe harbour in the South African framework imposes a degree of residual legal risk on compliant non-resident suppliers that is difficult to quantify and manage and may deter voluntary registration.

Furthermore, the regulations do not address the data collection burden — specifically, how a supplier is expected to obtain evidence of residency or address in a digital transaction where the customer provides only an email address and payment details. Unlike a bank, which conducts FICA due diligence and holds address data, a digital content platform may have very limited customer information. In practice, many non-resident suppliers rely heavily on the bank indicator because it is the most readily available, raising the question of what constitutes sufficient evidence of the other two indicators.

Registration friction

The non-resident VAT registration process, while reportedly improved in recent years, remains more burdensome than equivalent processes in comparable jurisdictions. Obtaining a South African tax reference number as a foreign entity, navigating the representative vendor requirements, and meeting banking requirements for VAT remittance impose compliance costs likely to deter smaller willing compliers. By contrast, the EU's OSS portal allows a non-resident supplier to register in a single member state and account for VAT across the entire EU.

Audit and enforcement reach

Even where non-compliance is suspected, SARS's practical ability to enforce against an entity with no physical presence, no South African bank account, and no assets in the country is limited. This limitation was included in the explanatory memorandum to the 2025 regulations as one of the reasons for introducing the B2B exclusion since compliance can be more easily enforced domestically than across borders. Joint and several liability for both the principal and intermediary is also designed to incentivise compliance.

In addition, penalties that are meaningful in a domestic context may be commercially irrelevant to a foreign supplier operating outside SARS's enforcement reach. This is not a uniquely South African problem but reflects the broader challenge of enforcing tax obligations across borders in the absence of bilateral enforcement assistance agreements.

The intermediary rule in practice: a proposed reframing of commercial agency

The initial 2019 shift of VAT liability to electronic intermediaries and platforms was a sensible evolution in tax policy, recognising that centralised digital platforms are better equipped to handle mass compliance than fragmented individual software developers. A further refinement occurred with the 2025 amendment of section 54(2B), which allowed non-residents to use intermediaries irrespective of the principal's underlying VAT registration status, simplifying the administrative burden for platforms managing mixed-residency portfolios. The 2026 amendment to section 54(2B) further removed the requirement that the principal must be a non-resident, easing the burden on intermediaries that must distinguish between resident and non-resident principals in mixed marketplaces.

The most significant structural shift in the electronic services regime, however, was set out in Annexure C of the 2026 Budget Speech (delivered on 25 February 2026) and is expected to be formally enacted via the Taxation Laws Amendment Act later in the 2026 legislative cycle. Under the proposal, the statutory default position would be inverted: the intermediary (the digital platform, app store, or freelance marketplace) would be liable by default to account for output VAT on the supply, unless a written agreement to the contrary places the tax burden back onto the principal. The joint and several liability of principal and intermediary would remain applicable. At the time of writing, this proposal has not yet been promulgated, so the current position — which requires an explicit written agreement before the intermediary is deemed to be the supplier — continues to apply. Clarification is also still awaited on whether the inverted default would apply regardless of whether the recipient is a registered vendor or a consumer, i.e. whether the B2C/B2B distinction will fall away entirely.

This proposed amendment is designed to address a compliance vulnerability for SARS. It is administratively costly to pursue thousands of small-scale foreign electronic principals across multiple jurisdictions. By placing the default liability on intermediaries, SARS would in effect rely on global digital marketplaces as its primary collection agents.

Commercially, this proposal would create significant contractual disruption once enacted. Many global intermediaries operate on standardised terms of service based on common-law agency principles, disclaiming indirect tax liabilities on behalf of their underlying users and positioning themselves as technological facilitators. South African domestic law would override these global contractual norms by default. Global platforms that do not put in place tailored opt-out agreements with every principal operating in the South African market would inherit the VAT liability for all transactions flowing through their platform. Managing this transition will require legal review by foreign intermediaries, many of whose legacy operating agreements were not drafted to accommodate the liability-defaulting mechanism anticipated under the amended South African VAT Act. Transitional arrangements accompanying the eventual amendment would be welcomed. The fact that the proposed default can be contracted away — even where that may not reflect the economic and commercial substance of the arrangement — also remains worth scrutinising.

Legislative and policy gaps

Beyond enforcement, several structural gaps in the current legislative framework may warrant attention:

The B2B imported services gap

South African VAT-registered businesses that receive electronic services for private, exempt, or other non-taxable purposes from non-resident suppliers are required to self-account for VAT as the recipient. This obligation is, in practice, widely under-reported. SARS has limited visibility into these transactions, and the administrative burden of self-accounting deters compliance among smaller businesses.

The definition of electronic services

When initially introduced in 2014 the electronic services regulation contained a closed-list definition of electronic services. While the 2019 revision broadened that list considerably, new digital service categories continue to emerge such as generative AI tools, virtual world services, tokenised assets and similar emerging service categories which will continue to test the boundaries of the current definition.

The definition has been clarified to some degree by the explanatory memorandum to the 2025 regulations which categorically states that the concept of "minimal human intervention" was never introduced in the electronic services regime by the VAT Act or the electronic services regulations.

However, an open-ended, principles-based definition, like those adopted in other jurisdictions such as Australia, Singapore and New Zealand, would future-proof the legislation. For example, the New Zealand GST Act defines "remote services" as any service where, at the time of supply, there is no necessary connection between the physical location of the recipient and the place where the services are physically performed. The location-independence criteria rather than the technical delivery mechanism are more likely to accommodate future digital service categories.

The VAT treatment of free digital services supported by advertising revenue

This issue is not unique to South Africa, but a significant proportion of the digital economy operates on a model where the service is provided to the consumer free of charge although the economic reality is that the consumer's data and attention are being monetised with advertising revenue being the consideration received. How should the triangular relationship between the intermediary/supplier, consumer and advertiser be characterised for South African VAT purposes?

The VAT treatment of multi-sided platforms

This is related to the point above and applies to multi-sided platforms that simultaneously supply services to two or more distinct customers, each for different amounts or nothing at all. Examples would be ride-hailing platforms, food delivery apps and accommodation booking platforms. Is the platform making a single composite supply or multiple separate supplies? Where the platform charges no consideration or a discounted consideration to one of the customers, how will the consideration for the two distinct services be apportioned?

Recommendations

The following targeted reforms could materially improve the effectiveness of the regime without requiring a wholesale redesign:

1) Introduce a dedicated, simplified online registration portal for non-resident digital services suppliers, modelled on the EU OSS. Reducing compliance friction for willing registrants is most likely the lowest-cost tool available to SARS.

2) The anticipated amendment to section 54(2B) of the VAT Act (discussed above and currently proposed in Annexure C of the 2026 Budget Speech) is endorsed and will shift VAT accounting obligations from the underlying supplier to the platform, intermediary or marketplace through which supplies are made. This concentrates the compliance burden on a small number of commercially significant intermediaries.

3) Safe harbour for suppliers and perhaps an interpretation note addressing the above-mentioned data collection burden and what criteria can be applied when determining the three indicators of a South African consumer.

4) Future-proof the legislation, specifically the definition of electronic services, against the continuous evolution of the digital economy.

5) Transition from voluntary e-reporting to mandatory continuous transaction controls (CTC) to address the lack of third-party verification that constrains cross-border enforcement. The recent promulgation of the Tax Administration Laws Amendment Act 4 of 2026 is a useful foundational step, defining structured data formats such as the "e-invoice" and inserting section 74(1B) into the VAT Act to establish the statutory framework for a voluntary e-reporting system. However, to meaningfully capture non-resident digital revenue, this framework should evolve beyond voluntary participation. SARS should leverage this legislative architecture to transition to a hybrid centralised clearance model with mandatory platform reporting obligations. By aligning with the OECD's Model Reporting Rules for Digital Platforms and drawing on the European Union's DAC7 directive, SARS could require digital platforms to transmit structured transactional data on their underlying sellers to a central tax hub in near-real-time. This would provide the independent, third-party data pipeline currently missing from the regime, reducing reliance on the goodwill of foreign entities.

6) Actively pursue bilateral and multilateral data-sharing arrangements targeting digital economy revenues, leveraging South Africa's membership of the G20 and the OECD Inclusive Framework on BEPS.

7) Publish annual transparency data on non-resident VAT registrations and collections under the electronic services regime.

Conclusion

South Africa's VAT framework for cross-border digital services was pioneering for its time and remains ahead of most African jurisdictions. The 2019 expansion demonstrated a legislative willingness to keep pace with a rapidly changing digital landscape. However, in an environment that is changing at an exponential rate, the regime is showing its age relative to global best practice, and the gap between the VAT theoretically collectible from non-resident digital suppliers and the VAT actually collected is likely material and growing.

The digital economy is not a niche. For many South African consumers, it is increasingly the primary channel for purchasing content, software, and services. The cost of leaving the current compliance and enforcement gaps unaddressed compounds annually. A focused package of administrative modernisation and legislative reform — most of which has already been proven in other jurisdictions — would allow South Africa to realise significantly more of the revenue its existing policy framework was designed to collect.

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