

# The Potential Influence of Value Added Tax Law Amendments on the Existence of E-Service Providing SMMEs in South Africa

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*In South Africa, almost all existing businesses are regarded as Small Medium and Micro Enterprises (SMMEs). Through legislation, the South African government has identified SMMEs as the best enablers to help with the achievement of certain core socio-economic objectives; particularly the creation of jobs and reduction of poverty levels. According to previous research studies these business entities are not achieving the latter socio-economic objectives; mainly as a result of their weak existence rate – up to 80% of these business entities fail within their first three years of existence. The latter is believed to stem from the realisation of economic factors – a major economic factor which adversely influences South African SMMEs is that of taxation. Over the years, more South African SMMEs have started to make use of the internet to conduct their respective business, which spurred the national government to make amendments to existing Value Added Tax (VAT) Laws by levying taxation on electronic services (e-services) provided by e-service suppliers. Hence, for this research study, the perception was formulated that the amendments made to VAT Laws will have an adverse influence on the existence of e-service providing South African SMMEs in the foreseeable future. Empirical research was conducted through means of obtaining quantitative data from registered South African Tax Practitioners based in the Cape Metropolis; all of whom had to adhere to strict delineation criterion. It was found that the amendments made to VAT Laws, by national government, will have an adverse influence on the existence of e-service providing South African SMMEs in the foreseeable future.*

**Keywords:** Taxation, Value Added Tax (VAT), Electronic services, South Africa, Tax practitioners, South African Revenue Services (SARS), Small Medium and Micro Enterprises (SMMEs)

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## 1. Introduction

In South Africa, SMMEs are formally recognised by the National Small Business Act No.102 of 1996; defined as separate, distinct and legal business entities, that are owned by at least one natural person, which include cooperative enterprises and non-governmental organisations, as well as its branches or subsidiaries, if any; predominantly carrying out their trade in any sector(s) or subsector(s) of the national economy (South Africa, 1996; Berry et al., 2002; Chimucheka 2013). Due to the fact that almost 90% of all existing business entities in South Africa can be classified as SMMEs (Mouloungui, 2012), it is of no surprise that the South African government has identified SMMEs as the best enablers to assist it in the achievement of two core socio-economic objectives, namely: 1) the creation of job opportunities, and 2) the diminishing of poverty levels (Young, et al., 2012; Chimucheka 2013; Sibanda, 2013; Salie, et al., 2014). The socio-economic value which SMMEs add to the South African economy is placed in perspective by previous research studies (Fatoki and Odeyemi, 2010; Swart, 2011; Ahiawodzi and Adade, 2013) where it was found that these business entities contribute up to 57% to the national Gross Domestic Product, while simultaneously providing job opportunities to between 61% and 80% of the total national workforce.

Unfortunately, the aforementioned statistics are overshadowed by additional research studies (Van Eeden, et al., 2003; Rootman and Kruger, 2010) which show that South African SMMEs are not achieving their relevant core socio-economic objectives to a large extent as between 70% and 80% of these business entities fail within their first three years of existence. Otherwise stated, since the early-2010s, at least 88 000 South African SMMEs are believed to fail on an annual basis (Duncan, 2013). Albeit the alarming failure rate of South African SMMEs, the latter is believed to be “triggered” by economic factors.

In layman’s terms, economic factors are those factors which influence the economy of a country, be it positive or negative, which, in turn, will directly impact on all natural persons and all legal persons that are situated in the relevant country (Bruwer, et al., 2013). Based on previous research studies (Bruwer, 2010; Abor and Quartey, 2010) some of the identified economic factors which are directly associated with the disconcerting failure rate of South African SMMEs include: 1) stagnant economic growth, 2) fluctuating exchange rates, 3) high interest rates, 4) high inflation rates, 5) government red tape, 6) crime, 7) fluctuating supply-and-demand levels, 8) unstable market conditions, 9) ineffective performance measurement, 10) lack of management skills, 11) insufficient business knowledge, 12) lack of funding, and 13) poor financial management. In addition, another major economic factor which also contributes to the failure rate of South African SMMEs is that of taxation (Van Eeden, et al., 2003).

It is therefore of no surprise that several initiatives, with specific reference made to the provision of taxation relief, have been promoted by the South African government over the years; all with the intent to promote South African SMMEs and streamline their respective taxation administration (Aucamp, 2011). Notwithstanding the aforesaid, the Commissioner of the South African Revenue Service (SARS) acknowledged in 2005 that “compliance” with taxation-related legislation still remains a considerable burden for most South African SMMEs (Abrie and Doussy, 2006). In more recent times however, more than a decade after the previous announcement by the SARS Commissioner, it is perturbing to note that taxation-related legislation is still extremely onerous (and ambiguous) to these business entities (Coolodge, et al., 2009; Cassim, et al., 2014).

From a South African perspective, taxation is a means by which the national government finances its expenditure. The South African government obtains money, through SARS (based on the South African Revenue Service Act No. 34 of 1997), by imposing certain mandatory charges on South Africa’s natural persons and legal persons as a type of fee(s)/levy(ies) for utilising its resources and/or infrastructure(s) (Salie, et al., 2014; SARS, 2014; SARS, 2015). In fundamental nature, taxation also serves as a type of “mechanism” to encourage and/or discourage certain economic behaviour(s) by natural persons and legal persons (Steyn, 2012). For the sake of clarity, taxation is collected by the South African government through means of imposing direct taxation and indirect taxation on natural persons and/or legal persons (Haupt, 2013). The latter is briefly elaborated on below:

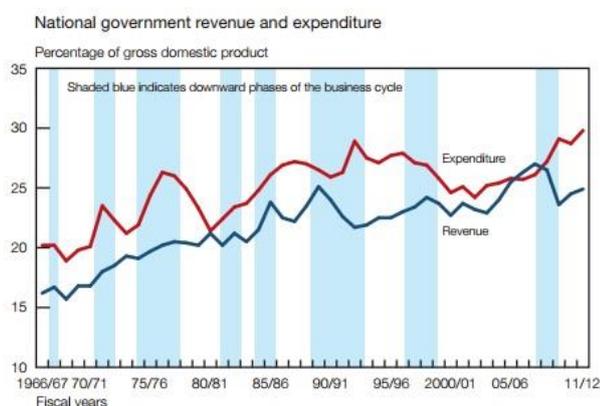
- **Direct taxation:** A type of taxation that is paid directly by an entity on whom it is levied. An example of a direct tax would be income tax levied on salaries and/or wages.
- **Indirect taxation:** A type of taxation that does not consider circumstances as it is levied on transactions (concerning both goods and services). Such taxation is collected by intermediaries (“middle-men”) and not paid to SARS directly. An example of an indirect tax is that of VAT.

All taxation that is collected by SARS, on behalf of the South African government, is primarily used to fund the National Revenue Fund which, in turn, is used to help with the enhancement of the national

economy and the infrastructure of South Africa (Salie, et al., 2014). Albeit the fact that taxation is mandatory in South Africa, taxation is supported by strict Taxation Laws which both natural persons and legal persons have to comply with (Abrie and Dousy, 2006; Hendricks, et al., 2015). One of these Tax Laws is the Value Added Tax Act No. 89 of 1991.

The Value Added Tax Act No.89 of 1991 serves as a type of “guideline” pertaining to Value Added Tax (VAT), in a holistic sense. As previously mentioned, VAT is a type of indirect taxation which is levied on the supply of certain goods and the rendering of certain services. In quintessence, such goods and/or services can subject to standard rated VAT (14% input VAT and 14% output VAT), zero-rated VAT (14% input VAT and 0% output VAT), or be completely exempted from VAT (no VAT).

The significance of VAT is placed in perspective by the statistics provided by National Treasury (2013); pointing out that VAT makes up approximately 26.4% of all taxation that is collected, on behalf of the national government, by SARS – translating to an estimated amount of R241.84 billion. As such, it is fair to infer that taxation received from VAT contributes substantially to the revenue of national government. Notwithstanding the aforesaid, there is a great challenge for government to collect these taxes (Dongil, 2012), especially when taking into account that the South African government’s expenditure has exceeded its income since the mid-2000s – as depicted Figure 1.



**Figure 1.** National government spending over the years (Source: National Treasury, 2013)

In order to increase the revenue of the South African government, SARS proposed that relevant Taxation Laws had to be “sharpened-up” during the course of April 2014; all with the intent to ensure a steady inflow of money to the national economy of South Africa – particularly the Value Added Tax Act No.89 of 1991 – through the Taxation Laws Amendment Act No. 31 of 2013 (SARS, 2013b). The Taxation Laws Amendment Act No. 31 of 2013 has introduced amendments to the Value Added Tax Act No. 89 of 1991 in respect of the “supply of electronic services (e-services)”. Based on the aforementioned Act, a supplier of e-services is defined as follows:

*“[An entity] which supplies electronic services from a place in an export country to a recipient that is a resident of the Republic [of South Africa]; or where any payment to that person in respect of such electronic services originates from a bank registered or authorised in terms of the Banks Act No. 94 of 1990”*

According to this Act: 1) suppliers of e-services have the obligation to register as VAT vendors, with SARS, if their taxable supplies exceed R50 000, 2) suppliers of e-services have to account for VAT on the supply of electronic services to any South African citizen(s), and 3) suppliers of e-services are liable to register as VAT vendors (with SARS) to the extent that VAT is levied on the supply of electronic services (Louw and Botha, 2014). The biggest irony is that the term “e-services” is very broadly defined in the *Taxation Laws Amendment Act, No. 31 of 2013*:

*“Electronic services mean those electronic services prescribed by the Minister by regulation in terms of this [Taxation Laws Amendment] Act [No. 31 of 2013].*

In a South African dispensation, many SMMEs make use of the internet to conduct their respective business; particularly in relation to the rendering and/or using of e-services via the internet (Hooper, et al.,

2010). Although only a handful of South African-based SMMEs are owned by foreigners from export countries (Chandra, et al., 2001; O'Malley, 2006), the last mentioned Act's description of "e-service providers" is extremely vague which, if interpreted, can actually include all South African e-service providing SMMEs.

Thus, based on the above, the perception was formulated that South African e-service providing SMMEs will be adversely influenced, in an economic sense, at least, by the *Taxation Laws Amendment Act No. 31 of 2013* (It should be noted that this Act was clarified by the Electronic Services Regulations – which came into effect on 1 June 2014). In order to empirically test the aforesaid perception, the following research questions were asked:

- What e-service related items are taxable in terms of the *Value Added Tax Act No. 89 of 1991*?
- What e-service related items are taxable in terms of the *Taxation Laws Amendment Act No. 31 of 2013*?
- How will the amendments made to VAT, in terms of the *Taxation Laws Amendment Act No. 31 of 2013*, influence the overall existence of e-service rendering SMMEs?

## 2. Literature Review

The literature review below provides insight to the first two research questions posed above; all with the intent to mitigate and/or solve the identified research problem. Relevant discussions below take place under the following headings: 1) VAT in South Africa, and 2) Possible implications for South African e-service providing SMMEs.

### 2.1. VAT in South Africa

VAT was first introduced in South Africa in September 1991 – replacing the old General Sales Tax (GST) – through means of the *Value Added Tax Act No. 89 of 1991* (Go, et al., 2004). In this Act, VAT is categorised in terms of input VAT (charged to a registered VAT vendor, by another registered VAT vendor, on the purchasing of certain goods and/or the rendering of certain services – claimable from SARS when a revenue transaction has taken place) and output VAT (charged to a customer, by a registered VAT vendor, on the sale of certain goods and/or rendering of certain services – payable to SARS when a revenue transaction has taken place) (SARS, 2013a). By Law, based on the *Value Added Tax Act, No.89 of 1991*, although a South African business entity must register as a VAT vendor if its taxable supplies (taxable turnover) exceeds R 1 000 000 for a period of 12 months, a South African business entity can also voluntarily register as a registered VAT vendor if its taxable supplies range between R50 000 and R1 000 000 for a period of 12 months (SARS, 2013a).

One of the main reasons why VAT was introduced in South Africa was to eliminate the cascading effects of taxation on intermediate inputs to, in turn, remove the distortion affecting input choices in production; all with the intent to assist the poor (Go, et al., 2004). In quintessence, the *Value Added Tax Act No.89 of 1991* makes mention that VAT is exempted on certain supplies (e.g. educational services, residential rental and accommodation and public transport) and that output VAT is zero-rated (Zero-rated VAT is also applied on exports, illuminating paraffin, goods which are subject to the fuel levy, international transport services, farming inputs, sales of going concerns and certain government grants.) on basic foodstuff (e.g. brown bread, maize meal, samp, milk, eggs, milk powder, unprocessed vegetables, and unprocessed fruits) (Haupt, 2013). Notwithstanding the aforementioned, at present time, VAT is levied at a standard rate of 14% on most goods and services within South Africa.

The *Taxation Laws Amendment Act No. 31 of 2013* amended certain aspects in the *Value Added Tax Act No. 89 of 1991*:

- Foreign entities (natural persons and legal persons) may become liable to register as a VAT vendor in terms of Section 23 of the *Value Added Tax Act No. 89 of 1991*.
- Foreign entities may have to account for VAT in terms of Section 7(1)(a) of the *Value Added Tax Act No. 89 of 1991* on the supply of electronic services to any South African citizen.
- In terms of Section 23(1)(a) of the *Value Added Tax Act No. 89 of 1991*, any entity will become liable to register as a VAT vendor to the extent that VAT is levied on the supply of electronic services.
- In terms of Section 7 (1)(a), it clearly states transaction would be excluded from attracting VAT under Sections 7(1)(c) of the *Taxation Laws Amendment Act, No 31 of 2013*.

Notwithstanding the above, VAT makes up a large portion of the South African government's revenue. As such, it is important to keep in mind that the primary idealistic idea surrounding the *Taxation Laws*

*Amendment Act No. 31 of 2013* was to substantially boost government's revenue through expanding the coverage of indirect taxation (Dongil, 2012); despite the fact that the revenue which SARS collected, in the form of VAT, increased from R191 million in 2012 to R215 million in 2013 (National Treasury, 2013).

## 2.2. Possible Implications for South African E-Service Providing SMMEs

The internet can be viewed as a worldwide system of computers, that are all interlinked with one other, while using networking technology, on a global scale. In fundamental nature, the internet has revolutionised the world of commerce (Louw and Botha, 2014), through the discovery of online trading (e-commerce) – resulting in a significant increase of daily transactions and daily revenues alike (Naicker, 2010).

Using the above as foundation, over the years, in South Africa, many heated debates have flared-up surrounding possible taxation regimes on e-commerce as a whole (Jones and Basu, 2012). On the one hand, by enforcing (indirect) taxation on e-commerce, the national government will have the opportunity to receive more money from both natural persons and legal persons however, on the other hand, the latter may discourage e-commerce in a holistic sense – resulting in the possible failure of many business entities that strive to add socio-economic value to the South African economy (Moschella, 1999; Gutuza, 2006; Naicker, 2010; Jones and Basu, 2012).

In an international dispensation, the levying of indirect tax on e-services is not a new phenomenon. The European Union (EU) (since January 2015), Switzerland (since January 2010) and Norway (since July 2011) have enforced VAT on e-commerce transactions (Tax Executive, 2014). The reason for the latter is that, from a global perspective, most economies around the world have experienced increases in their respective Gross Domestic Products over the years (Trading Economics, 2015) which, in turn, is believed to stem from a rapid increase in e-commerce related transactions (Laguna, 2000). Although some international government officials (along with relevant industry leaders) are in agreement that e-commerce transactions should be subjected to equitable and non-discriminatory taxation practices (as not to impede e-commerce growth), private sector groups, government bodies and other international organisations are also in agreement that the taxing of e-commerce transactions should be done in accord with standard principles governing the taxation of ordinary commerce (Laguna, 2000). The Organisation for Economic Co-Operation and Development (OECD) defined the following five equitable e-commerce taxation principles, as based on the four “canons” of taxation (As proposed in Smith, A. 2003. *The wealth of nations*. New York: Bantam Classic):

- Neutrality: E-commerce should be free from additional discriminatory or non-equitable taxes.
- Efficiency: Compliance costs for both business and government should be minimalised.
- Certainty: E-commerce taxation rules should be clear for taxpayers to determine their compliance obligation.
- Effectiveness and Fairness: Sufficient tax revenue should be collected and taxpayer fraud should be minimised.
- Flexibility: Taxation regimes should be able to evolve with technological advancements

In the EU, long before January 2015, the intention of policy makers was to place taxation only on electronic supplied services. In particular, from 1 July 2003, policy makers enforced the regulation (2002/38/EC) that non-EU suppliers of electronic services had to both register and account for VAT in the EU (ITR, 2015). In due course, the latter dispensation resulted to a similar regulation (2006/112/EC) to be applied to all EU business as from January 2010 (ITR, 2015). With the passing of time, as from January 2015, policy makers enforced a new regulation (EU1042/2013) whereby any supply of telecommunication, broadcasting and electronic services, to private individuals and non-business customers, will be taxed in the member state of the customer (ITR, 2015). At present time, countries such as China and Russia also tax the supply of electronic services in a similar fashion as the EU (ITR, 2015).

When focus shifted back to South Africa, it is interesting to note that the country introduced its own (first) version of taxing the supply of electronic services as early as 2013 through the passing of the *Taxation Laws Amendment Act No. 31 of 2013* (Diligen Tax Consulting, 2015). The term “e-service” is defined in the *Taxation Laws Amendment Act No. 31 of 2013* as “those electronic services prescribed by the Minister of Small Business Development” (Louw and Botha, 2014). Due to the girth of the latter definition, the assumption can be made that e-services, in South Africa, include services provided by many industry giants such as E-bay, Apple, Netflix, Amazon and Google. Notwithstanding the aforesaid, electronic services can therefore also be inclusive of educational games, games of chance, internet-based auctions, the selling of e-books, the selling of audio-visual content, the selling of still images, the selling of music and subscription services, just to mention but a few (Louw and Botha, 2014). The irony of the matter is that in the *Taxation Laws Amendment Act, No.*

31 of 2013, the definition for “electronic services” is still broad as it predominantly reads the same as the previous definition.

Building forth on the aforesaid, the *Taxation Laws Amendment Act, No. 31 of 2013* describes a supplier of e-services as “[an entity] which supplies an electronic services from a place in an export country to a recipient that is a resident of the Republic [of South Africa] ...” (SARS, 2013b). The latter definition has an extensive girth attached to it as the section “from a place in an expert country” can be interpreted to include international servers through which electronic services are rendered by entities (both South African and non-South African) or even a natural person(s) who live in South Africa, who is not a resident, whom renders e-services to residents of South Africa. As such, the assumption can be made that South African SMMEs are included in the definition for “supplier of electronic services”.

All in all, the *Taxation Laws Amendment Act, No. 31 of 2013* was drawn up in accordance with OECD principles – through a proposed “rule of supply” which was introduced in relation to e-commerce – all with the intent to boost current imported e-services (Steyn, 2012) in order for the national government to earn more revenue from indirect taxation (Dongil, 2012; SARS, 2013a), regardless of the fact that the total revenue received by SARS, from indirect taxation, increased from R305 million in 2012 to R354 million in 2013 (National Treasury, 2013). For this very reason, it is not surprising that the *Taxation Laws Amendment Act No. 31 of 2013* resulted in a number of concerns to be raised by various stakeholders (Tax Executive, 2014; ITR, 2015):

- The amendments made to VAT do not differentiate between B2B and B2C supplies.
- A larger administrative burden is placed on VAT vendors (current and future) without improving the ease of compliance.
- No proxies are addressed that would be acceptable to support the decision to charge or not charge VAT.
- The content is very subjective in nature.

As such, the assumption was made that due to the nature of the *Taxation Laws Amendment Act No. 31 of 2013* (as elaborated on above) the latter *Act* will have an adverse influence on South African e-service providing SMMEs, in a holistic sense, in the long-run.

### 3. Research Design, Research Methodology, Research Methods and Ethical Considerations

For this research study, a mixture of empirical research and non-empirical research were conducted (Collis and Hussey, 2009; Leedy and Ormrod, 2010). In fundamental nature, the first two identified research questions (see Section 1) were answered through means of conducting a literature review (see Section 2), while the final research question was answered through means of conducting survey research – a type of research whereby perceptions, insights and/or views of a certain sample(s) of a certain population(s) is obtained through means of asking quantitative questions with the assistance of a questionnaire-tool (Remenyi, et al., 2009). The questionnaire-tool deployed was largely quantitative in nature as it consisted mostly of closed-ended questions and Likert-scale questions. Before being disseminated to respondents, the questionnaire-tool was piloted by three academics (who held at least one postgraduate degree) and five members of the general public.

The targeted population for this research study was registered South African Tax Practitioners that were based in the Cape Metropolis – all whom had to adhere to the following strict delineation criteria:

- Had to be a registered South African Tax Practitioner.
- Had to have a minimum of two years of working experience as a South African Tax Practitioner.
- Had to have at least a NQF Level 5 qualification (or higher)(Based on the South African National Qualification Framework, a NQF Level 5 qualification is equivalent to a National Higher Certificate.).
- Had to be primarily based (for work purposes) in the Cape Metropolis.

Due to the facts that: 1) data had to be collected within a three-week period, 2) the research study was not backed by formal research funding, and 3) the size of the targeted population was unknown, a mixture of the following non-probability sampling methods were used to collect data:

- Convenience sampling: A type of non-probability sampling method that relies on the collection of data from a population who is conveniently available to participate in study – where the first available primary data source is used for the research study being conducted, without additional requirements.
- Purposive sampling: A type of non-probability sampling in which decisions concerning the respondents to be included in the sample are taken by a researcher(s); based upon a variety of (delineation) criteria.

A total of 70 questionnaires were disseminated to registered South African Tax Practitioners (which satisfy the aforementioned delineation criteria) of which only 32 responded positively – a 45.7% response rate. In addition, the following ethical considerations were accounted for throughout this research study:

- **Informed consent:** All respondents were informed on what the research study entails.
- **Voluntary participation:** All respondents opted to voluntarily participate in the research study.
- **Protection from harm:** All respondents were safeguarded from physical harm.
- **Anonymity and confidentiality:** Respondents were assured of anonymity; that their responses provided would be treated with the highest levels of confidentiality – used for research purposes only.

#### 4. Data Analysis and Results

##### 4.1. General Demographics

Due to the fact that respondents had to adhere to strict delineation criteria (see Section 3), it was imperative to ask respondents certain classification questions pertaining to their demographics.

When respondents were asked whether they were registered South African Tax Practitioners, a total of 100% of respondents answered “yes” – a total of 15.63% of respondents were registered at the Institute of Accounting and Commerce, 31.25% of respondents were registered at the South African Institute of Chartered Accountants, 28.13% of respondents were registered at the South African Institute of Professional Accountants and that remaining 25% of respondents were registered at the South African Institute of Tax Practitioners.

Next, respondents were asked how many years of experience they had as registered South African Tax Practitioners. A summary of the results are shown in Table 1.

**Table 1.** Respondents’ years of experience as registered South African Tax Practitioners

Value Label	Value	Frequency	Percent	Valid Percent	Cum Percent
Two years	2	2	6.25	6.25	6.25
Three years	3	2	6.25	6.25	12.50
Four years	4	2	6.25	6.25	18.75
Five years	5	3	9.38	9.38	28.13
Six years	6	2	6.25	6.25	34.38
Seven years	7	2	6.25	6.25	40.63
Eight years	8	1	3.13	3.13	43.75
Nine years	9	2	6.25	6.25	50.00
Ten years	10	4	12.50	12.50	62.50
Fourteen years	14	3	9.38	9.38	71.88
Fifteen years	15	3	9.38	9.38	81.25
Eighteen years	18	1	3.13	3.13	84.38
Twenty years	20	3	9.38	9.38	93.75
Thirty years	30	2	6.25	6.25	100.00
Total		32	100.0	100.0	

Source: Authors’ fieldwork, 2015

Stemming from the table above, the average respondent had 10.94 years of experience as registered South African Tax Practitioner; a minimum number of two years’ experience and a maximum number of 30 years’ experience.

When respondents were asked what their highest qualifications were, the following results were evident:

- 3.13% of respondents had a National Higher Certificate.
- 3.13% of respondents had a Higher Diploma in Taxation.
- 9.38% of respondents had a Diploma or National Diploma in Taxation.
- 34.38% of respondents had a Bachelor’s degree in Taxation (This statistic is inclusive of the number of respondents who held a BTech-degree).

- 50.00 % of respondents had an Honours degree in Taxation (This statistic is inclusive of the number of respondents who held CA(SA) designations.)

Otherwise put, a total of 3.13% of respondents had a NQF-level 5 qualification, a total of 12.51% of respondents had a NQF-level 6 qualification, a total of 34.38% of respondents had a NQF-level 7 qualification and 50% of respondents had a NQF-level 8 qualification.

In relation to geographical location, 28.13% of respondents were based in the Cape Town Business District (central Cape Town), 43.76% of respondents were based in the Northern Suburbs and 28.13% of respondents were based in the Southern Suburbs.

#### 4.2. Awareness and Understanding of Value Added Tax Acts

It was important for the authors to understand how aware respondents were with regard to the amendment of the *Value Added Tax Act No. 89 of 1991* through the *Taxation Laws Amendment Act No. 31 of 2013*. To achieve the latter respondents were first asked to rate three statements, through means of a five point likert-scale, starting with the sentence: “In my own expert opinion, I am fully aware ...”. The five point likert-scale made provision for the following ratings: 1 = “strongly disagree”, 2 = “disagree”, 3 = “neither agree nor disagree”, 4 = “Agree”, and 5 = “Strongly agree”. A summary of the results are shown in Table 2.

**Table 2.** Awareness of respondents of legislation pertaining to VAT

Statement	Valid percentage					Mean	Std dev
	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree		
a) ... of the existence of the Value Added Tax Act No. 89 of 1991.	6.25%	-	3.13%	53.13%	37.5%	4.16	0.99
b) ... of the existence of the Taxation Laws Amendment Act No. 31 of 2013.	3.13%	6.25%	6.25%	65.63%	18.75%	3.91	0.89
c) ... those amendments were made to the provisions in the Value Added Tax Act No. 89 of 1991 by the Taxation Laws Amendment Act No.31 of 2013.	3.13%	3.13%	3.13%	78.13%	12.5%	3.94	0.76

Source: Authors’ fieldwork, 2015

Stemming from the results in Table 2, one can deduce that respondents were quite aware of the existence of the *Value Added Tax Act No. 89 of 1991* (83.20% average awareness), the existence of the *Taxation Laws Amendment Act No. 31 of 2013* (78.20% average awareness) and amendments were made to the provisions in the *Value Added Tax Act No. 89 of 1991* by the *Taxation Laws Amendment Act No.31 of 2013* (78.80% average awareness).

Based on the answers provided by respondents, it was important to understand how they interpreted the *Taxation Laws Amendment Act No.31 of 2013*. Again, respondents were asked to rate statements (seven of them), through means of a five point likert-scale, starting with the sentence: “In my own expert opinion, based on the *Taxation Laws Amendment Act No. 31 of 2013* ...”. The five point likert-scale made provision for the following ratings: 1 = “strongly disagree”, 2 = “disagree”, 3 = “neither agree nor disagree”, 4 = “Agree”, and 5 = “Strongly agree”. A summary of the results are shown in Table 3.

The results in Table 3 provide clear evidence that the *Taxation Laws Amendment Act No.31 of 2013* is very subjective in nature. This view is supported by the fact that majority of the mean-scores, ranged close to 3 (“neither agree nor disagree”). On average, respondents’ agreement pertaining to “suppliers of e-services”, based on the *Taxation Laws Amendment Act No.31 of 2013*, were as follows:

- 71.88% of respondents agree that suppliers of e-services include Small Medium and Micro Enterprises (SMMEs).

- 65.63% of respondents agree that suppliers of e-services must register for VAT if an annual turnover of more than R50 000 is earned.
- 62.51% of respondents agree that suppliers of e-services are based where their headquarters are physically based.
- 59.38% of respondents agree that suppliers of e-services are based where their e-services are hosted (i.e. server).
- 53.13% of respondents agree that suppliers of e-services can voluntarily register for VAT if an annual turnover of less than R50 000 is earned.
- 37.5% of respondents agree that suppliers of e-services are based where their owner(s) are physically based.
- 21.88% of respondents agree that suppliers of e-services exclude South African based enterprises.

**Table 3.** Interpretation of respondents pertaining to the Taxation Laws Amendment Act No.31 of 2013

Statement	Valid percentage					Mean	Std dev
	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree		
a) ... suppliers of e-services can voluntarily register for VAT if an annual turnover of less than R50 000 is earned.	9.38%	18.75%	18.75%	40.63%	12.50%	3.23	1.20
b) ... suppliers of e-services must register for VAT if an annual turnover of more than R50 000 is earned.	3.13%	18.75%	12.50%	50%	15.63%	3.56	1.08
c) ... suppliers of e-services include Small Medium and Micro Enterprises (SMMEs).	3.13%	3.13%	21.88%	53.13%	18.75%	3.81	0.90
d) ... suppliers of e-services exclude South African based enterprises.	12.5%	25%	40.63%	18.75%	3.13%	2.75	1.02
e) ... suppliers of e-services are based where their e-services are hosted (i.e. server).	-	21.88%	18.75%	43.75%	15.63%	3.53	1.02
f) ... suppliers of e-services are based where their owner(s) are physically based.	-	34.38%	28.13%	31.25%	6.25%	3.09	0.96
g) ... suppliers of e-services are based where their headquarters are physically based.	-	21.88%	15.63%	46.88%	15.63%	3.56	1.01

Source: Authors' fieldwork, 2015

Taking all of the above into account, it is evident that although all of the aspects pertaining to “suppliers of e-services” are covered in the *Taxation Laws Amendment Act No.31 of 2013*, it is clear that this Act is extremely subjective in nature; often leaving registered South African Tax Practitioners with the task to make “educated guesses” as to how the relevant legislation should be interpreted. Regardless of the aforesaid the most important statistic pertaining to this research study is that majority of respondents were in agreement that SMMEs which render e-services could be regarded as “suppliers of e-services”.

#### 4.3. Feasibility of Amendments to the Value Added Tax Act No. 89 of 1991

Due to the fact that most legislation is idealistic in nature, it was important to understand how respondents regarded the overall feasibility of the *Taxation Laws Amendment Act No.31 of 2013*. As such, respondents were asked to rate a total of nine statements through means of a five point likert-scale, starting with the sentence: “In my own expert opinion, based on the *Taxation Laws Amendment Act No. 31 of 2013* ...”. The five point likert-scales made provision for the following ratings: 1 = “strongly disagree”, 2 = “disagree”, 3 = “neither agree nor disagree”, 4 = “Agree”, and 5 = “Strongly agree”. A summary of the results are shown in Table 4.

From the results in Table 4 the inference can be made that respondents' viewed the overall feasibility of the *Taxation Laws Amendment Act No.31 of 2013* as bad. In quintessence, when emphasis is placed on the results in Table 4, respondents had the following stand out:

Users of e-services:

- 62.5% of respondents agreed that South African users of e-services include citizens whom have a South African Identification Document.
- 56.25% of respondents agreed that South African users of e-services include citizens from abroad that are regarded as "resident".
- 43.75% of respondents agreed that South African users of e-services include citizens from neighbouring countries with work permits.

Suppliers of e-services:

- 53.13% of respondents agreed that suppliers of e-services will become discouraged to continue their trade with South Africans.
- 43.76% of respondents agreed that suppliers of e-services that earn more than R50 000 in annual revenue will not register for VAT.
- 43.75% of respondents agreed that suppliers of e-services that earn more than R50 000 in annual revenue will register for VAT.

**Table 4.** Summary of respondents' view of the feasibility of the *Taxation Laws Amendment Act No.31 of 2013*

Statement	Valid percentage					Mean	Std dev
	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree		
a) ... SARS is able to monitor relevant e-services transactions across the world.	15.63%	25.00%	21.88%	31.25%	6.25%	2.88	1.21
b) ... SARS is able to keep track on the revenue of non-registered suppliers of e-services.	18.75%	31.25%	21.88%	25.00%	3.13%	2.63	1.16
c) ... SARS will be able to timely collect money due from registered suppliers of e-services.	9.38%	15.63%	25.00%	37.50%	12.50%	3.28	1.17
d) ... suppliers of e-services will become discouraged to continue their trade with South Africans.	6.25%	15.63%	25.00%	46.88%	6.25%	3.31	1.03
e) ... suppliers of e-services that earn more than R50 000 in annual revenue will register for VAT.	6.25%	21.88%	28.13%	37.50%	6.25%	3.16	1.05
f) ... suppliers of e-services that earn more than R50 000 in annual revenue will not register for VAT.	-	37.50%	18.75%	34.38%	9.38%	3.16	1.05
g) ... South African users of e-services include citizens whom have a South African Identification Document.	-	9.38%	28.13%	50.00%	12.50%	3.66	0.83
h) ... South African users of e-services include citizens from neighbouring countries with work permits.	6.25%	12.50%	37.50%	37.50%	6.25%	3.25	0.98
i) ... South African users of e-services include citizens from abroad that are regarded as "resident".	3.13%	18.75%	21.88%	43.75%	12.50%	3.44	1.05

SARS:

- 50% of respondents agreed that SARS will be able to timely collect money due from registered suppliers of e-services.
- 37.5% of respondents agreed that SARS is able to monitor relevant e-services transactions across the world.
- 28.13% of respondents agreed that SARS is able to keep track on the revenue of non-registered suppliers of e-services.

As previously highlighted, the subjectivity of the *Taxation Laws Amendment Act No.31 of 2013* appears to be quite severe (see Table 4). When focus is placed on the results in Table 4, it is clear that respondents were in two minds as to whom the “users” of e-services refer to – additional evidence of the subjectivity of the relevant legislation. Moreover it is clear that respondents do not believe that SARS can “keep track” of all e-services taking place in South Africa and that the *Taxation Laws Amendment Act No.31 of 2013* will have an adverse influence on the relevant businesses of suppliers of e-services; ultimately the economic growth of South Africa.

To justify the aforementioned view surrounding the subjectivity of the *Taxation Laws Amendment Act No.31 of 2013*, respondents were asked about its clarity. Respondents were asked to rate a total of three statements through means of a five point likert-scale, starting with the sentence: “In my own expert opinion, based on the *Taxation Laws Amendment Act No. 31 of 2013*, specifically on the amendments made to Value Added Tax in terms of suppliers of e-services ...”. The five point likert-scale made provision for the following ratings: 1 = “strongly disagree”, 2 = “disagree”, 3 = “neither agree nor disagree”, 4 = “Agree”, and 5 = “Strongly agree”. A summary of the results are shown in Table 5.

**Table 5.** Summary of respondents’ view regarding the clarity of the *Taxation Laws Amendment Act No.31 of 2013*

Statement	Valid percentage					Mean	Std dev
	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree		
a) ... it is unambiguous.	3.13%	12.50%	53.13%	25.00%	6.25%	3.19	0.86
b) ... it is practical.	6.25%	18.75%	34.38%	37.5%	3.13%	3.13	0.98
c) ... it is easy to implement.	18.75%	28.13%	34.38%	18.75%	-	2.53	1.02

The results clearly justify the extensive subjectivity of the *Taxation Laws Amendment Act No.31 of 2013* as 31.25% of respondents regarded it as unambiguous, 40.63% of respondents regarded it as practical, and 18.75% of respondents agreed that it was easy to implement.

#### 4.4. Perceived Influence of Amendments to the Value Added Tax Act No. 89 of 1991 on E-Service Rendering SMMEs

Notwithstanding the aforesaid, it was important to understand respondents’ perceptions regarding the overall influence of the *Taxation Laws Amendment Act No.31 of 2013* on suppliers of e-services, particularly SMMEs.

First, respondents were asked to provide a brief description of how they viewed e-service providing SMMEs. To do so, respondents had to rate a total of seven statements through means of a five point likert-scale, starting with the sentence: “In my own expert opinion ...”. The five point likert-scale made provision for the following ratings: 1 = “strongly disagree”, 2 = “disagree”, 3 = “neither agree nor disagree”, 4 = “Agree”, and 5 = “Strongly agree”. A summary of the results are shown in Table 6.

**Table 6.** Summary of respondents’ perceptions of e-service providing SMMEs

Statement	Valid percentage					Mean	Std dev
	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree		
a) ... there are more than 1 000 000 e-service rendering SMMEs in operation in South Africa.	6.25%	28.13%	28.13%	37.50%	-	2.97	0.97
b) ... there are less than 1 000 000 e- service rendering SMMEs in operation in South Africa.	3.13%	12.50%	46.88%	34.38%	3.13%	3.22	0.83
c) ... most e- service rendering SMMEs operating in South Africa have a website that is hosted on a server abroad	3.13%	25.00%	53.13%	12.50%	6.25%	2.94	0.88

d)... most e- service rendering SMMEs operating in South Africa are registered for Value Added Tax.	3.13%	40.63%	34.38%	18.75%	3.13%	2.78	0.91
e) ... most e- service rendering SMMEs operating in South Africa are not registered for Value Added Tax.	3.13%	21.88%	28.13%	31.25%	15.63%	3.34	1.1

From the results in Table 6 it is evident that respondents had different views surrounding e-service providing SMMEs. The only “concrete” view of respondents were that most e-service rendering SMMEs operating in South Africa were not registered for Value Added Tax (46.88% of respondents agreed).

Lastly, respondents were asked how they believe the *Taxation Laws Amendment Act No.31 of 2013*, particularly its amendment to the *Value Added Tax Act No. 89 of 1991*, would influence the overall economic sustainability of e-service providing SMMEs. As such, respondents had to rate a total of four statements through means of a five point likert-scale, starting with the sentence: “In my own expert opinion the amendments made to the *Value Added Tax Act No. 89 of 1991* through the *Taxation Laws Amendment Act No.31 of 2013* will have a negative influence on ...”. The five point likert-scales made provision for the following ratings: 1 = “strongly disagree”, 2 = “disagree”, 3 = “neither agree nor disagree”, 4 = “Agree”, and 5 = “Strongly agree”. A summary of the results are shown in Table 7.

**Table 7.** Summary of respondents’ views regarding the perceived influence of the *Taxation Laws Amendment Act No.31 of 2013* on the economic sustainability of e-service providing SMMEs

Statement	Valid percentage					Mean	Std dev
	Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree		
a) ... the profitability of South African e-service providing SMMEs.	-	34.38%	34.38%	31.25%	-	2.97	0.82
b) ... the solvency of South African e-service providing SMMEs.	43.75%	34.38%	18.75%	3.13%	-	2.81	0.86
c) ... the efficiency of South African e-service providing SMMEs.	-	28.13%	40.63%	28.13%	3.13%	3.06	0.84
d) ... the existence of South African e-service providing SMMEs.		34.38%	18.75%	37.5%	9.38%	3.22	1.04

Based on the results in Table 7 above it is evident that respondents are undecided whether the amendments to the amendments made to the *Value Added Tax Act No. 89 of 1991* through the *Taxation Laws Amendment Act No.31 of 2013* will have a large influence on the economic sustainability of e-service providing SMMEs. Despite the fact that respondents did not agree nor disagree that the *Taxation Laws Amendment Act No.31 of 2013* will have an adverse influence on the profitability (2.97 mean-score) and the efficiency (3.06 mean-score) on e-service providing SMMEs, 46.88% of respondents agree that it the latter will have an adverse influence on the overall existence of these business entities.

## 5. Recommendations

Stemming from the above, it is strongly recommended that South African e-service providing SMMEs:

- Determine whether their supply of e-services, to South African residents, that are covered by the 2014 *Electronic Services Regulations*.
- Determine whether they need to register for VAT based on the *Taxation Laws Amendment Act No. 31 of 2013*.
- Evaluate the advantages and disadvantages of registering for VAT if their registration for VAT is optional.

All of the above can be done through the assistance of a qualified Tax Practitioner.

In addition, it is strongly recommended that South African policy makers take note of the potential influence of the *Taxation Laws Amendment Act No. 31 of 2013* as highlighted by Tax Practitioners in this research study. Not only should the latter *Act* be clarified to diminish ambiguity throughout, but the *Act* should also provide clear definitions of what an “e-service” is and what an “e-service provider” is.

Lastly, although VAT makes up a large portion of the South African government’s revenue, it is strongly recommended that the VAT rate is left unchanged (at 14%) – national government should ensure that it decreases its annual expenditure in order for it to be at a level that is lower than its annual revenue.

## 6. Conclusion

The aim of this research study was to provide a holistic perspective on the potential influence of VAT as levied on suppliers of e-services, mainly from a SMME viewpoint.

Based on the results and discussion above, it is evident that although respondents were experienced and knowledgeable in the field of Taxation (an average of 10.94 years’ worth), they had different views regarding the interpretation of the *Taxation Laws Amendment Act No.31 of 2013*, particularly due to the subjectivity of the latter *Act*. In fundamental nature, if legislation is too vague, its relevant objectives will be more idealistic than realistic. In addition to the aforementioned, more than 78% of respondents were aware of relevant legislation pertaining to *Taxation Laws Amendment Act No. 31 of 2013* (based on relevant mean scores) - hence it is fair to assume that most respondents are clued-up with the recent change in Taxation Laws. Ironically (and conversely), a total of 63% of respondents were unsure of the core amendments pertaining to the *Value Added Tax Act No. 89 of 1991*, through the *Taxation Laws Amendment Act, No. 31 of 2013*, in relation to the governing e-service transactions. Although respondents had average practical experience of close to 11 years, most of them regarded the amendments to the *Value Added Tax Act No. 89 of 1991* differently based on their own viewpoints.

Notwithstanding the above, stemming from the findings made, it is evident that respondents perceive that the amendments made to the *Value Added Tax Act No. 89 of 1991* (through the *Taxation Laws Amendment Act No. 31 of 2013*) will have a negative on the profitability of South African SMMEs (59% of respondents agreed), a negative influence on the solvency of South African SMMEs (56% of respondents agreed), a negative influence on the efficiency of South African SMMEs (61% of respondents agreed), as well as a negative influence on the existence of South African SMMEs (64% of respondents agreed).

From the findings made above, clear tangent planes emerge that the amendments made to the *Value Added Tax Act No. 89 of 1991* through the *Taxation Laws Amendment Act No. 31 of 2013* will have a definitive negative influence on South African SMMEs; particularly their existence, in the foreseeable future.

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