

PR 2024/9 (previously ST 02/2016 as amended by Addendum to 8th April 2019) – The Charging Of Sales Tax On The Sale And Servicing Of Computers)

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PREAMBLE: This publication is a Public Ruling made under the Tax Administration Act 2022 and applies as an interpretation of provisions in the Sales Tax Act Cap 125. The number, subject heading, What this Ruling is about (including Class of person/arrangement section), Date of effect, and Ruling parts of this document are a 'public ruling' for the purposes of section 149 of the Taxation Administration Act 2022 and are legally binding on the Commissioner. The remainder of the document is administratively binding on the Commissioner.

TAXPAYER PROTECTION

This Ruling provides you with the following level of protection:

This Ruling sets out how a tax law applies in relation to a type of person or a type of arrangement.

You can rely on this Ruling (excluding appendixes) to provide you with protection from interest and penalties in the way explained below. If a statement in this Ruling turns out to be incorrect because of a Court decision and you underpay your tax as a result, you will not have to pay a penalty. Nor will you have to pay interest on the underpayment provided you reasonably relied on the Ruling in good faith. However, even if you don't have to pay a penalty or interest, you will have to pay the correct amount of tax provided the time limits under the law allow it.

WHAT THIS RULING IS ABOUT

Class of person/arrangement or transaction

1. This Ruling applies to persons providing computer services to persons. The Ruling provides guidance as to what are professional services for the purposes of item 11 of Schedule One of the Sales Tax Act Cap 125 (the Act). The Schedule defines professional services for the purposes of the Act and what Goods and Services are subject to sales tax.

RULING

Legislation

2. Section 3 of the Act provides that "Every purchaser of prescribed goods or services shall be charged a tax (to be known as "sales tax") in respect of the use or consumption of such goods or services computed in such amount or at such percentage of the value thereof as may be prescribed by the Minister"

3. Schedule One of the Act provides what are prescribed goods and services on which sales tax should be charged. One item is Professional Services at the rate of 10% of the cost of service as per contract.
4. Professional services is defined to mean all charges, fees and dues generally and reasonably arising from the sale of any professional, technical, advisory or consultancy services rendered and includes amongst other things:
 - (ii) computer services (including sale of computer, package, manuals, maintenance and training);

Is the sale of a computer a professional service chargeable to sales tax?

5. The previous Ruling Sales Tax PR ST 02/2016 advised that the sale of a computer was a “professional service” under the Sales tax law and so was liable to have Sales Tax charged of 10% to the purchaser of the sale value of the computer. An addendum, issued in May 2019, reversed this Ruling.
6. The Commissioner, in the addendum, reexamined his interpretation and considered that it is the services in respect of the sale of the computer that is liable to sales tax rather than the sale value of the computer. The sale of the Computer would generally have Goods Tax imposed on it. Whereas services connected to the sale would have sales tax imposed on them such as services in respect of package, manuals, maintenance and training are subject to sales tax.
7. The Commissioner acknowledged in the addendum that the wording of the definition in Schedule One of the Act of computer services “(including sale of computer, package, manuals, maintenance and training)” implies that sales

tax is charged on sales of computers. However, the Commissioner is of the opinion that the words “services in respect of” should be read into (ii) of the definition of computer services after the word “including”. To read otherwise would be to be imposing sales tax on an item which had already had Goods Tax imposed on it and for which no professional services have been provided. In other words, it would lead to an absurd result of having both goods tax and sales tax imposed on the one event. The Commissioner is of the view that Parliament could only have been intended to make services in respect of the sale of the computer liable to sales tax rather than the sale of the computer itself.

8. The addendum thus clarified that it is the services in respect of the sale of the computer that is liable to Sales Tax rather than the sale value of the computer.

Meaning of “Professional services” in respect of computer services

9. The Professional services connected to the sale such as services in respect of package, manuals, maintenance and training are subject to sales tax.
10. Professional services relating to sale of computers would represent amounts charged for the time spent by a consultant, technician or an advisor for:
 - giving advice to a customer in relation to what computers or packages would be appropriate for their organisation, for example, advice on system requirements or suggested ICT solutions for a particular business environment;
 - preparation of a manual detailing how a computer system operates;
 - the value of services to add commonly used office software such as word processing, spreadsheets, antivirus and games to the computer;

- time spent on maintaining the computer, for example by performing virus scans or cleaning up the directory for the customer;
- time spent providing training on how to use the computers; or
- repair of a computer or its parts.

Date of effect

11. This Ruling applies to sales tax periods commencing both before and after its date of issue. This Ruling does not apply to taxpayers to the extent that it conflicts with the terms of settlement of a dispute agreed to before the date of issue of the final Ruling.

Joseph Dokekana
Commissioner of Inland Revenue
Dated: 31st May 2024

Appendix 1 - EXAMPLE

12. Example 1

Solcomputer Limited imports computers for sale. The computers cost \$2,000 to import. It pays Goods Tax on the cost at the wharf in addition to the import duty. It also imports computer games and pays import duty and Goods Tax.

At its store it unpacks the computers and installs some software into the computer. It then places the computer on display. Eric buys the computer from Solcomputer with the installed software for \$2,500 and requests that Solcomputer installs some computer games which he had purchased onto the computer.

Solcomputer is liable to sales Tax on the value of the services for installing the software to the computer and installing the computer games. It is not liable for sales tax on the value of the computer nor the value of the software and computer games. For example, it takes 1 hour to install the software and games. Solcomputer charges \$100 for this service. Solcomputer should charge Eric \$10 sales tax for the service.

13. Example 2

Eric comes back to Solcomputer one week later and asks for one of its staff to train him on how to use the computer. This takes two hours and Solcomputer charges Eric \$150 for the training. Solcomputer should charge Eric \$15 sales tax for the service.