

E-commerce and VAT in the UAE and in KSA

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E-commerce poses many challenges to legal practitioners and companies alike around the world, and the introduction of Value Added Tax ("VAT") in the United Arab Emirates ("UAE") and in the Kingdom of Saudi Arabia ("KSA") has added an additional layer of complexity that should be borne in mind by all stakeholders.

In this article, we will highlight two of the main issues that usually arise, from a VAT perspective, on the supply of goods or services in the e-commerce industry: (1) where is the supply taxable, and (2) who should account for VAT on the supply.

Place of supply

VAT is typically imposed on consumption that takes place within the territory of the concerned jurisdiction. However, as e-commerce is by its very nature digital, law-makers are required to define in their respective regulations where such supplies are deemed to take place.

We shall distinguish between supplies of goods and supplies of services.

Supplies of goods - general rule

The place of supply for goods depends on whether there is transportation or dispatch thereof:

The place of supply for goods which are not transported or dispatched is, as a general rule, where the supply is made under the UAE rules, or where the goods are situated at the time of supply under the KSA rules.

On the other hand, the place of supply for goods that are transported or dispatched, by the supplier or on

account of the customer, is generally the place where the goods are located when the transportation or dispatch commences. However, the UAE and KSA regulations provide special rules for specific scenarios. For example, where the supply includes transportation of the goods to a customer registered for VAT in another GCC State that has implemented VAT the place of supply is the customer's State.

Finally, there are requirements to evidence the transportation. Failure to comply with such rules or to submit the transportation documentation as requested by the tax authorities may result in the supplier being accountable for VAT in the supplier's State.

Supplies of goods - special rule for distance supplies

As an exception to the above rules, there is a special regime for intra-GCC supplies of goods to customers that are not registered for VAT. The regime is broadly based on the "distance sales regime" under the European Union Directive 2006/112/EC, as amended.

Under the distance sales regime, where a taxable supplier supplies goods with transportation to customers that are not registered for VAT in another GCC State that has implemented VAT, the place of supply is to be considered in the supplier's State if the supplier does not make taxable supplies in that other State above the mandatory registration threshold (as a general rule, SAR 375,000 or its equivalent in other GCC currencies).

However, if the supplies made by that supplier to persons who are not registered for VAT in that other State which has implemented VAT exceed the mandatory registration threshold in that other State, the place of supply of the sales made to those customers shall be in that other State. Accordingly, the supplier will be required to register and to comply with local VAT obligations in that other State.

In short, the distance sales regime allows taxable suppliers to distance-sell goods to customers not registered for VAT in another GCC State which has implemented VAT, without the need to register and account for VAT therein where the taxable supplies do not exceed the mandatory registration threshold in that other State.

This red-tape cutting measure may prove beneficial for small and medium businesses operating across the GCC.

Supplies of services - general rule

The place of supply of services is generally the place of residence of the supplier. However, the place of supply of services supplied to a customer who is registered for VAT is the place of residence of the customer.

Supplies of services - special rules

There are several exceptions to the above general rule on the place of supply of services. However, the key exception for supplies in the e-commerce sector is related to electronic services.

A supply of electronic services is considered to take place in the State where these services are actually used and enjoyed. The determination of the place of the use and enjoyment may not be straightforward; therefore it is recommended that businesses keep as much evidence as possible to demonstrate where the services are used and enjoyed.

The VAT regulations in the UAE and in KSA provide a non-exhaustive list of services that are considered electronic services for VAT purposes, including but not limited to supplies of live streaming via the internet; supplies of music, films and games, and programs on demand; and supplies of software and software updates. Therefore it is important to consider whether the supply of services qualifies as an electronic service.

Accounting for VAT

The person responsible to account for VAT is as a general rule the supplier, except where the goods and services are received from a non-resident supplier and the reverse charge mechanism applies.

An e-commerce supply may involve two, three or even more parties. In a typical transaction, A (supplier or merchant) supplies goods or services through the Internet to B (customer). However, in the recent years, new business models have evolved, and it has become common for a third party, C (known as the marketplace) to be involved in the supply.

In the case of e-commerce, it is important to accurately define the functions performed and risks undertaken by all the parties to a supply. If the agreements are not carefully drafted or reviewed, or if the agreements do not reflect the facts in practice, unintended VAT consequences may arise. For instance, there is a risk that the operator of the online interface or portal acting as intermediary for the non-resident supplier may be required to account for VAT.

Finally, with regard to foreign suppliers with no place of residence in any GCC States that have implemented VAT, there is a risk that they are liable to account for VAT if the supply takes place within a GCC State that has implemented VAT and no other person is required to account for and pay VAT on the supply.

It may be noted that other countries have introduced specific measures to tackle administrative costs and ease the burden of compliance with the VAT rules in e-commerce, therefore facilitating intra-regional trade. In this regard, the implementation of the mini-one-stop-shop (MOSS) by the European Union, whereby taxable persons in one member State are relieved from registering for VAT in other member States –which was initially restricted to the supply electronic services, but is expected to extend to supplies of goods from 2021- may be considered in the future by lawmakers across the GCC.

Final remarks

Whilst the e-commerce industry has expanded significantly over the last decade, after the implementation of VAT in the UAE and in Saudi Arabia, businesses that are involved in e-commerce need to consider the VAT implications of their transactions.

In this regard, it is important for businesses to identify the correct VAT treatment of the supplies and to comply with all the obligations. This includes but is not limited to analysing whether the supplies are in the nature of goods or services; the place of supply; the existence of a place of residence; the applicability of any zero rate treatment; the recovery of input VAT; as well as registration and other compliance obligations.

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