

VAT and Commercial Services

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| Type | Practical Guidance |
| Document type | Practice Note |
| Date | 21 Feb 2023 |
| Jurisdiction | Saudi Arabia |
| Copyright | LexisNexis |

Document link: https://www.lexismiddleeast.com/pn/SaudiArabia/VAT_and_Commercial_Services



Overview

- Pursuant to the International Treaties Common VAT Agreement of the States of the Gulf Cooperation Council (GCC) that has been signed between all member states of the GCC, the KSA has introduced a general tax on consumption, known as VAT, applicable from 1 January 2018 governed by Saudi Arabia Royal Decree No. M113/1438 Amended by Saudi Arabia Royal Decree No. M52/1441 on the Approval of the Value Added Tax Law (Saudi Arabia Cabinet Decision No. 654/1438 On the Approval of the Value Added Tax Law).
- VAT in general is levied on the import and supply of goods and services at each stage of production and distribution.
- This Practice Note discusses the VAT treatment of the commercial services which fall under the scope of VAT.

Definitions

- *VAT*: Value Added Tax levied on the sales of goods and services, and on imports.
- *GCC*: Gulf Cooperation Council, the regional organization consisting of six members, the UAE, Oman, the KSA, Kuwait, Bahrain and Qatar.
- *KSA*: Kingdom of Saudi Arabia.
- *Service*: Anything that is supplied other than goods.
- *Commercial service*: Service which is provided in exchange of consideration.
- *ZATCA*: Zakat, Tax and Customs Authority.
- *Tax Invoice*: An invoice issued in respect of taxable supplies in accordance with the requirements provided for in Saudi Arabia Royal Decree No. M113/1438 (Saudi Arabia Cabinet Decision No. 654/1438) and regulations.

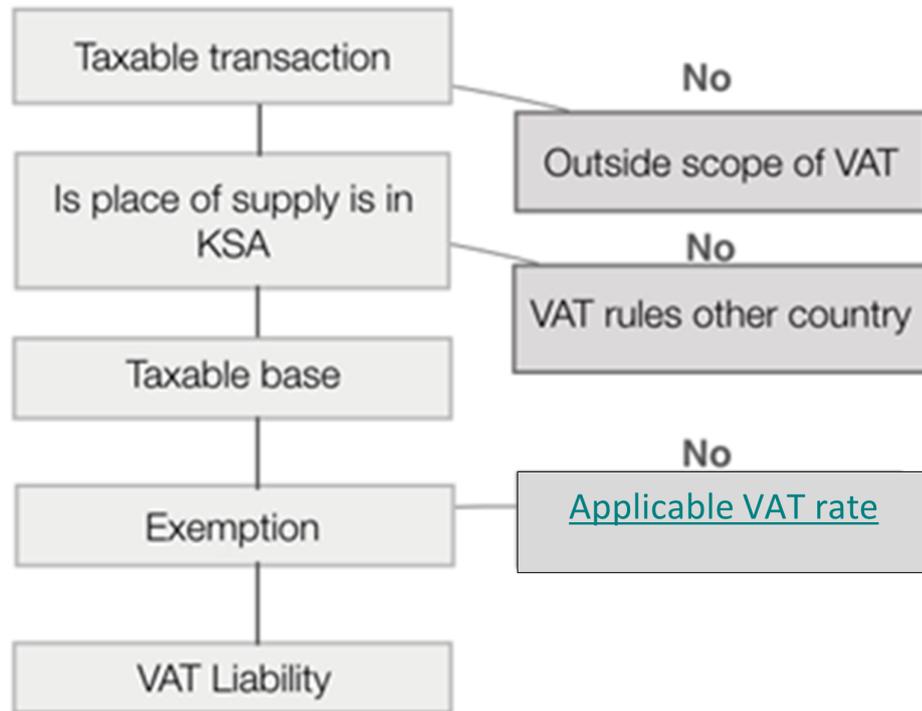
Practical Guidance

VAT on commercial services

- A commercial service means to provide work performed in an expert manner by an individual or team for the benefit of its customers in exchange for consideration. Typical commercial services include accounting, banking, consulting, cleaning, education, insurance, treatment, and transportation services.
- VAT is levied on the imports and supply of goods and services at each step of the supply chain. Therefore, the supply of commercial services is in the scope of VAT.
- VAT is applied at a basic rate of 15% of the value of the supply or import, unless an exemption is provided, or a zero rate is imposed on the same supply.

Determination of VAT liability

The VAT liability in the KSA on any type of commercial service can be determined by following the below steps:



Taxable transactions

- Any commercial service will only fall under the scope of tax if it is supplied by a taxable person, meaning any person (corporation or otherwise) conducting an economic activity for the purpose of generating income and is registered for VAT purposes in KSA.
- Local businesses that are providing services in the KSA must verify whether they have an obligation to register and account for VAT in the KSA. Foreign businesses which are located outside the KSA territory may also be required to get registered if the recipient of the services in the KSA is unregistered for VAT purposes.
- Local businesses will only have to register for VAT once their local turnover has reached the threshold of SAR 375,000 whereas foreign businesses will in principle have to register for VAT in the KSA as from their first supply.

Place of supply of service

- The place of supply means the jurisdiction where the tax is ultimately levied. If the place of supply of the service is determined to be in the KSA, then VAT will be levied.
- For a commercial enterprise providing services to a VAT registered business in the KSA, the place of supply of the services is in the KSA. Whereas if the services are provided to a non-registered business or an individual then tax will be levied as per the location of that commercial enterprise (i.e., the supplier).
- For example, if a UAE business provides consultancy services to a taxable business in the KSA then the place of supply will be in the KSA.
- There are special situations for which the place of supply is determined on a different basis, due to the nature of the business. Examples are:
 - Real estate services: where the real estate is located.
 - Wired and wireless telecommunications and electronic services: where the services are used and enjoyed (e.g., an internet cafe or a hotel).
 - Cultural, artistic, sport, education, and entertainment services: wherever the service is performed.

Taxable base

- The value of the commercial service for the purpose of the calculation of VAT is referred to as the taxable base. The taxable base is the value of the consideration without the tax and the possible value of the non-cash portion of the consideration determined according to the fair market value.
- The value of the supply of service includes all the expenses, due fees and all the taxes including excise tax, but excluding VAT and excludes the discounts, subsidies or any amount already paid on the behalf of the customer for the calculation of taxable base.

Applicable VAT treatment

- By default, 15% VAT will apply on the value of commercial services unless otherwise specified as exempt or zero-rated supply.
- The commercial services supplied by a business in the KSA to a business established abroad should be taxed in the country of the recipient (note however that the legislation mixes place of supply and zero rates). Whereas if the same services are supplied to a GCC country which has implemented VAT (currently only in UAE, Bahrain and Oman) then the services should be subject to a reverse charge mechanism in the country of the recipient.
- Currently though, KSA is disregarding the GCC for VAT purposes. In terms of the reporting, ZATCA requires the taxable persons to report all these types of services to recipients abroad as “zero rated services” (which is technically not the terminology followed in the GCC VAT treaty or the law). However, certain conditions apply such as, the place of residence of the service recipient, place of supply of services, consumption of the services and enjoyment of benefit of the services is determined to be held outside the territory of the KSA or any other and that these services are not related to any tangible goods or property located in the KSA. As well as that the services are received by any customer in the KSA. This means that the services could only be zero rated when it fulfils all these conditions.
- Under the reverse charge mechanism, the supplier will not charge VAT on the supply. The VAT will have to be paid and potentially recovered by the recipient in its VAT return if the reverse charge mechanism applies. If any business (within the KSA) receives a supply from a foreign supplier, it will generally have to apply the reverse charge mechanism and pay VAT itself.

Tax point and tax liability

- The calculation of the tax liability on the service will be due upon the completion of the performance of the service.
- After the determination of the tax liability on the services, the supplier of the services is obliged to pay the tax collected from the customers to ZATCA.
- In case the services are supplied by a non-established foreign business and the recipient of the foreign business is established and registered for VAT in the KSA, the reverse charge mechanism applies.
- For example, in the case a Jordanian consulting company provides services to an IT company in the KSA, the place of supply will be located in the KSA and accordingly VAT will be due. The IT company is established, and VAT registered in the KSA, the reverse charge mechanism will in principle apply and VAT will have to be accounted for by the IT company.

Restrictions on the input tax deduction of certain taxable commercial services

A taxable business can deduct input VAT, meaning VAT paid on goods or services purchased from registered suppliers. However there are certain services which are taxable but the taxable business are not permitted to deduct input VAT paid on these services. This includes, sports, entertainment, or cultural services, catering services in hotels, restaurants and similar venues, services related to vehicles that are not exclusively for company purposes and if the services are used for non-business purposes.

Taxpayers

A taxable person in the KSA is defined as a person who engages in an economic activity for the purpose of generating income and is registered or is required to register for VAT in the KSA .

A. Required registration:

Registration is required for all residents of the KSA whose annual taxable turnover exceeds a certain threshold.

If a resident's taxable supplies exceed SAR 375,000 (the "mandatory VAT registration threshold") in a calendar year, that person must register for VAT. This is subject to the transitional provisions provided for in Saudi Arabia Administrative Decision No. 3839/1438 on the Approval of the Implementing Regulation of the VAT Law, which apply during the 2018 calendar year and exempt residents with less than SAR 1,000,000 in annual revenue from mandatory registration until 2019.

B. Optional registration:

A person residing in the KSA whose annual taxable turnover exceeds SAR 187,500 (optional registration threshold) in 12 months can register for VAT.

Registration is preferred if this person wants to claim the VAT paid for his expenses prior to issuing invoices or making a subsequent supply.

Application for registration

1. An application for registration must be made by completion of the form prescribed by ZATCA.
2. Any application must contain the required information by Saudi Arabia Royal Decree No. M113/1438 (Saudi Arabia Cabinet Decision No. 654/1438) .
3. ZATCA may request the taxable person to provide documentation, in electronic or physical form, to verify that the information in the application is valid and that the taxable person is eligible to be registered. The said taxable person must be given 20 days, as a minimum, from the date of request to provide this documentation.

4. ZATCA may refuse an application for registration where it does not have evidence that the application is valid or that the taxable person is eligible to be registered. A notification of refusal must be provided to the taxable person making the application.
5. Upon acceptance of the registration, the Authority will issue a certificate of registration to the taxable person in a notification. This certificate will state the date on which the registration takes effect and their tax identification number.
6. ZATCA will maintain a register containing the relevant details of all taxpayers who are registered in the KSA.
7. Where any of the taxable person's information changes from that provided in the application or otherwise currently recorded, that person is required to notify the Authority of the change within 20 days of that change taking place.
8. A resident who is a taxable person and is registered with ZATCA must display the registration certificate at such taxable person's main place of business and branches in a manner that is visible to the public.

Tax obligations

Issuance of tax invoices

A supplier must issue a tax invoice for each taxable supply in favor of another person registered for VAT purposes or to any legal person who is not subject to tax no later than 15 days after the end of the month in which the supply is made. Each taxable person must also issue a simplified tax invoice if the value of the supply is less than SAR 1,000.

As for supplies made by taxable persons to non-taxable natural persons, the taxable supplier must issue an invoice in the same format as the simplified invoice for supplies, and in both cases the invoice must be issued no later than 15 days after the end of the month in which the supply takes place. The tax invoice must clearly include some data and information such as the date of the invoice, the tax identification number of the supplier, the taxable amount, the applicable tax rate, and the amount of VAT charged. If different rates are applied to supplies, the value of each item must be determined separately, as well as the VAT applicable to that item.

A tax invoice may be issued in the form of a commercial document (such as a ticket receipt) provided that this document includes the requirements for issuance of a tax invoice and a simplified invoice contained in the implementing regulations of the law. All tax invoices are not required for supplies that fall outside the scope of VAT in the KSA.

Tax identification number

All persons carrying on an economic activity who are registered for VAT purposes will receive a tax identification number issued by ZATCA.

Supplier's domicile

In many cases, the rules regarding the place of supply are determined by the place of residence of the supplier or customer. The term "resident" includes a resident company if it is incorporated under the laws of the KSA or if its center of administration is in the KSA. If a company or any other legal person is incorporated outside the KSA, and it has a branch, workplace, or any other form of fixed establishment in the KSA, then this company is considered a resident company inside the KSA.

Imposing VAT

When a resident supplier makes taxable supplies. It is his responsibility to register for VAT purposes (if required) and to charge VAT at the appropriate rate, and the registered supplier must issue a tax invoice for each taxable supply. If services are supplied from a non-resident supplier to a resident customer who is registered for VAT in the KSA, the non-resident supplier does not impose VAT, but the recipient bears the responsibility of calculating the tax through the reverse charge mechanism and declaring VAT (according to the imposed rate).

Submission of VAT returns

Each person registered for VAT purposes, or the person authorized to act on his behalf, must submit a VAT return to the ZATCA for each monthly or quarterly tax period as the case may be). The tax return is a self-assessment by the taxable person of the tax due for that period.

Monthly tax periods are mandatory for persons subject to VAT whose annual revenue exceeds SAR 40 million. While the normal tax period for the rest of the persons subject to VAT is three months.

VAT return must be completed and the net VAT due must be paid no later than the last day of the month following the end of the tax period to which the VAT return relates. More details on filling in VAT returns will be provided in a separate guide.

Record keeping

All persons subject to VAT must maintain appropriate tax records relating to the calculation of VAT for audit purposes. This includes any documents used to determine the VAT due on each transaction and in the VAT return.

Certificate of registration in the value-added tax system

A resident taxable person registered with ZATCA in VAT system must display the tax registration certificate for his registration at his main workplace and all its branches, in a manner, so that it is visible to the public.

Request for an explanatory decision

In the event that you are not sure of how VAT will be applied to a specific activity or transaction that you undertake or intend to carry out, after reviewing the relevant legal provisions and guidelines, the taxable persons can apply to ZATCA to obtain an

explanatory decision, provided that the application includes: all facts relating to the specific activity or specific transaction that you would like ZATCA to consider.

Correction of previous errors

If the taxable person finds that there is an error or incorrect amount included in his submitted tax return, or he fails to comply with any tax obligation, ZATCA must be notified, and the error must be corrected by amending the tax return.

If the error is one of the errors that results in a tax difference in net value of more than SAR 5,000, the taxable person must notify ZATCA within 20 days of his realization of this error or incorrect value and amend the previous declaration. As for small errors that result in a tax difference less than SAR 5,000, the error can be corrected by adjusting the net tax in the next tax return.

| Tax violations | Penalties |
|---|--|
| 1. Submitting incorrect documents with the intention of evading paying the due tax or paying a value less than the due tax | <ul style="list-style-type: none"> • Not less than the value of the tax due • It shall not exceed 3 times the value of the goods or services |
| 2. Transporting goods to or from the Kingdom without paying the due tax | <ul style="list-style-type: none"> • Not less than the value of the tax due • It shall not exceed 3 times the value of the goods or services |
| 3. Failure to register with the tax during the period specified for registration | <ul style="list-style-type: none"> • SAR 10,000 |
| 4. Submitting an erroneous tax return, or amending a tax return after submitting it, or submitting any document to the Authority related to the tax due on it, which resulted in an error in calculating the amount of tax less than the due amount | <ul style="list-style-type: none"> • 50% of the value of the difference between the tax calculated and the tax due |
| 5. Failure to submit the tax return on time for not paying the tax on time | <ul style="list-style-type: none"> • 5-25% of the tax that was required to declare |
| 6. Failure to pay tax on time | <ul style="list-style-type: none"> • 5% of the tax due for each month or part thereof |
| 7. Tax collection without registration | <ul style="list-style-type: none"> • A fine of up to SAR 100,000 |
| 8. Failure to keep records and books as specified in the regulations | <ul style="list-style-type: none"> • A fine of up to SAR 50,000 |
| 9. Obstructing the Authority's employees from performing their duties | <ul style="list-style-type: none"> • A fine of up to SAR 50,000 |
| 10. Violating the provisions of the executive regulations or the value-added tax system | <ul style="list-style-type: none"> • A fine of up to SAR 50,000 |

Related Content

Legislation

- Saudi Arabia Administrative Decision No. 3839/1438 on the Approval of the Implementing Regulation of the VAT Law
- Saudi Arabia Cabinet Decision No. 257/1438 on the Approval of the GCC Unified VAT and Selective Tax Agreements
- Saudi Arabia Royal Decree No. M113/1438 Amended by Saudi Arabia Royal Decree No. M52/1441 on the Approval of the Value Added Tax Law
- Saudi Arabia Cabinet Decision No. 654/1438 On the Approval f the Value Added Tax Law.

Regulations

- International Treaties Common VAT Agreement of the States of the Gulf Cooperation Council (GCC)

Guidance^[1 p.8]

- [Kingdom of Saudi Arabia VAT Manual Version 1](#) ^[1 p.8]
- https://zatca.gov.sa/en/RulesRegulations/VAT/Documents/VAT_Guideline_Agents_EN.pdf
- https://zatca.gov.sa/en/eServices/Pages/eServices_007.aspx

Authors

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Education

- Mini MBA, Kings College London, UK
- Specialist Certificate in Corporate Governance, University of Manchester, UK
- Doctor of Legal Practice, Nottingham Law School, Nottingham, UK
- Specialist Certificate (BA Equiv.) Arabic and Foundations of Islamic Sharia, Umm Al-Qura University, Makkah, KSA
- LPC, College of Law, Birmingham, UK
- LL.B (Hons.), Law with Business, University of Birmingham, Birmingham, UK

Memberships

- Admitted as a Solicitor of the Senior Courts of England and Wales
- Admitted as a Member of the Chartered Institute of Arbitrators (MCIArb)
- Admitted as an Associate of the International Compliance Association (AICA)
- Admitted as a Member of the Association of Corporate Counsel (ACC)
- Member of the British Association of Islamic Studies (BRAIS), International Chamber of Commerce- Young Arbitrators Forum (ICC-YAF), International Society for Islamic Legal Studies (ISILS), Legal Education Research Network (LERN) and The Society of Legal Scholars (SLS)

Biography

Dr. Sairah Narmah-Alqasim is a British lawyer and academic with over 15 years of professional experience in the United Kingdom (UK) and the Kingdom of Saudi Arabia (KSA). Dr. Narmah-Alqasim has trained at top 20 international law firms in the UK and acted as in-house counsel in the dispute resolution department at one of the world's largest international banks. Dr. Narmah-Alqasim is a former Vice Dean of one of the largest law schools in Saudi Arabia and holds a Doctorate in Legal Practice. She is currently based in KSA as a Senior Legal Consultant at Dentons KSA. She advises clients on a range of corporate, commercial and litigation matters. She also leads Knowledge Management for Dentons KSA and provides managerial support in the Jeddah KSA office.

Raghad Alamoudi

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Education

- Bachelor of Law, Dar Al-Hekma University, KSA

Memberships

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Biography

Raghad Alamoudi is a Trainee Lawyer at Dentons, Jeddah, KSA office in the Corporate, Banking and Finance sector. She is registered with the Ministry of Justice and a member of the Saudi Bar Association. She graduated from Dar Al-Hekma University with a Bachelors of Law degree and worked in both local and international firms.

Notes

1. ^{^ [p.6] [p.6]} https://www.vat.gov.sa/sites/default/files/2017-11-2/VAT_Manual_English_16_Nov.pdf
2. ^{^ [p.7]} sairah.narmahalqasim@dentons.com
3. ^{^ [p.7]} <mailto:sairahalqasim@hotmail.com>