# VAT and roaming in the GCC

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TMT issue update

Generally, VAT applies on the provision of telco services at the standard rate (five percent). The UAE VAT rules contain zero-rating provisions for telco services provided to a non-resident telco provider or where initiated outside of the GCC by a non-resident person who is not a telco provider. These specific zero-rating provisions are absent from the Saudi and Bahraini VAT rules. There is no specific relief or exemption in the UAE, Saudi or Bahrain legislation for roaming customers.

## Place of supply rules for telco services

- According to the GCC VAT treaty, the place of supply for wired and wireless telco services is where those services are used or enjoyed. This means the place of supply (and the allocation of taxing rights) is determined by where the user is situated when they use or enjoy the services – not necessarily where they habitually reside.
- The Saudi, Bahrain and UAE VAT legislation contains similar provisions.
- The place of use and enjoyment of a telco service can be determined by a fixed location, the country code on the SIM or - where the service is related to international roaming - the country of the mobile network.
- If telco providers have customers roaming in Bahrain, Saudi Arabia or the UAE, they may be required to register and account for VAT in those countries (assuming the customer is not VAT-registered). There is no registration threshold for non-resident businesses - so the registration liability is triggered by the first roaming customer.

## How do other jurisdictions manage these rules?

- The EU has comparable rules which permit member states to treat telco services as taking place in the country where the consumer is located at the time the services are used and enjoyed.
- The EU VAT system allows businesses required to register for VAT in the EU to register in one EU state under a special regime called the "mini-one-stop shop" (MOSS) to avoid requiring telco providers to register in every EU country separately.
- The MOSS VAT return allows businesses to charge the appropriate local VAT rates and to file a single consolidated VAT return in a single EU jurisdiction known as 'the member state of identification'.
- The GCC VAT treaty does not provide for a comparable registration system – meaning telco providers may potentially need to register in every GCC state where they have roaming customers and which has implemented VAT.
- Prior to 1 November 2017, the UK's use and enjoyment provisions required foreign non-EU telcos with roaming customers in the UK to register and account for VAT subject to a limited incidental use exception. Where UK B2C customers used and enjoyed telco services outside the EU, these supplies were treated as outside the scope of UK VAT.
- To simplify the VAT treatment, the UK changed the rules effective 1 November 2017 to apply VAT based on the usual place of residence of the B2C customer. After the change, UK VAT is no longer applicable to telco services used and enjoyed in the UK by non-UK B2C customers and VAT applies on supplies made to UK resident B2C customers regardless of where the services are used and enjoyed. With the change, the UK now falls in line with the treatment adopted in most EU countries.

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## What about the Melbourne Agreement?

- The GCC countries (with the exception of Bahrain) are signatories to the International Telecommunications Regulations prescribed by the International Telecommunications Union (often referred to as the Melbourne Agreement) which dictate that taxes should only be collected in respect of international services billed to customers in that country.
- Effectively, the purpose of the Melbourne Agreement is to make international telecommunication supplies made under arrangements for global roaming and provided to customers of a foreign telco (while they are roaming in that country) not subject to VAT.
- However, where the place of use and enjoyment can be established and a physical presence is required (this clearly applies to phone calls made in Bahrain), the Bahrain VAT legislation indicates that the place of supply is Bahrain. Saudi Arabia has similar rules.
- As Bahrain is not a party to the Melbourne Agreement, Saudi Arabia or the UAE may not extend the right of non-taxation to customers of Bahraini telcos with roaming customers.
- The Melbourne Agreement doesn't prevent non-resident telcos from having to register in the GCC states. Ultimately, it is up to each country to adopt provisions to not create a tax point in such scenarios.
- For example, Australia has amended its GST (VAT equivalent) legislation to make certain supplies VAT-free:
  - The supply made by an Australian telco to a foreign telco of use of its network in respect of the foreign telco's roaming customers visiting Australia
  - The supply of global roaming facilities in Australia made by the foreign telco to its customers while roaming in Australia
- The UK - as noted earlier - has made similar amendments

## Next steps for telcos with roaming customers

- Unless Bahrain, Saudi Arabia and the UAE amend their current VAT legislation or the tax authorities across the GCC implement an arrangement similar to the EU's MOSS, telcos across the GCC and elsewhere who have roaming customers in Bahrain, Saudi Arabia and the UAE should consider whether they are required to register for VAT in the relevant country (if they haven't already done so).
- Roaming charges are technically subject to Bahraini, Saudi and UAE VAT (unless the customer is registered for VAT in that GCC state – those customers should self-account by reverse charge).
- Where VAT applies, telcos are required to issue tax invoices that are compliant with national VAT legislation. In Saudi Arabia, this means issuing tax invoices in Arabic.
- Non-resident suppliers required to register for Saudi VAT must appoint a tax representative - including telcos. This does not apply to Bahrain or the UAE.