VAT brief | Issues for directors

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Saudi Arabia and the UAE implemented VAT on 1 January 2018. Bahrain has confirmed implementation on 1 January 2019, with the other GCC countries expected to follow over the next 12 months. Business leaders should now be more aware than ever that we have entered a new tax era. Key decision makers in the UAE, Saudi Arabia and Bahrain need to ensure their processes and systems are - and remain - VAT-compliant, while their counterparts in the other GCC states need to start preparing now for the implementation of VAT.

What is VAT?

- VAT is a tax on consumption.
- The GCC countries have agreed a standard VAT rate of five percent.
- The supply of goods and services can be exempt, zero-rated or standard-rated (five percent), or out of scope.
- The mandatory registration threshold is the equivalent of US$100,000 - as set out in the GCC VAT treaty. The voluntary registration threshold is the equivalent of US$50,000.
- Registered businesses account for VAT on the price charged for the goods or services they supply and pay it to the tax authority on a regular basis.
- Registered businesses should (where the supplies they make are either standard- or zero-rated or out of scope with recovery) be able to recover the VAT they have incurred in the course of making those supplies.
- Registered businesses that make supplies that are exempt from VAT cannot recover the VAT they have incurred in the course of making those supplies.
- Registered businesses may not be able to recover the VAT they have incurred on certain purchases that are deemed to have a private element.
- Registered businesses that make supplies that are predominantly zero-rated are likely to be in a VAT refund position.
- Businesses that make both exempt and taxable supplies can only recover a proportion of their input VAT.

Which legal provisions impact directors?

- The Unified VAT Agreement for the Cooperation Council for the Arab States of the Gulf (the GCC VAT treaty) sets out the conditions for mandatory VAT registration.
- Article 50 of the GCC VAT treaty states: A *taxable person shall be obliged to register if:*
  - *He is resident in any member state*
  - *The value of his annual taxable supplies in that member state exceeds or is expected to exceed the mandatory registration threshold.*
- Subsection 2 of Article 50 of the treaty defines the annual mandatory registration threshold (MRT) as the equivalent of US$100,000.
- In Article 1, the GCC VAT treaty defines:
  - **Taxable person:** A person that conducts an economic activity independently for the purpose of generating income, who is registered or obligated to register for VAT in accordance with the provisions of this agreement
  - **Person:** Any natural or legal person, whether public or private, or any other form of partnership
  - **Economic activity:** An activity that is conducted in an ongoing and regular manner including commercial, industrial, agricultural or professional activities or services or any use of material or immaterial property and any other similar activity.

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What does this mean in practice for directors?

- Saudi Arabia and the UAE have both confirmed that directors are considered to be taxable persons where total taxable income from directorships – they may be directors of more than one company - exceeds the annual MRT of US$100,000 (this includes directors' fees received from other countries outside the jurisdiction - once all six GCC countries implement VAT, fees received from other GCC countries will not count towards the threshold).
- As the definition of person includes individuals, where individuals conduct an economic activity - including consultancy and advisory services - on an ongoing or regular basis which exceeds the MRT, those individuals will be required to:
  - Register for VAT
  - Charge VAT to their customers – the companies they are directors of
  - Account for VAT to the tax authority
  - Submit periodic VAT returns
- Directors are therefore required - subject to exceeding the MRT - to register with the tax authority and account for VAT.
- This should not apply to directors who are in an employer-employee relationship - such as company CEOs who serve on the board of that company.
- In the absence of a specific exclusion in the Bahrain VAT regulations (which have not yet been released) or guidance from the Bahrain tax authority, directors should expect to face the same issue in Bahrain.
- The UAE's FTA has issued a guide for directors.

Liability

Directors are liable for the actions of their companies. Where a corporation commits a taxation offence, a person who takes part in the management of the corporation (such as a director) may be considered to have committed the taxation offence and may be punishable accordingly. Directors can become personally liable for tax evasion or administrative delays by the businesses on whose board they sit.

To discuss your responsibilities - and liability - as a director of a Bahrain company, contact a VAT specialist on the Keypoint tax team.

Important note