VAT brief | Issues for directors

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We have entered a new tax era. Saudi Arabia and the UAE implemented VAT on 1 January 2018. Bahrain implemented - for businesses with taxable turnovers above BD5m - on 1 January 2019 - with other businesses going live on 1 July 2019 or 1 January 2020. Other GCC countries are expected to follow. Key decision makers in the UAE, Saudi Arabia and Bahrain need to ensure their processes and systems are - and remain - VAT-compliant, while their peers in other GCC states need to start preparing now for VAT's implementation.

What is VAT?

- The GCC countries have agreed a standard VAT rate of five percent.
- Supplies of goods and services can be exempt, zero-rated or standard-rated (five percent), or out of scope.
- The mandatory registration threshold (MRT) is the equivalent of US$100,000. The voluntary registration threshold is the equivalent of US$50,000. Bahrain has staggered VAT's introduction.
- Registered businesses account for VAT - a consumption tax - on the price charged for the goods or services they supply and regularly pay the VAT to the tax authority.
- Where registered businesses make supplies that are standard- or zero-rated or out of scope with recovery, they should be able to recover the VAT they have incurred in making those supplies.
- Registered businesses making supplies that are exempt from VAT cannot recover the VAT they have incurred in the course of making those supplies.
- Registered businesses may be unable to recover VAT incurred on purchases that are deemed to have a private element.
- Registered businesses making 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 GCC VAT treaty sets 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 (MRT) – defined in subsection 2 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?

- In Saudi Arabia, Bahrain and the UAE, directors are considered to be taxable persons where total taxable income from directorships – as 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 – although, once all the GCC countries implement VAT, fees received from other GCC countries will not count towards the threshold.
- However, the General Authority of Zakat and Tax (GAZT) recently stated that directors have been assessed as not completely independent of the company they represent and so do not count as persons subject to tax and therefore do not need to separately register for Saudi Arabian VAT purposes.
- Prior to this announcement, directors were expected to register for VAT in respect of their board remuneration. GAZT's announcement is retrospective so directors who have already registered and lodged VAT returns will need to assess their situation.
- Directors should, however, also assess whether they have a registration requirement due to their other business activities.
- Elsewhere, 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 – (that is, the companies they represent as directors)
  - Account for VAT to the tax authority
  - Submit periodic VAT returns
- Other than in Saudi Arabia, 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.
- The UAE's FTA has issued a guide for directors which confirms their requirement to register.

What liability are directors exposed to?

- Directors can be held 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. Under Bahrain's VAT legislation, directors can become personally liable for tax evasion or administrative delays by the businesses on whose board they sit.