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VAT Guide on B2B services into and from the UAE

This study covers VAT for services in the business sector. Digital (electronic) services are outside the scope of this research and will soon be addressed separately.

VAT exemption issues are not within the scope of this research. Neither is the reverse charge mechanism.

Zero-rating is addressed thoroughly but only for cases where services are exported.

The UAE is the subject of the study. However, rules and guidance from other GCC states (Saudi Arabia, Oman, Bahrain) are borrowed where this helps to obtain clarity on the UAE's turf.

Reference to a VAT Implementing State in the transitional period

1. The VAT Law and VAT Executive Regulation contain special treatment for intra-GCC[1] supplies named as supplies in or from Implementing States. They hinge on the Common VAT Agreement of the GCC States.

   The UAE, KSA, Oman and Bahrain have already implemented VAT. Qatar and Kuwait haven't.

   However, intra-GCC trade rules are for the future, at most, even for those four states which have already implemented VAT. Article 70(15) of the VAT Executive Regulation sets forth a transitional rule that '*a GCC State shall be treated as an Implementing State according to the provisions of the Decree-Law and this Decision if the following conditions are met:*

   a. *Where the GCC State treats the State similarly as an Implementing State in its published legislation.*

   b. *Full compliance with the provisions of the Common VAT Agreement of the States of the GCC'*.

   As per the FTA's VAT Public Clarification VATP019 '*currently, the UAE does not recognise any other state as an "Implementing State" for the purposes of VAT. Consequently, the first condition for zero-rating (i.e. that the recipient of services should not have a place of residence in an Implementing State) will be satisfied if the recipient does not have a place of residence in the UAE*'.

   The FTA substantiated this approach with arguments as follows:

   1) Article 1 of the VAT Law '*defines "Implementing States" as "GCC States that are implementing a Tax law pursuant to an issued legislation"*.

   2) *Article 70(15) of the Executive Regulation states that a GCC State shall be treated as an Implementing State if the GCC State treats the UAE similarly as an Implementing State in its published legislation, and is in full compliance with the provisions of the Common VAT Agreement of the … GCC…'*.

   The Oman Tax Authority (OTA) shares this position. For example, in Sec. 2(i) of its Guide for VAT on Financial Services, the OTA defines a "*GCC Member State*" as '*any other member state of the GCC .., provided this state has fully implemented the provisions of the Unified VAT Agreement ... At the time of*

[1] Cooperation Council for the Arab States of the Gulf comprising the UAE, KSA, Oman, Bahrain, Qatar, Kuwait.

issue, no states have yet fully implemented this Agreement. During this transitional period, all Gulf States should be treated as third country states'.

ZATCA sheds more light on this in Section 9.5 of its VAT General Guideline: '*The Unified VAT Agreement lays down special rules for VAT to be applied to internal supplies between the countries of the GCC States, which are designed to harmonize the application of VAT on cross-border trade and ensure VAT is only payable once on each supply of goods and services. These rules are designed* ***to work with all six states of the GCC having a domestic VAT law in place, and with an Electronic Service System to capture details of cross-border transactions in the GCC States****.*

Upon the introduction of VAT in the KSA on 1 January 2018, not all GCC states had a domestic VAT in place, and there was not an Electronic Service System in place on this date. ***Transitional provisions therefore apply to the supply of goods to and from KSA from all other GCC States, from the introduction of VAT in the KSA until the Electronic Service System is fully implemented****. These rules apply regardless of whether other GCC States have a domestic VAT system in place.*

The special rules apply until GAZT releases an Order to certify that the Electronic Service System is in place*… Until this time, as a transitional measure: … Services provided to or from a resident of a GCC State will be considered to be provided to or from a non-GCC resident*'.

The Bahrain National Bureau for Revenue in Section 19.4 of its VAT General Guide[2] clarifies that '*the status of Implementing State is given by the VAT Law to a GCC Member State that has implemented a national VAT legislation compliant with the Framework* ***and that recognizes Bahrain as an Implementing State****.* ***In this respect, an announcement of the GCC Member States recognized by Bahrain as Implementing States for VAT purposes will be made by the NBR****'.*

The transitional rule included in the Preliminary remarks to this Guide sets forth '*that* ***Bahrain does not currently recognize any other GCC member states as Implementing States*** *for the purpose of VAT. Until further notice, any transaction involving another GCC member state is treated, for VAT purposes,* ***as a transaction involving a non-Implementing State***'.

Hence, the rules referred to intra-GCC trade are generally put on hold. All GCC members treat each other as non-Implementing States. However, in the UAE, the reference to an Implementing State is not totally disabled in the Transitional Period. The definition of an Implementing State and the GCC states in the UAE includes the UAE itself.[3] This allowed the FTA to conclude in VATP019 that '*currently, … the first condition for zero-rating (i.e. that the recipient of services* ***should not have a place of residence in an Implementing***

[2] Version 1.8, updated November 16, 2023
[3] Article 1 of the VAT Executive Regulation.

***State**) will be satisfied if the recipient **does not have a place of residence in the UAE**'.*[4]

This approach is not common in the GCC. For example, the KSA doesn't apply a similar exception reserved for a case where customer resides in an Implementing State. ZATCA clarifies: '*The first case concerns services supplied to Taxable Persons who are Resident in any other Member State, and registered for VAT in that other State. The place of supply for these services is the Member State where the Customer has its Place of Residence. This exception applies only after the full implementation of GCC VAT*'.[5]

As we may see, the Kingdom recognizes a rule which is akin to those in Art. 30(1) of the UAE VAT Law but in the transitional period negates it wholly instead of replacing therein a Member State with the Kingdom.

2. The position of the FTA and other Gulf tax authorities has recently been exposed to a different interpretation in the UAE Federal Supreme Court's Judgement of 20 September 2023 on Appeal No. 1006 of 2022. In this case the Saudi appellant claimed for a VAT refund of tax paid in the UAE. As I may assume from the judgment, the reasoning of the claim had been based on:

   Article 75 which allows the FTA to '*return Tax paid for any supply received by … a Non-Resident of the State **or an Implementing State** [that is] conducting Business and is not a Taxable Person*'.

   Article 67(1) of the UAE VAT Executive Regulation obliges the FTA to '*implement a Businesses VAT Refund Scheme for Foreign Businesses to allow the repayment of Tax on expenses incurred in the State by a foreign entity which has no Place of Establishment or Fixed Establishment in the State **or the Implementing State**, and is not a Taxable Person*'.

   If the position of the FTA applies, then a KSA resident is within the scope of this article and is in a position to request a refund. However, the Supreme Court decided this:

   - '*The appellant acknowledged in their lawsuit that they imported and introduced their equipment into the United Arab Emirates from the Kingdom of Saudi Arabia for the purpose of repair, and, consequently, they were charged with VAT for repair services from a local supplier in the UAE and for their purchase of certain goods.*
   - *Therefore, the provision of Article 75 of the same law, which allows the authority to exempt a taxpayer from this tax **if they are from a GCC country that does not implement this tax**, does not apply to them. This is because, according to the Unified VAT Agreement for GCC countries and the appellant's acknowledgment in their appeal … **Saudi Arabia***

[4] Bahrain's NBR provides for the same treatment in Section 5.4.2 of its VAT General Guide (p. 33).
[5] Section 3.1 of the ZATCA Guideline "Supplies of Services To Non-GCC Residents"

***implements the VAT law, which is evidenced by Saudi Royal Decree** No. M/113 dated 2/11/1438 H and amended by Royal Decree M/52 dated 28/4/1441 H and Royal Order No. A/638 dated 5/10/1441 H.*

- *Moreover, the non-applicability of Article 67 of the Executive Regulations of this law, issued by Cabinet Resolution No. 52 of 2017, … requires for the exemption eligibility that the supply should not have a place of supply in the state **or belong to a GCC country that does not implement the VAT.** Consequently, the appellant does not meet the legal conditions for exemption, making their second reason for appeal, regarding **not considering Saudi Arabia as a country that does not implement the VAT law**, irrelevant*'.

There is no assessment of the FTA's arguments in the Judgment. The most substantial among them is Art. 71(15) of the UAE Executive Regulation. Paragraph (a) thereof obstructs one from treating as an Implementing State a GCC State that doesn't treat the UAE '*similarly as an Implementing State in its published legislation*'. However, ZATCA doesn't treat the UAE in this way: '*Services provided to or from a resident of a GCC State will be considered to be provided to or from a **non-GCC resident***' '*until GAZT [i.e. now ZATCA] releases an Order to certify that the Electronic Service System is in place…*' (see above).

There is not much available information on the case. The Court mentions that the appellant recognized that the Kingdom has implemented VAT: '*This is because, according to the Unified VAT Agreement for GCC countries and the **appellant's acknowledgment** **in their appeal** … **Saudi Arabia implements the Value Added Tax law***'. Maybe this was a reason for leaving the above rationale of the FTA without assessment. Perhaps it was because the appeal for which the Judgment was issued is eventually dismissed by this judgment due to procedural issues. Anyway, since there is no development of this precedent, further consideration in this research will hinge on the position put forward by the FTA.

The GCC Common VAT Agreement

3. The Agreement mentioned above '*aims to establish a **common legal framework** for the introduction of a general tax on consumption in the GCC known as (VAT) levied on the import and supply of Goods and Services at each stage of production and distribution*'. In the Saudi VAT Law the adjective in the name of the Agreement is translated as "Unified"[6] instead of "Common" which, I think, better emphasizes that its goal is the unification of the rules.

   The Bahrain VAT Law defines 'the Unified Agreement' as 'the Framework'.

   The Saudi VAT Law contains provisions to honor the relationship between the GCC agreement and local legislation. In particular:

[6] The same translation is given in the Sultan of Oman's Decree No. 67/2003 and in Legislative Decree No. 47/2018 of the King of the Kingdom of Bahrain.

- Art. 1(2) stipulates that, except as provided in this article, '*words and phrases used in the Law shall have the meanings given to them in the Agreement*'.
- Article 2 sets forth that *'tax shall be imposed on the import and supply of Goods and Services in accordance with the provisions stipulated in the Agreement, the Law and the Regulations'.*
- Pursuant to Art. 13, *'the Regulations shall determine the terms and conditions required for determining the place of Supply of Goods and Services according to the provisions of the Agreement'.*

The KSA VAT Implementing Regulation is even more straightforward. Article 31(1) sets out that '*the supplies of goods and services listed in this Chapter **shall be zero-rated according to the Agreement** and Law*'.

Neither the UAE VAT Law nor the VAT Executive Regulation comprises similar provisions. However, Article 70(15)(b) of the VAT Executive Regulation sets out that '*a GCC State shall be treated as an Implementing State … if the following conditions are met: … b. **Full compliance with the provisions of the Common VAT Agreement***'. The FTA in Public Clarification VATP019 stipulated that '*currently, … the first condition for zero-rating (i.e. that the recipient of services **should not have a place of residence in an Implementing State**) will be satisfied if the recipient **does not have a place of residence in the UAE***'. Since the UAE qualifies the definition of an Implementing State, its legislation shall be recognized as fully compliant with the Common VAT Agreement.

In practice, this gives a sound reason to fill a gap in the guidance in one GCC member with existing guidance from another.

However, in doing so, consideration should be given to the following:

1) UAE legislation could contain relevant rules with wording which substantially differs from the wording of pertinent rules in the regulation of other GCC jurisdictions. If this is the case, the relevance of the discrepancy should be assessed to ensure a fair judgement on whether a clarification from a different jurisdiction is acceptable.
2) UAE legislation may provide rules which substantially differ from the GCC Common VAT Agreement or are absent therefrom. However, another GCC State may be silent on this. In such scenario, there is no direct contradiction between the UAE and this State's legislation. However, an indirect contradiction is enough to substantiate an additional check for whether a clarification from the other State is applicable in the UAE. In such a case, the relevance of the discrepancy between UAE legislation and the Agreement shall be tested.

Place of supply for services

4. There are two consequent steps to be examined for VAT treatment of the services in the UAE:

   1) a place of supply, and

   2) an applicable tax rate.

5. For a supply to be within the scope of the UAE VAT regime, the supply needs to take place in the UAE. If a supply takes place outside UAE, the supply is treated as outside the scope of UAE VAT and therefore UAE VAT will not apply.[7]

   Supplies '*that are not subject to UAE VAT are not considered taxable supplies, and therefore do not require a tax invoice*'.[8] Section 5.3.2 of the Taxable Person Guide VATG001 excludes supplies placed outside of the UAE from the scope of VAT and definition of Taxable Supplies. Therefore, tax invoice is not required for the services with place of supply outside of the UAE.

   Article 19 of VAT Law[9] includes in calculation for 'Mandatory Registration Threshold and the Voluntary Registration Threshold' '*the value of taxable Goods and Services*…'. Services with place of supply outside of the UAE are not taxable. Therefore, they may not be included in such calculations.

   In contrast, zero-rated supplies produces zero output VAT as well but their value counts towards registration thresholds.

6. It is not fair to say that out-of-State supplies are VAT neutral. As per Art. 54.1(b) of the UAE VAT Law, recovery is permitted of '*Input Tax … paid for Goods and Services which are used or intended to be used for … Supplies that are made outside the State which would have been Taxable Supplies had they been made in the State*'.

   Article 54(1) of the VAT Law permits the recovery of Input VAT even for certain '*supplies … that are made outside the State, which would have been treated* ***as exempt had they been made inside the State****'*. Clause 1 of Article 52 of the VAT Executive Regulation covers by this allowance '*the supplies of financial Services, where the place of supply of these Services is treated as outside the State and the Recipient of Services is outside the State at the time when the Services are performed*'.

7. Clause 1 of Art. 29 of VAT Law sets out that '*the place of supply of Services shall be the Place of Residence of the Supplier*'. This is '*the default rule for the place of supply of services*'.

[7] Section 7.1 of the FTA's of VAT Taxable Person Guide VATG001
[8] Ibid, Sect.
[9] Federal Decree-Law No. 8 of 2017 on Value Added Tax

Place of supply in special cases

8. Article 30 of VAT Law determines a '*Place of Supply in Special Cases*', i.e. '*an exception to what is stipulated in Article 29 of this Decree-Law*'. The exceptions cover services:

   1) '*Where the Recipient of Services has a Place of Residence in ~~an Implementing~~ [the] State and is registered for Tax therein, the place of supply shall be the Place of Residence of the Recipient of Services*'.[10]

   2) '*Where the Recipient of Services is in Business and has a Place of Residence in the State, and the Supplier does not have a Place of Residence in the State, the place of supply shall be in the State*'.

   3) '*For the supply of Services provided on Goods, such as installation of Goods supplied by others, the place shall be where said Services were performed*'.

   4) '*For the supply of means of transport to a lessee who is not a Taxable Person in the State and does not have a TRN in an Implementing State, the place shall be where such means of transport were placed at the disposal of the lessee*'.

   5) '*For the supply of restaurant, hotel, and food and drink catering Services, the place shall be where such Services are actually performed*'.

   6) '*For the supply of any cultural, artistic, sporting, educational or any similar services, the place shall be where such Services were performed*'.

   7) '*For the supply of Services related to real estate as specified in the Executive Regulation of this Decree-Law, the place of supply shall be where the real estate is located*'.

9. Broadly, the cited provisions of the UAE VAT Law are in concert with Section 1 Part 2 of the Common GCC States VAT Agreement, except for the '*supply of Services provided on Goods, such as installation of Goods supplied by others*'. The Agreement doesn't include them in special cases. Partially, these services overlap with '*services linked to transported Goods supplied from a taxable Supplier residing in a Member State to a non-taxable Customer residing in another Member State*'. Article 21(c) of the VAT Agreement places these services where they are actually performed, i.e. treats them on an equal footing with the UAE.

Place of Residence

10. Rules from Articles 29 and 30 of the UAE VAT Law tied for first place an issue of where a supplier or recipient of services has a "place of residence".

    Same standing the FTA takes in the VAT Public Clarification VATP019 where it explained that '*a recipient of services may have a "place of residence" in the UAE if it has either of the following in the UAE*:

[10] An explanation of what is crossed-off is given above.

1) '*A "place of establishment", being the place where the recipient is **legally established pursuant to the decision of its establishment**, in which significant management decisions are taken or central management functions are conducted*; *or*'

2) '*A "fixed establishment", being **any fixed place of business** in which the recipient conducts business **regularly or permanently** and where sufficient human and technology resources exist to enable the recipient to supply or acquire goods or services, including **the recipient's branches***'.

"Most closely connected" test

11. Section 7.3 of VAT Taxable Person Guide VATG001 clarifies that '*where the supplier has multiple potential places of residence (e.g. the business is incorporated in one country and has branches in other countries) the place of residence will be the place that is most closely connected with the supply being made. For example, where a UAE branch of a UK company provides services under the contract signed by the branch, the supply will be most closely connected with the UAE*'.

    In VATP019, the FTA sets forth:

    - '*Where a recipient has a number of different establishments, with some being in the UAE and some being outside the UAE, it is necessary to determine which of these establishments should be considered as the recipient's place of residence …*
    - *Where a recipient has a number of establishments in different countries, the place of residence of that recipient should be considered to be the country in which the recipient's place of establishment or fixed establishment **most closely related to the supply of services being made is located**'*.

12. These clarifications stem from Art. 32 of the VAT Law which defines '*the Place of Residence of the **supplier or Recipient** of Services*' '*as follows:*

    *(1) The state in which the Person's Place of Establishment is located or where he has a Fixed Establishment, **provided that he does not have a Place of Establishment or Fixed Establishment in any other state**.*

    *(2) The state in which the Person's Place of Establishment is located or where he has a Fixed Establishment that is the most **closely related to the supply if he has a Place of Establishment in more than one state or has Fixed Establishments in more than one state.***

    (3) The state in which the usual Place of Residence of the Person is located if he does not have a Place of Establishment or a Fixed Establishment in any state'.

13. These rules are equally addressed to the supplier and Recipient. Therefore, a clarification of these rules given by the FTA for a recipient of the services works for a supplier as well.

14. So, a supplier should determine whether it has a Place of Residence (branch or other, see below) in another jurisdiction:

    1) If it isn't, then a Place of Residence coincides with place of where a company is set up. If this place is UAE, than by default the place of supply is the UAE.

    2) If it is, then '*most closely related*' test shall be applied to determine a Place of Residence of the supplier:

       – if a supply is mostly connected with supplier establishment in another country, then, by default, the supply is out-of-State,

       – if a supply is mostly connected with supplier establishment in the UAE, then, by default, the supply is in-state and in-scope for VAT.

15. A similar test shall be applied to determine the Place of Residence of the Recipient of the Service.

Example[11].

A US company provides consulting services from its branch in the UAE to a customer resident in India. The place of supply is in the UAE (i.e. the place of residence of the supplier) because the branch in the UAE is the place of residence most closely connected to the supply of the consulting service to the customer in India.

Example[12].

An Emirati representative office of a Saudi Arabian company which is registered for VAT in the UAE directly receives marketing services from a supplier established in Bahrain.

The place of supply of these services is the UAE (i.e. the place of residence of the registered customer). This is because the Emirati representative office is the place of residence most closely connected to the supply of the marketing services made by the Bahraini supplier.

Special rule No. 2 from Art. 30 of the UAE VAT Law prescribes that the Place of Residence of the Recipient is used as the Place of Supply in this Example.

[11] Taken from p. 33 (example 2) of the Bahrain NBR General VAT Guide with adjustment to the UAE (Bahrain being replaced with the UAE and vice versa).

[12] Ibid, Example 2, p. 33. Bahrain is replaced with the UAE and vice versa.

16. The FTA illustrates it in VATP019 with similar examples. One is where a recipient of services has '*a head office (i.e. a place of establishment) outside the UAE and a branch (i.e. a fixed establishment) in the UAE'*. Its facts coincide with those from the example in the NBR's Guide addressed above. The FTA's positions are similar to those of the NBR:

    - '*If the services provided by the UAE supplier **relate solely to the activities of the head office and do not involve the UAE branch**, then the head office would be considered the establishment most closely related to the supply. As a consequence, the place of residence of the recipient of services would be the country **where the head office is located**.*
    - *In contrast, where, for example, a UAE supplier makes a supply of services to the UAE branch of an overseas head office and the services will be used **solely for the purposes of the branch**, then the branch would be the establishment most closely related to the supply. As a result, the recipient would be treated as having the place of residence in the UAE…*'.

17. Further, the FTA elaborates on issues where '*the supply of services is received, **to some degree**, by both the place of establishment and the fixed establishment*.

17.1. In such scenario, '*the supplier will need to identify which establishment is most closely related to receiving the supply by considering the facts of each case objectively. The following factors should be taken into consideration*:

a) *'which establishment is the contractual recipient of the supply';*

b) *'which establishment is actually benefiting from the supply';*

c) *'which establishment will receive the invoice and make payment for the supply';*

d) *'which establishment provides instructions to the supplier; and'*

e) *'whether the services are related to business being carried on by the recipient through an establishment in a particular country*'.

17.2. As per the FTA, such test is required in those scenarios where two or more establishments are involved (to some degree). This evinces that:

1) the test is irrelevant of only one establishment involved,

2) involvement of establishment situated in the State doesn't preclude oversees establishment to win the test if its involvement prevails.

17.3. Some of the features indicated by the FTA don't fit the supplier's activity as the FTA used them to clarify the Place of the Residence of the Recipient of the Services. Some of them can easily be adjusted to conduct a test for the supplier's Place of Residence, and some can't (e.g. "d").

We haven't found, though, this test being described by the FTA with a similar degree of detail as above *in respect of a supplier*. In Section 7.3 of the Taxable Person VAT Guide No. VATG001, the FTA recognizes the relevance of the

"closely connected test" for the supplier: "*Where the supplier has multiple potential places of residence (e.g. the business is incorporated in one country and has branches in other countries) the place of residence will be the place that is most closely connected with the supply being made*". This is illustrated with a brief example only: '… *where a UAE branch of a UK company provides services under the contract signed by the branch, the supply will be most closely connected with the UAE*'.

17.4. The supplier's specifics for such test are addressed in detail in the Bahrain VAT General Guide. The NBR includes the Appendix C to help with the determination of the "Place most closely connected with a supply".

The NBR VAT General Guide distinguishes between simple situations and complicated ones. The NBR uses the example with a branch of a UK Company in the State similar to those above which are considered by the FTA. The FTA concluded that the 'mostly connected establishment' is the branch since the service is provided '*under the contract signed by the branch'.* The NBR treats this scenario as capable of being simple or complicated. The simple one is where a fixed establishment of a UK company in the State:

- '*receive[s] an order to supply services to a Bahraini customer;*
- *only uses local employees to provide the services,*
- *all work on the project is done in Bahrain, the billing is done by the Bahraini fixed establishment and*
- *the fee is paid to a Bahraini bank account*'.

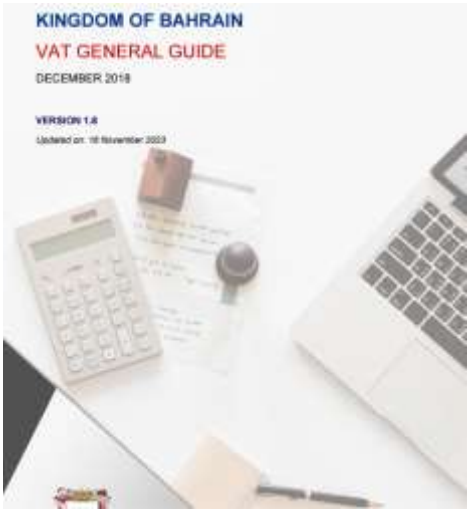
With this added to the facts from the FTA scenario, the NBR agrees with the FTA's conclusion. The NBR adds, though, that '*if the situation had been reversed with all work done from the UK* ***and no involvement whatsoever from the Bahrain branch****, the UK place of residence would be the most closely connected with the supply*'. This clarification in the UAE should be restricted by the FTA's position which:

1) admits the involvement of the establishment 'to some degree' and
2) recognizes the winner in a test after those establishments whose degree of involvement is higher.

Furthermore, as we may see below, the NBR and FTA are on the same footing here. The NBR includes in the supplier's test such questions as:

⇒ Which establishment appears on the contracts, correspondence and invoices;

⇒ Where the directors or other officials who entered into the contract to make or receive the supply are permanently based;



⇒ At which establishment decisions are taken and controls are exercised over the performance of contracts;

⇒ From which establishment the services are actually provided or, as the case may be, used or consumed;

⇒ The nature of the work undertaken by each establishment to make or receive the supply, as the case may be;

⇒ The extent of the involvement of each establishment's personnel in the provision of or receipt of the supplies.

According to the NBR, '*where, following consideration of the above factors it is evident that the Bahraini establishment has minimal involvement in making or receiving the supply, it will not be regarded as being the most closely connected with the supply*'.

Since, the FTA doesn't address the specifics of the "closely connected establishment' for the supplier, it's worth taking this from the NBR VAT General Guide.

17.5. The NBR also specifies features which shouldn't influence the choice of the closest establishment: '*Where a Bahraini establishment's resources are only* ***used for administrative support tasks such as accounting, invoicing and collection of debt claims without having any substantive role in the supply****, the NBR will accept that that establishment is not the one mostly closely connected with the supply*'.

All these are reminiscent of the Core Income Generating Activity (CIGA) test in the UAE Economic Substance regulations. The FTA defined CIGA as "*the activities that are of central importance*".[13] The UAE Cabinet determined in Art. 3(2)(g) of Resolution No. 57 of 10 August 2023 that CIGA constitutes '*activities that are of central importance to a Licensee for generating income from a Relevant Activity and may include the following*'. In para 4.3.2 of the Relevant Activity Guide, the UAE MoF explains that CIGA doesn't include '*back office functions, IT, payroll, legal services, or other expert professional advice or specialist services provided*'. In Art. 8(4) of Decision No. 100 of 25 October 2023, the Cabinet determined that '*core income-generating activities … mainly consist of those* ***significant functions that drive the business value****… and are* ***not exclusively or mostly support activities***'.

17.6. Thus, we may surmise that to determine the closest establishment related to the service a supplier shall:

- Determine all activities included in CIGA for this service,

[13] General Corporate Tax Guide CTGGCT1, Section 5.5.4

- Pinpoint which establishment conducts the most of these operations.

Let's elaborate this with examples given by the NBR in its General VAT Guide.

Example 1

Solutions Co, a UK based company with a branch office in Bahrain, supplies payment solutions, develops and sells software to clients. The development of the software ***solutions is undertaken exclusively in the UK where the engineers and all related personnel and facilities (R&D) for the development of the systems are located.***

The ***head office signed a contract with Bahraini based clients*** *(registered for VAT) for the supply of software and payment solutions. As per the contact, the supplier will provide maintenance services (e.g. upgrades) for a period of two years.* ***The maintenance services will be provided remotely from the UK****.*

Where necessary, local support from the branch will be obtained.

After the two-year period lapses, any upgrades to the system will be handled locally by the Bahrain branch under a separate contract to be concluded between the client and the branch at the time, if required. The head office will not be involved in maintenance after the two-year period.

The Bahraini branch is only responsible for providing administrative support to the head office such as:

1. ***Issuing the invoice for the supply per the terms of the contract;***
2. ***Collecting the invoices raised; and***
3. ***Assisting during the commissioning phase of the systems and, to the extent required, where onsite presence to the client's premises is required.***

The NBR determines the UK as the place most closely connected to the supply to Bahraini clients. The basis is that:

- *'The contract was signed by the UK head office;*
- *The development of the solution is undertaken exclusively in the UK;*
- *The maintenance of the system during the two-year period will be undertaken by the UK head office remotely;*
- *The involvement of the branch's employees will be limited to exceptional cases where onsite support is needed, and will not be continuous;*
- *The branch's role will be limited to providing administrative support to the head office during the implementation of the system'.*

The fact that the Bahrain branch of Solutions Co will be issuing the invoice *'does not influence the place from which the services are provided as the role of the branch is limited to mere administrative tasks and its involvement is minimal*'.

In contrast, *'the Bahrain branch will be the establishment providing the maintenance services after the two-year period lapses'* since from that moment *'any upgrades to the system will be handled locally by the Bahrain branch under a separate contract to be concluded between the client and the branch at the time, if required. The head office will not be involved in maintenance after the two-year period'*.

Example 2

XY Insurance Ltd, a Swiss based company with a branch in Bahrain, offers insurance coverage for clients in Bahrain, all of whom are registered for VAT. The ***Bahrain branch enters into a contract with a Bahraini company*** *for the supply of employee health insurance. The* ***Bahraini branch sends the contract to the head office in Switzerland for approval and signature****.* ***Once approvals are in place, invoices are raised and billing is done locally through the local branch****.* ***Payment of the insurance premiums is through bank transfer in Bahrain and all claim requests are collected, processed and paid by the Bahraini branch.***

The NBR clarifies that the place connected with the supply is the Bahrain branch *'on the basis that:*

1. *The Bahrain branch is the one that actively pursued the client and agreed the terms and conditions of the contract etc;*
2. *All tasks relating to the contract (i.e. invoice, collection, receiving, processing, handling and payment of claims) is handled by the branch;*
3. ***The head office's involvement is limited to merely approving and signing the contract****;*
4. *The client has only dealt with and negotiated the contract with officials from the Bahrain branch.*

Thus, approving and signing the contract is not a decisive factor, as may be mistakenly interpreted from above example from Sec. 7.3 of the FTA's VAT Taxable Person Guide No. VATG001.

Example 3

A Construction Co, an entity established in Saudi Arabia signed a contact with Absolute Properties WLL, a Bahraini entity, for the construction of logistics warehouses. The **contract was signed by the head office in Saudi Arabia**. Construction Co also has a **Branch in Bahrain which is engaged in the provision of construction services**. **Construction Co instructs its Bahrain branch to provide the services.** The **invoicing for the contract will be done from the Bahrain branch.**

The NBR determines the place most closely connected with the supply in the State as the Bahrain branch *'on the basis that:*

*1. The head office involvement is limited to the **negotiations and the conclusion of the contract without any further involvement in the project**;*

2. The Bahrain branch is the one that will be providing the construction services in their entirety; and

3. The Bahrain branch will be invoicing the services provided'.

Again, we may see that '*negotiations and the conclusion of the contract without any further involvement in the project*' may not be decisive in determining the place most closely connected to the supply.

Agent's location as a Place of Supply for the Principal

18. Article 33 of VAT Law specifies the Place of Residence where agents are involved: '*The Place of Residence of the principal shall be considered as being the Place of Residence of the agent in **any** of the following cases*:

    1) ***If the agent regularly exercises the right of negotiation and enters into agreements in favor of the principal***.

    2) *If the agent maintains a stock of Goods to fulfil supply agreements for the principal regularly*'.

    Hence, the Place of Residence of the client may be determined as place of the Residence of the agent (i.e. UAE) where Company:

    a) acts as an agent, and

    b) has the right of **negotiation,** and

    c) **regularly** exercises this right, and

    d) **enters into agreements** in favor of the principal.

19. This rule may be treated as an extension of the "closely connected establishment". It shows that such establishment may be constituted by activity of another person.

    A similar rule is included in Art. 14(1)(b) of the Corporate Tax Law: '*A Non-Resident Person has a Permanent Establishment in the State … b) Where a Person has and **habitually exercises an authority to conduct a Business or Business Activity in the State on behalf of the Non-Resident Person***'. Article 14(5) of this Law specifies that, for the purposes this rule, '*a Person shall be considered as having and habitually exercising an authority to conduct a Business or Business Activity in the State on behalf of a Non-Resident Person **if any** of the following conditions are met:*

    *a) The Person **habitually concludes** contracts on behalf of the Non-Resident Person.*

    *b) The Person **habitually negotiates contracts** that are concluded by the Non-Resident Person **without the need for material modification** by the Non-Resident Person'.*

20. In spite of the similarity of the subject matter of the regulation and the wording, there are substantial differences between Corporate Tax and VAT:

VAT	Corporate Tax
An agent regularly has to undertake both negotiating the contract and entering into it.	One of these types of activities suffices.
The absence of any need for material modification of the negotiated contract before conclusion is irrelevant.	This is relevant if the contract wasn't concluded by an agent.
"Independent agent" features are irrelevant.	Agency doesn't constitute a permanent establishment for a principal where an agent acts for a principal '*in the ordinary course of that Business or Business Activity'*, unless the agent '*acts exclusively or almost exclusively on behalf of'* the principal or where that agent 'cannot be considered legally or economically independent from' the principal.[14]

Algorithm to Place the Supply

21. To reckon with all the above rules, the taxpayer may route its consideration as follows:

    1) Screen a service with the special cases list. If the service doesn't fit any position from this list, the default rule shall be applied, i.e. the supplier's Place of Residence predetermines the Place of Supply.

    2) If a service is in the list, follow the rule envisaged for this service:

        a) If a special rule places the supplies with the actual performance of the service, place of transport transfer or location of property, the Place of Residence of the parties is irrelevant. Determine the Place accordingly.

        b) If the special rule refers to the Place of Residence of the Recipient, this place shall be pinpointed.

    3) In scenarios 1 and 2b of this algorithm, establish whether the supplier (in scenario 1) or the Recipient (scenario 2b) has an establishment in the UAE. If not, then the supply is out-of-State. If does, determine whether the supplier (scenario 1) or Recipient (scenario 2b) has any establishment ouside of the UAE:

[14] Article 14(6) of the Corporate Tax Law.

a) if there is no such establishment outside of the UAE, the Place of Supply is in-State;

b) if there is, apply '*most closely connected*'. The location of the establishment which won the test predetermines the Place of the Supply of the service.

Place of Supply for advisory, consulting, management, marketing, advertising and/or legal services

22. These principles will be illustrated below by examples using advisory, consulting, management, marketing, advertising and/or legal services.

22.1. Option 1 "The provider is incorporated in the UAE and has no establishments abroad".

By default, the Place of Supply is in the UAE.

The exception for the Recipient's Place of Residence in an Implementing State doesn't alter the Place of Supply. It shall be currently treated as the Place of Residence of a Recipient residing in the UAE.

The exception for the Recipient's Place of Residence in the UAE gives the same outcome. It also determines the Place of Supply as the UAE.

The same result gives an exception for "agency representation". It has the potential to shift the Place of the Residence of the Recipient to the UAE but the same consequences bring about the "default rule" for a supplier which has only an establishment in the UAE.

The only exception which may shift the Place of Supply outside the State is the one reserved for services related to real estate located outside of the UAE. Such services have a place of supply outside of the UAE.

22.2. Option 2 "The provider is incorporated in the UAE but has establishments abroad".

Here, the 1st and 2nd special rules from the exceptions list disregard the default rule only where this is required to shift the Place of supply to within the State:

Closely connected establishment				Place of Supply
Supplier		Recipient		
in UAE	abroad	in UAE	abroad	
yes	no	**yes**	no	UAE, perfect match
no	yes	**yes**	no	UAE, exception 1 or 2
yes	no	no	yes	UAE, exception 1 and 2 are not applicable as the recipient is not in the State.
no	**yes**	no	yes	Abroad, default rule.

Broadly, a UAE taxpayer may also avail itself of the table provided by the Bahrain NBR in Section 5.4.2 of its VAT General Guide (p. 33). In this table, the Kingdom shall be replaced with the UAE, though, to illustrate the UAE's VAT position. The references in purple direct one to Articles 29, 30(1) and 30(2) of the UAE VAT Law.

Place of residence of the Supplier	Place of residence of the Customer	Place of supply of the service
Bahrain	Bahrain 30(1) or 29	Bahrain (where the supplier is resident)
	Outside the Implementing States 29	
	Other Implementing State - not a VATable person 29	
	Other Implementing State - VATable person	Until further notice: Bahrain (where the supplier is resident) 30(1) or 29 When intra-GCC rules apply (not yet applicable): Other Implementing State, i.e. where the customer VATable person is resident 30(1)
Outside Bahrain	Bahrain - Not a VATable person	Outside Bahrain - where the supplier is resident **UAE if Recipient is in Business - 30(2)**
	Bahrain - VATable person	Bahrain - where the customer VATable person is resident 30(1)

There's only one position that differs in the tables above. The NBR places outside of state the supply to a non-VATable person. Art. 30(2) of the UAE VAT Law determines the place of supply as the State '*where the Recipient of Services **is in Business** and has a Place of Residence in the State, and the Supplier does not have a Place of Residence in the State*'. In Bahrain, engagement in Business is included in the definition of a VATable person. Thus, in the NBR's table, a supply to a non-VATable person implies supply to a person who is not in Business.

Our research focuses on B2B supplies. Therefore, the position where a service is supplied to a person who is not in Business is not included in our table.

23. As the UAE VAT Guidelines don't include relevant examples, they may be borrowed from the GCC with an adjustment where required.

Page 33 of the NBR's General VAT Guide provides this example.

الجهاز الوطني للإيرادات
National Bureau for Revenue

'*A VATable person who is resident in Bahrain receives a legal service from a law firm resident in the UK.*

*The place of supply of this service is in Bahrain, i.e. the place of residence of the VATable customer. The same would apply if the services were received from a law firm **established in the United Arab Emirates** instead of the UK*'.

In this Example, a "*law firm established in the UAE"* shall account for the same supply as placed in the UAE:

1) Art. 30(1) of the UAE VAT Law is not applicable since the UAE doesn't recognize Bahrain as an Implementing State. Therefore the Place of Residence of the Recipient may not be applied.

2) Art. 30(2) of this Law is not applicable because the supplier has a Place of Residence in the UAE, and anyway this Article places the supply in the UAE.

3) Art. 29 of the UAE Law is applicable by default as no special rule covers such supply, that is, the Place of Residence of the supplier predetermines the Place of Supply.

Ultimately, Bahrain and the UAE both recognize this supply as subject to VAT. As we will see below, double taxation may be avoided by applying 0% VAT in the UAE under Art. 30(1)(a) of the VAT Executive Regulation.

Zero Rating Services: supply to a foreign customer

24. Article 31(1) of the VAT Executive Regulation determines when the services shall be treated as the Export of Services and zero-rated.

25. Clause (a) zero-rates them if the following conditions are met:

(1) The Services are supplied to a Recipient of Services who does not have a ***Place of Residence*** *in an Implementing State* ***and*** *who is* ***outside the State*** *at the time the Services are performed;*

(2) The Services are not supplied directly in connection with real estate situated in the State or any improvement to the real estate or directly in connection with moveable personal assets situated in the State at the time the Services are performed'.

It is necessary to avoid a confusion at this stage. This rule is relevant only if the place of supply is the UAE. If according to the place-of-supply rules the venue of the Recipient predetermines it, than zero-rating is irrelevant. Cited rule zero-rates the service where recipient is outside of the State. However, there's no export of the services if the Supply has Place outside the State. These supplies are out of scope of VAT; hence, Art. 31(1)(a) is irrelevant. Therefore, it doesn't matter was the Recipient '*outside the State at the time the Services are performed*' or was not.

On balance, Art. 31(1)(a) of the VAT Executive Regulation zero-rates only those services which place of supply is not determined as a place of Recipient's Residence. As established earlier, the services at hand may fall within the scope of this rules.

Similarly, if a service's Place of Supply is located abroad due to the location of Real Estate, or actual performance, Art. 31(1)(a) is irrelevant as well.

Two Pillars for zero rating of services physically performed locally

26. Article Art. 31(1)(a) of the has been clarified in the FTA's VAT Public Clarification VATP019 named "Zero-Rating of Export of Services".

    It brakes down the rule in two components.

    – 1st is a Place of Residence of the Recipient test. The test is the same as elaborated above to pin down the Place of Residence for the purpose of the Place of Supply. Here it is to be applied to determine Recipient's Place of Residence for the Supply with Place in the State.

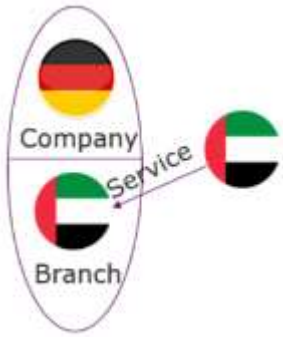
    – 2nd is a location of the Recipient. For zero-rating the services must be '*supplied to the recipient who is* ***outside the UAE at the time the services are performed***'.

27. According to the Clarification VATP019 read with Art. 31(1), if a client has multiple establishments, one of each is in the UAE and the other one is outside of the UAE, the Company may proceed in this way:

    1) Pinpoint the '*establishment of the recipient which is most closely related to the supply being made*' (1st component).[15] If it is located in the UAE, the further examination under Art. 31(1)(a) may be terminated. There is no need to proceed with the following steps in the algorithm. The Company may switch to the "place of actual performance test" under Article 31(1)(b) of the VAT Executive Regulation.

    Example[16].

    A German telecommunications provider has an established branch in the UAE with an office, employees and a Commercial Registration. The German head office requests legal advice from an Emirati law firm.

    The supplier law firm cannot apply the zero rate, because the Customer has a place of residence in the KSA from its fixed establishment. UAE VAT must be charged at 5% on the invoice.

    2) After that, the Company should check whether the non-resident establishment of the Recipient '*creates a temporary presence in the UAE at the time the services are performed,* ***which relates to the supply*** *being made'* (2nd component). If it does, then this is the moment to switch to the "place of actual performance test" under Article 31(1)(b). If it doesn't, the Company may claim the 0% rate (provided that another type of temporary presence for the recipients does not occur).

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[15] This test is addressed in the details above.
[16] Example taken from Section 5.2 of the ZATCA Guideline "Supplies of Services To Non-GCC Residents"
[16] Section 7.1 of the FTA's VAT Taxable Person Guide VATG001

The FTA in its VATP019 explains the interplay between these 2 components in this way: '*It is important to note that a non-resident recipient of services (including a recipient which may already have a UAE establishment) may lose the ability to receive a zero-rated supply where they create a* ***temporary presence in the UAE at the time the services are performed, which relates to the supply being made****'.*

The FTA illustrates it with an example, '*where a non-resident recipient of legal services relating to some arbitration sends its representative to the UAE to be present during the hearing*'. In this scenario, a foreign client may also have a branch in the UAE but the arbitration must have no connection to the branch's business or at least must have a closer relationship with a foreign establishment of the recipient.

The FTA proposes the following solution to this example: '*…law firm making the supply would* ***not be able to zero-rate*** *the supply of the* ***services relating to the arbitration process during which the client was present in the UAE*** *– since the non-resident client, through its representative, was physically present in the* ***UAE at the time the services were performed*** *by the law firm*'.

28. This example by the FTA received multiple comments. One of them is that: '*It is important to note that if the client is a non-resident, however, engages with a law firm in the UAE during a visit to the UAE, the supply cannot be zero-rated, irrespective of whether or not the person is an individual or representative of a corporate entity and a representative of the entity attends at the time of the delivery of the services in the UAE*'.[17]

    I may not agree with this opinion. Article 31(1)(a)(1) of the VAT Executive Regulation zero rates services '*supplied to a Recipient of Services who does not have a Place of Residence in an Implementing State and who is outside the State* ***at the time the Services are performed***'. Therefore, the presence of the client is prior to the moment when the services were performed. This is also what the FTA clarifies in VATP019: '*the location of the recipient before or after the services are performed and consumed should not be taken into account for the purposes of this condition*'.

Customer's temporary presence in the State

29. As per the above Clarification, to determine whether the 2nd component is satisfied, it is necessary '*to consider whether the recipient has any* ***physical*** presence *in the UAE at the time the services are performed.*

    The requirement that the location of the recipient should be determined "at the time when the services are performed" requires consideration of the ***nature of the services*** *supplied, and the* ***period or duration during which the services are performed*** *by the supplier* ***and consumed*** *by the recipient.*

[17] John Peacock "UAE VAT Laws and Export of Services", March 2021.

***Only** the physical presence of the recipient **during the period or periods in which the supplier performs services and the recipient consumes them** needs to be taken into account; **the location of the recipient before or after the services are performed and consumed should not be taken into account for the purposes of this condition**'.*

The FTA illustrates it with 2 examples.

One is where '*the services are of a nature that they are **performed and consumed at the time that they are completed***': '*then the location of the recipient **at the time of completion** of the services will determine whether the recipient is outside or inside the UAE at the time the services are performed*'.

Another is '*where services are such that they are **continuously performed and consumed for a duration of time**, then **any** presence of the recipient during*

- *commencement,*
- *throughout, or*
- *during completion of the service in the UAE*

would result in the recipient being treated as being within the UAE "at the time the services are performed'.

30. Applying it to consultancy services with a written opinion, advice, a survey, report, etc., to be issued, the services are consumed '*at the time of completion*'.

An Opinion or Written Advise

If a client received an opinion at the moment when he was outside of the UAE, this advisory service shall be zero-rated.[18] It seems reasonable to infer that such services are not "performed **and consumed**" until the moment when the client receives the deliverables.

31. When the client requires that he be represented in a meeting, hearing, trial, etc., the services may include preparation for such event.

In our opinion, the location of the client during preparation doesn't affect zero-rating. At this moment the services are being performed but not consumed by the client.

However, if the client joined the representative during the event, he is located at the place of the event at the moment of the completion of the services, i.e. at the time '*they are performed **and consumed**'*.

[18] See, however, additional consideration with regard to this opinion below here and here.

32. If the client's assignment requires the consultant to offer personal representation several times, e.g. in several hearings of one trial, the outcome depend on the nature of the services, the underlying benefit which the client consumes.

For example, the client's assignment is to bring a lawsuit against its debtor and collect receivable from him. All hearings are to be paid according to hourly rates and time spent.

In this case, it is reasonable to infer that the service shall be treated as '*continuously performed and consumed for a duration of time*'. This negates zero-rating if the client has been present in the UAE '*during commencement, **throughout**, or during completion of the service in the UAE*'.

Hence, those hearings where the client accompanied the attorney in the UAE courts may not be zero-rated. The service for hearings performed without the client being present may be zero-rated.

33. One assignment from the client may:

- consist of stages or
- include sub-assignments,

all of which are consumed at the completion of each stage. Here, the VAT treatment is more complex. We see two versions of potential solutions for such scenarios:

Version 1 Treat them as a single composite supply,

Version 2 Deem them a "*supply consisting of multiple components*"

Article 8 of VAT Law entitles the Cabinet to determine in the Executive Regulation '*the conditions for treating a supply consisting of more than one component for one price, whether such components are Goods or Services or both*'.

Clause 1 of Article 4 of the VAT Executive Regulation sets forth that '*where a Person made a supply consisting of **more than one component for one price**, the Person shall determine whether the supply constitutes a single composite supply or multiple supplies*'.

The phrase "single composite supply" means '*a supply of Goods or Services, where there is more than one component to the supply, and taking into account the contract and the wider circumstance of the supply*'.[19]

[19] Clause 2.

A single composite supply shall exist in '*the following cases:*

a. Where there is supply of all of the following:

1) A principal component.

2) A component or components which either are necessary or essential to the making of the supply, including incidental elements which normally accompany the supply but are not a significant part of it; or ***do not constitute an aim in itself, but are instead a means of better enjoying the principal supply****.*

b. *Where there is a supply which has* ***two or more elements so closely linked as to form a single supply which it would be impossible or unnatural to split***'.

As per Clause 4 of this Article, '*a single composite supply* ***may exist*** *under Clause 2 of this Article if all of the following conditions are met:*

a. ***The price of the different components of the supply is not separately identified or charged*** *by the supplier.*

b. All components of the supply are supplied by a single supplier'

Clause 5 stipulates that '*where a Taxable Person supplies more than one component* ***for one price*** *and* ***the supply is not a single composite supply****, then the supply of the components shall be treated as multiple supplies*'. Therefore, one price for multiple services included therein does not necessarily mean that this price has common and single VAT treatment. This may be the feature of a single composite supply (with one single treatment), but it also may be treated as multiple supplies with different VAT treatment.

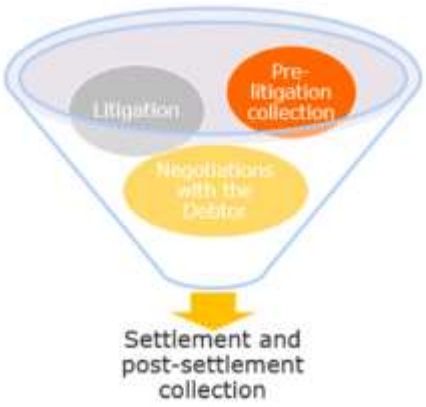
The main difference in the treatment of a "*single composite supply*" and a "*supply consisting of multiple components*" is established by Article 46 of the VAT Executive Regulation:

- '*Where a supply is a* ***single composite supply*** *…, the Tax treatment of the supply shall follow the Tax* ***treatment of the principal component of the supply.***
- *Where a supply consisting of* ***multiple components*** *is not a single composite supply, the* ***supply of each component is to be treated as a separate*** *supply*'.

Example.

A Client with no establishment in the UAE has retained a UAE law firm to collect receivables from its UAE customers.

As per the contract, the law firm decides on its own what should be done to perform the assignment. The fee is determined as a share of the



amount collected from the debtors in favour of the client.

An employee of the Client attended a couple of the court hearings and took part in certain of the meetings with the debtors.

A settlement agreement has been concluded with a debtor and approved by the court. The amount agreed has been transferred to the Client. The Client's employees haven't been in the UAE during any of these occurrences.

The law firm wasn't authorised to exercise the right of negotiation of and entry into agreements in favor of the Client regularly. Therefore, this law firm's location may not predetermine the Place of Residence for the Client. [20]

The services provided to the Client in this case have multiple features of a Single Composite Supply:

1) they have a principal component which is the physical receipt of the funds owed,
2) other components necessary for and essential to the making of the supply *'do not constitute an aim in itself, but are instead a means of better enjoying the principal supply'*;
3) all elements of the provider's activity are *'so closely linked as to form a single supply which it would be impossible or unnatural to split'*;
4) different components of the supply are *'not separately identified or charged by the supplier'.*
5) *'all components of the supply are supplied by a single supplier'*.

The nature of such services and agreed terms of the contract are tied in with the material result of the services. All milestones which may be treated as consumption of this result (the closure of the settlement and its performance) fall within the period when the Client was out of the State. His prior in-State attendance at the hearings and meetings predates the completion of the services. All this considered, we believe that parties are in a position to enjoy the 0% VAT rate.

34. In situations where:

⇒ the services may be split into several components (e.g. stages), and

[20] The figures are borrowed from here and here.

⇒ the recipient was outside the UAE at the time when the services of one component were performed and was not at the time when another component was supplied, and

⇒ each component of the service has been consumed after the completion of the pertinent component,

then the taxpayer applies 0% and 5% respectively to every particular component.

35. The FTA clarifies that '*above principles relate to companies and other entities, which are capable of being established and present in multiple locations simultaneously, and do not apply to natural persons who are incapable of having a simultaneous presence in multiple locations*.

Therefore, where an individual is physically inside the UAE, he or she cannot be "outside the State". This presence of the individual in the UAE at the time the services are performed would typically take away the ability of the supplier to zero-rate the supply to the individual'.

Extension for temporary presence

36. Article 31(2) of the VAT Executive Regulation sets forth that '*for the purpose of paragraph (a) of Clause 1 of this Article, a Person shall be considered as being "outside the State" if they only have a short-term presence in the State of* ***less than a month*** ~~***or***~~ ***and*** *the presence is* ***not effectively connected*** *with the supply*'.

The "or" has been replaced with "and" by the Cabinet in Decision No. 46 of 4 June 2021. Both of the conditions previously determined may thus only excuse the temporary presence of the Recipient in the UAE.

It is remarkable that, in Art. 52(2) of the Executive Regulation, the Cabinet provides for a similar extension for exempted financial services where the Place of Supply and location of the Recipient both are outside the State at the time when the Services are performed. As mentioned earlier, input VAT for such services may be recovered. Thus, in the rule of an extension for these services the "or" has survived: '*For the purpose of [recovery of Input VAT for exempted financial Services] … a Person is "outside the State" even if they are present in the State, provided it is only a short-term presence in the State of* ***less than a month***, ***or*** *that his presence is* ***not effectively connected with the supply***'.

The rationale for differentiating the rule for extension between zero-rating and recovery purposes is anyone's guess.

37. As per Thomas Vanhee, prior to the above amendment '*Article 31 (2) and (3) of the UAE VAT ER were inspired by the New Zealand GST Act. This can be rather ascribed to a coincidence than a conscious policy choice. Conceptually the NZ GST Act is very different from the GCC VAT Treaty, which is based on the European Union VAT directive…*'.

Having been amended, UAE VAT diverges from its earlier resemblance to that of New Zealand: '*The NZ's GST Act … says for the same provision "or", like in the original text of the UAE VAT ER (see Article 11 A 3 of the NZ GST Act)*'.

38. The FTA clarifies in VATP019 that Article 31(2) of the VAT Executive Regulation provides an exception to the condition that the recipient of the services must be physically outside the UAE for zero-rating of the pertinent supply.

    Pursuant to FTA, '*the purpose of this condition is to ensure that the ability to zero-rate a supply is not unduly affected where the recipient has a UAE presence* ***which is both*** *short-term and is not effectively connected with the supply, and, as a consequence, this presence is* ***unlikely to be known*** *to the supplier of the zero-rated services*'. This, though, doesn't explain the difference between the general extension rule and the similar rule for the recovery of input VAT on exported exempted services. There is no clarity as to why in one rule the presence '*is* ***unlikely to be known*** *to the supplier'* if the Recipient fits at least one of the conditions, while in the other rule both conditions are a must for this.

39. This amendment has been broadly discussed in the UAE. One comment illustrates the change with an example where 'the client is in the UAE for 30 days vacationing and if he overstays here, the service provider has to consider him as '**established** in the UAE'. In this situation, the foreign client has to evaluate the cost of an additional 5% along with the cost of the service he receives'.

    The idea of treating the "overstay" as "establishment" is shared in other comments[21].

    That concept seems favourable but vulnerable:

    - favourable because if the overstay turns into an "Establishment" ("Place of Residence"), then such Place of Residence added should compete with other Places of Residence in the "most closely connected test" and in doing so may lose to the foreign establishment. In the example above with the client's employee, overstaying a vacation is not effectively connected with the service, and the foreign employer's location remains most closely connected Establishments. As a result, even a 1.5 month or longer period of such vacation in the Emirates doesn't lead to the 5% rate;
    - vulnerable because Clause 2 of Article 31 applies '*for the purpose of paragraph (a) of Clause 1 of this Article*'. The latter provides for the zero-rating of services to a Recipient which:

      1) '*does not have a Place of Residence in the*' State '***and***

      2) ***is outside the State*** *at the time the Services are performed*'

      Clause 2 discloses the second condition since it describes when '*a Person shall be considered as* ***being "outside the State"*** *…'*. Therefore, long-

[21] See, for example, Mradul Gupta "Dilemma around Zero-Rating Export of Services! Did the amendment to Article 31(2) of UAE VAT Regulations result in making Article 31(3)redundant?", 11 July 2023, LinkedIn.

term presence in the State doesn't automatically turn such presence into a Fixed Establishment and doesn't make presence a part of the "most closely connected test".

40. The example with overstaying a vacation seems good but has to be matched with '*the time the Services are performed*'. If the employee is on vacation in the UAE for more than one month but in course of his stay the services have been provided on one day alone, then only this one day shall count toward the 1 month threshold.

    Example 1 for a short-time threshold in terms of presence.

    Facts

    One small but proud tax consulting company in Dubai has been retained by the UK Law Firm to work on an international project. The UK Law Firm's ultimate client in the UAE. The services include day-to-day all-out support of the project to the extent of the UAE tax issues that have arisen. It includes advising in conference calls and in emails, as well as drafting the relevant part of a consolidated report.

    The services are physically performed in the UAE.

    The period of the services agreed is:

    Variant 1 – 3 weeks,

    Variant 2 – 6 months.

    An employee of UK law firm (the client) spent 1.5 months of his vacation in the UAE without any involvement in this project.

    Analysis

    Under Art. 31(1)(a)(1) the supplier needs to determine whether the Recipient of the Service was inside or '*outside the State at the time the Services are performed*'. Hence, the supplier takes '*the time the Services are performed*' and checks the presence of the Recipient in the UAE.

    '*For [this] purpose',* Article 31(2) determines that a person '*shall be considered as being "outside the State" if they only have a short-term presence in the State of* ***less than a month*** *and the presence is not effectively connected with the supply*'. Article 31(2) doesn't specify a period within which one month shall be tested. However, it applies for the purpose of Article 31(1)(a)(1) which speciies that presence shall be assessed *'at the time the Services are performed*'. Hence, the relevant presence of the person is that which falls in the period when the Services are performed.

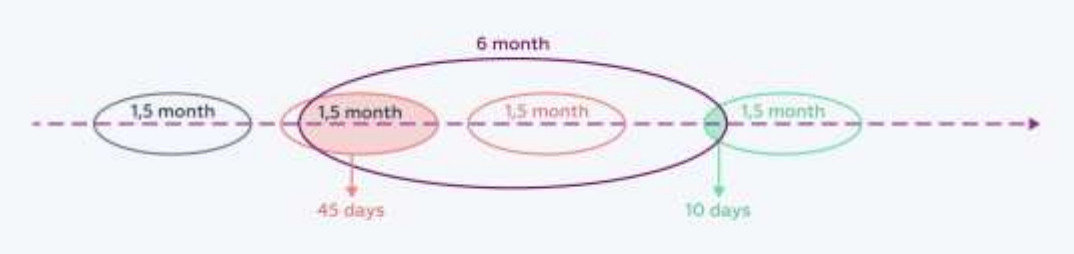
    This conclusion complies with the FTA's position in VATP019: '*Only the physical presence of the recipient* ***during the period or periods***

***in which the supplier performs services and the recipient consumes them needs to be taken into accoun**t; the location of the recipient before or after the services are performed and consumed should not be taken into account for the purposes of this condition*'.

In Variant 1 the whole period of the services doesn't exceed 1 month. Therefore, the 1 month threshold may not be exceeded regardless of the duration of the employee's stay. The whole three weeks may fall during the presence on vacation.

So the threshold of 1 month may never be exceeded if the period of the services doesn't exceed one month.

In **Variant 2**, the period of the service is 6 months and the period of presence is more than 1 month. Hence, theoretically the threshold may be exceeded. Therefore, the period of the employee's presence shall be juxtaposed with the period when the services were provided:



In the black oval, the whole vacation falls within the period when the services hadn't yet been provided. It may be moved forward to the period which starts after the services have been provided. The result is the same: this presence is irrelevant.

In contrast, the red oval presents a case where the whole period of vacation falls within the period when the services have been provided. This case is perfect to demonstrate that the short-term threshold of 1 month was exceeded.

In the brown and green ovals, part of the presence coincides with the period when the services have been performed. In the brown oval, 45 days of the vacation stay fell within this period. Hence, the threshold of 1 month is exceeded. In the green oval, this threshold was not exceeded since only 10 days of the stay coincide with the period when the services have been provided.

Example 2 for a short-time threshold in terms of presence.

The facts are the same as in previous example except for the nature of the service. Now it is litigation in the UAE which lasted 6 months in the Court of First Instance and in the Court of Appeals. The contract sets lump sum contingency fees for the whole circle of the litigation regardless of how many instances and hearings occurred, the procedural documents produced, etc.

Analysis.

In this scenario, it is reasonable to infer that:

1) the nature of the services is such that the client consumes them after the final hearing, where the positive verdict is issued;

2) this moment represents the moment referred to in VATP019, i.e. '***the time of completion*** *of the services'*.

This moment is a clincher to test the location of the Recipient at the time when the services were performed, for '*the services are of a nature that they are* ***performed and consumed at the time that they are completed***'.

Therefore, only one date (one day) is relevant in Case 2 as on this date the client's employee was located in the State. One day may not exceed a 1-month threshold. Therefore, we believe that in this scenario the Company may apply the 0% VAT rate.

Takeaways from the FTA's examples

41. The FTA gives 3 examples where '*a recipient would still be considered to be outside the UAE*'.

Example 1.
'A UK-resident company employs a UAE law firm to represent it during an ongoing litigation before the UAE courts. During the course of the litigation, one of the company's employees comes to the UAE for a conference ***not related*** *to the ongoing litigation'.*

It is remarkable that in this example the FTA do not specify the duration of the client's presence. It may lead to the opinion that similar to the selection of proper establishment: the presence of the recipient's employee doesn't affect zero-rating regardless of duration of the presence. As we found above, it is too risky to assume so without additional Guidance from the FTA. Ignoring the duration of the presence in this example, the FTA could imply that a conference lasts less than one month as a matter of course.

Example 2.

*'A UAE investment fund provides fund management services to a US-based company. The company **has a UAE branch which is not related to the supply** being made by the investment fund. The US establishment sends a staff member to the UAE **for 3 weeks** to provide training to the employees of **the UAE branch**'.*

Contrary to previous example, the FTA specifies that the duration of the presence of the client's stuff in the UAE is less than 1 month. It is obvious from the example that this presence has nothing to do with services provided by investment fund to the client.

The FTA doesn't specify why in the previous example duration of the client's employee stay is irrelevant and in this example it is. The only substantial difference is that US client has fixed establishment (branch) in the UAE. It is not clear why this difference may affect relevance of the duration of the presence.

Meanwhile, this example shows that existence of a fixed (i.e. long-term) establishment in the UAE doesn't hinder from zero-rating. This is in full concert with clarification where the FTA sets forth that '*where the **recipient has establishments both inside and outside the UAE** and the supply is **most closely connected with the non-resident establishment** of the recipient, then that non-resident establishment of the recipient will be treated as the location of the recipient for the purposes of Article 31(1)(a) of the Executive Regulation. In such circumstances, **the condition that the recipient is outside the UAE would be met even if the recipient also has a UAE establishment**'.*[22]

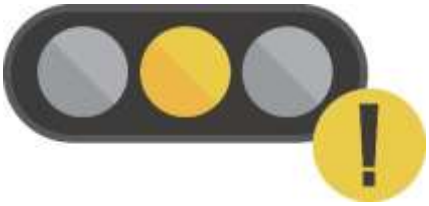
Example 3.

*'A Canadian resident **natural person** engages a UAE company for assistance with due diligence on a company he is interested in investing in. During the*

[22] Prior to the release of VATP019, the position had not been this clear. As per Thomas Vanhee, it had been '*also not clear if this change to Article 31(2) intends to prevent the zero rate on supplies made to foreign customers who have a fixed establishment in the UAE (e.g., branch or representative office)*' ("UAE considerably restricts application VAT zero rate on services", July 10, 2020.

process, the person comes to the UAE on a ***week-long*** *holiday and does not visit the UAE company or meet with its employees*'.

Here, the FTA again specified duration of the presence which is not related to the supply. This example differs from both examples above by a status of the client – he or she is natural person. Probably, the FTA reckons with its earlier clarification that '*presence of the individual in the UAE at the time the services are performed would typically take away the ability of the supplier to zero-rate the supply to the individual*'. In this interpretation, all makes perfect sense: the rule in Art. 32(2) works as exception rewarding excuse for the case which otherwise falls under 5% VAT rate.



Anyway, **example 2 triggers risk** that the FTA will claim that one month and longer period of presence in the UAE of the employees of the foreign client transfers the location of the recipient in the UAE even if employees had nothing to do with the services provided to the non-resident establishment of the recipient.

The more features of Example 2 a case have, the higher the degree of this risk.

The 'Where a client benefits from services' factor

42. Article 34(1)(d) of the GCC Common VAT Agreement sets out that a 0% tax rate applies to a '*supply of Services by a Taxable Supplier residing in a Member State for a Customer who does not reside in the GCC Territory* ***who benefits from the service outside the GCC Territory*** ***in accordance with the criteria determined by each of the Member States****…*'.

    This rule raises the question of whether the 0% VAT rate is applicable where all above conditions are met and the test is passed but the customer benefits from the services inside the UAE.

    The UAE legislation doesn't repeat the rule from Art. 34(1)(d) of the of the GCC Common VAT Agreement. However, the FTA in its Public Clarification VATP019 includes the question of 'which establishment is actually benefiting from the supply" in the "mostly connected" test.

    Article 54(4) of the Oman VAT Law includes a reference to benefit: '*Supply of Services by a taxable Supplier that has a Place of Residence in the Sultanate to a Customer that does not have a Place of Residence in the GCC States,* ***provided that he benefits from this service outside the GCC States****…*'. The same rule is included in Article 53(7) of the Bahrain VAT Law.

    Saudi Arabia includes the rule from Art. 34(1)(d) of the GCC Common VAT Agreement in Art. 33(2)(c) of the KSA VAT Implementing Regulation. It sets forth that the zero rate '*shall not be applicable 'if the customer or* ***any other person has benefitted from the services*** ***directly during the presence*** *of either one in a member State and where the other person is not entitled to*

full input tax deduction thereof'. In this rule, the benefit is circumscribed by the period of presence in the State and tied in with such presence. This rule is very similar to that included in Article 31(3) of the UAE's VAT Executive Regulation which prohibits zero-rating where '*the performance of the Services is … received* ***in the State by another Person***' which wouldn't be able to recover it in full.[23]

ZATCA clarifies this "Direct benefit requirement/test" in Section 5.2 of the VAT Guideline on "Services to Non-GCC Residents": '*There is someone (the Customer or another Person) who directly benefits from the Services* ***whilst situated (either through a usual residence or temporary physical presence)*** *in the KSA or another GCC State*'.

This shows that benefitting services in the UAE from the GCC Common VAT agreement are reduced in the KSA to the same criteria as given in Art. 31(1)(a)(1) of the UAE VAT Executive Regulation, i.e. to the location (either in the form of an establishment or of temporary presence) of the client whilst the service was provided. In other words, **the presence of the client in the State is relevant only if such presence is a link to connect the benefit of the service with the customer.**

It is also fair to conjecture that the benefit test comprises the rules designed to identify a *real recipient* and his Place of Residence and location at the time when services were provided *rather than a contractual recipient*.

43. Bahrain applies a different concept. Article 73(4) of the Bahrain VAT Executive Regulations makes zero-rating conditional on the requirement for the Services to '*be enjoyed outside the territory of the Implementing States*'. The NBR clarifies this by saying that 'enjoyed means that:

    1) '*… the services must be* ***received and consumed / used by the customer at a place of residence which is outside Bahrain*** *…*'.

    2) '*… the services* ***must not be used by the customer for the purposes of specific operations that he carries out in Bahrain*** *…*'.

    3) '*… the services must not be actually received by a person, other than the customer, who is resident in Bahrain …*'.[24]

    Check out how the NBR illustrates this.

Example

الجهاز الوطني للإيرادات National Bureau for Revenue	*A French company contracts with a Bahrain based consulting firm registered for VAT purposes to receive a* ***specific study on the Bahrain market for a specific type of services it may decide to offer in Bahrain****.*

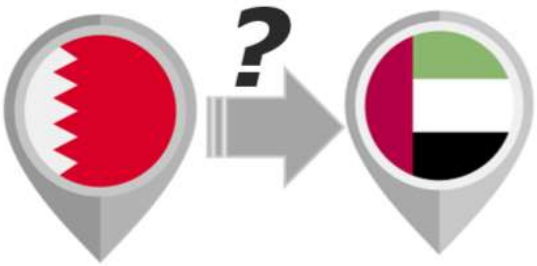
[23] Considered in detail below.

[24] Section 2.3.3 of the Kingdom of Bahrain Import and Export VAT Guide.

The French company has no physical presence in Bahrain, either by way of a fixed establishment or by way of one-off or temporary visitors. Also, it is ***currently*** ***not "commercially" present in the Bahrain market (i.e. it does not supply any products or services in Bahrain).***

Even if the services relate to the Bahrain market, they are not "enjoyed" by the French company in Bahrain, either through a place of residence in Bahrain or through a physical presence in Bahrain*. ... Besides, these* ***services are not used by the company for the purposes of operations that it carries out in Bahrain****... Therefore, the Bahrain based consulting firm should be able to treat its services as an export of services and apply VAT in Bahrain at the zero-rate.*

If the French company was offering products to the Bahrain market (e.g. music streaming services to Bahrain customers) and the services received were to be used for the purposes of its specific operations carried out in Bahrain (e.g. creation of a specific advertisement campaign for the Bahrain market), these services would be considered as enjoyed in Bahrain and they would not meet the conditions to qualify as an export of services*.*



This example seems inapplicable to the UAE since it doesn't make zero-rating conditional on the place of enjoyment. This criterion is used in Art. 31 of the UAE VAT Law to determine the Place of Supply for telecommunications and electronic Services. The UAE doesn't apply the place to the supply of other services to zero-rate them. Therefore, this example doesn't fit the UAE's legislative framework and may not be applied in the Emirates to resolve the issue of zero-rating.

To obtain the full picture, it's worth considering ZATCA's approach to secondary advantages for services whose benefits are incidentally enjoyed by residents in the State. It is discussed in details below.

Temporary presence: relevant or irrelevant

44. ZATCA addresses this in a number of examples. They illustrate the general principles from the GCC Common VAT Agreement and are designed to establish the customer's presence in the state at the moment when services were provided. This fact is relevant for the application of the cited rules in both countries. Therefore, it seems possible to consider these examples as applying equally in both GCC member states.

In Section 5.3.1 of the Guideline on Supplies of Services to Non-GCC Residents, ZATCA explains: '*If the Customer is a non-resident with no fixed establishment in a Member State, that Person - including employees of that Person -* ***can receive the performance of services, and the direct benefit from those services whilst they are visiting the KSA*** *or another Member State.* ***In this way, the employee or individual Person's physical presence means they are situated in a Member State***'.

Example (5) from the ZATCA Guideline.

Employees of Terra SpA, an **Italian** design consulting agency without a Saudi establishment, visit Riyadh **for two weeks** to prepare for and make a **proposal bid to a Saudi client**.

It engages Al Murdi, **a Saudi supplier**, to provide administrative and technical support with the bid.

Al Murdi provides a team who interacts directly with the visiting employees of Terra SpA. Al Murdi provides its services to a Non-Resident Customer, but the Non-Resident Customer directly benefits from the services whilst its employees are temporarily situated in the KSA. Al Murdi cannot apply the zero-rate to the services.

This type of arrangement is similar to those considered in examples provided by the FTA. The solutions proposed by the Authorities are consistent in full.

Further, ZATCA proceeds, though: '*The Customer is not considered to directly benefit* [i.e., in the UAE terms, not considered located in the UAE at the moment when the services were provided – A.N.] *from the services in the KSA or another Member State in the following cases*:

1) '*The Customer or the Customer's employees is present in the KSA to meet with the Supplier, and any services provided to the Customer during those meetings* ***are not substantial and are ancillary to the main services which are provided directly to the Non-Resident Customer***'.

2) '*The Customer is travelling to and situated in the KSA or another Member State at the time the services are provided, but the Customer's presence is not related to the provision of the Services*'.

The 2nd excuse is akin to the extension in Art. 31(2) of the UAE VAT Executive regulations. The "not substantially and ancillary excuse" (the 1st case above) is not envisaged either in UAE legislation, clarifications and guidance, or in the GCC VAT Common Agreement. However, neither does Saudi legislation envisage it. Hence, this excuse is ZATCA's view on how relevant presence shall be examined and established and how it shall be distinguished from irrelevant presence. Since the nexus between presence and supply is included in Art.

31(2) read with Art. 31(1)(a)(1), this position may be relevant for the UAE in terms of how similar wording should be interpreted.[25]

Moreover, UAE domestic legislation contains legal rationale for "*not substantial and ancillary excuse'. This is the "single composite supply"* in Art. 4 of the UAE VAT Executive regulations addressed above.

Thus, it is expedient to consider ZATCA's solution for the examples below.

Example (7) from the ZATCA Guideline.

Ali (the Client) returns to Saudi Arabia for a **business trip** during the next year. *Before the trip*, he has requested **Omar**, a different **Saudi lawyer** in Riyadh to provide a report for **Ali** to use in an international project.

Ali visits Riyadh *during his trip* and meets briefly with Omar. Omar says he is *still working* on the report and asks **Ali** to confirm how he would like the report to be structured.

Omar completes his report and **sends** during the next week. ***Ali*** *is in Dammam (**KSA**),* visiting another business contact, when **he receives an electronic copy of the report**.

In this case, **Ali receives the report whilst in the KSA *but is not considered to "directly benefit" from the services whilst in the KSA***.

Omar must apply the zero-rate to his fee for the report.

Example (8) from the ZATCA Guideline:

A UK law firm asks an affiliated Saudi law firm to meet with a client representative whilst visiting Riyadh to discuss a matter.

During the discussion, the representative provides information on the matter. The Saudi law firm makes some high-level comment on laws which may apply and suggests these aspects are considered further, but **does not provide any specific advice to the representative during the meeting**.

Following the meeting, the Saudi law firm agrees to provide formal advice to the UK law firm, which the UK law firm will use to provide a memo to the UK client.

[25] The FTA isn't obliged to share ZATCA's opinion, though.

In this case, **whilst a representative of the ultimate client visited the KSA, the direct benefit of the Saudi law firm's services is not provided to that representative (or to any other person in the KSA)**. The Saudi law firm should apply the zero-rate to the services.

As we said, the FTA hasn't gone so far as to address issues pertinent to Article 34(1)(d) of the GCC Common VAT Agreement. Therefore, it is not clear whether the FTA agrees with its colleges from ZATCA or disagrees with them. However, in our opinion, ZATCA's opinion should find support in UAE domestic VAT regulation.

In a situation similar to the Example (8) but placed on UAE turf, the Taxpayer may refer to single composite supply rules to support the position that:

1) UAE components of the service are ancillary to the principal component of the supply since these components '*do not constitute an aim in itself, but are instead a means of better enjoying the principal supply'.*[26]

2) the principal element is the '*formal advice to the UK law firm, which the UK law firm will use to provide a memo to the UK client*', because it '*constitute[s] an aim*'.

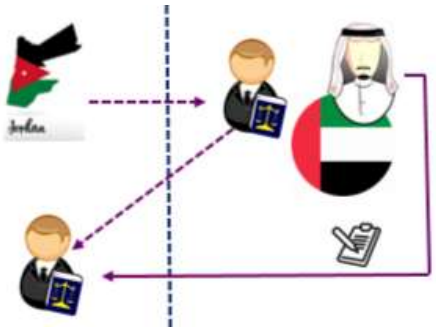
3) these services are not '*continuously performed and consumed for a duration of time',* for which '*any presence of the recipient during commencement, throughout, or during completion of the service in the UAE would result in the recipient being treated as being within the UAE "at the time the services are performed" …*'.[27] In this case they have been consumed at the moment when the formal legal opinion has been issued.

Example (7) seems more vulnerable. It is clear enough why the first meeting with the lawyer in the State may not be reckoned. At this moment, the service hasn't yet been provided (consumed), similar to Example (8). However, the rationale behind disregarding the presence of the client in the State when the email with the report was received is not that clear.

ZATCA rules that '*in this case*, *Ali receives the report whilst in the KSA* ***but is not considered to "directly benefit" from the services whilst in the KSA***'. We may only speculate. Maybe this was because the client's presence in the State on the date of the email did not relate to this report. The client could have been anywhere at that moment. Another explanation may be that, during Customer's presence, the '*services provided to the Customer … **are not** substantial and are ancillary to the main services which are provided directly to the Non-Resident Customer*'. However, there are no facts presented in the Example to assume so.

[26] Art. 4(3)(a)(2) of the UAE VAT Executive Regulation.
[27] The FTA's Clarification VATP019

It seems expedient to compare the above Examples (7) and (8) with the facts and conclusions in Example (6) of the ZATCA Guideline.



Example (6):

Ali is a Jordanian lawyer.

Ali **attends** a consultation with a lawyer in **Jeddah (KSA)** concerning a specific matter of Islamic Financing law. **The Saudi lawyer delivers a documented meeting note of the consultation to Ali two weeks later**, **when Ali has returned to Jordan**.

In this case, the advice provided **during the in-person consultation** is a **significant part** of the services. Ali receives **the direct benefit of the services whilst situated in the KSA**. Therefore, the Saudi lawyer cannot apply the zero-rate to the services.

The results from the comparisons are included in the table:

Examples	Presence in the State	Outside of the State	Significant (substantial part of service)
Example (6)	Consultation in personal meeting	Meeting note	In the State.
Example (7)	Attended meeting to delineate the assignment (content of the future advice). **After the meeting,** the advice was sent by email whilst the client was in the Kingdom.	The advice is used by the client in an international project.	Outside the State.
Example (8)	A high-level comment on laws which may apply and suggests these aspects are considered further, but **does not provide any specific advice to the representative during the meeting**.	KSA Supplier provides formal advice which the client uses in its own memo to its client.	Outside the State.

It is reasonable to conclude from this comparison that in Example 7 there was no relevant presence of the customer in the State at the time when the services were provided:

1) The client was present in the State at the moment when the assignment was delineated. This presence is irrelevant as no service has been provided at this moment.

2) The client was situated in the State when the service was provided (the report was sent to and received by him during this presence). However, presence at this moment had nothing to do with the service being provided at that time. Thus, this presence may also be disregarded.

"Most closely connected" test for temporary presence?

45. Section 2.3.3(b) of the NBR's Imports and Exports VAT Guide instructs that the "closely connected" test be applied not only to choose between establishments but also between establishments and other forms of temporary presence in the State. It says: '*Presence in Bahrain does not mean having a place of residence in Bahrain. If the customer is physically present in Bahrain, even if* ***just visiting****, he will be considered as having a presence in Bahrain. However, a customer will* ***not be considered present at the time the services are performed when his presence in Bahrain is not the most closely connected to the services received***'.

The NBR illustrates this with example below.

Example

'A translation services agency resident and registered for VAT in Bahrain is requested by a South Korean based company to provide translation services in relation to specific documents to be translated from English into Arabic. These documents are to be submitted by the South Korean company as part of the bidding process for a request for proposal for a new project to take place in Bahrain (installation of solar panels on several buildings).

The South Korean entity has already won a similar project in Bahrain (unrelated to this new project) and has currently a team on site in Bahrain taking care of the installation. This team has been sent on site directly from South Korea and will stay in Bahrain for a limited period of time (i.e. the time to install the panels).

The translation services are provided to a customer who has a place of residence outside Bahrain and the other Implementing States, but who has a presence in Bahrain at the time the services are performed.

However, the customer's presence in Bahrain is not the most closely connected to the translation services. These services are requested by the South Korean company to submit a bid with the aim to win a new project in Bahrain while its current presence in Bahrain is solely for the purpose of delivering of an existing project, which is unrelated to the new project for which the company will bid.

When supplying its services, the translation services agency will consider that its customer has a place of residence outside Bahrain and the other Implementing States and has no presence in Bahrain at the time the services are performed. *It may be able to charge VAT at the zero-rate on its translation services provided all the other conditions for them to qualify as an export of services are met'.*

Example

The NBR continued the example above to contrast the difference in the substantive facts: '*In addition to the services covered above, the translation services agency is also requested by the South Korean company to provide translation* ***services to the team working on site*** *in Bahrain on the existing project (e.g. translator to attend commissioning meetings between the team and the client).*

For these services, the presence of the South Korean company in Bahrain must be ***considered as the most closely connected to the services****. Therefore, the translation services agency must consider that its customer has a presence in Bahrain at the time the services are performed. It will not be able to treat these services as an export of services and should charge VAT at the standard rate...'*.

The application of this approach in the UAE may raise a dispute with the FTA. Bahrain doesn't have the "extension rule' which in the UAE excuses only those customers with a short term presence of which the duration doesn't exceed 1 month. The Kingdom and other GCC members excuse any presence which is not related to the services. Only one State in the GCC set time limits for presence not effectively connected with the supply. No other GCC member recognizes such presence as relevant to dismiss 0% VAT. Therefore this approach may not be applicable in the UAE if the 1 month threshold is exceeded. The above examples with translation services being extrapolated to the UAE produce the same outcome (a 5% VAT rate) if the installation team in the UAE:

1) was present in the UAE for more than 1 month,

2) the services were provided for more than 1 month,

3) the dates of team's presence correspond to the dates when '*the services are performed by the supplier and consumed by the recipient'*.[28]

Discrepancy between 'contractual' and 'actual' customers

46. Art. 30(1)(a) of the UAE VAT Executive Regulation zero-rates '*the Services … supplied to a Recipient of Services who does not have a Place of Residence in an Implementing State and who is outside the State at the time the Services are performed*'.

In some cases, a customer can instruct a supplier to provide a service, and enter into a contract for the provision of the services, but instructs that they be rendered for the benefit of another person. The cited rule of Art. 30(1)(a) refers to the place of residence and location of the Recipient of the Services. Article 1 of the Regulation defines such Recipient as a '*Person to whom Services are supplied or imported*'. Therefore, in a case when services are ordered by one client for the benefit of the another person, the latter is the Recipient whose place shall be tested.

Art. 30(3) of the UAE VAT Executive Regulation provides for special regulation to be applied in such cases: '*As an exception to paragraph (a) of Clause 1 of this Article, a supply of Services* ***shall not be zero-rated****, if the supply is made under an agreement that is entered into, whether directly or indirectly,* ***with a Recipient of Services who is a Non-Resident****, if all of the following conditions are met*:

a. *The* ***performance of the Services is, or*** *it is reasonably foreseeable that the performance of the Services* ***will be, received in the State by another Person****, including* ***but not limited to, an employee or a director of the Non-Resident Recipient of Services****.*

b. *It is reasonably foreseeable,* ***at the time the agreement is entered into****, that that other Person in the State will receive the Services in the course of making supplies* ***for which Input Tax is not recoverable in full*** *under Article 54 of the Decree-Law*'.

47. Here is what other GCC members set out in their Implementing Regulations:

Oman	Saudi Arabia	Bahrain
'…shall be subject to the zero rate … supply … to a Customer that does not have a Place of Residence in the GCC States, provided that ***he benefits from this service outside the GCC States****…'*.	The zero rate is not applicable *'if the customer or any other person has benefitted from the services directly during the presence of either one in a member State* ***and where the other person is not entitled to full input tax deduction thereof'****.*	For zero-rating *'the Services shall be enjoyed outside the territory of the Implementing States.*[29]

[28] See explanation below.

[29] Bahrain VAT Executive Regulations, Art. 73(4).

As you may see, only the KSA and UAE give the right to keep the 0% rate in cases where the actual Recipient is a third party residing in the State and entitled to an input VAT credit (recovery).

Due to the similarities in the Regulations:

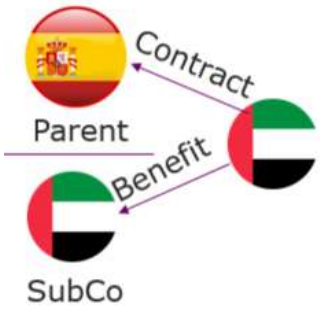
- One may avail oneself of ZATCA's considerations regarding this matter to pick up the slack in the FTA's Guidelines and Clarifications regarding purchases for third party cases and for the input credit excuse in these cases. There is no doubt, though, that the FTA may assume the opposite position.
- The OTA and NBR clarifications may be used with care as the regulation they interpret is less similar to that which is used in the UAE legislation.

  These authorities do not address the '*creditability excuse*' as it is not present in the legislation of Oman and Bahrain. However, a purchase of a non-resident in favor of a resident is a concept which may equally be deduced from the legislation of all GCC members. So, the OTA and Bahrain may still contribute valuable input.

48. ZATCA addresses performance to a third party in Section 5.3.2 of the VAT Guideline on Services To Non-GCC Residents: '*A Person other than the Customer will be considered to directly benefit from the services if*':

    1) '*The Supplier and the Customer intend that the **main deliverables, output, or performance** of the services will be supplied directly to another Person situated in KSA or another GCC Member State (either through that Person's place of residence, or a temporary presence to receive the services) as a term of the supply; or*'

    2) '*The **nature of the services** is such that a different Person to the Customer, must receive the predominant benefit directly from the Supplier*'.



Example (9) from the ZATCA Guideline.[30]

A multinational construction company has its main headquarters in Spain and a subsidiary entity in the UAE. The head office of the Spanish company contracts with a UAE law firm to provide legal services with respect to the UAE labour law applying to the subsidiary's activities.

In this case, the law firm is *instructed by and enters into a contract with the Spanish company, but it **provides its legal services directly to the team of the UAE subsidiary***. The benefit of the services is therefore directly received by a person in the UAE.

[30] The KSA is replaced with UAE in these examples for the purpose of this survey.

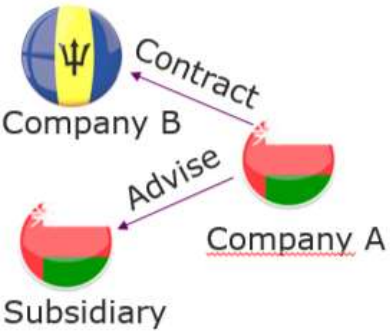
Example (10) from the ZATCA Guideline.

An Emirati accounting firm is asked by its US affiliate to carry out the statutory audit of a local Emirati subsidiary of a multinational company.

Whilst the Emirati accounting firm is instructed and paid by its US affiliate, ***the regulatory reliance on the audit*** by the Emirati subsidiary means that the subsidiary must receive the ***predominant*** *benefit* of the services.

We see no mismatch with the UAE VAT regulation which hinders these examples from being applied by UAE Companies.

49. The Oman Tax Authority came up with an example similar to above Example (9):



Example from the OTA.

Company A is a consulting firm registered for VAT in Oman that entered into a contract with Company B in Barbados, which also has a subsidiary in Muscat. Company A provides the services directly to a subsidiary in Oman. Even though the contract is in the name of a non-resident in Oman, the service is not eligible for zero-rating since the actual customer is benefiting from the service in Oman.

50. The supply of the services on behalf of a third party residing in the UAE shall not be confused with '*business relations which do not involve provision of services*'. Pursuant to the ZATCA Guideline: '*If the Supplier has a regular business interaction with another affiliated Person in the KSA, this does not in itself indicate that the other affiliated Person receives any direct benefit. Whilst the facts will be important in each case, ZATCA considers that the main output or deliverables are most important to determine whether direct benefit exists*'.

Example (13).

"Saudi Insight", a market research company in KSA, provides research services to a customer resident in the UK (UK Co).

The services contract is with UK Co and its deliverables are provided exclusively to UK Co. **Saudi Insight often liaises with UK Co.'s KSA affiliate entity (in respect of administrative matters such as**

planning, deliverables, administration of contract), but no output is not intended for, and never provided to, the KSA affiliate. In this case, the KSA affiliate does not directly benefit from the services.

This example may be contrasted with the example given by Bahrain's NBR. It shows where the demarcation line between '*regular business interaction with another affiliated Person'* and 'receipt of direct benefit' is crossed.

Example[31].

A consulting company resident and registered for VAT in Bahrain entered into a contract with an entity based in Spain for the provision of advisory services.

The advisory services relate to a business acquisition to be made by a Bahrain based holding company owned by the Spanish entity. While **the contract is signed with the Spanish entity and the services will be paid for by that Spanish entity**, the consulting company actually **receives instructions directly from the Bahrain entity**. It **reports on progress to the Bahrain entity and will deliver its report for discussion and sign-off to the Bahrain entity**.

The NBR explains that '*in this scenario, the person with whom the consulting company entered into the service agreement and from whom it will receive a payment* ***cannot be considered as the customer of the services****. It appears from the facts and* ***economic reality*** *that the* ***actual*** ***customer of the services is the Bahrain entity****. There is a* ***discrepancy between the "contractual" customer and the "actual" customer.*** *Consequently, for the purpose of assessing the customer and his place of residence, the consulting company must* ***disregard the "contractual" customer (i.e. the Spanish entity) and consider the "actual" customer (i.e. the Bahrain entity).*** *As a result, the services are considered supplied to a customer that has a place of residence in Bahrain.*

To this moment, all above conclusions fit the UAE's VAT treatment and therefore may be applicable to the actual case on UAE turf.

The NBR further concludes that '*the consulting company cannot charge VAT at the zero-rate on its services as they do not meet the conditions to qualify*

[31] This example is taken from the NBR but from its Imports and Exports VAT Guide (Sec. 2.3.3).

as an export of services'. This conclusion for UAE VAT may be different since the potential VAT incurred may be recoverable in full (see above). It doesn't matter for Bahrain, which hasn't implemented this attribute (recoverability) in its VAT legislation. However, the UAE has done so, and the consultancy firm retains the potential to keep the 0% VAT rate if the "actual" customer may recover the VAT in full.

51. The FTA doesn't address cases of the onward provision of services by foreign clients. ZATCA's position for such cases is disclosed in the same Section of the Guideline: '*A direct benefit does not arise if the Non-Resident Customer* ***receives the services from the Supplier and subsequently chooses to provide these to another Person in the KSA****. The onward provision of services is a circumstance which* ***is not in the direct control of the Supplier and should not affect the supply already performed***'.

    Example (11) from the ZATCA Guideline.

    Global Consulting UK has a global contract with Asia Trading Company Limited, which has a head office in Singapore and local companies established in many countries throughout Asia and the Middle East, including Asia Trading KSA.

    Global Consulting UK enters into a contract to carry out an impact assessment for Asia Trading Co. Limited across multiple countries. ***It arranges for its subsidiary, Global Consulting KSA, to carry out specific information gathering tasks at the premises of Asia Trading KSA***.

    The local consulting team carry out these tasks but do not provide services directly to Asia Trading KSA. The analysis of the information, conclusions and recommendations are carried out at a projectwide level by Global Consulting's head office and will be distributed to all subsidiaries.

    Global Consulting KSA charges Global Consulting UK for the time spent in carrying out the tasks as agreed under the contract. This charge can be zero-rated, as the direct benefit of the services is provided to Global Consulting UK.

    Asia Trading KSA will later receive some ***indirect benefit*** *from the services, but* ***it does not directly benefit from Global Consulting KSA's services'****.*

    This interpretation is relevant to the UAE as it also considers the question of who is the Recipient of the Services. As earlier established, this is the '*Person to whom Services are supplied or imported*'. In the Example above, the services have been supplied to the Global client. Moreover, its subsidiary in the State hasn't received those services, which have been performed in the State:

'*The analysis of the information, conclusions and recommendations are carried out* ***at a project-wide level by Global Consulting's head office*** *and will be distributed to all subsidiaries*'. Hence there is no discrepancy between the Recipient of the Service and contractual client. Therefore, we believe that where there is a similar arrangement in the UAE, a similar conclusion on the 0% VAT rate should be made.

The 'Secondary or ancillary advantage in the State' factor

52. ZATCA distinguishes between supplies to Recipients and cases where '*a* ***different Person*** *to the Customer obtains some secondary benefit, advantage or eventual performance of services resulting from a supply of services to the Customer. These will not affect the VAT treatment unless the other Person directly benefits from the Supplier's performance of the service*'.

A secondary or ancillary advantage of services supplied to a foreign customer hasn't been addressed by the FTA. Thus, we again revert to the ZATCA Guidelines.

ZATCA clarifies that '*a direct benefit does not arise if the services are provided to a non-Resident Customer and another Person receives a* ***secondary or ancillary advantage*** *from the provision of those services*.

Example (12).

A Saudi advertising company designs an advertising campaign for a consumer product to be launched in the Saudi print and television media.

The advertising company enters into a contract directly with the Non-Resident product manufacturer, and the campaign **does not make direct reference to local manufacturers selling the products**.

In this case, the local manufacturers may receive an *ancillary advantage* from the services provided, but they do not directly benefit from the services.

In the UAE, the rationale for such an example should be referred to in terms of the "Recipient of the Service". The local manufacturers are not '*Persons to whom Services are supplied or imported*'.

You may also find a difference in VAT treatment in this scenario with the example provided for Bahrain by the NBR. As explained earlier, the difference is triggered by the inclusion in the Bahrain VAT Law of the "place of enjoyment" rule.

'Potential to recover' factor

53. As mentioned above, the zero rate in the UAE and KSA may not be unconditionally lost in a case where the performance of the Services is or '*will be, received in the State by another Person*'. The taxpayer may still qualify for the 0% rate if '*it is reasonably foreseeable, at the time the agreement is entered into, that that other Person in the State will receive the Services in the course of making supplies for which Input Tax is not recoverable in full under Article 54 of the Decree-Law*'.[32]

53.1. The FTA guides and public clarifications don't offer much on this provision.

Section 2.3.2 of the Director's Services VAT Guide No. VATGDS1 cites an example with VATable director services.[33] This example is given below with an adjustment to a legal person and the clarification of the FTA regarding VAT Implementing States.

0% VAT if 5% VAT would be recoverable if charged to the Actual Recipient

Example 1.

The provider is a UAE resident company. It provides a director *'from the UAE to a company not resident in the GCC Implementing States'*

These '*services may be zero rated if the company does not have a presence in the UAE, and the performance of the services is not received in the UAE by any person* ***who would be able to recover VAT incurred***'.

Example 2.

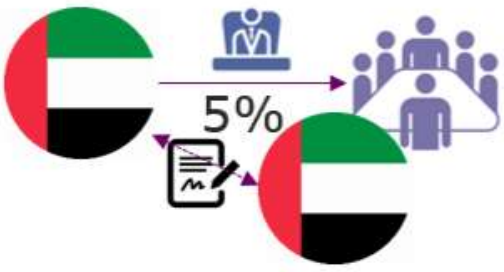
The same situation as in the previous example except for the fact that the director shall be provided not to the foreign Customer but to another company residing in the UAE. Applying the FTA's comments to the previous scenario, the 0% rate is applicable if the UAE company '*would be able to recover VAT incurred*'. If it isn't able to do so, 5% VAT shall be applied.

[32] Art. 31(3)(b) of the UAE VAT Executive Regulation.
[33] From 1 January 2023, Article 3(3) of the UAE VAT Executive Regulation removes from the scope of VAT 'the functions of a member of a board of directors, performed by a natural person'. Therefore, the clarification is still in effect for judicial persons proving these services.

The simpler issues are illustrated below.

Example 3.

A director is provided by the UAE Company to serve in a UAE company under a contract with the latter company. There is no doubt that the 5% VAT rate is applicable here since there is no international element involved.



Example 4.

This time, a director is provided to a foreign company to serve on the board of this foreign company. In this scenario, no local element on the Recipient's side is involved. Thus, 0% ensues.

Example 5.

And, finally, to set a complete picture: if a UAE resident pays for a director to be provided to serve on the board of the foreign company, the 0% VAT rate is only applicable if the director performs the duties abroad[34].

Actually, all these clarifications have been found in the FTA's resources.

53.2. However, in practice, there is a bunch of controversial issues here which are worth addressing.

For instance, the "excuse" rule mentions full recoverability. Does it prevent a pro rata approach? For example, may a supplier zero rate half of the price charged if the beneficial recipient of the service in the UAE would be able to recover half of the VAT incurred?

The answer may be found in Sec. 5.3.3 of the ZATCA Guideline "Supplies of Services To Non-GCC Residents": '*If the other Person is only entitled to partial VAT deduction in relation to services supplied to him (not 100% full deduction), then the requirement for the purpose of applying zero tax rate has not been met*'.

[34] See section "0% VAT for services actually performed outside the UAE" below.

53.3. The FTA doesn't give a guidance on how the taxpayer may prove that '*it is reasonably foreseeable, at the time the agreement is entered into*', that Input Tax is recoverable in full. The Clarification to this effect may be found in the same Section of ZATCA's Guideline: '*And for the purposes of documenting the entitlement of applying zero-rate tax on supplying services in these cases, ZATCA requires that* ***the supplier must obtain the following evidence from the other person*****:**

- *Full name of the other Person*
- *Tax Identification Number*
- ***Confirmation*** *of full right to Input Tax Deduction in respect of that Supply, in case the other person directly benefited from the services*'.

Written confirmation from the customer is not unusual on the UAE's turf either.

In Section 3.3.3 of the Designated Zones VAT Guide, the FTA says: '*the Authority expects that in most arm-length situations,* ***a written statement from the recipient*** *that the goods will not be consumed should be sufficient for these purposes*'.

The FTA's Public clarification VATP034 prescribes that the Recipient must provide to the supplier '***a written declaration*** *indicating that the intent of the supply of Electronic Devices is for the purposes of reselling or to use the Electronic Devices in producing or manufacturing Electronic Devices*'.

53.4. ZATCA also clarifies that '*if the Supplier makes multiple supplies of similar services to a Customer during a calendar year, for which a single other Person directly benefits from those services, ZATCA accepts [that] the other Person can provide* ***a single evidence*** *of the right to full Input Tax Deduction* ***in respect to supplies during that calendar year***'.

This approach is a part of the job of administering VAT. I mean it is not an interpretation of any rule with the same wording which we may take away. Therefore, this approach may work only with the relationship with the administrator (ZATCA). The FTA may share it or may act in another way.

53.5. Must a supplier verify information obtained from the customer?

Art. 31(3)(b) of the UAE's VAT Executive Regulation covers supplies where '*it is* ***reasonably foreseeable, at the time the agreement is entered into****, that … Input Tax is not recoverable in full*...'. Hence, the 0% rate is legitimate even for those cases where 'reasonably foreseen' recoverability never became actual after the '*time the agreement [was] entered into*'.

For example, the KSA VAT Implementing Regulation doesn't employ '*reasonably foreseeable at the time the agreement is entered*' or similar wording at all. Article 33(2)(b) prohibits zero rating where '*the customer or any other person has benefitted from the services directly during the presence of either one in a member State* ***and where the other person is not entitled to full***

input tax deduction thereof'. However, even this wording doesn't hinder ZATCA from clarifying: '*ZATCA does not expect the Supplier to perform any additional checks to verify the other Person's ability to deduct VAT*'. Nonetheless, '*if the Supplier* ***has reason to suspect*** *the services would be used for exempt or non-Taxable purposes,* ***it may request additional evidence*** *to support the application of the zero-rate'*.[35]

It is liberal to use "may" when exercising this approach in the UAE, in my opinion. A "reason to suspect" affects the status of "reasonable foreseeability". Thus, the supplier must request additional evidence rather than "may" do so.

Interplay between the terms 'relevant presence' and 'actual customer'

54. Some experts believe that "*the amendment to Article 31(2) of UAE VAT Regulations result in making Article 31(3)redundant*". The rationale for such opinion is this:

- '*Article 31(3) … states that if the service is received by any other person in UAE* ***on behalf of non-resident recipient of services*** *and that person cannot recover Input VAT in full if VAT charged to him, then the supplies cannot be zero rated. While, Article 31(2) … already provides that zero-rating VAT would be denied if the presence in UAE is effectively connected with supplies, Article 31(3) of ER further extending similar condition by placing the 'non-recovering of input VAT' aspect in order to disallow zero-rating VAT really makes it duplicating*'.
- '*Separately, not meeting the conditions of Article 31(3) … also does not mean that the supplies would be zero-rated, since it would breach the conditions provided under Article 31(1)(a) and 31(2) … based on having 'effectively connected presence' in UAE. In the pre-amendment era, Article 31(3) of ER may well have served as an exception to Article 31(1)(a) in the overall scheme of things, however, it can be said that post amendment, it no longer remains an exception but has turned into an absurd provision whose relevance cannot be ascertained*'.

I may not agree with this position. Article 31(3) doesn't contain the text ***in bold***, and this is crucial in understanding its scope. Articles 31(1)(a) and 31(2) chase the cases where the Recipient of the Services is situated in the State, whether in the form of an establishment or in the form of the presence of persons acting on behalf of the Recipient. Article 31(3) deals with cases where, conversely, a contractual Recipient acts in favor (or on behalf) of '*another Person, including but not limited to, an employee or a director of the Non-Resident Recipient of Services*'. For that reason, this Article states: '*the performance of the Services is… received in the State* ***by another Person****… including … an employee or a director …*'. This may be the case where the foreign

[35] Sec. 5.3.3 of the ZATCA Guideline "Supplies of Services To Non-GCC Residents"

company has paid for a service which is to be enjoyed by one of its employees residing in the State rather than the Company itself.

0% VAT for services actually performed outside the UAE

55. If a company's operations don't fit the conditions for zero-rating under Art. 31(1)(a), the company may still be in a position to apply this rate.

A second option for zero-rating is specified in Article 31(1)(b) of the VAT Executive Regulation: '*If the services are* ***actually performed outside the Implementing States*** *or are* ***the arranging of services that are actually performed outside*** *the Implementing States*[36]'.

The place of actual performance shouldn't be confused with the place of supply rules. The cited rule of Article 31(1)(b) covers supplies with a place of supply within the State.

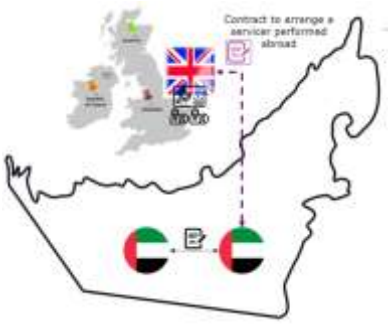
Example.

The Recipient of the consultancy services is a UAE client. Consequently, the Place of Supply is in the UAE and therefore subject to VAT.

Article 31(1)(a) doesn't fit to zero-rate this supply as the Recipient is inside the UAE. However, if these supplies have been physically performed outside of the UAE, they shall be treated as a zero-rated export of services according to Article 31(1)(b).

Therefore, the consultancy services shall be zero-rated if these services are actually, i.e. physically, performed abroad.

If a provider's activity or a part thereof relates to the arrangement of services which are physically performed abroad, such arrangement shall also be zero-rated.



Section 2.3.1 of the Director's Services VAT Guide No. VATGDS1 gives one relevant example. This example is outlined below with adjustments for a legal person[37].

[36] As clarified above, currently reference to Implementing States shall be replaced with a reference to the UAE.
[37] As stated earlier, from 1 January 2023 the activity of a director who is a physical person, who serves as director in a company, is excluded from VAT scope in the UAE.

Example "Director working overseas"

A company residing in the UAE provides a director who is also resident in the UAE.

This UAE resident director is '*contracted to physically attend board meetings in the UK*'. The company '*can zero-rate the supply of these services since the nature of the services requires that they are physically performed outside the*' UAE.

56. The UAE is a pioneer in this type of the zero-rating in the Gulf. Article 34 of the GCC Common VAT Agreement zero-rates '*Supplies **to** Outside the GCC Territory*' only and includes therein a 'supply of Services by a Taxable Supplier residing in a Member State **for a Customer who does not reside in the GCC Territory**'. Para (b) of Article 31(1) extends the zero rate to supplies where the Customer's Place of Residence has no relevance at all. As established above, it zero-rates '*the services … actually performed outside the Implementing States or … the arranging of services that are actually performed outside the Implementing States*'.

    This mismatch exists not only between the Agreement and the UAE VAT regulation. There is no similar rule in other GCC States. Article 54(4) of the Oman VAT Law zero-rates a '*supply of Services by a taxable Supplier that has a Place of Residence in the Sultanate to a Customer that does not have a Place of Residence in the GCC States*'. The special rule from Article 31(1)(b) of the UAE VAT Executive Regulation (or similar) is not included in either the Oman VAT Law or in the Oman Executive Regulations. In the KSA the situation is akin to Oman[38].

    Article 73 of the Bahrain VAT Executive Regulations zero-rates '*the Services [that] are performed outside the territory of the Implementing States*'. However, this is included in the Article named "Supply of Services to Non-Resident Customers". Article 53(7) of Bahrain's VAT Law zero-rates '*the Supply of Services from a taxable Supplier resident in the Kingdom to a Customer not resident in the territory of the Implementing States who benefits from the Service outside the Implementing States territory…*'. The NBR's VAT General Guide and its Import and Export VAT Guide make no mention at all of zero-rating for services actually performed abroad. Thus, zero-rating services provided to a Bahraini resident but performed oversees requires additional consideration.

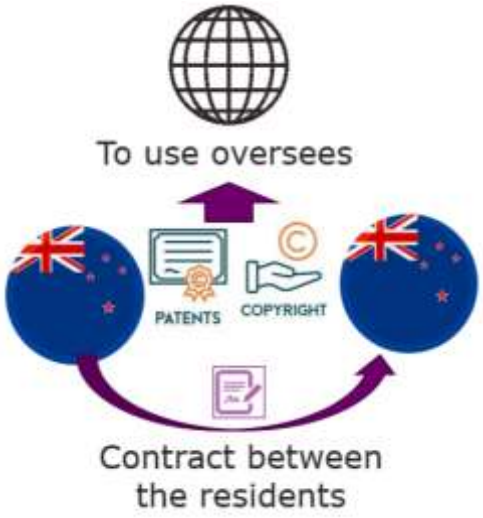
57. An example illustrating the zero-rating of services actually performed overseas may be borrowed from the New Zealand Inland Revenue.

    Section 11A(1)(j) of the GST Act 1985 also zero-rates services which '*(i) are **physically performed outside New Zealand**; and (ii) are not remote services supplied to a New Zealand resident who is not a registered person; or (jb) the services are the **arranging of underlying services that (i) are physically performed outside New Zealand**; and (ii) are not remote*

[38] Article 33 of the Saudi Implementing Regulation.

services supplied to a New Zealand resident who is not a registered person…'.

The Inland Revenue illustrates this with an example where, in a transaction between residents, IP rights are licensed for overseas use.



Example from the New Zealand Inland Revenue

A New Zealand publishing company with the copyright on a New Zealand author's book sells the copyright to another New Zealand company.

The fee for the right **is zero-rated as the other company will be publishing and selling the book overseas**.

Lack of evidence for zero-rating supplies

58. The FTA in the above Clarification obliges taxpayers to collect evidence of the facts relevant for zero-rating: '*… a supply should only be zero-rated where the supplier can ascertain that all of the above conditions for the application of the 0% rate are satisfied*'.

    The FTA instructs the supplier to '*consider all available facts and seek, if necessary, additional information from the recipient in order to identify the recipient's residency status and location at the time the services are performed. If the supplier is not able to establish the necessary facts to ascertain if the zero-rating conditions are met, the supplier must standard-rate the supply*'.

    The Oman Tax Authority makes the same clarification in the last paragraph of Section 6.1 of its Import and Export Guide.[39]

Disclaimer

Pursuant to the MoF's press-release issued on 19 May 2023 "*a number of posts circulating on social media and other platforms that are issued by private parties, contain inaccurate and unreliable interpretations and analyses of Corporate Tax*".

The Ministry issued a reminder that official sources of information on Federal Taxes in the UAE are the MoF and FTA only. Therefore, analyses that are not based on official publications by the MoF and FTA, or have not been commissioned by them, are unreliable and may contain misleading interpretations of the law.

See the full press release here.

[39] Version 1, issued in June 2023.

You should factor this in when dealing with this Guide as well. It is not commissioned by the MoF or FTA. It is not legal or tax advice or a recommendation to proceed in a certain way. If you need such, you should make a request to a consultant for, it with all relevant facts of your case being disclosed. The interpretation, conclusions, proposals, surmises, guesswork, etc., it comprises have status of the author's opinion only. Like any human job, it may contain inaccuracy and mistakes that I have tried my best to avoid. If you find any inaccuracies or errors, please let me know so that I can make corrections.

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