



Doing business in the Gulf in the new VAT regime

With Saudi Arabia and the United Arab Emirates (UAE) introducing a Value Added Tax (VAT) on 1 January 2018 further to the Gulf Cooperation Council (GCC) VAT Framework Agreement, and other GCC member states (Bahrain, Qatar, Kuwait and Oman) expected to follow before 2 January 2019, businesses need to look ahead to the primary and secondary effects of the new VAT regime on their deals and operations in the GCC.

VAT is a transaction-based tax levied on supplies of goods and services and imports and exports, due in each step of the supply chain. The end consumer should ultimately bear the tax burden and VAT therefore should be neutral for businesses. The standard VAT rate in the GCC will be 5%, unless an exemption or zero rate is applicable.

The VAT in the GCC is akin to the European system and, similarly, GCC member states have some discretionary authority with respect to certain supplies, mechanisms or industries.

How Baker McKenzie can help you

As trusted tax counsel to multinational companies for over five decades, Baker McKenzie's market-leading Global Tax Practice can help your organisation with the strategic and practical aspects of the GCC's new VAT regime.

With 950 tax practitioners — lawyers, economists and advisers — in more than 40 countries, we collaborate across borders and specialties to stay abreast of changing tax laws, practices and dispute resolution techniques around the world. Our unsurpassed global coverage enables us to help our clients design, implement and defend tax strategies for their international operations and transactions everywhere they operate.



Summary of the legislation

- ❑ VAT will be levied on the transfer of goods and services within the territory of the GCC member state, and the place of supply of goods and services are similar to European VAT law, including the intra-GCC-supply and distance sales.
- ❑ VAT taxable persons are entitled to recover input VAT. Input VAT recovery may be limited in so far as exempt supplies are made.
- ❑ Electronically supplied services are subject to VAT where the actual use or benefit of the services is accrued.
- ❑ Businesses will be required to register for VAT purposes if their annual revenue is at least SAR 375,000 (or the equivalent in national currency) and can voluntarily register if their revenue is above 50% of that amount.
- ❑ Member states may subject the following sectors to the **zero rate** or **exemption**:
 - Financial services
 - Education
 - Health
 - Real estate
- ❑ Member states may subject the following sectors and/or supplies to the **zero rate**:
 - Oil and gas
 - Certain food products
 - Medical supplies
 - Intra-GCC goods and passenger transport
 - Import and export
- ❑ The VAT treatment of M&A deals is not yet crystallized. In both Saudi Arabia and the UAE transfers of businesses would not to be subject to VAT if specified conditions are met.
- ❑ A reverse charge mechanism is applicable on cross border supplies between VAT taxable persons and on imports of goods by businesses within the UAE, meaning that the VAT taxable customer is liable to account for the VAT instead of the supplier.
- ❑ Member States may implement a tax group in their national VAT legislation.



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Key issues for businesses

As with any new legislation, many aspects of the new VAT law are still unclear. Nevertheless, businesses need to consider the strategic and practical implications of the new VAT regime and to adapt when structuring and executing M&A transactions and conducting commercial operations.

1. Impact of registration

Businesses want to understand how the VAT registration rules apply to their existing operating models and impact them. Some of the issues include how in country registration with respect to cross border supplies would affect their other supplies, how to determine the place of supply and how to minimise VAT on intercompany charges.

2. Managing global VAT obligations of e-commerce and online services

E-commerce businesses providing services online to customers in a GCC country but which do not have any business presence in such country may still be required to register for VAT in that country and account for local VAT, even if the value of the supplies is below the registration threshold.

3. Intra GCC trading and supply chains

Complexities arise with respect to the links between the Customs duty processes and the VAT treatment, on supplies to and from UAE free trade zones, and on supplies from one GCC country to another. Supply chain models may need to be reviewed, to assess whether any refinements are necessary to mitigate the impact of the new legislation. With VAT collected all along the supply chain, all parties will be impacted. While the tax administration infrastructure develops, you need to consider how best to avoid or minimise business interruptions and costs.

4. Risk management and compliance with reporting obligations and disclosure requirements

The introduction of VAT brings a new level of transparency and corporate liability in the GCC states, with penalties for non-compliance, tax evasion and tax fraud coming into play. You not only need to comply with new legal obligations, but also manage your company's new risk profile while doing so.

5. Determining and optimizing cash flow

You will need to determine and optimise your company's VAT and cash flow position and address any interaction with your company's direct and indirect tax liabilities. If not applied correctly you can lose income, and possibly be penalized, so it is key to understand the VAT impact on your cost structure and revenue streams.

6. VAT treatment of domestic and cross-border M&A deals

VAT can have a significant cost and cash flow impact on M&A deals, requiring careful consideration when structuring transactions, whether business transfers or asset sales, or share transfers. Particular attention should be paid to indemnities, representations and warranties that may be required, as well as to any potential corporate liability issues that may arise.

7. Restructuring business models onshore and in free trade zones

The impact of the new VAT regime on your business or transaction could be influenced by where your company is incorporated, the corporate vehicle in the country the geographical limitations of your business licence and the defined scope of services that you can provide. Accordingly, you will need to consider whether your current business model will comply with the new legislation and still enable you to achieve your commercial objectives.

8. Negotiating commercial contracts with suppliers and customers

Renegotiating the terms of existing contracts to address any VAT risks that were not previously relevant, as well as ensuring that new contracts include appropriate provisions outlining how any VAT burden will be borne. It is not just your own organisation's readiness that you should be concerned about, but also that of suppliers and other third parties.

9. Infrastructure projects

Businesses may need to minimise possible disadvantages of the VAT costs which may arise at the initial phase of capital intensive projects. This may require considering efficient structures for undertaking infrastructure projects, including contracts with government entities, and the application of the VAT capital assets scheme in relation to the supplies and importation of plant and machinery.

10. Industry exemptions

Whether or not your organisation falls within a zero rate or exempt sector, you may well be impacted at practical level by the VAT rules that apply to different industries. If you are operating in the financial services, real estate or e-commerce sectors, or your business centres around the movement of physical goods across borders, then the new VAT may have a major impact on the way you do business.

11. Disputes

Although national tax dispute resolution mechanisms are being established, so far, there are no plans for a central organization that settles disputes between taxable persons and member states and for the different treatments of cross-border transactions that may result in double (non)-taxation. It is therefore key to align with the federal tax authorities and through the Organisation for Economic Cooperation and Development (OECD) early on in areas of uncertainty, and to consult with them on the practical impact of the legislation.

12. Training and controls

With the introduction of a new VAT system, it is key to have staff prepared as well so they know what to do and how deal with these changes from the start. At the same time, it is important to be in control and to ensure that the right persons are reporting to the correct colleagues (check and controls).

