

Introduction:

The Professional Magazine is a specialized publication issued by Ali Ibrahim Al-Nasser & Partners, Certified Public Accountants and Consultants. In this twentieth issue, we address the concept of Deemed Supply under Value Added Tax (VAT). This edition also highlights several common professional mistakes and practices, most notably the failure to register exempt real estate dispositions, as well as the failure to remit Withholding Tax (WHT) arising from settlement of amounts due with non-resident supplier.

Deemed Supply in Value Added Tax (VAT)



The supply of goods and services is one of the key determinants that gives rise to Value Added Tax (VAT). Article 14 of the Implementing Regulations of the VAT Law provides as follows:

“ The Tax is imposed on all Taxable Supplies of Goods and Services made by a Taxable Person in the Kingdom in the course of carrying on their Economic Activity...”

Furthermore, Article 1 of the Agreement defines a supply as any form of supply of goods or services for consideration, in accordance with the cases stipulated in Chapter Two of the Agreement.

Chapter Two of the Agreement, in Article 5, provides that the supply of goods means the transfer of ownership of such goods or the right to dispose of the same as an owner. Article 7 further stipulates that any supply that does not constitute a supply of goods under this Agreement shall be considered a supply of services.

Accordingly, VAT arises when a taxable person supplies goods or services in the Kingdom in the course of conducting an economic activity, which requires verifying that the description of the supply applies to the transaction for VAT purposes.

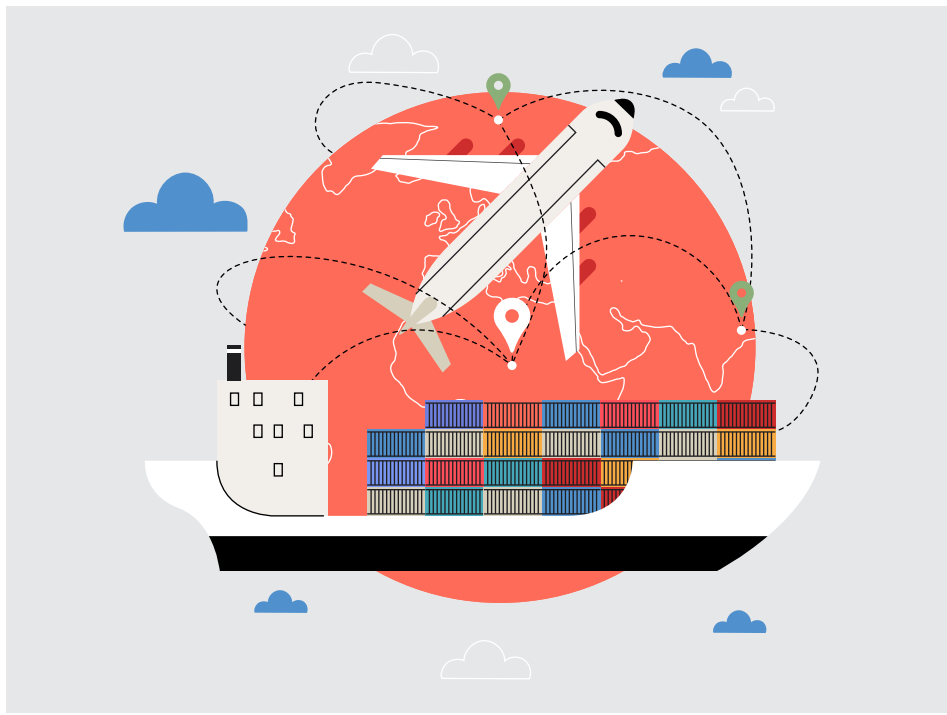
However, the description of a supply may not apply to certain types of transactions that result in the transfer of goods or services. Examples include:

- The transfer of goods or services to others without consideration, as the taxable supply description is not met in such cases, given that the existence of consideration is an essential element in the definition of a taxable supply.

However, supplies of goods and services provided without consideration are treated as fully-fledged supplies, and VAT must be remitted on such supplies even in the absence of consideration. This is known as a deemed supply, i.e. , a supply in which the usual elements of a supply are not actually present, but are assumed to exist for the purpose of applying VAT.

The general concept of deemed supply is linked to a taxable person incurring input VAT and claiming it in their VAT return on supplies that were originally expected to be subject to taxable supply. However, if the taxable person changes the use of such goods or services, which leads to the failure to apply the supply as initially required, the transactions carried out on these goods or services are treated as deemed supplies until the tax is paid thereon. This does not include cases where the goods are damaged, stolen, or lost.

Conversely, if a taxable person incurs input VAT but does not claim it in their VAT return, any subsequent supply of the goods or services without consideration shall not be treated as a deemed supply under any circumstances. Therefore, for the deemed supply justification to take effect, it is essential that input VAT has been incurred and claimed.



Accordingly, it can be stated that the reason for treating a supply as a deemed taxable supply, even when provided without consideration, is to address and recover the input VAT that the taxable person has incurred and claimed.

Article 8 of the Agreement and Article 15 of the Regulations provide examples of deemed supplies, which do not go beyond the general concept described above, including the following:

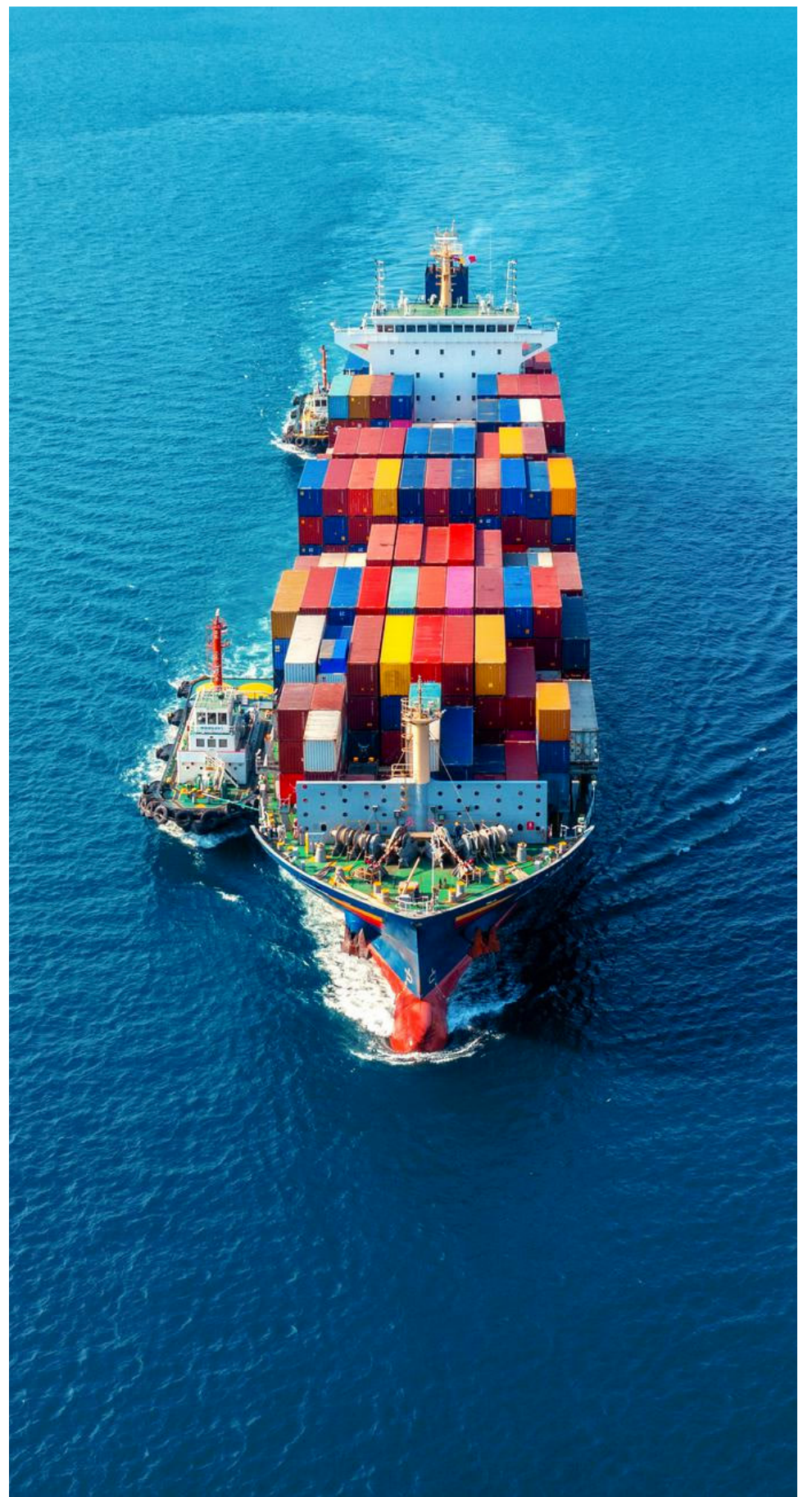
- Supplies of services without consideration.
- Disposal of goods for purposes other than economic activity.
- Changing the use of goods to use for non-taxable supplies.
- Retention of goods after ceasing economic activity, or upon the taxpayer being considered ineligible for registration, whichever occurs first.
- Supplies of goods or services without consideration in the course of the activity (e.g., gifts to customers or employees) shall not be treated as deemed supplies if the market value of the goods or services supplied does not exceed SAR 200 per recipient per calendar year, with an annual cap of SAR 50,000 per calendar year.

Deemed supply cases are among the common situations encountered by some taxpayers, which require careful attention and treatment in accordance with tax provisions. Examples include:

- Providing meals to employees and workers at restaurants and hotels, if the limits specified in the Implementing Regulations (as mentioned above) are exceeded.
- Providing samples or promotional gifts to customers, if the limits specified in the Implementing Regulations (as mentioned above) are exceeded.
- Providing free training or educational seats in the field of educational or training services.
- Purchasing certain goods intended for activity purposes for the personal use of owners.
- Dividend in kind to partners from the entity's inventory of goods.
- Providing personal services without consideration to owners or certain related parties.

As for the value of deemed supplies that must be declared in the taxpayer's VAT returns, Article 39 of the Implementing Regulations provides as follows: "The value of deemed supplies that are treated as supplies in accordance with the provisions of the Agreement, the Law, and the Regulations shall be the purchase price or cost. In cases where the purchase price or cost cannot be ascertained or is impracticable to ascertain, the value of such supplies shall be their fair market value at the time of the deemed supply, in accordance with the rules for determining fair market value set out in Article 38 of these Regulations."

Accordingly, the general rule is to declare deemed supplies when their criteria are met, based on the cost of supplies on which input VAT has been previously claimed. In cases where the cost cannot be determined—such as for certain types of services whose cost is impracticable to establish, or for some composite goods—deemed supplies must be reported based on their fair market value. It is essential for the taxpayer to verify the nature of their activity and whether it includes any forms of deemed supply that must be declared in their VAT return as part of their taxable supplies.





Common Professional Mistakes and Practices

Common Mistake:

Failure to register exempt Real Estate Transactions Tax (RETT) dispositions in the Real Estate Transactions Portal, under the assumption that they are exempt from tax.

Correct Procedure:

The disposer must register the real estate disposition in the Real Estate Transactions Portal, even if the disposition is exempt from tax.

Clarification (Example):

A disposer may carry out certain real estate dispositions that are exempt from tax under the provisions of the Law and its Implementing Regulations, yet fail to register or declare such dispositions through the Real Estate Transactions Portal. This is considered a violation of Article 11 of the Implementing Regulations of the Real Estate Transactions Tax Law.

An exception applies to exempt real estate dispositions carried out in connection with subscription to securities offered through an Initial Public Offering and the trading of listed securities.



Common Mistake:

Failure to withhold tax when settling amounts payable to a non-resident supplier.

Correct Procedure:

Withholding tax must be deducted on account settlement transactions if they relate to amounts subject to withholding tax, as account settlement is considered equivalent to a payment.

Clarification (Example):

A resident company may receive services from a non-resident supplier, which requires withholding tax to be applied at the time of payment. However, instead of making an actual payment to the non-resident supplier, the resident company may settle the amount payable by offsetting it against other amounts owed to the supplier. In such cases, the resident company must treat the settlement as a payment, and accordingly remit the withheld tax to the Authority for this transaction. This applies to cases where the settlement relates to the full amount owed to the non-resident supplier or only a portion thereof.



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