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28 Issue

The Professional Magazine

A monthly publication prepared by the Professional Research Team at Ali Al Nasser & Partners Certified Public Accountants and Consultants

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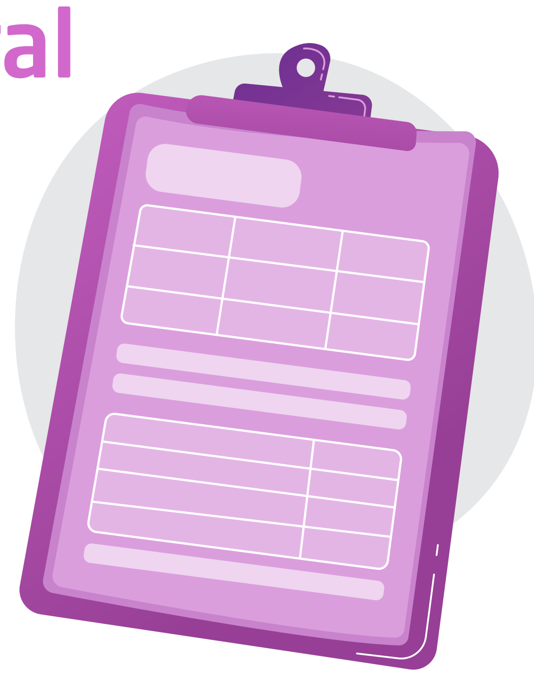
Introduction:

The Professional Magazine is a professional publication issued by Ali Ibrahim Al Nasser & Partners, Certified Public Accountants and Consultants. In this twenty-eighth issue, we discuss the Place of Supply for VAT: The General Rule and Special Provisions. We also review some common professional mistakes and practices, most notably the failure to apply the Reverse Charge Mechanism when receiving services from a non-resident supplier, as well as the failure to submit the documents required to register a claim before the relevant committees and to follow up on the claim thereafter.

Place of Supply for VAT: The General Rule and Special Provisions



Determining the place of supply is a fundamental aspect of applying Value Added Tax (VAT). Its significance extends beyond identifying the country in which a supply is deemed to take place; it also determines the tax authority responsible for collecting the tax and whether the supply is subject to tax in the Kingdom or in another Member State. Article (40) of the Unified Agreement for the States of the Gulf Cooperation Council provides: "A taxable person shall be required to pay the tax due on taxable supplies of goods and services to the competent tax authority in the Member State in which the place of supply is located."

The place of supply is particularly important in transactions where one of the parties is located outside the Kingdom, services are performed at more than one location, or supplies relate to real estate, transportation, electronic services, or events. A supplier may be resident in the Kingdom, while the place of supply may nevertheless be outside the Kingdom under the special rules. Conversely, a customer may be located outside the Kingdom, while the service may be regarded as supplied in the Kingdom depending on the nature of the service and the applicable place of supply rules.

Accordingly, determining the place of supply is an essential preliminary step before determining the tax treatment of a supply. It is not sufficient to consider only the location of the supplier or customer; the nature of the goods or services, their location or where they are performed or received, and whether the supply falls under the general rules or the special place of supply rules must also be considered.

First: General Place of Supply Rules

The general rules distinguish between the supply of services and the supply of goods, depending on the nature of the supply, whether the customer is a taxable person or a non-taxable person, and whether the goods are transported or dispatched to the customer.

With respect to the supply of services, the general rule is that the place of supply is the place of residence of the supplier where the service is supplied by a taxable supplier to a non-taxable customer. This means that, as a general rule, a service provided by a supplier resident in the Kingdom to a non-taxable customer is considered supplied in the Kingdom, provided that none of the special rules apply.

For example, where a consultancy firm resident in the Kingdom provides general consulting services to a non-taxable individual, and the services are not related to real estate, an event, or any other special case, the place of supply in this case, under the general rule, is the place of residence of the supplier.

Where the service is supplied to a taxable customer, however, the place of supply is the place of residence of the customer. This is particularly relevant to transactions between taxable persons, where the place of residence of the supplier is not the sole determining factor; rather, the place of residence of the taxable customer must also be considered.

With respect to the supply of goods, where the goods are supplied without being transported or dispatched, the place of supply is the location of the goods at the time they are placed at the customer's disposal.

For example, where a supplier sells goods located in the Kingdom to a customer and delivers them to the customer at their existing location without transporting or dispatching them, the place of supply is the location of the goods when they are placed at the customer's disposal.

Where the supply of goods involves their transportation or dispatch, however, the place of supply is the location of the goods when the transportation or dispatch begins.

For example, where a supplier sells goods located in the Kingdom and ships them to the customer, the place of supply in this case is the location of the goods when transportation or dispatch begins, rather than when the goods are placed at the customer's disposal, in accordance with the relevant general rule governing the supply of goods involving transportation or dispatch.

Accordingly, the general rules provide an important basis for determining the place of supply. However, they do not apply to all cases, as the tax provisions contain special rules for certain types of services, which take precedence depending on the nature of the service.

Second: Special Place of Supply Rules

The VAT provisions include a number of special cases in which the place of supply of a service is determined based on the nature of the service, rather than solely on the place of residence of the supplier or customer. These rules are particularly important because their application may change the place of supply and, consequently, the resulting tax treatment.

1. Transportation Means Rental Services

For the rental of means of transport between a taxable supplier and a non-taxable customer, the place of supply is where the means of transport is put at the disposal of the customer.

For example, where an entity rents a vehicle to a non-taxable customer and the vehicle is placed at the customer's disposal within the Kingdom, the place of supply is the location where the vehicle is placed at the customer's disposal, rather than necessarily the place of residence of the customer or supplier.

This rule is important because the customer's actual use of the means of transport generally begins at the location where the customer takes possession of the vehicle and becomes able to use it.

2. Transportation of Goods and Passengers

For the transportation of goods and passengers, the place of supply is the place where the transportation begins.

For example, where a transportation company provides a goods transportation service that begins in a city within the Kingdom and ends at another destination, the place of supply in this case is where the transportation begins, even if the journey ends elsewhere. Conversely, where the journey begins outside the Kingdom, such as a flight originating outside the Kingdom and arriving in the Kingdom, the place of supply is considered to be outside the Kingdom, meaning that the supply is outside the scope of VAT in the Kingdom in this case.

The same principle applies to passenger transportation services, where the starting point of the transportation is considered when determining the place of supply. This rule has significant practical implications for transportation services that extend across more than one country or location.

3. Services Related to Real Estate

For services related to real estate, the place of supply is where the real estate is located. This is one of the key special rules, as the connection with real estate makes its location the determining factor in establishing the place of supply.

For example, where an engineering company provides supervision, design, or construction services relating to real estate located in the Kingdom, the place of supply is where the real estate is located, even if the customer is resident outside the Kingdom. Conversely, where the real estate to which the services relate is located outside the Kingdom, the place of supply in this case is considered to be outside the Kingdom, meaning that the supply is outside the scope of VAT in the Kingdom in this case.

The significance of this rule is that the mere fact that the customer is a non-resident is not sufficient to change the place of supply where the service is related to real estate located in the Kingdom, as the nature of the service and its connection to the real estate are the determining factors in this case.

4. Telecommunication and Electronic Services

The special rules determine the place of supply of telecommunications and electronic services based on the place of actual use or enjoyment of the service, where the provision of the service requires the customer to be physically present at that location. In other cases, the customer's address is considered the place where these services are supplied.

For example, where an electronic service requires the customer to be present at a specific location in order to benefit from the service, the place of supply is linked to the place of actual use or enjoyment. Conversely, where the electronic service is provided remotely and does not require the customer to be physically present at a particular location, the customer's address is an important factor in determining the place of supply.

This rule is particularly significant given the expansion of digital services, where a service may be provided by a supplier in one country and a customer in another, with the service being used or enjoyed electronically. This requires a more detailed analysis to determine the place of supply.

5. Cultural, Artistic, Sporting, Educational and Entertainment Services, and Restaurant and Hotel Services

This category includes cultural, artistic, sporting, educational and entertainment services, including admission to events held at a specific location, as well as restaurant and hotel services and catering services for the provision of food and beverages. The place of supply for these services is the place where the services are actually performed.

For example, where an in-person training course is held in the Kingdom or an entertainment event takes place at a specific location in the Kingdom, the place of supply is the location where the service is actually performed, regardless of the place of residence of some of the persons benefiting from the service.

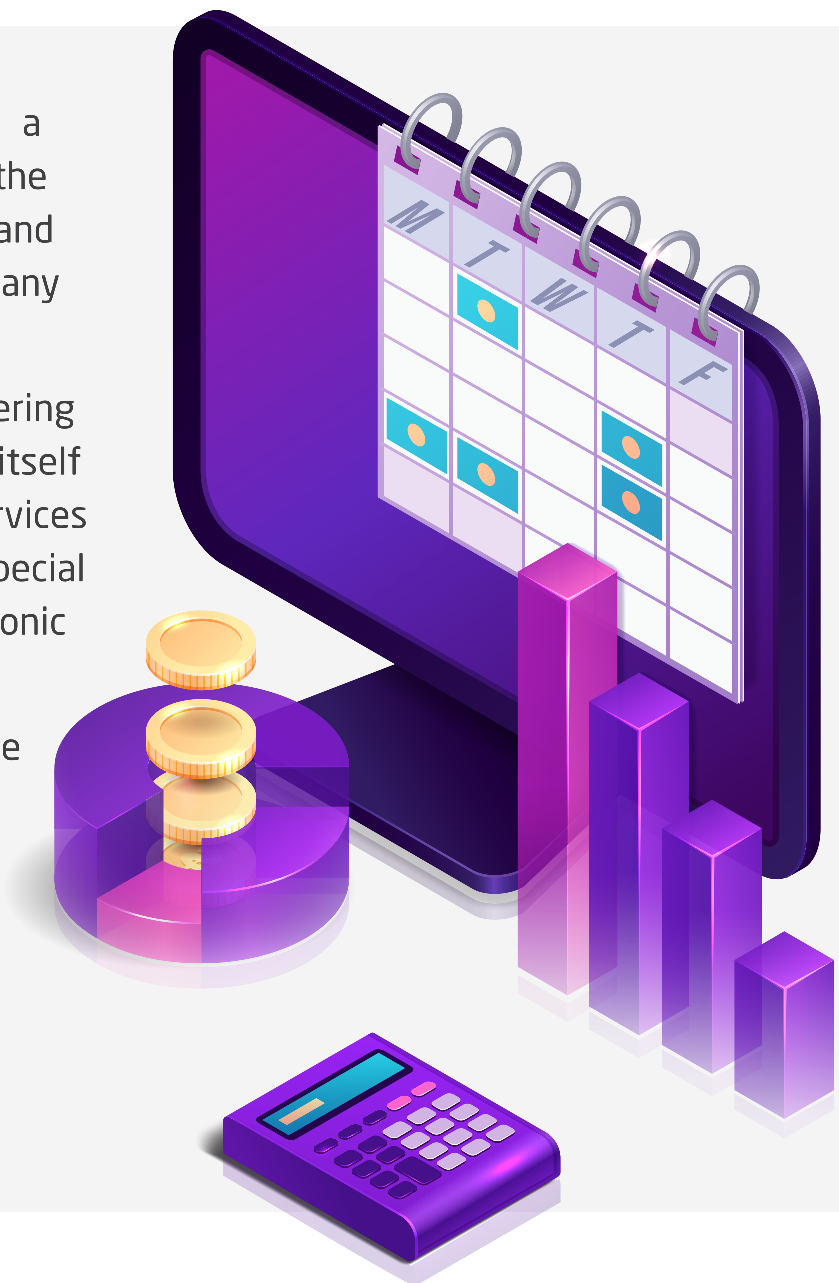
The same applies to restaurant and hotel services, as the nature of these services is linked to the location where they are actually provided. Accordingly, the place where the service is provided is the basis for determining the place of supply.

This rule is important because it links the tax treatment to the actual place where the service is performed, given that the enjoyment of these services is generally inseparable from the location where they are provided.

Based on the foregoing, determining the place of supply is a fundamental step in applying Value Added Tax, as it determines the country entitled to impose the tax, the appropriate tax treatment, and whether there is an obligation to issue invoices, pay tax, or apply any special treatment.

Determining the place of supply requires more than simply considering the location of the supplier or customer. The nature of the supply itself must be analysed, including the distinction between goods and services and whether the service falls under the general rule or is subject to special rules, such as those applicable to transportation, real estate, electronic services, events, and restaurant and hotel services.

Accordingly, due consideration should be given to determining the place of supply before issuing an invoice or submitting a tax return. This helps minimise tax mistakes and enables entities to achieve more accurate VAT compliance, particularly in cross-border transactions or in relation to services where the place of performance or enjoyment has a direct impact on the tax treatment.



Common Professional Mistakes and Practices

Common Mistake:

Failure to apply the Reverse Charge Mechanism when receiving services from a non-resident supplier.

Correct Procedure:

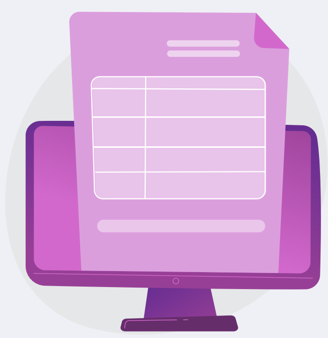
Verify the nature of the services received from the non-resident supplier and determine whether they are subject to VAT in the Kingdom in accordance with the place of supply rules. The Reverse Charge Mechanism should then be applied where the relevant statutory conditions are met.

Illustrative Explanation:

A Saudi entity registered for VAT may receive consulting, technical, or administrative services from a non-resident supplier, yet fail to report the supply in its VAT return under the Reverse Charge Mechanism.

This is a common mistake, as the local entity may be required to account for VAT on the services under the Reverse Charge Mechanism where the place of supply is in the Kingdom and the conditions for taxation are met.

Accordingly, taxpayers should review services received from non-resident suppliers, verify their VAT treatment, and account for the tax due under the Reverse Charge Mechanism where applicable. In certain cases, the application of the Reverse Charge Mechanism may result in the recipient being required to account for tax where the taxpayer is not entitled to recover the full amount of input tax.



Common Mistake:

Failure to submit the documents required to register a case before the Tax Committees and failure to follow up on the case.

Correct Procedure:

Complete all documents and requirements necessary to register the case before the Tax Committees, and monitor the status of the case within the statutory time limits. Taxpayers should not merely submit an objection or application without ensuring that it has been accepted, registered, and properly followed up.

Illustrative Explanation:

Some taxpayers may submit a case or application to the Tax Committees without attaching all supporting documents or required information, such as a copy of the decision being objected to, evidence of submitting the objection to the competent authority, or other required statutory documents. Article (15) of the Rules of Procedure for the Tax Committees provides: "A case that meets the prescribed requirements and information shall be deemed registered as of the date of its submission. If the requirements and information are incomplete, the submitter must complete the missing requirements within fifteen (15) days from the date of being notified of the deficiency. If the submitter fails to complete the requirements within the prescribed period, the case shall be deemed as if it had never been filed."

A taxpayer may also fail to monitor the status of the case after submission. This may result in requests to complete missing requirements going unnoticed, the expiry of the prescribed period for completing such requirements, or the case not being properly registered.

Accordingly, taxpayers must ensure that the case file is complete before submission and monitor any notifications or requests for additional information issued by the General Secretariat of the Tax Committees. This helps ensure that the case is properly registered and considered in accordance with the applicable procedures and prevents the taxpayer's right to object from being forfeited.

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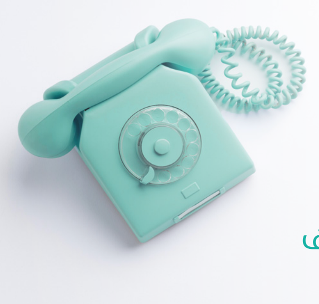

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