

GCC VAT and Customs rules for e-commerce

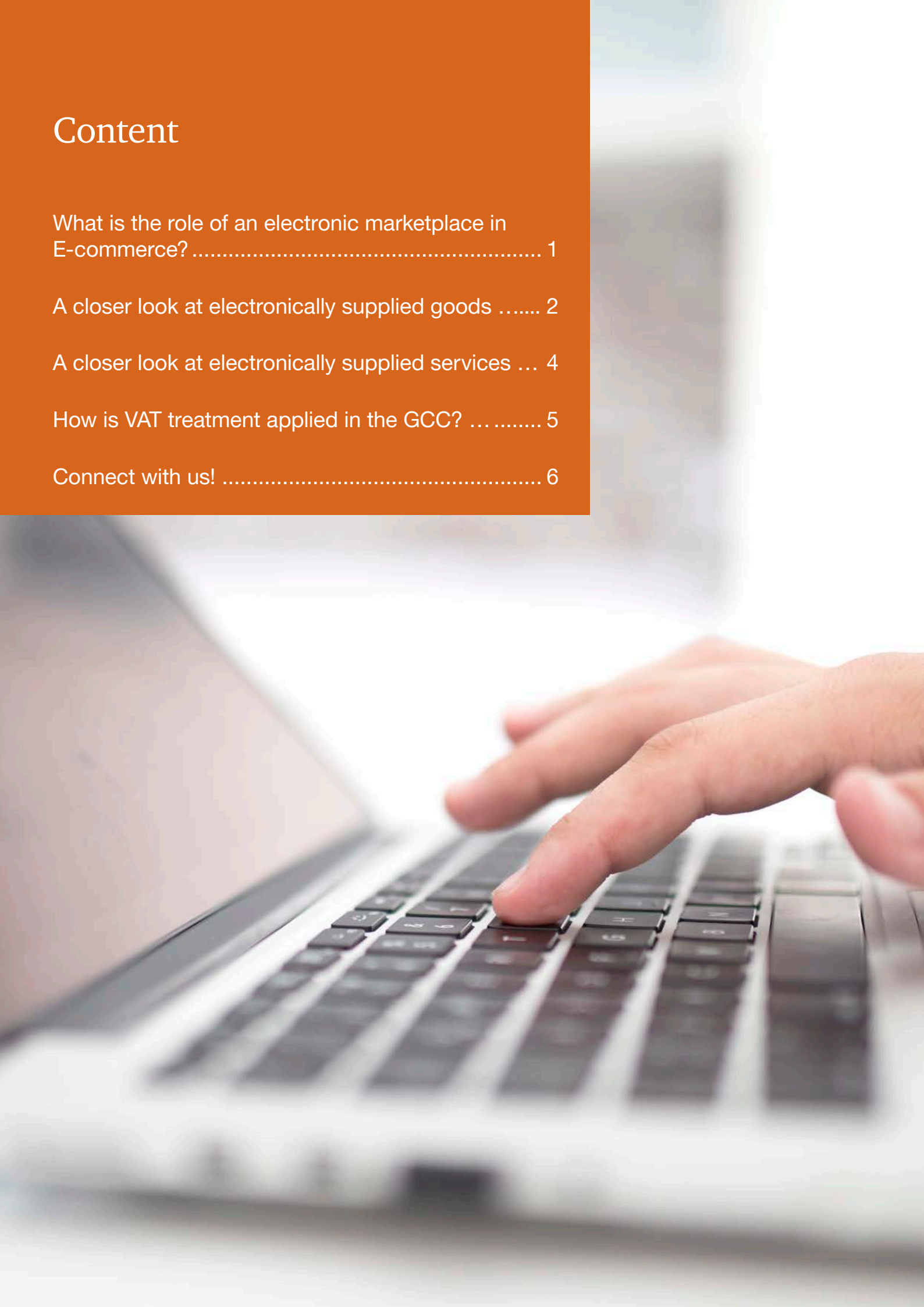
Helping you navigate the maze

September 2020



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The E-commerce industry is growing at a rapid pace with various stakeholders across business in one transaction.

We set out to simplify the confusion around how VAT impacts businesses operating within the e-commerce space.

GCC VAT rules for e-commerce are mainly dependent on how the business is operated. The structure is generally set up in one of two ways:

- An e-commerce business sells its own goods on its own website to businesses and consumers and retains the full profit from its sales.
- An e-commerce business lists goods and services from various suppliers and markets them on its own website to potential customers. The e-commerce business acts as an electronic marketplace which connects suppliers and customers and earns a share (commission) of the profit from each sale made through its website.



What is the role of an electronic marketplace in e-commerce?

An electronic marketplace, also referred to as a 'digital platform' by the OECD and other economic organisations acts as an agent or a facilitator of transactions where the suppliers allow the electronic marketplace to market and sell their goods or services.

Generally, the electronic marketplace, acting as an agent, in the GCC can either be a 'disclosed agent' or an 'undisclosed agent'.

- A disclosed agent is an agent who supplies goods and services in the name and on behalf of a supplier, i.e. the supplier. The disclosed agent is not the supplier of the goods or services but earns a commission/fee for the service it performs.
- An undisclosed agent is an agent who supplies goods and services in their own name but on behalf of a principal. Such agents are deemed to be making a direct supply to the customer and for their benefit. The difference between the consideration received from the customer and the amount paid to the supplier is deemed to be the profit of the undisclosed agent.

With agents in the supply chain, the e-commerce business model introduces challenges in the application/collection of VAT.

Generally, VAT is charged by the supplier and collected from the customers for each taxable supply made. The responsibility to collect and account for VAT is on the supplier. This is clear when the supplier interacts with the consumer directly.

Determining who is responsible to account for VAT becomes more complex when multiple parties are involved in a transaction and from different VAT jurisdictions. For example, suppliers, customers and agents may be located in different VAT jurisdictions, and the place where the supply is concluded can also be in another VAT jurisdiction. Moreover, at times, there is more than one agent in the supply chain.

Goods and services that are supplied through an electronic platform are referred to as 'electronically supplied goods' or 'electronically supplied services (ESS) or e-services'.

A closer look at electronically supplied goods

VAT related implications

In the digital era, customers are able to purchase goods from any location and from any supplier i.e. local or foreign, using an online platform.

The VAT treatment of e-commerce transactions depends on various factors such as:

- Type of customer i.e. business-to-business sales 'B2B' or business-to-customers sales 'B2C'.
- Place where goods are located at the time of sale i.e. local supply or import of goods.
- Role of the e-commerce platform operator i.e. who authorises the payments, sets out terms and conditions, issues the invoice etc. and whether he is acting as a disclosed or undisclosed agent.

For goods purchased online by a customer, the supplier may either fulfil the order from the country of the customer (i.e. a local supply) or from outside that country (i.e. an import of goods). Furthermore, goods can be imported in bulk for storage into a warehouse (which can also be located within a free zone or a bonded area), to ensure that the goods that are subject to higher demand are closer to the customers when these place an order. A third-party logistics provider may also be involved in the transaction, managing the goods in the warehouse and exporting them to the customers, normally via a domestic courier service.

The supply of goods that are physically located in the country and supplied to the local customer in that country is considered as a local supply subject to VAT in that country at the applicable rate.

Under the general rules, the person liable for VAT relating to a local supply is the supplier who is registered for VAT in that

country. However, where the supplier is a non-resident and not registered for VAT in the country of the customer, the recipient of the goods who is a taxable person would be liable for VAT under the reverse charge mechanism.

If goods are located outside the country and the supply is made from a place outside the country to a business customer in that country, there are two aspects to the transaction:

- Sale of goods from a foreign supplier (not registered for VAT in the country), to a customer in that country (not taxable in the country of the recipient) would be outside the country.
- The import of goods in the country (taxable in the country of importation). The Importer of Record ('IoR') is liable for VAT that is collected at Customs upon entry of the goods into the country.

Where a non-resident supplier is the title owner of the goods that are supplied locally to a non-VAT registered person (B2C supply), a VAT registration requirement arises for the non-resident supplier from the date of its first supply in the country of the customer.

From a VAT perspective, the place of taxation for electronically supplied goods will not be different from the supply of goods under a traditional commerce supply i.e. at a showroom or transport to customer's warehouse or even in case of an export. Since goods are tangible and movement of goods can be tracked, the place of taxation follows the location of the goods when handed over to the customer or ownership is transferred.

The VAT treatment in the table below is based on the assumptions that the goods are located in the country where the supplier is based when the supply is made. The supply will be outside the scope of VAT where the goods are located outside the local country at the date the supply is made.

Supplier	Online/Digital platform operator	Place of supply	Person liable for VAT	VAT treatment
Local	Local	Place where the goods are at the time when the supply is made	Supplier – local supplies Importer of record (IoR) – import of goods	Standard rated VAT (unless exempt or zero-rated)
Local	Foreign	Place where the goods are at the time when the supply is made	Supplier – local supply Importer of record (IoR) – import of goods Online platform operator – where they are acting as an undisclosed agent (needs to register for VAT in the country of where the supply is made)	Standard rated VAT (unless exempt or zero-rated)
Foreign	Local	Place where the goods are at the time when the supply is made	The foreign supplier must register and account for VAT if the goods are supplied locally, unless the local online platform operator is acting as an undisclosed agent In case of import of goods, the IoR should be liable for VAT	Standard rated VAT (unless exempt or zero-rated)
Foreign	Foreign	Place where the goods are at the time when the supply is made	The foreign supplier must register and account for VAT if the goods are supplied locally, unless the foreign online operator is acting as an undisclosed agent in which case they must register for VAT and charge VAT on the supply In case of import of goods, the IoR should be liable for VAT	Standard rated VAT (unless exempt or zero-rated)

Customs duty related implications

The customs duty implications for e-commerce transactions are mainly influenced by cross-border regulatory aspects, which may impact the decision on the most appropriate commercial business model. These may include:

- Importer of record (IoR) – generally, only a locally registered company can be the IoR. The regulations however may allow for a local third party logistics company or more commonly, an express courier to act as IoR on behalf of a foreign entity. The IoR can also be an individual/final customer.
- De minimis or low value consignment relief – the customs value threshold below which customs declaration and/or import duties are not applicable.
- Import licensing – a wide range of goods may be subject to import licenses or restrictions, which need to be dealt with before the goods are imported.

The supply of goods which are physically located in the country and supplied to the local customer in that country would not trigger any customs duty implications, unless the goods are stored in a free zone or another bonded area, such as a customs warehouse. In these cases, customs duty is triggered when the goods are moved from those areas to the local market to be delivered to the customer.

If goods are located outside the country and the supply is made from a place outside the country to a customer in that country, the shipment of these goods will constitute an import subject to customs duty, unless the goods are placed in a bonded area (e.g. customs warehouse) or free zone upon arrival in the GCC.

If goods are located in one of the GCC countries (e.g. UAE) and the supply is made to a customer in another GCC country (e.g. KSA), the customs duty treatment will depend on whether the goods have already been imported into the GCC (i.e. they are stored in the local market) or not (for instance, if they are stored in a free zone, which is considered outside the GCC customs territory). It is critical for e-commerce companies to map all potential flows to ensure adherence to the multiple customs rules and formalities that may apply to each of the different flows.

Given the nature of most e-commerce shipments, the so-called low value consignment relief or De minimis rule is normally applicable. Shipments of a personal nature and in non-commercial quantities are eligible for informal entry procedures and are exempt from customs duties where the value does not exceed a certain amount.

The table below provides an overview of the potential customs treatment of goods imported in the GCC countries that currently apply VAT, under the most common import channels used by e-commerce businesses. It is important to note that this low value consignment relief applies normally to the shipments made to the final customers, as shipments of a commercial nature (for example, imports in bulk to stock up a fulfillment/distribution center located in the GCC) are not eligible.

Service provider	Import channel	Personal liable for customs duty (IoR)	De minimis
UAE	International Mail (Postal Parcels)	Normally the Postal Parcel Office using its own authorised customs brokers	There is no requirement to pay duty on imported goods valued below AED 1,000
	Express Courier	Courier companies, express couriers, or individuals (consignee)	
KSA	International Mail (Postal Parcels)	Normally the Postal Parcel Office using its own authorised customs brokers	There is no requirement to pay duty on imported goods valued below SAR 1,000
	Express Courier	Express couriers or individuals (consignee)	
Bahrain	International Mail (Postal Parcels)	Normally the Customs officers at Bahrain Post Office	There is no requirement to pay duty on imported goods valued below BHD 250
	Express Courier	Express courier	

Customers often return goods that they have purchased for multiple reasons. Generally, the return process requires that goods are (re)exported and potentially re-imported in the country of origin, or brought back to a free zone/bonded area.

In addition to the important customer service aspect of the return process, it is critical for e-commerce businesses to understand the applicable customs compliance rules, such as:

- Who should be the exporter of record
- What are the export formalities and subsequent re-import formalities in the countries involved in the supply chain
- What are the export licensing requirements, if any
- What value should be declared to Customs
- Can the customer obtain a customs duty refund, where applicable

In addition to the aforementioned VAT and customs duty implications, it is important to bear in mind that certain categories of goods may also be subject to excise tax upon import in the GCC. The excise tax due forms part of the import VAT taxable base and therefore it is critical to manage this appropriately. The import of goods subject to excise tax requires the importer to register and fulfill a number of compliance obligations with the respective tax and customs authorities in the GCC country of import.

A closer look at electronically supplied services

Electronic services are qualifying services which are supplied remotely over the internet or any electronic platform with minimal or no human intervention.

For supplies of services, the place of taxation may differ depending whether it is a traditional supply of services or electronically supplied services.

- For traditional supply of services, the place of supply is the place of the residence of the supplier. Where such services are received by a business in a country from a non-resident supplier, the place of supply will be the country of the recipient (subject to exceptions).
- For electronically supplied services, the place of supply is the place of actual use and enjoyment of the service (Article 20 of the GCC VAT Framework Agreement).

Where the services are used and enjoyed in a country by the recipient, the supply is considered taxable in that country, irrespective of whether the recipient is a taxable person (B2B) or not (B2C).

Usually, the service provider is liable for VAT when they are registered for VAT. The VAT liability shifts from the service provider to the recipient (through the reverse charge mechanism) when the non-resident service provider is not registered for VAT in the country of the recipient and the recipient is a taxable person.

The service provider and the online platform operator are usually different entities and may be established in different countries. There may be one or several online platform operators between the actual service provider and the end customer.

These online platform operators generally act as agents. The role of the agent is crucial in determining the VAT liability and compliance requirement for the supply.

The main challenge with the VAT collection and compliance is relate to supplies of e-services by non-resident suppliers to individual customers or non-VAT registered customers in a country, where the services are used and enjoyed in that country.

Both the service provider and online platform operator can make an electronically supplied service depending on the nature of the activities performed by these parties.

The VAT treatment in the table below focuses on the service provider and based on the assumptions that the recipient is using and enjoying the electronically supplied service in the local country. The supply will be outside the scope of VAT where the recipient is using and enjoying the service outside the local country at the date the supply is made.

Service provider	Online digital platform operator	Place of supply	Person liable for VAT	VAT treatment
Local	Local	Place where the services are used and enjoyed	Local service provider	Standard rated
Local	Foreign	Place where the services are used and enjoyed	Local service provider Online platform operator – where the customer is not VAT registered (B2C) and the online platform operator is acting as an undisclosed agent (registration requirement arises in the country of recipient)	Standard rated
Foreign	Local	Place where the services are used and enjoyed	Foreign service provider in case the recipient is not VAT registered The recipient, through reverse charge mechanism, in case the recipient is VAT registered Online platform operator – where is acting as an undisclosed agent	Standard rated
Foreign	Foreign	Place where the services are used and enjoyed	Foreign service provider or online platform operator acting as undisclosed agent. A VAT registration and requirement to account for VAT on the services used and enjoyed in the country of the recipient where the customer is not VAT registered (B2C supply) Recipient – where they are VAT registered (B2B)	Standard rated

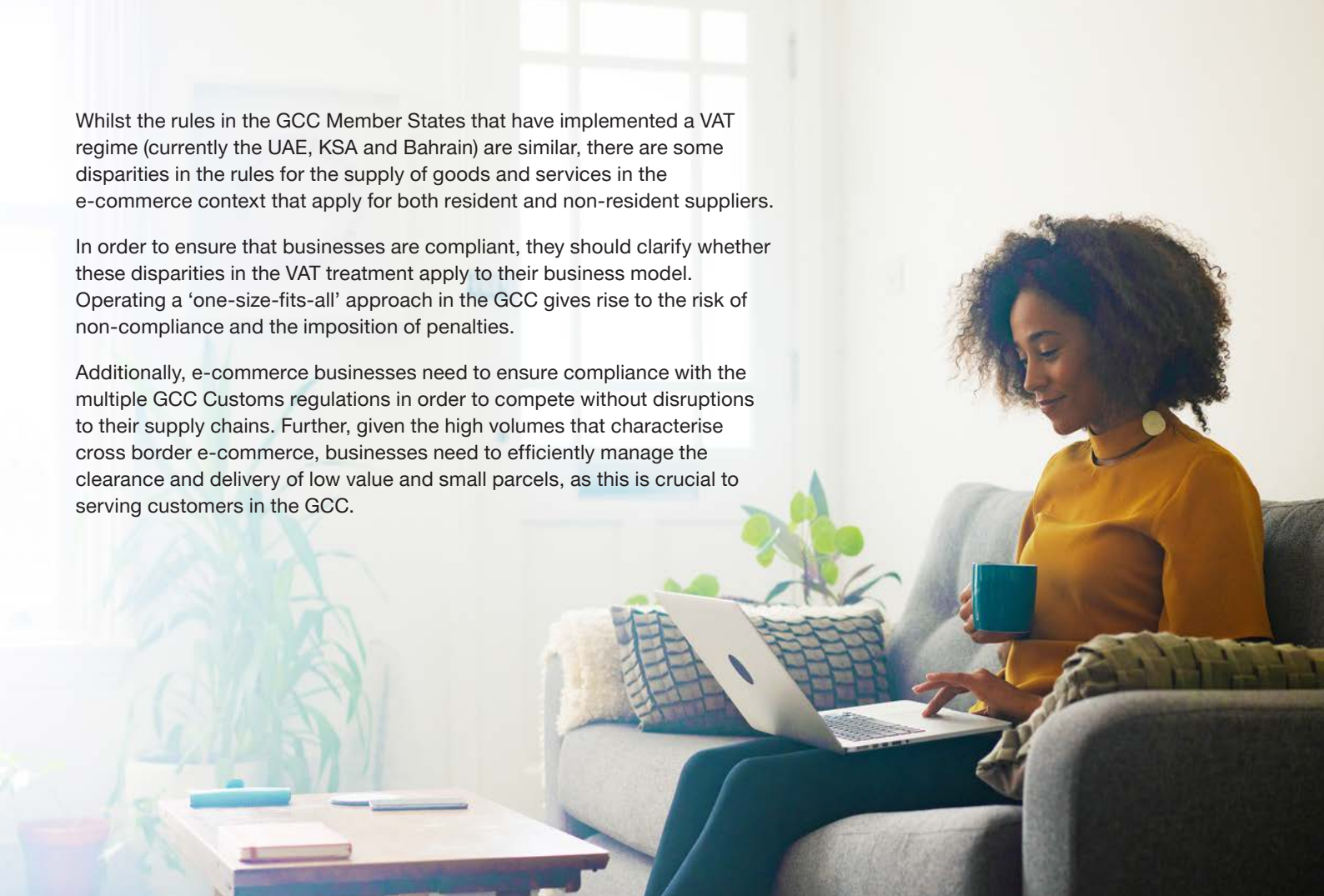
How is VAT treatment applied in the GCC?

	Kingdom of Saudi Arabia	United Arab Emirates	Kingdom of Bahrain
VAT implementation date	1 January 2018	1 January 2018	1 January 2019
VAT rate	5% increased to 15% effective 1 July 2020	5%	5%
ESS definition	Examples of 'wired and wireless telecommunication services and electronic services' are set by Article 24 of the KSA VAT Implementing Regulations.	Services which are automatically delivered over the internet, an electronic network or an electronic marketplace.	Services provided over the internet or any electronic platform, and which operate in an automated manner with limited human intervention and which are impossible to complete without the use of information technology.
Place of supply	<p>KSA legislation states that in the cases where electronic services are provided at a telephone box, a telephone kiosk, a wi-fi hotspot, an internet café, a restaurant or a hotel lobby or in other cases where the physical presence of the customer at a particular location is needed for those services to be provided, the customer consumes and enjoys the services at that location.</p> <p>In all cases where the ESS are not used and enjoyed at a specific 'location' driven the place of supply rules for ESS the customer is viewed as consuming and enjoying the service at his usual place of residence.</p>	The UAE legislation specifies that the actual use and enjoyment of electronic services shall be where these services were used regardless of the place of contract or payment.	<p>Bahrain legislation set that in the cases where electronic services are provided at a telephone box, a telephone kiosk, a wi-fi hotspot, an internet café, a restaurant or a hotel lobby or in other cases where the physical presence of the customer at a particular location is needed for those services to be provided, the customer consumes and enjoys the services at that location.</p> <p>In all cases where the ESS are not used and enjoyed at a specific 'location' driving the place of supply rules for ESS, the customer is viewed as consuming and enjoying the service at his usual place of residence.</p>
Indicators for electronic suppliers to determine the customers place of residence	<p>KSA released the following indicators for electronic suppliers to determine the customers place of residence for electronic services not supplied to a specific location:</p> <ul style="list-style-type: none"> The invoice address of the customer Customer's bank account details The Internet Protocol (IP) address of the customer used to receive the electronic service The country code of the SIM card used by the customer to receive the electronic service. 	<p>The UAE released the following indicative indicators for electronic suppliers to determine the recipient's location:</p> <ul style="list-style-type: none"> The internet protocol (IP) address of the device used by the recipient to receive the electronic service The country code stored on the SIM card used by the recipient to receive the electronic service The place of residence of the recipient; The billing address of the recipient; and/or The bank details used by the recipient for the payment. 	<p>Bahrain released the following indicators for electronic suppliers to determine the customers place of residence for electronic services not supplied to a specific location:</p> <ul style="list-style-type: none"> The invoice address of the customer Customer' bank account details The Internet Protocol (IP) address of the customer used to receive the electronic service The country code of the SIM card used by the customer to receive the electronic service.
VAT registration obligation/threshold	<p>Local supplier:</p> <ul style="list-style-type: none"> Mandatory threshold of SAR 375,000 Voluntary threshold of SAR 187,500 <p>Non-resident supplier:</p> <ul style="list-style-type: none"> B2B – recipient accounts for the VAT under the reverse charge [consider the permanent establishment risks if goods are located in KSA at the time where the supply is made] B2C – VAT registration obligation from date of the first supply. 	<p>Local supplier:</p> <ul style="list-style-type: none"> Mandatory threshold of AED 375,000 Voluntary threshold of AED 187,500 <p>Non-resident supplier:</p> <ul style="list-style-type: none"> B2B – recipient accounts for the VAT under the reverse charge B2C – VAT registration obligation from date of the first supply. 	<p>Local supplier:</p> <ul style="list-style-type: none"> Mandatory threshold of BHD 37,500 Voluntary threshold of BHD 18,750 <p>Non-resident supplier:</p> <ul style="list-style-type: none"> B2B – recipient accounts for the VAT under the reverse charge B2C – VAT registration obligation from date of the first supply.

Whilst the rules in the GCC Member States that have implemented a VAT regime (currently the UAE, KSA and Bahrain) are similar, there are some disparities in the rules for the supply of goods and services in the e-commerce context that apply for both resident and non-resident suppliers.

In order to ensure that businesses are compliant, they should clarify whether these disparities in the VAT treatment apply to their business model. Operating a 'one-size-fits-all' approach in the GCC gives rise to the risk of non-compliance and the imposition of penalties.

Additionally, e-commerce businesses need to ensure compliance with the multiple GCC Customs regulations in order to compete without disruptions to their supply chains. Further, given the high volumes that characterise cross border e-commerce, businesses need to efficiently manage the clearance and delivery of low value and small parcels, as this is crucial to serving customers in the GCC.



If you would like to discuss any of these areas further, please do not hesitate to reach out.

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2020-08-11_RITM3463362