

VAT Public Clarification: VAT/PC/20/3
Date: 31 December 2020
Subject: Place of supply of telecommunications services

Introduction

This clarification sets out the intention of the National Bureau for Revenue (NBR) to amend the “use and enjoyment” rules under which the place of supply for certain telecommunications services is determined for VAT purposes.

The purpose of the amendment is to align the place of supply rules for these services with the International Telecommunications Regulations (Melbourne, 1988), also known as the Melbourne Agreement, to which Bahrain is a party. It is intended for the amended place of supply rules to be effective from 1 February 2021 and those making supplies of telecommunications services should apply them from that date.

Amended use and enjoyment rules

Under Article 18 of the VAT Law, the place of supply of telecommunications services will be Bahrain if they are used in Bahrain and to the extent of their use and enjoyment in Bahrain. With effect from 1 February 2021, the place of use and enjoyment of telecommunications services shall be determined as follows, rather than under the provisions currently set out in Article 17 of the Executive Regulations to the VAT Law:

1. For telecommunications services that require the customer to be physically present in a specific location to use them (such as a wi-fi hotspot or an internet café), the place of use and enjoyment is that specific location. There is therefore no change in the place of supply rules for these services.
2. For all other telecommunications services, the place of use and enjoyment is the place of residence of the customer. The supplier of the service should determine the place of residence of the customer by reference to the following:
 - a. The internet protocol address used by the customer to receive the service;
 - b. The country code of the SIM card used by the customer to receive the service;
 - c. The customer’s address as stated on the VAT invoice or other documents used for billing;
 - d. Details of the customer’s bank account; and
 - e. Other information of a commercial nature.

Where any of the above is in or refers to Bahrain, the place of residence will be Bahrain. Where the customer provides satisfactory evidence to the supplier that his actual place of residence is in another country, that other country will be treated as the place of residence for the purposes of determining the place of supply of the telecommunications services. Notwithstanding the above, the place of supply cannot shift from Bahrain where the country code of the SIM card is Bahrain.

From the NBR's perspective, evidence of actual residence in another country will be satisfactory if it comprises at least two documents clearly showing the same address for the person in another Country. Documents such as a residence permit / ID card, bank statement, utility bill, tax return or assessment and certificate of tax residence issued by a tax authority will be acceptable. The supplier must either:

- See original documents and retain hard or electronic copies with the signature of an employee confirming that he has had sight of the original document and the date that the copy was retained; or
- Obtain copies which have been certified (e.g. by a lawyer or notary) as copies of the original.

The nationality of an individual will not be regarded as evidence supporting his place of residence. Hence, a passport or an ID card without an address cannot be used as evidence for this purpose.

The place of use and enjoyment of telecommunications services should be determined on the tax due date for the provision of such services. Any subsequent changes to the use of the services will not affect the place of supply.

Timing of changes

As stated above, the change to the use and enjoyment rules in Article 17 of the Executive Regulations of the VAT Law will take effect from 1 February 2021. This means that these rules should be applied where a tax due date for a supply of telecommunications services occurs on or after 1 February 2021.

Implications of the amendment

The amendments will have the following main implications:

- Telecommunications providers (telcos) who are resident in Bahrain will treat charges levied on non-resident telcos under roaming agreements as outside the scope of Bahraini VAT.
- Non-resident telcos will not be required to register for VAT or to account for VAT in Bahrain in respect of services provided to their non-Bahraini resident customers visiting Bahrain. Such services will be outside the scope of Bahraini VAT.
- A Bahraini resident telco will be required to account for VAT at 5% on supplies of telecommunications services (such as calls and data) supplied to Bahraini resident customers when they are travelling (roaming) outside Bahrain. This is because the place of supply for these services will be Bahrain, as the place of their use and enjoyment will be the place of residence of the customer, which will be Bahrain.

The receipt by a Bahraini resident telco of charges from a non-resident telco under a roaming agreement will continue to be subject to VAT at 5% under the reverse charge mechanism.

This Public Clarification is issued in accordance with the provisions of Article 114 of the Executive Regulations of the Value Added Tax Law issued by Decree-Law No. (48) of the year 2018.