



Bahrain

NBR to amend VAT place of supply rules for telecommunication services

The NBR has released [VAT Public Clarification VAT/PC/20/3 dated 31 December 2020](#) (Public Clarification) highlighting the intention to amend the place of supply rules for telecommunication services. The amendment is intended to be made effective from 1 February 2021.

As per Article 17 of the VAT Executive Regulations (Regulations), the place of supply of telecommunication services provided to customers not registered for VAT in Bahrain will be the place of use and enjoyment of such services. This means the place of supply (and the allocation of taxing rights) is determined by where the user is situated when they use or enjoy the services – not necessarily where they habitually reside. The way the Bahrain VAT Regulations are drafted potentially results in telco providers with customers roaming in Bahrain to register and account for VAT in Bahrain (assuming the customer is not registered for VAT).

The Public Clarification issued by the NBR intends to fix this issue by amending the scope of place of use and enjoyment and consequently the place of supply for telecommunication services provided to customers not registered for VAT in Bahrain. The Public Clarification refers to the Melbourne Agreement – the International Telecommunications Regulations prescribed by the International Telecommunications Union - which dictates that taxes should only be collected in respect of international services billed to customers in that country. The purpose of the Melbourne Agreement is to effectively make international telecommunication supplies made under arrangements for global roaming and provided to customers of a foreign telco (while they are roaming in that country) not subject to VAT. The Melbourne Agreement does not prevent non-resident telcos from having to register to Bahrain. Ultimately, it is up to Bahrain to adopt provisions to not create a taxing point in such scenarios, which is what the Public Clarification intends to do.

A comparison of the existing and the amended rules has been outlined below:

Nature of telecom service	Place of supply (existing)	Place of supply (amended)
Services which require the customer to be physically present in a specific location to use them (public telephone services, or Wi-Fi services etc)	Specific fixed location	Specific fixed location
Services provided through mobile networks	Country code of the SIM card used to receive the service	Place of residence of the customer
Services related to international roaming	Country where the mobile network used for roaming is located	Place of residence of the customer

The place of residence of the customer may be determined by reference to the following:

1. Internet protocol address used by the customer to receive the service
2. Country code of the SIM card used by the customer to receive the service
3. Customer's address as stated on the VAT invoice or other documents used for billing
4. Details of the customer's bank account
5. Other information of a commercial nature

The NBR has clarified that where any of the above is in or refers to Bahrain, the place of residence will be Bahrain. However, for the place of residence to be considered in a country other than Bahrain, evidence in the form of at least 2 documents clearly showing the same address in another country for the customer must be retained. Such documents may include:

6. Residence permit / ID card
7. Bank statement
8. Utility bill
9. Tax return/assessment
10. Certificate of tax residence issued by a tax authority

For the above documents, NBR expects the Bahrain resident telecommunication service provider (telco) to either:

11. Retain hard or electronic copies with an employee's signature confirming verification of the original document along with the date on which the copy was retained; or
12. Obtain copies of the original which have been certified by a lawyer or a notary

NBR has also clarified that the nationality of an individual as well as a passport or an ID card without an address will not be regarded as evidence supporting his/her place of residence.

In addition to the above, the NBR has outlined the following main implications of the proposed amendment:

Nature of transaction	VAT treatment
Services provided by telcos resident in Bahrain to non-resident telcos under roaming agreements	Outside the scope of VAT
Services provided by non-resident telcos to telcos resident in Bahrain under roaming agreements	To be accounted for by the resident telco under the reverse charge mechanism
Services provided by non-resident telcos to non-resident customers visiting Bahrain	Outside the scope of VAT
Services provided by telcos resident in Bahrain to resident customers while they are travelling outside Bahrain	Subject to VAT at 5%

It should be noted that under the existing place of supply rules for telecommunication services, the place of supply for telecommunication services provided to a VAT registered customer in Bahrain shall be the place of residence of the customer. Further, irrespective of whether all other criteria in determining the place of residence of the customer can be satisfied to be outside of Bahrain, the place of supply shall by default be in Bahrain if the country code of the SIM card is Bahrain.

The above is for general information only and is not intended to address the circumstances of any particular scenario. Please seek professional advice in relation to your particular circumstances.

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