

VAT Alert: ZATCA amends the VAT application to government contracts starting from 1 November 2021

October 2021

In brief

On 9 October 2021, The Zakat, Tax and Customs Authority (ZATCA) announced amendments of Article 20, “Date of Supply in specific circumstances”, of the Saudi Arabian VAT Implementing Regulations (VATR) - effective from 1 November 2021.

The amendments are designed to support the taxpayers who provide goods and services through contracts concluded under the KSA Government Tenders and Procurement Law (“GTPL”). ZATCA also issued a guide that clarifies the provisions of new legislation (the Guide).

In detail

I. Application of VAT to government contracts

The amendment

In the cases where supplies of goods or services are made to a government body through contracts concluded under the KSA GTPL, such supplies are deemed to take place and VAT is due at the earlier of:

- The date that the payment order is issued to the supplier for the supply; or
- The date that the consideration or part thereof is received, to the extent of the amount received.

Government bodies included

The term “government body” is not defined in VATR, but is used in practice in a variety of situations (for example, VAT rate increase and the Real Estate Transaction Tax transitional rules), thus providing some variety in interpretation.

In the Guide, ZATCA states that the proposed amendments refer to government ministries and authorities, and other bodies governed by public law which must abide by the KSA GTPL.

The definition of government agencies does not extend to government-owned enterprises, even if the percentage ownership is 100% of the capital.

Operations in scope

The following transactions are not in scope of the new amendments:

- Supplies where the government body is *not* a counterparty (including where a subcontractor works for a main contractor which is the contracting party with the government body); and
- Supplies to a government body that is *not* acting in this transaction in its public capacity and thus is not covered by the GTPL (e.g. petty cash expenses).

Please note that where a supply to a government body acting in its public capacity is for an amount less than SAR 300,000, it will still be covered by the GTPL and, thus, subject to the new amendments even though the Etimad platform is not used to process the payments.

The effective date and transitional rules

The new amendments will take effect from 1 November 2021.

The legislation does not refer to transitional rules, but ZATCA provides some information in its Guide as follows:

- Where the tax invoice by the contractor or payment order/actual payment by the government body is already issued before 1 November 2021 – the “old” rules will apply to the related VAT liabilities after 1 November 2021;
- Where neither the tax invoice by the contractor nor payment order/actual payment by the government body is issued before 1 November 2021, but the claim by the contractor from the government body is issued before 1 November 2021 – the “old” rules will apply to the related VAT liabilities after 1 November 2021; and
- In all other cases – the “new” rules will apply to determine tax event date and related VAT liabilities after 1 November 2021.

II. Application of VAT to contracts with prescheduled due dates for consideration payable

In addition to the above, Article 20 (1) of VATR, which regulates continuous supplies under the pre-agreed schedule of payments, is amended as follows:

- The clause now applies to “services” only;
- The clause is amended to refer to “consideration due and payable in periodical instalments and on prescheduled dates, resulting in the issuance of invoices on the sequential basis”; and
- A requirement has been introduced whereby the taxpayer is obliged to issue an invoice at least once every twelve consecutive months.

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III. Implications for businesses

Taxpayers contracted to government bodies should assess how the new rules would affect their VAT liability and where there is uncertainty, for example, the VAT treatment of contracts with prescheduled dates for consideration payable, request additional clarification from ZATCA.

For more information on this topic or to learn more about KPMG's VAT services in Saudi Arabia, kindly contact our team at KPMG.

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