International

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The Role of Digital Platforms in Collecting VAT in Selected Countries in the Middle East

In this article, the authors analyse the role of digital platforms in collecting VAT on services in some of the key jurisdictions in the Middle East. The authors discuss the rules and draw references to other tax jurisdictions and recent case law, providing a holistic overview of these rules and their applicability to digital platforms.

1. Introduction

The economy is digitizing. Brick-and-mortar businesses are digitizing their business models and completely new and disruptive models have emerged at a rapid pace, revolutionizing the provision of everyday sales of goods and services. These models predominantly facilitate the provision of goods and services to customers via online platforms, marketplaces, portals, applications and websites (hereinafter referred to as "digital platforms" for ease of reference).[1] According to the OECD, two thirds of all cross-border e-commerce sales of goods are made through such platforms.[2] With the exponential global growth of e-commerce in the last few years, these platforms have become a widely used (and in many cases the only) sales channel for many businesses in the Middle East.

Synonymous with the rapid digitalization of the economy, the taxation of digitized and new business models is a pressing issue, particularly regarding the ever-increasing role and responsibilities of digital platforms. Such changes in responsibilities are mainly triggered by major cases, reports and recommendations by trading blocs (e.g. the European Union[3]) and other international bodies (such as the OECD, UN, World Customs Organization (WCO) and IMF). Other countries, including several Middle Eastern countries that have recently introduced a VAT system,[4] are following suit.

In section 2. the authors provide an overview of recent trends in VAT legislation concerning digital platforms. In section 3. they compare the pieces of legislation adopted by a selection of Middle Eastern countries that have recently adopted a VAT system, including the United Arab Emirates (UAE), the Kingdom of Saudi Arabia (KSA), Bahrain, Oman and Egypt.

2. Platforms and Their Role in Collecting VAT – Recent Trends

With the fast-paced digitalization of the economy, new and disruptive business models have emerged at a rapid pace. From online product marketplaces to the gig/sharing economy and social media platforms, consumers are constantly offered new solutions for problems they may not even have been aware of in the first place. An individual can now generate active or passive revenue and consume a wide range of services from the comfort of their own home. Furthermore, traditional borders between countries have become easier to cross. For instance, a customer based in the UAE can buy digital content created by someone in Mexico with a click of the button.

Such business models facilitate the provision of goods and services from sellers to buyers. An issue is created from the involvement of many micro or small entrepreneurs and businesses, many of whom are not considered to be taxpayers/taxable persons under the VAT rules and which sell to non-business customers (B2C or C2C). Even when such sellers are within the scope of the VAT regime, tax administrations cannot easily enforce VAT rules, partly because the sellers often reside in a country other than the place of consumption, and the cost of administration and enforcement would exceed any foreseeable tax revenue gain or loss recovery. Meanwhile, platforms can disclaim any tax liabilities arising from the sale and purchase of the goods/services and will limit their tax liabilities to the supplies they make directly as principals. As a result, consumption of a supply often goes untaxed within the jurisdiction of consumption.

One method to address the challenges resulting from the digitalization of the economy is to shift the responsibil-

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1. International organizations, including the OECD, have not sought to define or allocate a specific term to describe such platforms as the concept is likely to evolve over time. OECD reports use the term "digital platform" as a generic term to refer to the actors in online sales that carry out the functions that can be considered essential for their involvement by tax authorities in the collection of VAT/GST on online sales.
2. OECD, *The Role of Digital Platforms in the Collection of VAT/GST on Online Sales* (OECD 2019), available at www.oecd.org/tax/consumption/the-role-of-digital-platforms-in-the-collection-of-vat-gst-on-online-sales.pdf (accessed 6 Dec. 2023).
3. *See* European Commission, *VAT in the Digital Age*, available at https://taxation-customs.ec.europa.eu/taxation-1/value-added-tax-vat/vat-digital-age_en (accessed 6 Dec. 2023). The European Commission developed an action plan which announces a legislative proposal for 2022 on VAT in the digital age, which will cover VAT reporting obligations and e-invoicing, VAT treatment of the platform economy and single EU VAT registration.
4. The United Arab Emirates (UAE) and the Kingdom of Saudi Arabia (KSA) introduced VAT on 1 January 2018 at a standard rate of 5%. The KSA increased the standard rate of VAT to 15% effective 1 July 2020. Bahrain introduced VAT on 1 January 2019 at a standard rate of 5% which was increased to 10% effective 1 January 2021. Oman introduced VAT on 16 April 2021 at a standard rate of 5%. Egypt replaced its sales tax regime with VAT back in 2016 and imposed a standard VAT rate of 14%.

ity for the liability to account for VAT on supplies to the intermediary or digital platform.

Many countries have recognized the role platforms can play to ensure that VAT is collected in the place of consumption, and accordingly, the importance of platform liability rules. Several jurisdictions have introduced a regime under which a platform has full VAT liability, while others have allowed platforms to voluntarily act as collectors of VAT due and share information on a spontaneous basis, or have required them to be a conduit for tax authorities to reach the underlying suppliers. Other jurisdictions, such as the countries of the Gulf Cooperation Council (GCC),[5] have included provisions into their VAT legislation under which an agent or intermediary is deemed to provide the underlying supply.

The rationale is that enforcement and collection of tax from platforms carries less of an administrative burden in contrast with an attempt to enforce the rules on suppliers.[6] The design and particulars of the rules (including the extent of liability and the scope of the rules) depend on multiple factors, including policy objectives. This is especially evident in the rules currently put in place in some jurisdictions, where variations are seen in the definition of "digital platforms" and accordingly the entities in the scope of the rule. The OECD also recognizes the importance of carefully designing such rules, where they should avoid exposing intermediaries to excessive liabilities or obligations that may prevent them from entering or continuing activity in certain markets.[7]

One approach to achieve full platform liability is where the digital platform is deemed to have received the supply from the underlying supplier and to have supplied it onwards to the customer. Here, the digital platform is deemed to operate as an undisclosed agent or commissionaire. Whether or not the deemed reseller rule applies depends on the location of the underlying supplier, the nature of the services provided and the level of involvement (both practical and contractual) of the digital platform in delivering these services.

For example, as of 1 January 2015, in the European Union, the VAT Implementing Regulation (282/2011)[8] was amended to include article 9a, which introduces the rebuttable presumption that a taxable person that takes part in the supply of electronic services is acting in its own name but on behalf of the provider of these services. In other words, the intermediary (which can be a digital platform) is deemed to have received and supplied the electronic services itself.

The Court of Justice of the European Union (ECJ) recently ruled on questions referred to it on the validity of article 9a(1) of the VAT Implementing Regulation in *Fenix International*.[9] In this case, the platform contended that article 9a(1) extends the scope of article 28 of the VAT Directive[10] and was therefore considered invalid. Article 9a of the VAT Implementing Regulations stipulates that:

> 1. For the application of Article 28 of Directive 2006/112/EC, where electronically supplied services are supplied through a telecommunications network, an interface or a portal such as a marketplace for applications, a taxable person taking part in that supply shall be presumed to be acting in his own name but on behalf of the provider of those services unless that provider is explicitly indicated as the supplier by that taxable person and that is reflected in the contractual arrangements between the parties.
>
> In order to regard the provider of electronically supplied services as being explicitly indicated as the supplier of those services by the taxable person, the following conditions shall be met:
>
> (a) the invoice issued or made available by each taxable person taking part in the supply of the electronically supplied services must identify such services and the supplier thereof;
>
> (b) the bill or receipt issued or made available to the customer must identify the electronically supplied services and the supplier thereof.

The ECJ found that article 9a(1) cannot be considered invalid as it does not exceed its implementing powers. In short, article 9a(1) permits the express indication of a person (other than the platform) as the actual supplier of electronically supplied services, so long as the platform does not authorize the charge of the price to the customer or sets the general terms and conditions of the service. Meanwhile, article 28 stipulates a deemed supplier provision where a supplier acting under its own name is treated as if it had received the services from the underlying supplier and subsequently provides them to the final consumer. As such, the platform operated by Fenix International was considered the supplier of the underlying services as assessed by HMRC. This conclusion may potentially open the door to a broader presumption under which an agent is considered to be acting in the name of the principal.

More recently, on 8 December 2022 the European Commission issued proposed rules for taxing the platform economy, named VAT in the Digital Age (ViDA).[11] The proposal introduces a new article in the VAT Directive deeming platforms that facilitate short-term accommodation or passenger transport as resellers of the underlying services (i.e. as if they have received and onward-sup-

5. The GCC consists of six countries: the UAE, KSA, Kuwait, Oman, Bahrain and Qatar. Kuwait and Qatar have not implemented VAT yet, but are expected to implement it in the coming years.
6. OECD, *Mechanisms for the Effective Collection of VAT/GST: When the Supplier Is Not Located in the Jurisdiction of Taxation* (OECD 2017) [hereinafter Mechanisms VAT/GST], available at http://www.oecd.org/tax/tax-policy/mechanisms-for-the-effective-collection-of-VAT-GST.pdf (accessed 6 Dec. 2023).
7. Id.
8. Council Implementing Regulation (EU) 282/2011 of 15 March 2011 Laying down Implementing Measures for Directive 2006/112/EC on the Common System of Value Added Tax (recast), OJ L077 (2011), Primary Sources IBFD.
9. UK: ECJ, 28 Feb. 2023, Case C-695/20, *Fenix International Limited v. Commissioners for Her Majesty's Revenue and Customs*, ECJ Case Law IBFD (accessed 6 Dec. 2023).
10. Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, OJ L347 (2006), Primary Sources IBFD.
11. European Commission, Proposal for a Council Directive amending Directive 2006/112/EC as regards VAT rules for the digital age COM(2022)701 final, 8 Dec. 2022 [hereinafter ViDA proposal], available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52022PC0701 (accessed 6 Dec. 2023).

plied those services to the customers themselves). Under ViDA, the facilitating platforms would become deemed suppliers only if the underlying provider falls into one of these categories:

(a) a non-established person who is not identified for VAT purposes in a Member State;
(b) a non-taxable person;
(c) a taxable person carrying out only supplies of goods or services in respect of which VAT is not deductible;
(d) a non-taxable legal person;
(e) a taxable person subject to the common flat-rate scheme for farmers;
(f) a taxable person subject to the special scheme for small enterprises.[12]

The proposal limits these rules to only short-term accommodation and passenger transport on the basis that these businesses are often the most disruptive and accordingly where loss of tax revenue is the highest.

Similarly, New Zealand is considering expanding the rules on platform liability with effect from 1 April 2024, so that operators (including non-residents) of platforms that facilitate short-stay accommodation, ride-sharing and food delivery services would be required to account for GST on behalf of the underlying suppliers.

3. Platforms and Their Role in Collecting VAT in the Middle East

In this section the authors analyse the different approaches adopted by a selection of Middle Eastern countries with respect to digital platforms.

3.1. KSA

The KSA has a general provision in its VAT Law[13] under which an agent that acts in its own name but on behalf of its principal (undisclosed agent) is deemed to purchase and onward-sell the underlying services.

In addition, article 47(2) of the KSA VAT Implementing Regulations[14] (KSA Implementing Regulations) contains a rebuttable presumption that in cases where electronically supplied services are supplied in the KSA through an online interface or portal acting as intermediary for a non-resident supplier, the operator of the interface or portal is deemed to act as an undisclosed agent. In other words, the KSA has a deemed reseller provision for online platforms that are in the supply chain between a non-resident electronic service provider and an end customer based in the KSA. In contrast with the other GCC countries discussed below, the KSA is the only jurisdiction to explicitly state such a rule in its VAT legislation. Although the presumption of article 47(2) of the KSA Implementing Regulations only applies in relation to electronic services provided by non-residents, digital platforms may be considered an undisclosed agent under the general agency provision of article 9 of the KSA VAT Law. A few examples of when the intermediary is considered an undisclosed agent are provided in the guidance.[15]

No distinction is made between B2C and B2B supplies. As a result, where electronic services are provided to a taxable person (the person registered or required to register for VAT in the KSA), the operator of the online interface should be liable to account for VAT under the reverse charge mechanism for supplies made by a non-resident supplier and account for VAT on the onward supply to the local customer. For the onward supply the operator should issue an electronic invoice.

The presumption may be rebutted when both the following conditions are met:

> a) the non-resident supplier is expressly indicated as the supplier during the online sale process, in the contractual arrangements between the parties, and on the invoice or receipt issued by the operator of the interface or portal,
>
> b) the operator of the interface or portal does not authorise charging the customer for the delivery of the services or the delivery itself, or set the general terms and conditions of the supply.[16]

Contrary to article 9a of the EU VAT Implementing Regulations, the KSA argued that reseller provision for marketplaces only applies to electronic services supplied by non-resident suppliers.

For VAT purposes electronic services fall under the broader defined category of "wired and wireless telecommunication services and electronic services."[17] Telecommunications services and electronic services are closely related as services that involve the transmission of information to a recipient or recipients. Article 24 of the KSA Implementing Regulations further provides the following non-exhaustive list of services that fall within the definition of this term:

a) Any service relating to the transmission, emission or reception of signals, writing, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems,

b) The transfer or assignment of the right to use capacity for such transmission, emission or reception.

c) The provision of access to global information networks.

d) The provision of audio and audio-visual content for listening or viewing by the general public on the basis of a program schedule by a person that has editorial responsibility.

e) Live streaming via the internet.

f) Supplies of images or text provided electronically, such as photos, screensavers, electronic books and other digitised documents or files.

g) Supplies of music, films and games, and of programs on demand.

h) Online magazines.

12. Art. 28a ViDA proposal.
13. SA: Royal Decree M/113, dated 2/11/1438 AH (25 July 2017) and its amendments [hereinafter KSA VAT Law].
14. SA: Implementing Regulations 839, dated 14/12/1438 H [hereinafter KSA Implementing Regulations] and its amendments.
15. ZATCA, *Guideline Agents* (July 2020), available at https://zatca.gov.sa/en/HelpCenter/guidelines/Documents/Agents%20Guideline.pdf (accessed 6 Dec. 2023).
16. Art. 47(2) KSA Implementing Regulations.
17. Art. 24 KSA Implementing Regulations.

i) Website Supply or web hosting services.

j) Distance maintenance of programs and equipment.

k) Supplies of software and software updates.

l) Advertising space on a website and any rights associated with such advertising.

The Zakat, Tax and Customs Authority (ZATCA) further clarifies in the guidance that the digital economy is a rapidly growing environment, and that new types of electronic service provided over the internet or other electronic means will also be included as electronic services. Contrary to other jurisdictions (such as Bahrain, Oman and the UAE,) there is no threshold in respect of the extent to which there is human intervention in providing electronic services under the KSA legislation. Electronic services, even where provided with more than minimal human intervention, should in principle be in the scope of the KSA VAT regime when supplied to an individual residing in KSA.

There is no definition of an online interface or portal. The ZATCA considers this to be an electronic website, electronic marketplace or similar forum that facilitates the sale of goods or services from a supplier to a customer and allows a transaction to be completed through it.

In view of the above, operators of online marketplaces that deal with both resident and non-resident suppliers need to review whether the rules set by the KSA legislation apply and may need to set up different processes to distinguish between these merchants to allow for the correct reporting of VAT. The digital platforms may also need to set distinct terms and conditions for resident and non-resident merchants in addition to collecting a more diverse range of data points. This may pose an additional administrative burden but will prevent the platform from facing an expensive tax bill from the tax authority.

3.2. Bahrain

Pursuant to article 8 of the Bahrain VAT Law,[18] a taxable person that supplies or receives goods or services in its own name but on behalf of another person is considered to have supplied or received such goods or services itself.

In addition, the Bahrain tax authorities state in their VAT guidance on the Digital Economy that, as a presumption, a platform is considered to act as an undisclosed agent for a non-resident supplier, unless:

- the non-resident is expressly mentioned as the supplier of the goods or services sold on the platform, on the contractual agreement and on the invoice or receipt issued for the sale of the goods or services sold; or
- the platform cannot charge the customer for the goods or services sold themselves and has no rights on the terms and conditions of the supply provided.[19]

This presumption is not codified in the legislation.

3.3. UAE and Oman

The UAE and Oman do not have specific presumptions in place for digital platforms or online marketplaces. As in the other GCC countries, the respective legislation has a general provision in the law under which an agent that acts in its own name but on behalf of its principal (undisclosed agent) is deemed to purchase and onward-sell the underlying services. On the other hand, where the intermediary is acting as a disclosed agent between the supplier and the recipient of the supply, the supply is treated as being made directly by the supplier to the recipient.

Whether a digital platform meets these conditions should be reviewed on a case-by-case basis and is dependent on several indicators as derived from both contractual arrangements and commercial realities.

3.4. Egypt

Egypt has introduced one of the most recent VAT rules on electronic services and platforms in the region, including a new registration requirement for non-residents and a role for platforms in collecting this VAT.

From 22 June 2023, non-resident service providers that provide certain services to non-registered customers in Egypt are required to register and account for VAT. Non-residents should register via the Simplified VAT Registration System (SVRS).

On 11 January 2023, the Minister of Finance issued amendments to the VAT Law Executive Regulations under Decree 24/2023,[20] corresponding to the previously issued Law 3/2022.[21]

Under article 7(4) of the VAT Law Executive Regulations, Egypt will be considered as the place where the service is provided when the service recipient is not registered for VAT purposes and has a residence in Egypt. Residence will be determined by the data obtained and includes such information as address, credit card and bank account data, SIM card and IP address. The service provider should have two non-conflicting data points to determine where the customer resides. This information requirement is in line with that of other jurisdictions, including the European Union.

The SVRS is not restricted to electronic services. It also applies to all services provided remotely. The registration threshold is EGP 500,000 (approximately USD 16,000) in any 12-month period. Non-residents that provide consultancy and professional services are required to register from the first supply (i.e. there is no registration threshold).

Additionally, the Egyptian VAT Law Executive Regulations[22] impose the liability to account for VAT and reg-

18. BH: Decree-Law 48 for 2018 Promulgating the Value Added Tax Law, Official Gazette 3387 (6 Oct. 2018) [hereinafter Bahrain VAT Law].
19. National Bureau for Revenue, *VAT Digital Economy Guideline* (Mar. 2019), available at https://www.nbr.gov.bh/publications/view/VAT_Digital_Economy_guide (accessed 6 Dec. 2023)
20. EG: Amending Some Provisions of Executive Regulation of Value Added Tax Law of Decree 67/2016, Decree 24/2023.
21. EG: Amending Some Provisions of the Value Added Tax Law Promulgated by Law 67 of the Year 2016 and the Stamp Duty Law Promulgated by Law 11 of the Year 1980, Law 3/2022, Issue 3, Official Journal.
22. EG: Executive Regulations of the Value Added Tax Law 67 of the year 2016.

istering under the SVRS on platforms that qualify as electronic distribution platforms (EDPs). In accordance with the rule, an EDP is responsible for collecting and remitting the VAT applicable on services provided by the underlying supplier to the customer. This is a key difference with the deemed supplier rules in the GCC countries and the European Union, where the marketplace is deemed to operate as an undisclosed agent. In other words, an EDP is not deemed to purchase and onward-sell the underlying services.

Article 1 of the VAT Law Executive Regulations defines an EDP as:

> A visible digital interface, such as a website, internet portal, e-store, online marketplace, or any other interface, that allows the connection between the supplier of goods or services and the beneficiary or recipient of the goods or services to supply or perform them through it.

Article 7bis of the VAT Law Executive Regulations states that an EDP is not liable for VAT when any of the following conditions are met:

1. An agreement between the service provider and the platform shall be in place confirming that the service provider is the party responsible for remitting the tax to the authority instead of the platform.
2. The invoice or the receipt that will be issued to the unregistered person (service recipient) shall indicate that the person who interacts through the platform for the service is the same person who provides this service, with a clear mention of the nature of the service.
3. The general terms and conditions that regulate the activity of the platform clearly state that it does not deliver the service to its recipients, and it is not authorised to collect tax from those who provide services through it. Additionally, these terms or conditions should not include anything expressly or implicitly indicating that the platform has a role in completing the provision of the service to its recipients.

With Decree 160 of 2023[23] the Ministry of Finance issued guidelines concerning VAT due on digital services that are remotely provided by non-residents (the Guide). The Guide's first edition was issued on 22 March 2023 and entered into force on 22 June 2023.

The Guide provides further clarification on the scope of the new legislation. It follows from the Guide that an EDP with limited influence and involvement in the services sold by vendors via the platform should not be considered liable for accounting for VAT on the underlying services. The authors understand this refers to an EDP that meets one of the conditions of article 7bis of the Executive Regulations.

Additionally, the EDP will not be responsible for any tax that may be due in excess of the value of the tax acknowledged and paid by the service provider in case the platform has collected the tax and remitted it to the tax authority based on the data correctly provided by the service provider or any third party.

4. Conclusion

The role of digital platforms in collecting VAT on services is not harmonized in the Middle East. Differences exist in relation to:

- the scope of services and type of digital platforms captured;
- codified and/or published rules for digital platforms;
- the conditions under which the digital platform is presumed to act as an undisclosed agent or supplier; and
- the conditions under which this presumption can be rebutted.

Service providers and digital platform operators should assess their position, determine which person has the obligation to account for VAT and make necessary changes to the arrangements to support or amend their position.

Given the ongoing review of VAT rules worldwide, it is imperative for digital platforms operating in the Middle East region to continuously monitor and evaluate developments in domestic legislation with respect to platform liability. This is particularly true for jurisdictions such as Oman and the UAE that have, at the time of writing, not published any guidance or position on the role of platforms in collecting VAT.

23. EG: Guidance for VAT on Digital and Remote Services Provided by Non-Residents, Ministerial Decree 160/2023.