



# VAT Guideline for Electronic Contracts Version 1



The Zakat, Tax and Customs Authority ("ZATCA", "Authority") has issued this Guide for the purpose of clarifying certain tax treatments concerning the implementation of the statutory provisions in force as of the Guide's issue date. The content of this Guide shall not be considered as an amendment to any of the provisions of the Laws and Regulations applicable in the Kingdom.

Furthermore, the Authority would like to highlight that the clarifications and indicative tax treatments prescribed in this Guide, where applicable, shall be implemented by the Authority in light of the relevant statutory texts. Where any clarification, interpretation or content provided in this Guide is modified - in relation to unchanged statutory text - the updated indicative tax treatment shall then be applicable prospectively, in respect of transactions made after the publication date of the updated version of the Guide on the Authority's website.



## 1. Introduction

The Zakat, Tax and Customs Authority (“ZATCA”) is the Government Body tasked with regulating, enforcing, administering, and implementing taxation in the Kingdom of Saudi Arabia (“KSA”). ZATCA is responsible for the administration and collection of all taxes, including Value Added Tax (“VAT” or “Tax”).

The role of ZATCA includes raising VAT awareness among taxpayers, providing information for Taxable Persons to understand their VAT obligations, and facilitating VAT compliance. As part of this, ZATCA has released many guidelines to provide additional clarification on VAT, in relation to specific sectors and circumstances.

## 2. Definitions of Main Terms Used

**Contract:** Not a defined term for VAT purposes. It is used within this guideline to refer to any written or electronic document which creates, defines, and governs the mutual rights and obligations of the parties to the contract.

**Goods:** All types of material property (material assets), including water and all forms of power including electricity, gas, lighting, heating, cooling, and air conditioning<sup>1</sup>.

**Supply of Services:** Any supply that does not constitute a supply of Goods<sup>2</sup>.

**Resident:** A person (natural or corporate) who has a place of residence in the KSA for VAT purposes<sup>3</sup>.

**Non-resident:** A person with no place of residence in the KSA<sup>4</sup>.

**Agent:** This is not a defined term for VAT purposes. In this guideline, an Agent is described as a person who is authorised to act for, or in place, of a person and to create legal obligations for that person.

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1. Article 1, Definitions, Unified VAT Agreement

2. Article 7, Definitions, Unified VAT Agreement

3. Article 1, Definitions, Unified VAT Agreement

4. Article 1, Definitions, Unified VAT Agreement



**Agent acting in Principal's name:** An Agent acting for a Principal in cases where the agency relationship is disclosed to the third party. The Agent in this case may also be referred to as a "disclosed agent".

**Agent acting in his own name:** The VAT Law sets out specific rules concerning situations where an Agent acts in his own name. This involves an Agent acting for a Principal in cases where it does not disclose to the third party that it is acting on a Principal's behalf. An Agent acting in his own name is often referred to as an "undisclosed agent" or a "commissionaire".

**Principal:** This is not a defined term for VAT purposes. In this guideline, a Principal is described as a person who authorizes another Person to act on his or her behalf as an Agent.

**Economic Activity:** An activity that is conducted in an ongoing and regular manner including commercial, industrial, agricultural or professional activities or Services or any use of material or immaterial property and any other similar activity<sup>5</sup>.

**Taxable Person:** A Person who conducts an Economic Activity independently for generating income, and is registered for VAT in the Kingdom or who is required to register for VAT in the Kingdom under the Law or the Regulations<sup>6</sup>.

**Taxable Supplies:** Supplies on which Tax is charged in accordance with the provisions of the [Unified VAT] Agreement, whether at the standard rate or zero-rate, and for which associated Input Tax is deducted in accordance with the provisions of the [Unified GCC VAT] Agreement<sup>7</sup>.

**Customer:** A Person who receives Goods or Services<sup>8</sup>.

**Supplier:** A Person who supplies Goods or Services<sup>9</sup>.

**Input tax:** Tax borne by a Taxable Person in relation to Goods or Services supplied to him or imported for the purpose of carrying on the Economic Activity<sup>10</sup>.

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5. Article 1, Definitions, Unified VAT Agreement

6. Article 2, Taxable Persons required or eligible to register in the Kingdom, VAT Implementing Regulations

7. Article 1, Definitions, Unified VAT Agreement

8. Article 1, Definitions, Unified VAT Agreement

9. Article 1, Definitions, Unified VAT Agreement

10. Article 1, Definitions, Unified VAT Agreement



### 3. What is a contract?

3.1. A contract is a legally enforceable agreement between two or more parties which defines the terms and conditions that govern their business relationship. Under general commercial practices, a contract is typically documented in a single document which creates, defines, and governs the mutual rights and obligations of the parties to the contract.

3.2. In certain cases, contracts are negotiated through electronic means and concluded through electronic records<sup>11</sup>.

3.3. This guideline does not seek to provide guidance on the general legal requirements for concluding electronic contracts. The purpose of this guide is to explain the VAT implications on supplies that are made in accordance to electronic contracts.

## 4. Overview of Electronic contracts

### 4.1. What is an electronic contract?

4.1.1. An electronic contract may be negotiated and executed electronically over the internet. The parties to the contract often interact with one another exclusively in a digital format, without the requirement to meet in-person.

4.1.2. With advancements in technology, electronic contracts have become an increasingly popular and convenient means to execute an agreement as compared to traditional paper contracts. The benefits of an electronic contract include ease of use, low transaction costs and greater efficiency in terms of the time required to execute such contracts.

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11. Article 10, Electronic Transactions Law (Royal Decree No. M/18 March 27, 2007)



## 4.2. Validity and status of electronic contracts

4.2.1. The key requirements for the formation of a contract are 'offer and acceptance'. For a contract to be valid, there must be an offer by one party and an acceptance of that offer by the other party.

4.2.2. In KSA, offer and acceptance of contracts may be expressed by electronic means and as such, electronic contracts are deemed valid and enforceable. Electronic contracts have the same legal recognition and effect as paper contracts, provided that these electronic contracts are concluded in accordance with the provisions of the relevant law<sup>12</sup>.

## 4.3. Technical requirements of electronic contracts

The parties to a contract must ensure that the electronic contract executed between the parties meet the technical requirements of the relevant law including the requirements to ensure integrity, validity of electronic signatures and initiation and delivery of the contract.

## 5. Parties to a contract

5.1. A party to a contract is one who holds the obligations and receives the benefits of a legally binding agreement. When two parties enter into a contract for a supply of goods or services, VAT Law distinguishes between a "supplier", who undertakes to supply those goods or services and the "customer", who undertakes to pay the agreed consideration for that supply. The contract may specify other obligations or undertakings.

5.2. Generally, the determination of the party acting as a supplier and a customer in respect of a bilateral supply negotiated directly between the two parties is a straightforward matter. However, the determination of a supplier may be more complex where an Agent is involved in introducing, facilitating or effecting an underlying supply from a supplier to a customer. Similarly, the assessment of the recipient of the supply may be more complex in cases where the contractual recipient of the supply is different from the person who benefits from the supply.

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12. Electronic Transactions Law (Royal Decree No. M/18 March 27, 2007)



5.3. It is imperative to correctly evaluate the supplier and the customer of a supply to accurately meet the VAT obligations of the parties.

## 6. Applying VAT to different types of contracts

6.1. The form of a contract does not affect how supplies made under that contract are treated for VAT purposes. An assessment will need to be made of the underlying nature of the supplies for VAT purposes under any form of contract. Accordingly, the correct VAT treatment of a supply remains identical irrespective of the form of the contract i.e. written, oral or electronic.

6.2. The following paragraphs discuss some common scenarios where electronic contracts are executed for making taxable supplies and explains how VAT is applied in such cases.

### 6.3. Scenario 1 - Goods sold via a manufacturer's website

6.3.1. In this scenario, a customer visits a manufacturer's website and purchases the goods of his choice directly from the website. No intermediary or agent is involved either to facilitate the sale of the goods or to arrange delivery of the goods.

6.3.2. Typically, a manufacturer's website may have several products that the customer can choose from. When a customer identifies the product that he wishes to purchase, the customer selects the product and adds it to the 'online cart'. The website then requires the customer to give his consent to certain general terms and conditions prior to selecting the preferred payment option. In such cases, the "offer and acceptance" for the sale of the product in question is via electronic means which results in the formation of an electronic contract. Once an order is successfully placed online, the manufacturer arranges the delivery of the product.



**6.3.3.** The VAT obligations of the manufacturer and the customer in the case of an electronic contract will remain identical to a paper contract were this to be signed by the parties. Accordingly, where the supply of the product is subject to VAT at the standard rate, the manufacturer will be required to issue a tax invoice and account for VAT. Further, where the product is used in carrying out an economic activity in the course of making taxable supplies, the customer will be entitled to deduct the input tax incurred on the purchase of the product.

## **6.4. Scenario 2 - Goods sold via an Agent's online interface or portal**

**6.4.1.** In this scenario, an online interface or portal acts as an intermediary in providing a platform to introduce and connect sellers of goods and services with buyers. A customer will typically be required to create an account on the online portal and provide consent to the general terms and conditions of using the portal.

**6.4.2.** The online portal that is involved in effecting a supply from a supplier to an end customer may act either:

- as an Agent for an underlying supply of goods or services on behalf of a Principal (disclosed Agent), or
- as a Principal in receiving the supply of goods or services on his own behalf from the seller and making an onward supply of those goods or services to the end customer (undisclosed Agent).

**6.4.3.** In the first case, where the online portal acts as a disclosed Agent on behalf of the supplier, the contract for the underlying supply is formed between the supplier and the end customer. The VAT consequences in such a case will be as follows:

- The supplier will be liable for accounting for VAT on the underlying supply and issuing a tax invoice to the end customer. The Agent may also issue a tax invoice on behalf of the supplier, provided certain conditions are met<sup>13</sup>.

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13. Article 53(3) of the VAT Implementing Regulations.





- The end customer will directly receive the supply from the supplier and will be eligible to claim input tax deduction provided the product is used in carrying out an economic activity in the course of making taxable supplies.
- The Agent facilitating the sale between the seller and the end customer will be required to account for VAT on the agency services provided to the seller and issue a tax invoice to the seller.

**6.4.4.** In the second case, where the online portal acts as an undisclosed Agent in making the supply, the VAT Law recognizes two separate supplies of goods are formed. One supply is made between the seller and the online portal; and the other is between the online portal and the end customer. The VAT consequences in such a case will be as follows:

- VAT will be applied on each transaction depending on the nature of supply and location of the customer. For example, if the seller, the undisclosed Agent (online portal) and the end customer are located in the KSA and the product being supplied is neither exempt nor zero-rated, both the supplies will be subject to VAT at 15%.
- The seller will be required to issue a tax invoice to the undisclosed Agent. Similarly, the undisclosed Agent will be required to issue a tax invoice to the end customer.
- The undisclosed Agent as well as the customer will be entitled to deduct input tax on their respective purchase of the product provided it is used in carrying out an economic activity in the course of making taxable supplies.

## **6.5. Scenario 3 - Provision of consultancy services where an electronic contract is executed**

**6.5.1.** Electronic contracts are not limited to electronic commerce and can be used for supplies in other sectors. In this scenario, a supplier provides a quotation to the customer to provide certain consultancy services. Once the business terms are negotiated between the parties, the supplier sends an electronic contract to the customer and the contract is executed electronically upon the acceptance by the customer.



**6.5.2.** Assuming both the supplier and the customer are located in the KSA, the supply of consultancy services will be subject to VAT at 15%. The customer will be able to deduct the input tax charged on the supply provided the services are used in carrying out an economic activity in the course of making taxable supplies. Therefore, the VAT consequences of the supply remain identical to those if a paper contract were signed by the parties.

## **6.6. Scenario 4 - Purchase of online content through a mobile app-store**

**6.6.1.** In this scenario, a mobile app-store offers online content for either a fixed fee or a subscription fee which is charged periodically. Once the customer chooses the content it wishes to purchase, the app-store requires the customer to accept the general terms and conditions and an electronic contract is executed.

**6.6.2.** The app-store in such an instance may act either as a:

- Disclosed Agent, thereby facilitating a supply between the content developer and the customer; or
- Principal in receiving the online content from the content developer and making an onward supply of the online content to the end customer.

**6.6.3.** In the first case, the content developer will be required to undertake the VAT obligations of the supply to the end customer as the contract for the supply of the underlying content is formed between the content developer and the end customer. The app-store would typically charge a commission to the content developer for arranging the supply and will remain responsible for the VAT obligations of its own supply.

**6.6.4.** In the second case, there are two supplies for VAT purposes. The first supply is between the content developer and the app-store; and the second supply is between the app-store and the end customer. The content developer and the app-store would be required to meet the VAT obligations of their respective supplies.



## 7. VAT Registration considerations

### 7.1. Mandatory VAT registration

**7.1.1.** VAT Registration is mandatory for all resident persons who carry out an economic activity on a regular basis and whose annual taxable supplies exceed a certain threshold. If the total value of a person's taxable supplies during any previous 12 months exceeds SAR 375,000, that person must register for VAT on a mandatory basis. Further, where the total value of a person's taxable supplies is expected to exceed SAR 375,000 in the next 12 months, the person must register for VAT on a mandatory basis.

**7.1.2.** For VAT registration purposes, taxable supplies do not include the following:

- Exempt supplies;
- Supplies which are outside the scope of VAT; or
- Revenue on sale of capital assets.

**7.1.3.** A non-resident who is not registered for VAT in the KSA is also required to register on a mandatory basis where such a person is obligated to pay tax on the supplies made or received by the person in the KSA irrespective of the value of the supplies.

### 7.2. Optional VAT registration

**7.2.1.** Any resident person in the KSA who has taxable supplies or taxable expenses exceeding the "Optional VAT registration threshold" of SAR 187,500 during any previous 12 months period may register for VAT on a voluntary basis.

**7.2.2.** Further, any resident person who expects that the value of his taxable supplies or taxable expenses would exceed the "Optional VAT registration threshold" of SAR 187,500 within the following 12 months may also register for VAT on a voluntary basis.



## 8. Input tax deduction under electronic contracting documents

8.1. A Taxable Person may deduct input tax incurred on goods and services it purchases or imports for the purpose of carrying on its economic activity in the course of making taxable supplies. The general eligibility to deduct is not affected by the format of the contract under which the goods and services are purchased.

8.2. For purposes of exercising the right of deduction, a taxable person must hold the following documents (as relevant):

- For a supply taking place in the KSA, a tax invoice; or
- For an import of goods into the KSA, a customs documents proving that he imported the Goods in accordance with the Common Customs Law.

8.3. The requirements for valid tax invoices (including electronic invoices) are prescribed by the Implementing Regulations<sup>14</sup> and an invoice must include all the prescribed particulars in order to be a valid tax invoice. Provided that the tax invoices are valid and the usual conditions for input tax deduction are met, a taxable person is eligible to deduct input tax and the deduction is not impacted by the fact that an electronic contract was executed between the parties.

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14. Article 53(5) of the VAT Implementing Regulations



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