

Principal – agency relationship and the impact on the transportation sector

Transportation of goods by sea from point A to point B involves contract / arrangement between the transporter (i.e. supplier) and the customer, while the actual provision of services would involve multiple service providers engaged in undertaking part of the overall process of transportation. One of such service providers is the businesses which acts as an 'Agent' for the vessel operator / container carrier (i.e. Principal). The Agents are based in the UAE and the Principal could be based in UAE or outside UAE.

Agents usually undertake particular set of functions for the Principal such as vessel handling / container handling at the Ports in UAE, Liaisoning with the Port Authorities in the UAE, Assistance in container loading / unloading, Assistance in booking space on the vessels, etc. Such activities are undertaken on a principal basis and not in the capacity of an Agent. However, the Agents typically undertake following tasks on behalf of the Principal, i.e. invoicing to the Customers for the transportation, incurring expenses on behalf of the Principal, etc.

To ascertain the VAT treatment in the hands of Principal and Agent, we would refer following provisions from the VAT Decree Law and the Executive Regulations:

Article (9) of the VAT Decree Law

Supply via Agent

- 1. The Supply of Goods and Services through an agent acting in the name of and on behalf of a principal is considered to be a supply by the principal and for his benefit.*
- 2. The Supply of Goods and Services through an agent acting in his name is considered to be a direct supply by the agent and for his benefit.*

Article (59) of the Executive Regulations

Tax invoices

11. Where an agent who is a Registrant makes a supply of Goods and Services for and on behalf of the principal of that agent, that agent may issue a Tax Invoice in relation to that supply as if that agent had made the supply, and provided that the principal shall not issue a Tax Invoice.

Article (60) of the Executive Regulations

Tax credit notes

6. Where an agent who is a Registrant makes a supply of Goods and Services for and on behalf of the principal of that agent, that agent may issue a Tax Credit Note in relation to that supply as if that agent had made the supply, and provided that the principal shall not issue a Tax Credit Note.

On combined reading of the aforesaid provisions, following would emerge:

1. Agent acting on behalf of the Principal and raises tax invoices / tax invoices on the customer (disclosed agent)
2. Agent acting in its own name and would raise tax invoices / tax invoices on the customer in its own capacity (undisclosed agent)

Under disclosed agent model, the Agent would invoice to the customers for the transportation and may contain following information:

- Charges for services provided by the Principal (i.e. Ocean freight, terminal handling charges, etc)
- Charges for own services to the customer (i.e. Delivery order charge, B/L fees, etc)

As the revenue for the Agent is to the extent of services provided to the customers, while preparing VAT returns, the businesses should ensure that revenue billed on behalf of the Principal is not considered (as the same is not a revenue for the Agent). Alternatively, the Agent may raise two invoices – one on behalf of the Principal and one for its own services to avoid confusion.

An important aspect to be considered while raising invoices on behalf of Principal is that it should contain a reference to the Principal (including the supplier's name and TRN) on the invoice. Accounting system should be appropriately configured to capture the details and reflect the details on the invoices (said information should be restricted to invoices raised in the capacity of disclosed agent).

The tax treatment for transportation and transport-related services should be determined by the Principal and Agent respectively. While the services in relation to international transportation and transport-related services is zero-rated, there is a possibility that certain services / charge may be taxable, i.e. charge may not qualify as transport related service (despite being incurred for international transportation). If the charge is taxable and the revenue pertains to the Principal, there is a possibility that the Principal may have to register for VAT (if based outside UAE) and discharge VAT obligations. It is advisable that all the charges are thoroughly reviewed and ascertained if the same is taxable. Also, there is no mechanism / process to discharge VAT obligation through an Agent; as the liability to pay VAT is casted on the Principal and may not be shifted to another person.

Likewise, the Agent may incur expenses while executing its functions. The expenses need to be split as – expense incurred for its own business and expense incurred on behalf of Principal. For the expenses incurred on behalf of the Principal, there persist an ambiguity whether the input tax can be claimed (though the invoice is issued to the Agent). A view could be taken that if the expense invoice is addressed to Agent, Agent may claim input tax and thereafter raise a tax invoice to recharge / recover the cost from the Principal. Certain costs incurred by Agent (on behalf of Principal) may be without VAT, however on subsequent recovery Agent should evaluate whether the charge is taxable / zero-rated / outside the scope (instead of relying on the suppliers' tax treatment). If the expense invoice is addressed to the Principal, then the input tax may not be claimed by the Agent and the transaction could be treated as 'Disbursement'. Here, if the Principal is based outside UAE then the VAT charged could become a cost in the supply chain. Review of expense invoices should be thoroughly undertaken to avoid claiming incorrect input tax.

Under undisclosed agent model, the transaction would be regarded as series of back to back supplies, i.e. Principal providing services to the Agent and Agent providing services to the customer. The Agent's invoice should not contain reference to the Principal.

Entities operating under Principal – Agency model should assess whether the invoicing and the documentation process as specified in the VAT regulations is followed to ensure appropriate VAT treatment. The contractual relationship is important, i.e. acting as disclosed or undisclosed agent and the same should be demonstrated with the documents.