

## Transfer of real estate property for equity share (capital contribution)

### Transaction –

1. Mr. Ahmed wishes to invest and transfer a real estate property to SOA Real Estate Company. (more of a general category of a transaction)
2. SOA Real Estate Company instead of agreeing on a monetary payment, transfers an equivalent value of equity shares to Mr. Ahmed (Individual status) in return for the transfer of real estate property at a Fair Market Value. (more of a specific category of a transaction)
3. There is a transfer of consideration in kind which is measured at Fair Market Value.

Is there a VAT exposure in this transaction as per KSA VAT law?

**Legal Reference** - In this scenario both the transactions are being considered at the same time in the eye of law to place the judgment. When there a General and a Specific category of transactions colliding, then the Specific category will override the General category. In this case, Mr. Ahmed will be treated as “Recipient” and SOA Real Estate Company will be treated as “Supplier”. In such circumstances, the second transaction will overrule the first transaction and the will be considered as Exempt Supply, else/otherwise Article 29 (6) of the KSA VAT Implementing Regulations will be considered as “redundant”.

**Reference of the VAT law** - This transaction is to be read with Article 29 (6) of the KSA VAT Implementing Regulations (VAT Regulations), which provides for issue or transfer of equity security which is considered an exempt supply of financial services.

Under the Financial Services Sector – Industry Guidelines (Guidelines), the GAZT clarifies that for VAT purposes, the provision of financial services is not limited to regulated or licensed suppliers. Accordingly, the aforementioned provision of the KSA VAT Implementing Regulations applies also to all the entities involved in the equity and ownership spinoff/restructuring activity. **The Guidelines provide that equity security is not a defined term for VAT purposes.**

The GAZT considers that equity security has a broad definition in the context of interpreting the VAT law, to be any share or other interest held in a company or venture, or other financial instrument representing an interest held in an entity by a shareholder. Income received from the ownership by the holder of equity security is generally by way of a dividend. Equity securities can be traded and therefore result in a trading gain or loss, depending on the value of the equity security. Accordingly, such transactions cannot, as a rule, constitute economic activities by themselves. Admittedly, it follows from Article 29 (6) of the VAT Regulations that transactions affecting issue or transfer of an equity security may come within the scope of VAT. However, the transactions covered by that provision are those which consist of generating revenue on an ongoing and regular basis from activities that go beyond the compass of the simple acquisition and sale of shares, such as transactions carried out in the course of a business trading in securities.

Therefore, in the above case, a more aggressive position, that given the capital nature of the transaction, the transfer of equity shares in this transaction by SOA (registered for VAT) does not qualify as economic activity and therefore is outside the scope of VAT.

Furthermore, considering that the issuance of shares is not the primary main economic activity of the Company for VAT purposes, but only an incidental activity.

As per the Global VAT practice, we understand that Capital contributions/investments are out of scope for VAT and to relate this there are several cases and judgments for reference.

### Reference to KSA VAT Implementing Regulation

Article 29(6) from Chapter 5 of the KSA VAT Law Implementing Regulation provides for:

Quote

*The issue or transfer of a debt security, equity security, or any other transferable document recognising an obligation to pay a monetary amount to the bearer will be considered an Exempt Supply of Financial Services.*

Unquote