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VAT

# Transfer of a Business Guideline

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Edition 1

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# 1. Introduction

## 1.1. Implementing a Value Added Tax (“VAT”) system in the Kingdom of Saudi Arabia (“KSA”)

The Unified VAT Agreement for the Cooperation Council for the Unified Arab States of the Gulf (the “VAT Agreement”) was approved by the KSA by Royal Decree No. M/51, dated 31438/4/ H. Pursuant to the provisions of the Unified VAT Agreement, the KSA issued the VAT Law under Royal Decree No. M/113 dated 21438/11/ H (the “VAT Law”) and its corresponding Implementing Regulations were subsequently issued by the Board of Directors of the General Authority of Zakat and Tax (“GAZT”) by Resolution No. 3839 dated 141438/12/ H (the “Implementing Regulations”).

## 1.2. General Authority of Zakat and Tax

GAZT, also referred to as “the Authority” herein, is the authority in charge of the implementation and administration of VAT (which may be referred to hereinafter as “the tax”) in KSA. In addition to the registration and deregistration of taxable persons for VAT, the administration of VAT return filing and VAT refunds, and undertaking audits and field visits, GAZT also has the power to levy penalties for noncompliance with legal provisions relating to VAT.

## 1.3. What is Value Added Tax?

VAT is an indirect tax which is imposed on the importation and supply of goods and services, with certain exceptions. VAT is imposed in more than 160 countries around the world.

VAT is a tax on consumption that is paid and collected at every stage of the supply chain, starting from when a manufacturer purchases raw materials until a retailer sells the end-product to a consumer. Unlike other taxes, persons registered for VAT will both:

- Collect VAT from their customers equal to a specified percentage of each eligible sale; and
- Pay VAT to their suppliers, if any, from whom they have received the goods or services, equal to a specified percentage of each eligible purchase.

When taxable persons sell a good or service, a 5% VAT charge – assuming a standard case – is assessed and added to the final sales price. The taxable persons will account for that 5% that they have collected from all eligible sales separately from its revenue in order to later remit a portion of it to the Authority. The VAT taxable persons collect on their sales is called Output VAT.

The same will apply to purchase transactions, in that VAT will be added at the rate of 5% to purchases of goods or services made from suppliers registered for VAT (on the assumption that the basic rate applies to those supplies). The VAT a business pays to its suppliers is called Input VAT.

Further information about VAT can be found at [vat.gov.sa](http://vat.gov.sa).

## 1.4. This Guideline

The purpose of this guideline is to provide further clarifications and assist taxpayers in understanding the VAT treatment and implications in relation to the transfer of a business.

This guideline represents GAZT's views on the application of the Unified VAT Agreement, the VAT Law and the Implementing Regulations as of the date of this guideline. This guide amounts to a guideline, and does not include or purport to include all the relevant provisions of the Unified VAT Agreement, the VAT Law, or the VAT Implementing Regulations. It is not binding on GAZT or on any Taxable Person in respect of any transaction carried out and it cannot be relied upon in any way.

However, for further advice on specific transactions you may apply for a ruling or visit the official VAT website ([vat.gov.sa](http://vat.gov.sa)), which contains a wide range of tools and information that has been established as a reference to support persons subject to VAT, as well as visual guidance materials, other relevant information, and FAQs.

## 2. Definitions of Key Terms

A Taxable Person is a term defined for VAT purposes under the Implementing Regulations as the following:

*“...a Taxable Person in the Kingdom is 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 these Regulations.”<sup>1</sup>*

Under the Unified VAT Agreement, persons who are registered or required to register in any GCC State are considered a Taxable Person.

Economic Activity is a term defined for VAT purposes as the following:

*“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>2</sup>*

Transfer of an Economic Activity is not a defined term for VAT purposes. It is used in this Guideline to refer to the situation whereby a business or part of a business, which is capable of being operated as an Economic Activity in its own right, is transferred by a Transferor to a Transferee.

The Implementing Regulations provide the conditions for such transfers to fall outside the scope of VAT.<sup>3</sup>

The terms “Business” and “Transfer of a Business” are not defined terms for VAT purposes, but are commonly used in practice. These do not necessarily have the same meaning as “Economic Activity” and “Transfer of an Economic Activity”, as the transfer of a business may also include situations where shares are sold in a legal entity operating a business.

Taxable Supply is a term defined for VAT purposes under the Unified VAT Agreement as the following:

*“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 VAT] Agreement.”<sup>4</sup>*

VAT is chargeable in the Kingdom of Saudi Arabia on taxable supplies of goods or services made or received by a taxable person in the Kingdom, and on importation into the Kingdom.<sup>5</sup>

Transferor is not a defined term for VAT purposes. It is used in this Guideline to describe the person transferring the business either through a sale of assets or shares.

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<sup>1</sup> Article 2, Taxable Persons required or eligible to register in the Kingdom, Implementing Regulations

<sup>2</sup> Article 1, Definitions, Unified VAT Agreement

<sup>3</sup> Article 17, Transactions not falling within the scope of Tax – transfer of an Economic Activity, Implementing Regulations

<sup>4</sup> Article 1, Definitions, Unified VAT Agreement

<sup>5</sup> Article 14, Taxable Supplies in the Kingdom, Implementing Regulations

Transferee is not a defined term for VAT purposes. It is used in this Guideline to describe the person to whom the business is transferred either through a sale of assets or shares.

Transfer Date is not a defined term for the VAT purposes. It is used in this Guideline to describe the date on which the business is transferred.

Mandatory Registration Threshold is a term defined for VAT purposes under the Unified VAT Agreement as the following:

*“The lower limit of the value of actual supplies at which the Taxable Person becomes obligated to register for Tax purposes.”<sup>6</sup>*

Further details on the Mandatory Registration Threshold are provided in section 3.2 of this guideline.

Deregistration is not a defined term for VAT purposes. The conditions are included in the Unified VAT Agreement as the following:

*“A Taxable Person who is registered for Tax purposes must apply for deregistration in any of the following cases:*

*a- cessation of carrying on of the Economic Activity;*

*b- cessation of Taxable Supplies;*

*c- if the value of the Taxable Person’s supplies falls below the Voluntary Registration Threshold pursuant to the provisions of Article (51) of the Unified VAT Agreement.*

*The Taxable Person may apply for deregistration if the total annual revenue of its business falls below the Mandatory Registration Threshold but exceeds the Voluntary Registration Threshold.”<sup>7</sup>*

Tax Group or VAT Group is a term defined for VAT purposes under the Unified VAT Agreement as the following:

*“A Tax Group means two or more Corporate Persons who are Residents of the same Member State.”<sup>8</sup>*

Qualifying Transfer is not a defined term for VAT purposes. It is used in this Guideline to refer to a Transfer of an Economic Activity that meets the conditions of the Implementing Regulations and therefore falls outside the scope of VAT.

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<sup>6</sup> Article 1, Definitions, Unified VAT Agreement

<sup>7</sup> Article 54, Deregistration, Unified VAT Agreement.

<sup>8</sup> Article 4, Tax Group, Unified VAT Agreement

## 3. Economic Activity and VAT Registration

### 3.1. Who carries out an Economic Activity?

An Economic Activity may be carried out by natural persons or legal persons.

It will be presumed that a legal person that has a regular activity making supplies carries on an Economic Activity.

Natural persons may perform certain transactions as part of their Economic Activity, or as part of their private activities. There are therefore specific rules to determine whether or not a natural person falls within the scope of VAT.

Natural persons and legal persons who carry on an Economic Activity must register for the purposes of VAT if so required, and such persons must collect the VAT applicable to their activities, and pay the tax collected to the Authority.

For the purpose of the Guideline, it should be determined whether a holding company carries out an Economic Activity.

#### 3.1.1. Holding Companies

A holding company is a company designed to control other companies, which are called subsidiary companies. The holding company holds shares or ownership in other companies. Saudi companies will not be regarded as holding companies unless they have been established as holding companies under the Companies Law and other relevant laws. The activities of a holding company may vary from one company to another.

A holding company established solely for the purpose of maintaining an ownership stake, with the receipt of dividends as its only source of income, will not be regarded as carrying on an Economic Activity for VAT purposes. However, if the holding company has other sources of revenue or expenditure, it is probable that it will be regarded as carrying on an Economic Activity.

A holding company may:	An "active" holding company may:
<ul style="list-style-type: none"> <li>Hold shares in one or multiple group subsidiaries</li> </ul>	<ul style="list-style-type: none"> <li>Incur operational costs and make re-charges of costs to other group entities</li> </ul>
<ul style="list-style-type: none"> <li>Receive dividend income relating to the ownership stake or shares that it holds</li> </ul>	<ul style="list-style-type: none"> <li>Provide financing to branches or other subsidiary companies</li> </ul>
<ul style="list-style-type: none"> <li>Pay dividends to its shareholders</li> </ul>	<ul style="list-style-type: none"> <li>Invest by means of sale and purchase of shares and other securities</li> </ul>
<ul style="list-style-type: none"> <li>Incur company registration, audit and other non-operational fees</li> </ul>	<ul style="list-style-type: none"> <li>Receive a recharge for a portion of staff or office costs, or have its own administrative staff</li> </ul>



	<ul style="list-style-type: none"> <li>• Provide services to other subsidiary companies</li> </ul>
	<ul style="list-style-type: none"> <li>• Own real estate and movable property to carry on its activity</li> </ul>
	<ul style="list-style-type: none"> <li>• Hire out ownership rights and other rights in rem to its subsidiary companies or others</li> </ul>
<p><b>These activities are not sufficient to indicate that Economic Activity is carried out</b></p>	<p><b>These activities indicate that the (active) holding company carries on an Economic Activity</b></p>

**Example (1):** Holding Company A, residing in the KSA, is the 100% owner of a group of companies consisting of seven subsidiary companies within the corporate group. The holding company is registered at the same address as the largest operating subsidiary and has no staff or office of its own. It holds annual board meetings to cover group activities and approve dividends, and incurs costs in this regard, but does not provide any management services to the subsidiary companies. Consequently, Holding Company A is not regarded as carrying on an Economic Activity and cannot register for VAT or join a Tax Group with the other companies in the corporate group.

**Example (2):** Holding Company B, residing in the KSA, is the 100% owner of a group of companies consisting of seven subsidiary companies. Holding Company B incurs centralized costs for the group's financial function, and makes a re-charge to group entities. In such case, Holding Company B carries on an Economic Activity for VAT purposes, on the grounds that it receives its revenues from fees for services performed for the subsidiary companies within the group. It will be required to register if annual supplies exceed the mandatory registration threshold, it may elect to register for VAT if annual supplies exceed the voluntary VAT registration threshold, or it may form or join a Tax Group with one or more of its subsidiary companies.

## 3.2. Mandatory registration

Registration is mandatory for all persons whose annual turnover exceeds a certain threshold. If the total value of a person's Taxable Supplies during any 12 months exceeds SAR 375,000, (the "mandatory VAT registration threshold"), that person must register for VAT<sup>9</sup> on the supplies made, subject to the transitional provisions provided for in the Implementing Regulations.

<sup>9</sup>Article 3, Mandatory registration - Supplies exceed the Mandatory Registration Threshold, Implementing Regulations

**Taxable Supplies do not** include:

- Exempt supplies – such as exempt financial services or residential rental which qualifies for VAT exemption;
- Supplies taking place outside the scope of VAT in any GCC state; or
- Revenues on sales of capital assets – a capital asset is defined as an asset allocated for long-term business use<sup>10</sup>

**In certain circumstances, other tests will apply for mandatory registration:**

- Persons who are not resident in the Kingdom of Saudi Arabia are required to pay the VAT in respect of supplies made or received by them in the Kingdom of Saudi Arabia and to register for VAT irrespective of the value of the supplies for which they are obliged to collect and pay the VAT<sup>11</sup>.
- During a transitional period up to 1 January 2019, businesses will only be required to register where annual turnover exceeds SAR 1,000,000, and an application for registration must be submitted no later than 20 December 2018<sup>12</sup>.

More information on mandatory registration for VAT is contained at [vat.gov.sa](http://vat.gov.sa)

### 3.3. Voluntary VAT registration

Any Resident person in the Kingdom of Saudi Arabia who has Taxable Supplies or taxable expenses exceeding the “Voluntary VAT registration threshold” of SAR 187,500 in a twelve-month period may register for VAT on a voluntary basis<sup>13</sup>.

Voluntary VAT registration may be desirable where a business wishes to claim VAT charged to it on their costs before invoices are raised or the occurrence of an onward supply.

More information on voluntary registration for VAT is contained at [vat.gov.sa](http://vat.gov.sa)

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<sup>10</sup>Article 1, Definitions, Unified VAT Agreement

<sup>11</sup>Article 5(1), Mandatory registration of Non-Residents obligated to pay Tax in the Kingdom, Implementing Regulations.

<sup>12</sup>Article 79 (9), Transitional provisions, Implementing Regulations

<sup>13</sup>Article 7, Voluntary Registration, Implementing Regulations

## 4. Transfer of Business by means of Assets or Shares

The transfer of a business can be executed by means of directly transferring the tangible and intangible assets of the business to the Transferee (an “asset deal”) or by transferring the shares in the company that operates the business to the Transferee (a “share deal”). The characteristics of an asset deal are included in paragraph 4.1.; the characteristics of a share deal are included in paragraph 4.2.

### 4.1. Asset deal

In case of an asset deal, the Transferee acquires the assets of the business of the Transferor. Assets can include both tangible assets (such as property and equipment) and intangible assets (such as intellectual property and goodwill). For further detail on different assets, please refer to paragraph 6.1. Typically, all assets to be transferred will be separately identified in the sale agreement between the Transferor and the Transferee.

In principle, liabilities in relation to the transferring business will remain with the Transferor, although parties might agree to transfer liabilities to the Transferee, subject to applicable laws in the KSA.

A transfer of individual assets (and/or individual liabilities, where applicable) should be distinguished from the transfer of the assets of a business capable of being operated as an Economic Activity. This is considered further in section 6.

An asset deal can be depicted as follows.

For a sale of assets to be considered the Transfer of an Economic Activity, the combined assets transferred should allow for the undertaking of Economic Activity by the Transferee in their own



right. The simple transfer of a stock, for example, would not qualify as a Transfer of an Economic Activity.

**Example (3):** Abdullah has a shoe shop in al Mamlaka Mall in Riyadh. Abdullah sells its entire stock of shoes to another shoe shop to make room for the new winter season collection. The sale of the stock does not qualify as a Transfer of an Economic Activity.

Additional examples to illustrate this distinction are contained in paragraph 6.3.

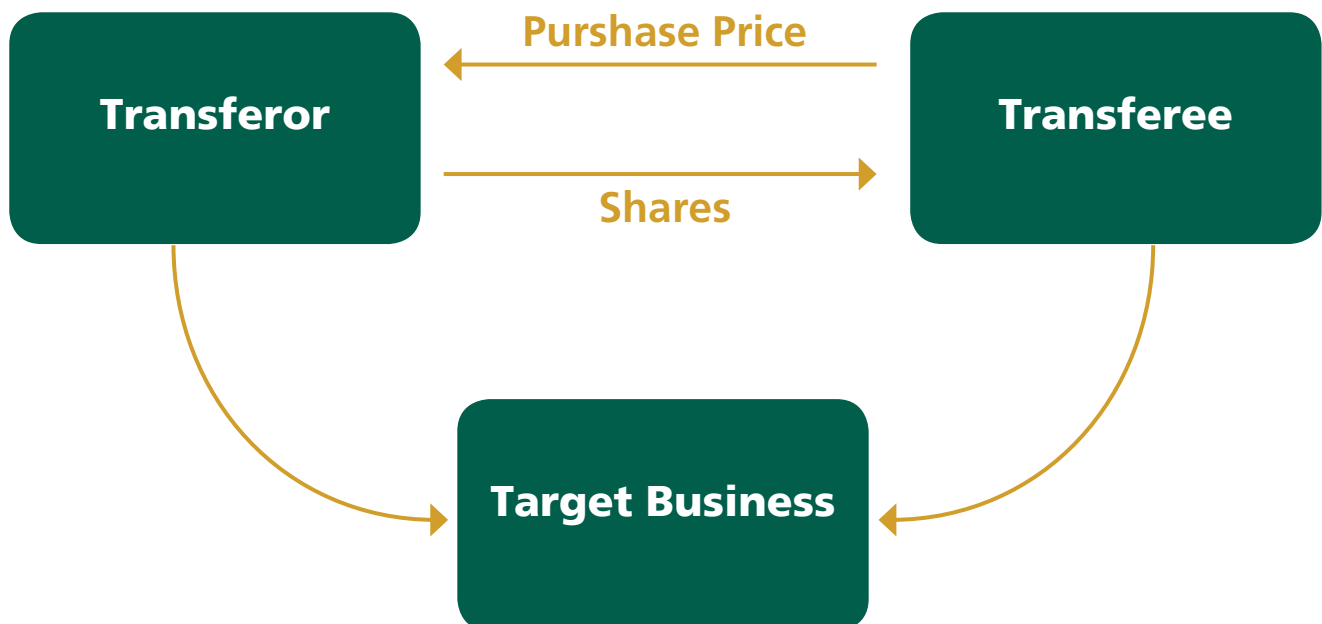
The VAT aspects of a transfer of a business through an asset deal are described in section 6.

## 4.2. Share deal

In case of a share deal, the Transferor is the owner of share capital in a separate legal entity, which directly owns and operates the Economic Activity. The Transferee acquires some or all of the shares in that separate legal entity from the Transferor, meaning that it becomes an indirect owner of the Business.

The separate legal entity continues to own the business assets and operating the business without interruption. The share deal simply changes the owner of that separate legal entity.

A share deal can be depicted as follows.



The VAT aspects of share deals (transfer of a business by means of the transfer of shares) are described in section 7.

## 5. Transfer of Assets

### 5.1. General

Assets may be distinguished as follows:

- **Tangible assets.** Tangible assets represent assets that have a physical form. Tangible assets include both fixed assets, such as machinery, buildings and land, and current assets, such as inventory.
- **Intangible assets.** Under accounting practice in the KSA, an immaterial (or intangible) asset is “an identifiable non-monetary asset without physical substance”.<sup>14</sup> Examples of intangible assets include: patented technology, computer software, databases, trade secrets, trademarks, trade dress, newspaper mastheads, internet domains, video and audio-visual material, lease agreements, mortgage servicing rights, licensing, royalty and standstill agreements, franchise agreements and marketing rights.

Where a business is transferred through an asset deal, typically each asset should be considered separately to determine the VAT consequences. In principle, the supply of tangible and intangible assets involves the provision of Goods and services from a Supplier to a Customer. It should be presumed in this context that by default, any supply for consideration involves a supply of Goods or services.

The concept of a supply is very broad for VAT purposes, being: “Any form of supply of Goods or Services for consideration...<sup>15</sup>”. Goods are any material or tangible assets, and a supply of services is any supply which is not a supply of goods<sup>16</sup> (including intangible assets). In case the consideration paid for an asset exceeds the value of that asset, this excess amount (e.g. goodwill) is also part of the supply for VAT purposes.

Article 17 of the Implementing Regulations provides for rules to determine when the transfer of Goods or services, being the assets of an Economic Activity, constitutes the Qualifying Transfer of the Economic Activity, instead of the supply of the individual Goods or services.

Broadly, this article refers to an asset deal, where a business or an independent part of the business is transferred. Where the asset deal is determined to be a Qualifying Transfer, it is deemed that no supply of Goods and services takes place for KSA VAT purposes. As such, there is no requirement to determine the VAT treatment of the individual Goods and services being transferred.

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<sup>14</sup>International Accounting Standard 38 - Intangible Assets.

<sup>15</sup>Article 1, Definitions, Unified VAT Agreement

<sup>16</sup>Article 7, Supply of Services, Unified VAT Agreement

## 5.2. Conditions

### 5.2.1. Transferred Economic Activity

Article 17 of the Implementing Regulations sets out the conditions for an asset deal to fall outside the scope of VAT. The transfer by a Taxable Person of the Goods and services (assets) forming a part of its Economic Activity, is not a Taxable Supply of Goods and services by that Person in the course of an Economic Activity, and is therefore not a supply subject to VAT, provided that all of the following conditions are met:

a) “the Goods and services transferred are capable of being operated as an Economic Activity in their own right, and the recipient immediately following the transfer uses those Goods and services to carry on that same Economic Activity;”

This requirement means that:

- there must be a form of cohesion between the Goods and services at hand in such way that collectively they are capable of being operated as a separate business;
- the person acquiring the Goods and services should start to use the goods and services acquired as soon as commercially feasible;
- the person acquiring the Goods and services should use these for the purpose of carrying on a business (Economic Activity);
- the business which is carried on should be the same as that carried on by the Transferor.

**Example (4):** The Saudi Diner, a restaurant in King Abdullah Economic City, is sold by means of an asset deal to Youssef Al Sahi (an entrepreneur in the restaurant business). After the Transfer Date, the restaurant closes for one month for a redecoration. In addition to the redecoration, the focus of the menu on traditional Saudi meals will be replaced by a focus on Italian food. Even though the restaurant is not immediately continued by the new owner due to the redecoration and the focus of the restaurant is altered from traditional Saudi food to Italian food, the asset deal can be considered a Qualifying Transfer as the objective of the Transferee is to continue the restaurant business.

b) “the recipient is a Taxable Person or becomes a Taxable Person as a result of the transfer;”

The Transferee should be a Taxable Person (already registered for VAT) or should become a Taxable Person (required to register for VAT) by conducting the business that is transferred.

c) “the Supplier and the recipient agree in writing that they wish the transfer to be viewed as the transfer of an Economic Activity for the purposes of the Implementing Regulations.<sup>17</sup>”

<sup>17</sup>Article 17, Transactions not falling within the scope of Tax- transfer of an Economic Activity, Implementing Regulations.

The application of the special rule for a Qualifying Transfer is optional. Where parties wish to apply the default rules and charge VAT on the assets transferred – for example because they are not sure if the conditions are met – they can agree not to put in writing that the transfer is a Qualifying Transfer under the special rule of Article 17 of the Implementing Regulations.

To evidence the agreement of the parties as at the date of supply, it is recommended that both parties explicitly confirm they wish the transfer to be viewed as a Qualifying Transfer in writing in advance of the Transfer Date.

GAZT is entitled to retrospectively request the transferee to pay VAT and penalties due, in case the transferee considered the economic activity as qualifying, however GAZT found out that transferred assets were not used for the same economic activity by the transferee.

### 5.3. Scenarios

The facts, contractual position, and circumstances with respect to transfer of assets should be analysed to determine if the transfer of assets constitutes a Qualifying Transfer.

**Example (5):** Saudi Woodwork, a Saudi registered company, is a leading business that supplies wooden goods (mainly furniture). Saudi Woodwork operates five stores in the KSA. As part of a reorganization, Saudi Woodwork will transfer its Dammam store, which specialises in wooden tables, to a taxable Transferee in Saudi Arabia. The transfer from Saudi Woodwork to the taxable Transferee includes various assets consisting of physical stock, cash register, shop interior furnishings, as well as a lease agreement for the retail outlet. The taxable Transferee is also a supplier of tables and intends to continue operating the store. Both Saudi Woodwork and the Transferee also agree in writing that the transfer of the Dammam store should be considered a Qualifying Transfer.

In this situation, the transfer of the Dammam store – being an independent part of the existing business - by Saudi Woodwork to the taxable Transferee is a Qualifying Transfer for KSA VAT purposes. The transfer of the individual assets is not a Supply of Goods or services, and can be disregarded from a VAT perspective. This is based on the fact that the store in Dammam can immediately operate as an Economic Activity and the Transferee will use the Goods and services acquired to carry on that same Economic Activity. The Dammam store is sold to the transferee for SAR 1,000,000 excluding VAT. As the transfer qualifies as a Qualifying Transfer, no KSA VAT is due on the transfer sum.

**Example (6):** Journey Rest, a KSA registered company, operates a restaurant within a converted warehouse. This taxable Transferor will transfer its restaurant through an asset deal to a Transferee who intends to demolish the warehouse for development of a historic car museum.

In this situation, the transfer of the assets by ABC Rest to the Transferee will not be considered a Qualifying Transfer for KSA VAT purposes (which can be disregarded for VAT purposes). This is based on the fact that the Transferee does not have the intention to operate the restaurant business as the Transferee purchases the assets for other purposes. As a result the Transferor must charge 5% KSA VAT on the transfer price.

**Example (7):** ElecServPlus Ltd is a UK multinational electronic service provider, which supplies electronic services to consumers in the Gulf region from the UK. ElecServPlus will transfer its whole business through an asset deal to a Transferee in the UK who subsequently will carry on the business. The assets include some routers/network equipment held in a data center in the KSA. ElecServPlus is registered for VAT in KSA as it supplies electronic services to Saudi residents.

In this situation, the transfer of the assets by the UK Transferor to the Transferee may be considered a Qualifying Transfer from a KSA VAT perspective. Whilst the assets located in KSA alone are not being capable of being operated as a business in its own right - this stock is transferred as part of the wider transfer of an entire business. As the Transferee is required to register for KSA VAT because of immediately continuing the business by making sales of electronic services to KSA consumers, the parties can elect to agree in writing that the asset deal is a Qualifying Transfer. As such no KSA VAT is due on the any consideration allocated to the equipment transfer in KSA.

## 5.4. Consequences of Transfer

### 5.4.1. Substitution

Where a Qualifying Transfer occurs, the Transferee assumes the place of the Transferor from the contractually agreed date of the transfer for any rights and obligations in respect of the assets which will arise for the purpose of the applicable Laws in the KSA.<sup>18</sup>

For VAT purposes, this is relevant in relation to the Adjustment Period for Capital Assets. The input tax deduction for Capital Assets must be monitored over a specified Adjustment Period for that Capital Asset, with adjustments made on an annual basis in cases where the actual use changes from the original intended use.

The length of the Adjustment Period (in years) depends on the type of asset, and commences from the date of purchase of the Capital Asset by the Taxable Person.<sup>19</sup>

However, if a Capital Asset is part of a Qualifying Transfer, the Transferee does not purchase the individual Asset, and instead assumes the Transferor's position. This means that if there are two remaining years in the Adjustment Period for the Transferor, there will also be two further years for the Transferee.

**Example (8):** Reliable Bank Ltd, a company operating small retail banks in KSA, sells all its assets of its Khobar branch to a KSA Transferee. Part of the assets is some office equipment. The office equipment was acquired by Reliable Bank Ltd in January 2019 and has the standard adjustment period of 6 years. In January 2021, the transfer takes place, upon which the Transferee will assume the obligations to review and adjust input tax on the Capital Assets, during the remaining Adjustment period of 4 years in respect of the office equipment.

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<sup>18</sup>Article 17, Transactions not falling within the scope of Tax- transfer of an Economic Activity, Implementing Regulations.

<sup>19</sup> Article 52(2), Capital Assets, Implementing Regulations



The Taxable Person owning the asset when making the adjustment of the input VAT at the end of a twelve-month period, should claim or pay the VAT in relation to that whole period, whether or not he is owner for that whole period.

**Example (9):** The Red Sea Development Company, a KSA VAT registered company, acquired an office building on 1 April 2019 for SAR 7,000,000 plus SAR 350,000 VAT. The company is carrying on partly exempt activities, and estimated the taxable use at 45% upon purchase.

As the building is an immovable asset, the Adjustment Period is ten years, with the first twelve-month period commencing on 1 April 2019. Upon the acquisition in 2019, SAR 157,500 (being 45% of 350,000) is deducted by The Red Sea Development Company.

During the first twelve-month period from 1 April 2019 to 31 March 2020, the taxable use remains at 45%, and no adjustment to Input Tax deduction is made.

The Red Sea Development Company decides to sell its business to Gulf Company – including the office building above - under the Qualifying Transfer rules. The transfer date is set as 1 August 2020. Gulf Company takes over the obligations in respect of this Asset from this date onwards.

Using the data provided by the Transferee, Gulf Company determines that during the second twelve-month periods from 1 April 2020 to 31 March 2021, the taxable use percentage increases to 50%. This means that an additional amount of VAT – 5% of 350,000 = 17,500 per year - can be deducted in respect of this second twelve months period.

Whilst The Red Sea Development Company was the owner of the Asset for part of the second twelve-month period, the Gulf Company has the rights and obligation to make the adjustment for the additional Input Tax deduction of SAR 17,500. The VAT obligations do not distinguish for partial ownership during a twelve-month period. Parties may want to take such adjustment of input VAT into account when setting the price for the transfer of the business.

The Implementing Regulations prescribe that where a Capital Asset is sold within the Adjustment Period, a permanent adjustment must be made to reflect the permanent change of use.

*“In cases where there is a permanent change in the use of a Capital Asset due to the sale or disposal of the Capital Asset by a Taxable Person, the Taxable Person must adjust the Input Tax deduction for the remainder of the Adjustment Period for that Capital Asset in the Tax Period in which it is sold.”<sup>20</sup>*

For the avoidance of doubt, please note that that this provision does not apply when such a Capital Asset is transferred as part of a Qualifying Transfer, as in that case the transfer of the Capital Asset is not a Taxable Supply of Goods and services.

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<sup>20</sup> Article 52(7), Capital Assets, Implementing Regulations

Reference is made to the Capital Assets Guideline for more guidance on adjustment of VAT on Capital Assets.

Although any VAT liabilities existing at transfer date will in principle remain with the Transferor, the parties might agree that certain liabilities be transferred to the Transferee, subject to applicable laws in the KSA. The risk of liability on any transfer is a commercial matter and should be assessed by the parties.

#### **5.4.2. Notification**

In cases where the transfer of an Economic Activity results in the Transferor or Transferee of that Economic Activity being required to register or deregister, notification must be provided to the Authority. In this regard, the notification to the Authority should be made within thirty days of the date of the transfer.<sup>21</sup>

Please refer to paragraph 3.2 of this Guideline for further details on mandatory registration.

#### **5.4.3. Administrative obligations**

The Transferor of an Economic Activity must provide copies of all business records relating to that Activity which are required to be retained under KSA Law to the Transferee of that Economic Activity.<sup>22</sup>

It is GAZT's view that the Transferor should make available to the Transferee copies of documents that will enable the Transferee to establish its VAT liabilities in relation to the acquired business as of the date of the transfer. Such documentation must include information on the applicable and remaining Adjustment Periods for Capital Assets, as well as the VAT originally incurred and deducted in relation to Capital Assets for which an Adjustment Period applies. The information supplied by the Transferor should not, under normal circumstances, include copies of information specific to the Transferor, for example, the VAT returns filed by the Transferor for periods preceding the transfer.

Further guidance will be provided in due course in respect of the use of the Cash Accounting basis<sup>23</sup> or the Eligible Used Goods method<sup>24</sup> in connection with any Qualifying Transfer. In general, however, if a Taxable Person requires an approval from GAZT to apply a certain scheme, the Transferee needs to apply for that approval himself: any existing approval in the name of the Transferor is not deemed to pass to the Transferee as part of a Qualifying Transfer.

Similarly, a ruling issued by GAZT to a Transferor is based on the individual facts and circumstances of that Person and should not be viewed as automatically applicable to a Transferee carrying on the same business. If the Transferee wishes so he can approach GAZT for a ruling himself. In any case, please note that a ruling is not binding on GAZT or any Person in any case. More information on rulings can be found in chapter 11.

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<sup>21</sup>Article 17, Transactions not falling within the scope of Tax- transfer of an Economic Activity, Implementing Regulations.

<sup>22</sup>Article 17, Transactions not falling within the scope of Tax- transfer of an Economic Activity, Implementing Regulations.

<sup>23</sup>Article 46, Cash accounting basis, Implementing Regulations.

<sup>24</sup>Article 48, Supply of used Goods, Implementing Regulations.

## 6. Application to specific situations

### 6.1. Transfer of an Economic Activity within a VAT Group

A VAT Group is registered as a single taxable person.<sup>25</sup> As the Representative Member of the VAT Group is deemed to carry on the activities of the group on behalf of all group members, all supplies can be seen to be made by the Group (or the Representative Member).

Transfers of assets within a VAT Group (between group members) would not be a Qualifying Transfer, as supplies of Goods or services from one member of a VAT Group to another member of a VAT Group are not within the scope of VAT.<sup>26</sup>

**Example (10):** Companies A, B, and C are all financial service providers and members of a KSA VAT Group. Company C will transfer an independent part of his financial business (its mortgage broker business) to company A. The transfer includes some modelling software, office supplies, real estate and a customer list.

In this situation, the transfer of the business by Company C to Company A will not be considered a Qualifying Transfer for KSA VAT purposes. Instead, the supply is outside the scope of VAT as the transfer takes place within one Tax Group.

However, where a VAT Group results in a tax advantage which is contrary to the purpose of the VAT legislation, and obtaining this advantage is one of the principal or main purposes of incorporating a VAT Group,<sup>27</sup> the Authority may issue a notice to the VAT Group to set aside the effect of the VAT Group. This means that VAT Grouping may not be used to artificially prevent the levy of VAT on a non-Qualifying Transfer. Further details and examples of this are provided in the guideline on VAT Grouping.

### 6.2. Transfers of Real Estate

The sale – by way of transfer of ownership – of Real Estate situated in the KSA is considered a supply of goods for VAT purposes and is in principle subject to VAT at 5%. This applies regardless of whether or not the supplier or recipient is a Resident in the KSA.

<sup>25</sup>Article 4, Tax Group, Unified VAT Agreement.

<sup>26</sup>Article 18 (2), Supplies by a legal Person to itself, Implementing Regulations.

<sup>27</sup>Article 12 (7), Amendments to or disbanding of a Tax Group, Implementing Regulations.

GAZT does not expect that the sale of Real Estate by itself would be a Qualifying Transfer. However, where Real Estate is used to carry out an Economic Activity, the transfer of Real Estate together with other assets required to operate a business could, under certain conditions, be considered a Qualifying Transfer. For example, the sale of commercial Real Estate is transferred with continuing lease agreements could be viewed as an Economic Activity in its own right. In order to be considered a Qualifying Transfer, the transfer of Real Estate must also meet the other criteria set out within section 5.2.1.<sup>28</sup>

**Example (11):** Batul Real Estate Development and Rentals Co, a KSA registered company, transfers its assets in relation to the ownership and management of the Central Mall in Jeddah to a competitor operating in the same market.

The transfer of the assets consists of the following elements:

- *The transfer of the ownership of the Real Estate;*
- *The lease agreements with the commercial tenants;*
- *The license for operating the Mall;*
- *Contracts with various third party property managers;*
- *The brand name "Central Mall of Jeddah"*

Both parties agree in writing that the Transferee will continue the business and parties agree that the transfer of the abovementioned tangible and intangible assets is considered a Qualifying Transfer. Therefore, Batul is not required to charge VAT on the transfer of assets (including the Real Estate).

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<sup>28</sup>Article 17, Transactions not falling within the scope of Tax- transfer of an Economic Activity, Implementing Regulations.

## 7. Transfer of Shares

In the below, comments are provided on the VAT treatment of a transfer of business via the transfer of shares (a share deal).

### 7.1. Share deals do not constitute Qualifying Transfers

When shares are transferred, the underlying transferred assets remain part of the transferred company, and therefore no change of ownership occurs to the assets forming a part of the Economic Activity. Therefore, a share deal cannot be considered a Qualifying Transfer in accordance with KSA VAT legislation.

### 7.2. VAT treatment of a transfer of shares

In case the transfer of a business is executed by the transfer of shares, the Transferee acquires the shares in the legal entity held by the Transferor. The shares in a legal entity are also referred to as equity securities.

Equity security is not a defined term for VAT purposes. The Authority 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. Please refer to the Financial Services Guideline for more detail on equity securities.

As the shares may be sold by a Transferor that is a holding company or private individual, it should be determined whether the transferred shares were used by the Transferor for carrying out an Economic Activity for VAT purposes.<sup>29</sup>

#### 7.2.1. The transfer of shares by a Transferor carrying out an Economic Activity is exempt

The transfer of an equity security (shares) is considered a VAT exempt supply of Financial Services<sup>30</sup>. As a VAT exempt supply, no VAT is due on the sale of the shares. Input VAT incurred by the Transferor on costs relating to the sale of the shares (such as legal fees) is in principle not deductible for the Transferor, subject to the exception for input VAT relating to one-off and incidental events. Further details on input tax deduction is included in section 8 of this Guideline.

#### 7.2.2. The transfer of shares by a Transferor not carrying on an Economic Activity is not subject to VAT

Where the transfer of shares is not made by a Transferor carrying on an Economic Activity, the transaction will fall outside the scope of VAT.

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<sup>29</sup>Article 1, Definitions, Unified VAT Agreement

<sup>30</sup>Article 29 (6), Financial Service, Implementing Regulations

The result is that no VAT is due on the sale of the shares, and that input VAT incurred in relation to the sale of the shares is not deductible for the Transferor. Further details on input tax deduction is included in section 8 of this Guideline.

**Example (12):** Holding Company A, residing in the KSA, is the 100% owner of a group of companies consisting of four subsidiary companies within the group. The only activity of Holding Company A consists of holding shares in its subsidiaries and receiving dividend income from its subsidiaries. The holding company does not qualify as a Taxable Person for VAT purposes. Holding Company A sells all of the share capital of one subsidiary company to a commercial purchaser by means of a share deal. As the shares are not used in the Transferor's economic activity, no VAT is due on the sale of the shares and no input VAT can be claimed by the Transferor on costs incurred in relation to this transfer.

### 7.3. Sale of shares in entities forming a Tax Group

Under the Unified VAT Agreement and the Implementing Regulations, two or more legal Persons may form a Tax Group – if conditions are met<sup>31</sup>. For example, a parent company holding the shares in various subsidiaries - each qualifying as Taxable Person in their own right – can form a Tax Group. If the parent company sells the shares in two of its subsidiaries to a third party, such a sale of shares may be a VAT exempt transaction by the Tax Group. As only shares are sold, such a transfer will normally not qualify as a Qualifying Transfer.

Upon a sale of shares in a Member of a Tax Group, the Representative Member of the Tax Group should notify GAZT of the change of the Tax Group<sup>32</sup>. The new owner of the company or companies may file an application for a new Tax Group, for which a new Tax Identification Number is issued by GAZT.

For more information on Tax Groups and Tax Identification Numbers, reference is made to the VAT Grouping Guideline.

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<sup>31</sup>Article 10, Group registration, Implementing Regulations

<sup>32</sup>Article 12, Amendments to or disbanding of a Tax Group

## 8. Input VAT deduction

### 8.1. General Provisions

A VAT registered person may deduct Input VAT charged on goods and services it purchases or receives in the course of carrying on its Economic Activity. Input VAT may be deducted on:

- VAT charged by a VAT-registered supplier in the KSA;
- VAT self-accounted by the VAT-registered person under the Reverse Charge Mechanism; or
- Import VAT paid to Saudi Customs on imports of goods into the Kingdom.

As a general rule, input VAT which is related to the Taxpayer's VAT exempted activities is not deductible as input VAT.

In addition, input VAT may not be deducted on any costs incurred that do not relate to the Economic Activity of the Taxable Person (including some blocked expenditure types such as entertainment, sporting or cultural services, catering service, and restricted motor vehicles),<sup>33</sup> or on any costs which relate to making exempt supplies. This input VAT is a credit entered on the VAT return which is offset against the VAT charged on supplies (output VAT) made during that period.

Input VAT may only be deducted where the Taxable Person holds a tax invoice, or customs documents showing the amount of tax due, or any other document showing the amount of input tax paid or due, subject to the approval of the Authority.<sup>34</sup>

### 8.2. Proportional deduction relating to input VAT

VAT incurred which relates to a Taxpayer's VAT exempt activities, such as exempt financial services or residential rental, is not deductible as Input VAT. A person making both taxable and exempted supplies, can only deduct the Input VAT related to the taxable supplies. If a taxable person incurs general costs or expenses (overheads) in the making of taxable supplies, and others that are exempt from VAT, he must in that event split the costs and expenses precisely so as to specify those costs that relate to the taxable supplies. The input tax will be determined in accordance with the following rules<sup>35</sup>:

Input VAT directly attributed to Taxpayer's taxable sales	Deduct in full
Input VAT <b>directly attributed</b> to Taxpayer's exempt sales	No deduction
<b>Overheads</b> and all other input VAT that cannot be directly attributed	Partial deduction based on apportionment

<sup>33</sup>A detailed list of the blocked expenditures is listed under Article 50 of the Implementing Regulations.

<sup>34</sup>Article 49(7), Input Tax Deduction, Implementing Regulations.

<sup>35</sup>Article 51, Proportional deduction of Input Tax, Implementing Regulations

The overhead costs/expenses incurred by the Taxable Person for making both taxable and exempted supplies must be apportioned to most accurately reflect the use of those costs in the **taxable portion** of the Taxpayer's activities.

A prescribed default method of proportional deduction is calculated on the Values of supplies made in the year, using of the following fraction:

$$\frac{\text{The Value of Taxable Supplies made by the Taxable Person in the last calendar year}}{\text{The total Value of Taxable Supplies and Exempt Supplies made by the Taxable Person during the last calendar year}}$$

The fraction for the default method does not include supplies of Capital Assets made by the Taxpayer, as these distort the use of input VAT.

Alternative attribution methods, using other calculation approaches than the Value of supplies, may be approved with the Authority in cases where these better reflect the actual use of VAT incurred. Further information about deduction of VAT and proportional VAT recovery is provided in the Input Tax deduction Guideline.

### 8.3. VAT Deduction on costs incurred by Transferor for asset deals

VAT deduction of costs incurred by the Transferor depends on the VAT qualification of the transfer of assets.

#### 8.3.1. Deduction of input VAT incurred in respect of sale of assets considered a Qualifying Transfer

In case the transfer of assets is considered a Qualifying Transfer in accordance with the Implementing Regulations, this means that the transfer of assets is outside the scope of VAT.

In this case, no supplies of Goods and services are deemed to take place from a VAT perspective and the VAT treatment of the various supplies of Goods and services will not individually need to be identified when transferring a business.

VAT on costs incurred by the Transferor in relation to the Qualifying Transfer will be deductible in accordance with the proportion of the overall Economic Activity of the Transferor using the applicable proportional deduction method.<sup>36</sup>

<sup>36</sup>Article 51 (11), Proportional deduction of Input Tax, Implementing Regulations



**Example (13):** Gulf Playground Ltd., specialised in the fully VAT taxable business of manufacturing playground materials, is looking to transfer its toddler equipment business to Play Ltd., another player on the playground market place.

The assets to be transferred consist of:

- The physical stock;
- The brand name of the toddler equipment business;
- The customer list;
- A lease agreement of the office from where the toddler equipment business is executed.

As Play Ltd. Intends to continue with the toddler equipment business, and parties agreed that the asset transfer is a Qualifying Transfer, the transfer is outside the scope of VAT. Gulf Playground Ltd. incurred costs in relation to the transfer of the toddler equipment business.

Gulf Playground continues with the remainder of its business, making wholly taxable supplies of playground materials for older children. The input VAT incurred on the transfer related costs is deductible in accordance with the proportion of the overall Economic Activity of Gulf Playground Ltd (100%).

### **8.3.2. Deduction of input VAT incurred in respect of sale of assets not considered a Qualifying Transfer**

In case the transfer of assets is not considered a Qualifying Transfer in accordance with the Implementing Regulations, this means that the VAT treatment of the Transferor's various supplies of Goods and services must be identified individually. In most cases, the sale of an individual business asset will be a Taxable Supply.

For costs incurred relating to the sale of the assets, the input VAT will generally be attributed to those sales. The default rules as described in paragraphs 8.1. and 8.2. will apply to determine whether and to what extent the Transferor can deduct input VAT on costs related to the transfer of the assets.

If all assets sold by the Transferor are taxable supplies with VAT charged at 5%, the VAT incurred on related costs should be deductible in full.

## **8.4. VAT Deduction on costs incurred by Transferor for share deals**

VAT deduction of costs incurred by the Transferor depends on the VAT qualification of the transfer of shares.

### **8.4.1. Deduction of input VAT incurred in respect of sale of shares by Transferor carrying out an Economic Activity**

In case the Transferor supplies shares in a business as part of an Economic Activity, the transfer of shares will, in principle, qualify as an Exempted Supply.

As a default, this means that any input VAT incurred directly in relation to this VAT exempt activity (such as legal fees) is not deductible for the Transferor.

As an exception, a special rule applies to VAT deduction in cases where the transfer of shares is a one-off event which is incidental to the Economic Activity of the Transferor. GAZT considers this will apply where a Taxable Person continues running an Economic Activity, and the transfer of shares is not a usual or fundamental part of this Economic Activity.

In that case, input VAT on Goods and services purchased in relation to the transfer of shares will be deductible in accordance with the proportion of the overall Economic Activity of the Transferor using the applicable proportional deduction method.<sup>37</sup>

**Example (14):** Al Hassan Co, a supplier of electronics in Al Khobar, wishes to focus its business operations by selling the shares in its photography subsidiary. Following a detailed vendor due diligence executed by third party advisors and law firms, it transfers all shares to Faisal Photography Co. The funds raised from the transfer of shares are used solely in expanding the existing electronics business, which is fully taxable for VAT. Al Hassan Co incurs advisory and legal costs of SAR 1,000,000 on the share transfer. Although the costs relate to a transfer of shares, which is exempt for KSA VAT purposes, the costs are for a one-off event which is incidental to the Economic Activity of Al Hassan Co (its ongoing VAT taxable business). Therefore, VAT charged by the advisors and lawyers on the costs is deductible, in line with the usual proportional deduction (100%).

## 8.5. VAT Deduction on costs incurred by Transferee

Depending on the qualification of the transfer, the Transferee may incur costs on:

- The transfer from the Transferor itself, if Assets are transferred as part of a Taxable Supply; or
- Third party costs incurred in relation to the acquisition of the business (such as legal, financial advisory and similar costs).

The default rules as described in paragraphs 8.1. and 8.2. will apply to determine whether and to what extent the Transferee can deduct input VAT on costs related to the transfer itself and/or other costs related to the transfer.

The costs incurred by a Transferee in the course of acquiring a Business do not usually relate to a particular onwards Supply made by the Transferee. Instead, these relate to the ongoing activities of the business. If the ongoing activities of the acquired Business are taxable in nature, it is likely that the related costs will be deductible in principle. It is recommended that Transferees carefully review the costs incurred and their right to deduct.

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<sup>37</sup>Article 51 (11), Proportional deduction of Input Tax, Implementing Regulations

## 9. VAT obligations of the Taxable Person

A Taxable Person must evaluate its tax obligations and also comply with the conditions and obligations relating to VAT. This includes registering for VAT as necessary, and exactly calculating the net amount of VAT payable, and paying the tax at the time due, as well as keeping all necessary records and cooperating with officials of the Authority on demand.

If a Taxable Person is not sure of its obligations, the Authority must be contacted through its website at [vat.gov.sa](http://vat.gov.sa) or by other means of communication, and a Taxable Person may also seek external consultation through a qualified consultant. There follows below a review of the most important tax obligations provided for in the Law and the Implementing Regulations.

### 9.1. Issuing tax invoices

A supplier must issue a tax invoice for each taxable supply made to any VAT-registered person or to any other legal person, or issue a simplified invoice in the event that the Value of the supply is less than SAR 1,000, or for supplies made to the end consumer, by no later than fifteen days following the end of the month in which the supply is made.

The tax invoice must clearly detail information such as the invoice date, supplier's tax identification number, taxable amount, tax rate applied, and the amount of VAT charged<sup>38</sup>. If different rates have been applied to supplies, the Value of each supply at each rate must be separately specified, as well as the VAT applicable to each rate. A tax invoice may be issued in the form of a commercial document, provided that document contains all of the requirements for the issuing of tax invoices as set out in the Implementing Regulations to the Law.<sup>39</sup>

Further information on the requirements for tax invoicing can be found in the Taxpayer guideline on Invoicing and Records.

### 9.2. Filing VAT Returns

Each VAT registered person, or the person authorised to act on his behalf, must file a VAT return with the Authority for each monthly or quarterly tax period. The VAT return is considered the Taxable Person's self-assessment of tax due for that period.

Monthly VAT periods are mandatory for Taxable Persons with annual revenues exceeding SAR 40 million. For all other VAT registered persons, the standard tax period is three months.

The VAT return must be filed, and the corresponding payment of net tax due made, no later than the last day of the month following the end of the tax period to which the VAT return relates.

More information on filing of VAT returns is provided in a separate guideline.

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<sup>38</sup>For more details on the requirements for issuing tax invoices, refer to the published Invoicing & Records guideline and Article 53, Tax Invoices, Implementing Regulations

<sup>39</sup>Article 53, Tax Invoices, Implementing Regulations

If the VAT return results in VAT due to the Taxpayer, or if the Taxpayer has a credit balance for any reason a request for a refund of this VAT may be made after the filing of the VAT return, or at any later time during the next five years by filing a request for a refund to the Authority. GAZT will review these requests and will pay the amount due on refund requests that have been approved, directly to the Taxpayer<sup>40</sup>.

### 9.3. Keeping records

All Taxpayers are required by law to keep appropriate VAT records relating to their calculation of VAT for audit purposes. This includes any documents used to determine the VAT payable on a transaction and in a VAT return. This will generally include:

- tax invoices issued and received;
- books and accounting documents;
- contracts or agreements for large sales and purchases;
- bank statements and other financial records;
- import, export and shipment documents; and
- other records relating to the calculation of VAT

Records may be kept in physical copy, or electronically provided the relevant criteria are met – but in all cases must be made available to the Authority on request.

All records must be kept for at least the standard retention period of six (6) years. That minimum period for retention is extended to eleven (11) years in connection with invoices and records relating to movable capital assets, and fifteen (15) years in connection with invoices and records relating to non-movable capital assets<sup>41</sup>.

A taxpayer who makes a Transfer of an Economic Activity by way of an asset deal must make appropriate records available to the Transferee. Please refer to section 5.4 of this guideline.

### 9.4. Certificate of registration within the VAT system

A resident person who is subject to VAT and registered with the Authority in the VAT system must display a certificate to the effect that he has been registered in the VAT system in a place visible to the public at his main place of business and at all his branches.

In the event of a contravention, the person in breach will be liable to the penalties provided for in the Law.

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<sup>40</sup>Article 69, Refund of overpaid Tax, Implementing Regulations

<sup>41</sup>Article 66, Records, Implementing Regulations, and Article 52, Capital Assets, Implementing Regulations

## 9.5. Correcting past errors

If a Taxable Person becomes aware of an error or an incorrect amount in a filed VAT Return, or of any other non-compliance with the VAT obligation, he should notify the Authority and correct the error by amending VAT the tax return. Errors resulting in a net understatement of VAT (exceeding SAR 5,000) must be made known to the Authority within twenty (20) days of detecting the error or incorrect amount, and the previous return must be amended. In connection with minor errors resulting in a difference of less than SAR 5,000, the error may be corrected by amending the net tax in the subsequent tax return<sup>42</sup>.

Further information on correcting errors can be found through [vat.gov.sa](https://vat.gov.sa)

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<sup>42</sup>Article 63, Correction of Returns, Implementing Regulations

## 10. Penalties

The Authority may impose penalties or fines on taxpayers for violations of VAT requirements set out by the Law or Implementing Regulations<sup>43</sup>.

Description of offence	Associated fine
<b>Submitting false documents with the intent of</b> evading the payment of the VAT due or to reducing its value	<ul style="list-style-type: none"> <li>• At least the amount of the VAT due</li> <li>• Up to three times the value of the goods or services</li> </ul>
Moving goods in or out of the Kingdom <b>without paying the VAT due</b>	<ul style="list-style-type: none"> <li>• At least the amount of the VAT due</li> <li>• Up to three times the value of the goods or service</li> </ul>
<b>Failure to register</b> for the VAT in the allotted timeframe	SAR 10,000
<b>Filing incorrect tax return, amend a tax return</b> after submission or filing any VAT document with the Authority resulting in a lower amount due	Equal to 50% of the value of the difference between the calculated Tax and Tax due
<b>Failure to file</b> VAT return in time	5%-25% of the VAT in respect of which the return should have been filed
<b>Failure to pay</b> the VAT in time	5% of the VAT due for each month or part thereof
Collecting VAT <b>without being registered</b>	Up to SAR 100,000
Failure to <b>maintain books and records</b> as stipulated in the regulations	Up to SAR 50,000
<b>Preventing GAZT employees</b> from performing their duties	Up to SAR 50,000
Violating of any other provision of the VAT <b>regulations or the VAT law</b>	Up to SAR 50,000

In all cases, if a violation is repeated within three years from the date of issuing the final decision of the penalty, the Authority may double fine for the second offense.

The level of the penalty or fine imposed is set by the Authority with regard to the taxpayer's behaviour and compliance record (including taxpayers meeting their requirements to notify the Authority of any errors and provide co-operation to rectify mistakes).

<sup>43</sup>Chapter Sixteen: Articles (39), (40), (41), (42), (43), (44), (45), and (47), [Tax Evasion and Penalties], VAT Law.

## 11. Applying for the issue of rulings (interpretative decisions)

In the event that a Person is not sure about the manner of application of VAT to a particular activity or particular transaction that it is doing or intend to do, after referring to the relevant provisions and the relevant guideline, the Person may submit an application to the Authority to obtain a ruling. The application should set out the full facts relating to the particular activity or particular transaction on which the Person is asking the Authority to express its view.

A reply to a request for a ruling may be either:

- Public, in which event the Authority will publish details of the ruling, but without referring to any private particulars relating to the individual Taxpayer, or
- Private, in which case the Authority will not publish the ruling.

The ruling may contain all of the information relating to the activity or the transaction in respect of which the ruling is requested, in addition to an explanation concerning the particular area of doubt or uncertainty in the law or the guide that the Person has looked at. The Person may choose to describe the alternatives and what it considers to be the correct treatment.

The Authority is not obliged to respond to all requests for rulings, and it may review all requests and specify priorities on the basis of certain elements, including:

- The level of information submitted by the Person in the request,
- The potential benefit to Taxable Persons as a whole on the issuing of a general ruling concerning some transaction or activity,
- Whether there is an existing law or guide dealing with this request.

Neither a public nor a private ruling issued by the Authority will be treated as binding on it or upon the Taxable Person in connection with any transaction that it performs, and it shall not be possible to rely on it in any manner.

## 12. Q&A

### 1) **Is the transfer of the ownership of an asset subject to VAT?**

Yes, the transfer of ownership of a tangible asset (whether moveable goods or immovable property) is considered a supply of goods for VAT purposes, and is subject to VAT if it takes place in the KSA.

### 2) **When a company sells fixed assets which have been used in its business activity, is the sale subject to VAT?**

Yes, the value of the sale of a fixed asset, including a used fixed asset, is a Supply of Goods as part of the economic activity of the Taxable Person, and shall be subject to VAT based on the consideration payable.

### 3) **Is the sale and purchase of shares of companies subject to VAT?**

No. The issue or transfer of a company share, being an equity securities, is considered an exempt supply of Financial Services and no VAT should be charged by the Transferor.

### 4) **Is a business owner required to charge VAT if he sells his entire business?**

If a Taxable Person sells all of the Assets of an Economic Activity to a Taxable Person who will carry on that activity, the Transferor and Transferee can agree that the sale is of the Economic Activity itself, and not a Supply of the underlying Goods and Services. In order to do this, the transaction must meet certain criteria.

If the ownership of a business is sold by way of a share sale, the Person selling the shares is not required to charge VAT on the share transfer. If the transfer is made as part of his Economic Activity, the supply of shares is an Exempted Supply.

### 5) **What are the obligations for a Person selling the Assets of an entire business?**

If the Taxable Person supplying the Assets (Transferor) wishes to make use the rules for the Transfer of an Economic Activity, it should obtain written confirmation that the Transferor also intends the deal to be the Transfer of an Economic Activity.

The Transferor must consider if it is required to deregister as a result of the Transaction, and notify GAZT within 30 days if so. The Transferor must provide sufficient business records that will enable the Transferee to establish its VAT liabilities in relation to the acquired business as of the date of the transfer.



**6) Can a person deduct VAT incurred on his legal costs relating to the sale of his business?**

This depends on the nature of the transaction. If the Business is sold by way of a taxable Supply of the underlying Assets, deduction should be available for the related costs.

If the Business is sold by the Transfer of an Economic Activity or a one-off sale of shares which is incidental to the Transferor's business, the Transferor may be able to deduct VAT in accordance with the proportional deduction applying to his continuing business. In all cases, the rules for VAT deduction should be studied carefully to establish if the Transferor is able to deduct.

