

## Saudi Arabia disregards Directors' fees for VAT purposes

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### Executive summary

On 14 April 2019, Saudi Arabia's General Authority of Zakat and Tax (GAZT) published an Arabic language [press release](#) on its website in which it indicates that Directors' fees are essentially to be disregarded for value added tax (VAT) purposes in Saudi Arabia. This means that Directors already registered - or those considering registering - for VAT purposes in Saudi Arabia solely on the basis of fees earned as Directors may no longer be required to be registered. Any other income generated by Directors (i.e., aside from Directors' fees or similar) continues to be taken into account for VAT purposes in the normal manner.

### Detailed discussion

#### Background

Under Article 1 of the *Unified VAT Agreement of the States of the Gulf Cooperation Council (GCC)* (Treaty) and the corresponding provisions in the Saudi Arabian VAT Law and VAT Implementing Regulations, a taxable person (being someone that is registered, or is required to register, for VAT purposes in Saudi Arabia) must be conducting an economic activity, and doing so "independently."

The employees of a business are generally not considered to be acting independently of their employer. While this can be inferred from the definitions contained in Article 1 of the Treaty, Article 9(6) of the VAT Implementing

Regulations confirms that an employer/employee relationship precludes the creation of an economic activity for the employee that is independent of that of their employer.

Article 9(6) should not apply to company Directors acting in that capacity (i.e., serving on a Board of Directors), as they are not considered to be acting in an employer/employee relationship.

### Treatment based on the press release

The GAZT's press release, which is only available in Arabic at this time, states that following a reexamination, the GAZT has concluded that Directors are not completely independent of the company in respect of whom they represent. As such, a Director cannot be undertaking an economic activity, independently, when carrying out its activities as a member of the Board of Directors.

The GAZT has indicated that this position is to be treated as effective from 1 January 2018 (i.e., from the date on which VAT was introduced in Saudi Arabia).

## Implications

Directors who have registered (or who are in the process of registering) for VAT purposes in Saudi Arabia should reconsider their registration obligations. In particular, the value of their remuneration for acting in the capacity of

a Director should be removed from the total value of all supplies made, or expected to be made, when considering whether they have breached or will breach the current mandatory VAT registration threshold of SAR375,000 (approx. US\$100,000) annually. In doing so they may find that they may no longer be obliged or eligible to register.

It is important to note that Directors may still have a registration requirement due to other business activities they undertake, and that such obligations will remain unaffected by the GAZT's press release.

Going forward, fees charged by Directors for services rendered to their respective companies should not be treated as taxable supplies for VAT purposes in Saudi Arabia; no VAT should be charged on the fees, and there is no requirement to issue a tax invoice.

Notwithstanding the press release, there are some areas that still require further clarification, including:

- ▶ The treatment of historic transactions, where Directors may have previously charged VAT on the fees charged, and where this VAT has been recovered by the company.
- ▶ The de-registration process for Directors who have registered for VAT based on their Directors' fees alone.

Further guidance is expected to be released on these points in due course.

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