



Indirect Tax Update

VAT Guide on employee benefits is now available in English

The General Authority for Zakat and Tax (“GAZT”) has released the English version of the guideline that explains in detail its view on the VAT treatment of the employee benefits.

We have summarized the most important messages of the guideline as follows.

Outsourced personnel

GAZT seeks to treat the various types of outsourcing of human capital that are similar in nature to an employee relationship as, effectively, an employment relationship even if there is no employment contract in place.

This may result in the ‘base salary’ portion payable to the third-party provider being considered outside the scope for KSA VAT purposes. Any additional amounts payable as commission or service charges are deemed to be a consideration for the provider’s services and thus subject to VAT. Such an interpretation may impact both providers and consumers of these services, which are widely used in the KSA. We expect this approach to be applied by the GAZT only in cases when the salary portion is clearly distinctive from the additional fees.

Service Providers — Individuals and non-executive directors

GAZT is of the opinion that individuals (other than employees) providing services on a regular and continuous basis under a services agreement or similar contract are obliged to register and account for VAT if their income exceeds the VAT registration threshold.

This includes non-executive directors who are not employees but are remunerated for their services. Such an interpretation is likely to have an impact on many currently serving non-executives. Considering the limited comments from the GAZT, analysis of practice in other developed jurisdictions may be required to enable businesses to decide on their approach in KSA.

Nominal supplies

In certain cases, the provision of goods or services without any consideration to employees or business guests may result in a nominal supply on which VAT must be accounted for.

GAZT recognizes that in some cases a taxable supply may include an element of a 'free' offering, which may not be considered as a separate nominal supply, but only if it is clearly an indistinguishable part of the overall supply.

Further, GAZT recognizes that the said nominal supplies should ideally be valued on the basis of purchase value/cost. However, in cases where such nominal supplies are made to the related persons which cannot recover input VAT in full (including employees) or a clear purchase value/cost cannot be ascertained (e.g. for goods produced internally), the VAT should be charged on the market price. Therefore, employee-specific discounts may be ignored by the GAZT for VAT purposes.

Employee allowances and benefits

In cases where an employer provides any benefits in kind (e.g., medical insurance) to the employees in excess of the statutory requirement under KSA laws, the excess must be recognized as a private expenditure (without input VAT deduction), or a nominal supply subject to VAT.

So far, there is no published view by GAZT on the types (or levels) of medical insurance coverage they will consider to be in excess of 'minimum' labour law requirements.

Motor vehicles

GAZT has confirmed that VAT incurred on the purchase/lease, repair and maintenance, and fuel for company vehicles is only deductible if such vehicle is used exclusively for business purposes. There is no ability for partial deduction if a vehicle is partly available for private use.

GAZT has stated in the guide that input VAT should not be blocked by the mere fact that employees may use the vehicle to commute from their residence to the office. This view is contrary to international practice. Also, it is worth mentioning that an opposing GAZT opinion is still publically available, creating uncertainty.

Catering

GAZT considers that VAT incurred by the employer on any catering costs, including the provision of free meals in the staff cafeteria, would be inadmissible for deduction.

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