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Kingdom Of Bahrain

VAT Oil and Gas Guide

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Preface

This document provides guidance on the VAT treatment of supplies of oil and gas in the Kingdom of Bahrain (Bahrain), together with related matters.

VAT was introduced in the Kingdom of Bahrain with effect from 1 January 2019 with a standard rate of VAT of 5%. With effect from 1 January 2022, the standard rate of VAT was revised to 10%. See the VAT Rate Change Transitional Provisions Guide on the NBR website (www.nbr.gov.bh) for an explanation of the transitional rules relevant to the change in rate.

This guide is intended to provide general information only, and contains the current views of the National Bureau for Revenue (NBR) on its subject matter. This guide is not a legally binding document, and does not commit the National Bureau for Revenue or any VAT payer in respect of any transaction. This document should be used as a guideline only and is not a substitute for obtaining competent legal advice from a qualified professional.

The main principles of the VAT system in the Kingdom of Bahrain are set out in the VAT General Guide issued by the NBR which is available on the NBR's website, www.nbr.gov.bh. This document should be read in conjunction with the VAT General Guide.

Contents

1. Oil and Gas supplies

1.1. Introduction

The value chain of the Oil and Gas ("O&G") industry is generally divided into three subsectors: upstream, midstream and downstream. These subsectors include activities such as:

- The licensing, exploration, development and production of crude oil and gas;
- Refining, processing of crude oil and gas and the manufacturing of petrochemical products; and
- Transportation, distribution and sale of O&G products.

1.2. Overview of the VAT treatment in the Kingdom of Bahrain

Upstream, midstream and downstream activities for the oil, oil derivatives and gas sector are generally zero-rated. As an exception, zero-rating does not apply to specific downstream activities such as the import and supply of products derived from oil, oil derivatives and gas such as plastic and fertilizers.

The zero-rating applies to the following supplies:

- The supply of oil, gas and other hydrocarbons (whether processed or unprocessed);
- The grant of a right to use, explore or exploit any part of the Kingdom to search for, extract or produce oil, gas or other hydrocarbons;
- Oil and gas exploration services;
- Oilfield and gas field related services such as design, drilling, rig set-up, drilling, extraction, recovery, separation, evaluation, feasibility analysis, testing, seismic and geophysical surveys and repair and maintenance services;
- Specialist professional services where they are required for the exploration or exploitation of existing and/or potential oil and gas sites;
- Oil refining or gas processing services, including regasification of liquefied natural gas ("LNG");
- Distribution/transportation of oil, gas or other hydrocarbons;
- The storage of oil, gas or other hydrocarbons;
- The supply of consumables that are used directly and exclusively for making the above supplies; and

- The purchase or lease of machinery or equipment which is used directly and exclusively for the making of the above supplies.

The below sections of this guide provide further details on the VAT treatment applicable to the supplies specifically relevant to the O&G sector.

1.3. Import and supply of oil, gas and other hydrocarbons

1.3.1. Supply and import of raw natural gas, crude oil and other hydrocarbons

The supply, in the Kingdom of Bahrain, of raw natural gas, crude oil and other hydrocarbons in their natural form (i.e., after extraction from the reservoir) is zero-rated. These products are those generally classified under HS codes 2709, 2711 and 2714.

Where such goods are imported into the Kingdom of Bahrain from a place outside the territory of the Implementing States, their import is exempt from import VAT (i.e., no VAT is levied at the time they are imported).

The application of the zero-rate on supplies occurring in the Kingdom of Bahrain and of the VAT exemption at import is strictly and solely linked to the nature of the products sold/imported. There are no specific requirements with regards to the supplier, the purchaser or the importer of record.

1.3.2. Supply and import of processed natural gas, other hydrocarbons and refined crude oil products

The supply, in the Kingdom of Bahrain, of processed natural gas and other hydrocarbons and refined crude oil products is zero-rated.

Where such goods are imported into the Kingdom of Bahrain from a place outside the territory of the Implementing States, their import is exempt from import VAT (i.e., no VAT is levied at the time they are imported).

The application of the zero-rate on supplies occurring in the Kingdom of Bahrain and of the VAT exemption at import is strictly and solely linked to the nature of the products sold/imported. There are no specific requirements with regards to the supplier, the purchaser or the importer of record.

Below is a non-exhaustive list of products that are subject to VAT at the zero-rate where supplied in the Kingdom of Bahrain or exempt from VAT when imported into the Kingdom. Where in doubt about the VAT treatment of an O&G product, further guidance should be sought from the NBR.

- Petroleum oils and oils derived from bituminous minerals (generally falling under HS code 2710), such as naphtha, diesel fuel, fuel oil, fuels (e.g., petrol, gasoline, kerosene (jet A-1) etc.) and lubricants.[1]

- Waste oil (i.e., oil that has not been used and is unsuitable for its originally intended purpose).

- Petroleum gases and other hydrocarbons, in gaseous or liquefied form (generally falling under HS code 2711) such as liquefied natural gas (LNG - methane, ethane) and liquefied petroleum gas (LPG - butane, propane).

- Other products such as petroleum bitumen and other residues of petroleum oils falling under HS code 2713.

For the avoidance of doubt, the following products are subject to Bahrain VAT at the standard rate of 10% where imported into or supplied in the Kingdom of Bahrain:

- Used oil (i.e., oil that has been used and is now contaminated by physical or chemical impurities, such as oil drained from a vehicle engine); and

- Products such as ammonia, methanol, urea, asphalt concrete (used notably as road or roof surface material).

Supply of liquefied petroleum gas ("LPG") in returnable containers/cylinders

It is common practice for LPG to be sold in returnable containers. The returnable containers are specifically made to be used only for LPG, i.e., they act as a pressure vessel for storing and containing LPG at above atmospheric pressure.

In addition to the selling price of the LPG, first time buyers usually pay a fixed amount to be (partially) kept by the LPG supplier in the event that the empty container is not returned or is returned in a damaged condition (i.e., a security deposit to ensure the safe return of the container). The receipt by the supplier of a security deposit for the returnable container is outside the scope of VAT (i.e., no VAT is applicable) and must not be included in the value of the supply of the LPG provided it can be evidenced that the amount paid as a security:

a. is refundable upon return of the container; and

b. is not applied by the supplier to reduce the total amount due by the customer for the supply of LPG (i.e., the supplier does not treat it as an advance payment for his supply of LPG).

If the security deposit is subsequently applied by the supplier to reduce/offset an amount due by the purchaser for a given supply, the security deposit will be considered as (a portion of)

[1] Examples of lubricants include base oils, petrol engine oil, diesel engine oil, gear oil (for both automatic and manual transmission gears), lubricating oil, lubricating oil used for automatic-transmission gears, hydraulic/turbine oils, grease, other lubricating oils and other oils

the consideration due for that given supply and may then become subject to VAT (in accordance with the VAT liability and the VAT due date rules applicable to this specific supply).

The refund (partially or in full) of the security deposit from the supplier to the purchaser (upon return of the goods) is outside the scope of VAT and does not trigger any VAT event.

If the purchaser does not return the container or returns it damaged and the security deposit is (partially or fully) kept by the supplier, the forfeited security deposit is not considered as consideration for a supply made by the supplier but an indemnity for his loss of or damage to the container. Thus, VAT is not applicable on the forfeited security deposit.

Example

Salman, a customer based in the Kingdom of Bahrain, buys a cylinder (container) of cooking gas from BAC Gas Dealers ("BAC"), an LPG dealer in the Kingdom. In addition to paying for the LPG, Salman pays a deposit of BHD 12 on the LPG cylinder, refundable upon return of the cylinder. During the year, Salman loses the cylinder. Because Salman cannot return the cylinder to BAC, the BHD 12 deposit will be forfeited as a compensation for the loss suffered by BAC. The forfeiture of the deposit is not considered as consideration for a supply by BAC to Salman, and it is therefore not subject to Bahrain VAT. There is no requirement for BAC to raise a VAT invoice for the forfeited security deposit.

1.3.3. Exclusion from the zero-rate and VAT exemption at import

The zero-rate and VAT exemption at import do not apply to the supply and import of products that are produced using oil, gas and other hydrocarbons as feedstock.

Plastics, fertilizers and asphalt concrete are subject to VAT at the standard rate of 10% on their supply in and import into the Kingdom of Bahrain. The export of such products will be subject to VAT at the zero-rate when they meet the conditions to qualify as an export of goods for VAT purposes.

The supply of O&G products remains subject to VAT at the zero-rate even where the purchaser intends to use these products in the production of plastics, fertilizers or other products. The same principle applies when the products are imported instead of being locally purchased (i.e., their import will remain exempt from VAT).

Example 1

Evo Plastic Manufacturers ("Evo") is a company established and VAT registered in the Kingdom of Bahrain. Evo manufactures plastic products for sale (local and at export).

Evo purchases naphtha from XYZ Oil and Gas Refineries Limited ("XYZ"), a company established and VAT registered in the Kingdom of Bahrain, as raw material to be used in the manufacture of its plastic products.

The supply of naphtha by XYZ to Evo is subject to VAT at the zero-rate as Naphtha is a product derived during the initial stage of processing/refining.

The supply of plastic products by Evo is subject to Bahrain VAT at the standard rate of 10%, unless the products are sold at export in which case the zero-rate for export of goods would apply (provided all the conditions for the zero-rate are met).

Example 2

MAP Chemical Industries ("MAP") is a company established and VAT registered in the Kingdom of Bahrain. MAP manufactures fertilizer for sale (local and at export).

MAP uses natural gas as raw material for the manufacture of nitrogen fertilizer. MAP imports the natural gas into the Kingdom of Bahrain from a place outside the territory of the Implementing States.

The import of natural gas by MAP is exempt from import VAT (because a local supply of that same product would have been zero-rated).

The supply of fertilizer by MAP is subject to Bahrain VAT at the standard rate of 10% unless the product is sold at export. In this case the zero-rate for export of goods will apply (provided all the conditions for the zero-rate are met).

2. Supplies of goods and services in the upstream sector

2.1. Introduction

Activities in the upstream sector include the exploration of O&G deposits, the development of oil and gas fields and the extraction/production of crude oil or natural gas. Exploration, development and production activities in a given block (i.e., an identified area of the territory, onshore or offshore) are typically undertaken and managed through:

- A concession or Production Sharing Agreement ("PSA") between the National Oil and Gas Authority ("NOGA") and international oil and gas companies ("Participating Parties"); and
- A Joint Operating Agreement ("JOA") between the Participating Parties, whereby one is appointed as the Operator and will be in charge of operating the exploration, development, exploitation and production of the block, while the products extracted and the costs incurred will be shared between the Participating Parties based on their participating interest in the JOA.

Please see section 2.5.1 of this guide for further details on these contractual arrangements and their VAT implications.

The upstream-related transactions listed below, when supplied in the Kingdom of Bahrain, will be subject to VAT at the zero-rate.

2.2. Grant of a right to use, explore or exploit any part of the Kingdom of Bahrain to search for, extract or produce oil, gas or other hydrocarbons

2.2.1. Preliminary

As a preliminary comment, the right or license to explore, develop and produce oil, gas or other hydrocarbons in an identified area/block is considered to be related to real estate for VAT purposes. Therefore, when falling in the scope of VAT, the place of supply of granting such a right or license is where the land is located.

2.2.2. Grant of the right to explore, develop and exploit a block by NOGA

The award of block exploration, development and production rights by NOGA to the Participating Parties is not considered a transaction falling within the scope of VAT as NOGA is making such an award in a sovereign capacity. Therefore, NOGA is not expected to charge VAT on the payments received (including any signing bonus and any other current or future payments relating to such rights) from the Participating Parties.

Please see section 2.5.1 of this guide (Contractual arrangements for upstream activities) for more details.

2.2.3. Transfer/Rearrangement of the right to explore, develop and exploit a block

Introduction

It is common practice for exploration and production businesses to enter into arrangements with other businesses over a given block or part of a block to which they have been granted rights by NOGA. Such arrangements may take various forms; some of these are explained below.

Outright transfer/sale of right

The holder transfers his right (or a portion of it) to a third party for a consideration in cash or in exchange for another right.

When a right is transferred in exchange for another right, both parties to the transfer are considered to be making a disposal of their respective right. The value of the right transferred by one party is the value of the right received from the other party.

The disposal of a right over a given block (or a portion of it) is a supply relating to land. Therefore, only rights over blocks located within the territory of the Kingdom of Bahrain fall within the scope of the VAT Law.

When falling in the scope of the VAT Law, the disposal/transfer of a stand-alone exploration, development and production right will be subject to VAT at the zero-rate.

There may be cases where a transfer of a right will be regarded as the transfer of an economic activity (i.e., transfer of a going concern or TOGC), subject to the relevant conditions in the VAT Law and Executive Regulations being met. Please refer to the VAT Transfer of a Going Concern Guide for further information on these conditions.

A TOGC may arise where the transferor actually transfers his exploration and/or production activity to the transferee as part of the arrangement. Such a transfer would typically include tangible assets (equipment) and intangible assets (exploration and production rights). It would also be necessary that the transferor carried out at least minimal activity in the licensed area prior to the transfer.

Where the TOGC provisions apply, the transfer of the economic activity would be outside the scope of VAT (as opposed to zero-rated).

Farm-in/Farm-out

The holder (the “farmor” who is “farming-out”) transfers his right (or a portion of it) to a third party (the “farmee” who is “farming-in”) for consideration taking the form of a work obligation (e.g., drilling one or more wells). The farmee may also pay the farmor a cash amount in addition to his work commitment.

A farming arrangement, whereby a party commits to a work obligation in consideration for a transfer of a right, is considered as a barter transaction from a VAT point of view:

a. The farmor transfers his right to the farmee, the value of which corresponds with the value of the farmee's work obligation (in addition to the cash payment, if any, made by the farmee). The VAT liability is the same as explained under the "Outright transfer/sale of right" section above.

b. The farmee provides a service to the farmor (i.e., the work obligation is considered a service), the value of which corresponds to the value of the right transferred by the farmor.

The VAT liability of the farmee's services will depend on the nature of the work to be done. It is therefore necessary to assess the VAT treatment in the light of the exact work to which the farmee has committed (e.g., drilling of one or more wells). Usually the farmee's work obligation will be considered a supply of exploration/exploitation services (we refer you to section 2.3 below).

Based on the above, the nature of each arrangement needs to be considered on a case by case basis when determining the VAT implications of such arrangements.

2.3. Exploration services, oilfield and gas field related services and specialist professional services required for the exploration or exploitation of existing and/or potential oil and gas sites

Oilfield and gas field related services may include, but are not limited to, design, drilling, rig set-up, extraction, recovery, separation, evaluation, feasibility analysis, testing, seismic and geophysical surveys, and repair and maintenance services.

Services related to the dismantling/decommissioning of the infrastructure, the securing and the restoration of the site after exploration or completion of production also fall within this category of zero-rated services.

Oilfields and gas fields are considered as real estate for VAT purposes. The place of supply of services relating to them is where the field is located in accordance with the place of supply rule applicable to real estate related services. This rule also applies to services related to floating oil rigs/platforms[2] in use at a given oil or gas field.

Specialist professional services would typically include, but would not be limited to, capital project management, analytics of oilfield production operations, development of industry-specific digital solutions, oilfield or gas field monitoring services, etc.

[2] Floating oil rig/platform should be attached to the seabed via flowlines (and not just anchoring) with sufficient degree of permanence.

These services may follow different place of supply rules depending on their exact nature (e.g., general place of supply rules; real estate related services, etc.). We refer you to the VAT General Guide for further details on the place of supply rules for services.

Services such as catering for personnel, provision of accommodation to personnel and transport of personnel are not considered as falling in the scope of the zero-rate applicable to exploration services, oilfield and gas field related services and specialist professional services. These services follow their own VAT treatment, based on the relevant VAT rules applicable.

Example 1

Z Drilling Services Company ("Z"), is a company established and VAT registered in the Kingdom of Bahrain. Z has been contracted by XYZ Offshore Company to provide seismic survey and drilling services in Block 6 (located in the Kingdom of Bahrain).

The place of supply of seismic survey and drilling services is in the Kingdom of Bahrain, i.e., where Block 6 is located.

The services will be subject to Bahrain VAT at the zero-rate as they fall within the scope of the zero-rate applicable to the O&G sector.

Example 2

Company C, a professional services entity established and VAT registered in the Kingdom of Bahrain, has been contracted by XYZ Offshore Company to provide audit and VAT advisory services.

The place of supply of Company C's services follows the general place of supply rule (i.e., place of residence of the supplier).

Bahrain VAT at the standard rate of 10% will apply as these professional services are not specifically required for the exploration or exploitation of existing and/or potential oil and gas sites.

Example 3

A catering service provider, established and VAT registered in the Kingdom of Bahrain, has been contracted by XYZ Offshore Company for the supply of meals to the workers on the Block 6 oilfield (within the territory of the Kingdom of Bahrain).

The place of supply of these catering services is where the services are actually performed (i.e., special place of supply rule). This is because catering services are not considered as oilfield and gas field related services, and are not required for the exploration or exploitation of oil and gas sites.

Bahrain VAT at the standard rate of 10% will apply as these services are neither oil/gas field related services nor professional services specifically required for the exploration or exploitation of existing and/or potential oil and gas sites.

2.4. Import, supply and lease of equipment and consumables that are used directly and exclusively in the exploration or exploitation of existing and/or potential oil and gas sites

The following notably fall within this category:

- Import, sale and lease of oil rigs;

Example
Zubira Oilfield Services Limited ("Zubira"), a company established and VAT registered in the Kingdom of Bahrain, entered into an agreement with a company based in the Cayman Islands to purchase two jack-up drilling rigs. *The import by Zubira of the two jack-up drilling rigs into the Kingdom of Bahrain will be VAT exempt (because a local supply of those same products would have been zero-rated).*

- Import, sale and lease of specialized oil tankers/pipes used for the transportation of crude oil, unprocessed natural gas and other hydrocarbons; and

- Import and sale of consumables that may include, but not limited to, parts or spare parts directly and exclusively used in oil rigs, oil tankers etc.

Where a VATable person in the Kingdom of Bahrain imports, supplies or leases equipment or consumables that will be used for both O&G activities and non-O&G activities, such items will not qualify for the zero-rate. For example, the sale of parts for installation in a tanker used for both O&G activities and non-O&G related activities will not meet the conditions to be zero-rated.

Example
XYZ Offshore Company ("XYZ"), a company established in the Kingdom of Bahrain, owns a vehicle that is used by its operations director to supervise drilling activities in two oilfields based in the Kingdom of Bahrain. The operations director uses the same vehicle on weekends to move around with his family. *The vehicle has some mechanical issues and XYZ imports spare parts to be used in the repair of the vehicle. As that vehicle is used for both O&G activities and other purposes (personal use in the case at hand), it is not directly and exclusively used for the purpose of oil, oil derivatives and gas activities. Therefore, VAT at the standard rate of 10% is applicable on the import of the spare parts.*

2.5. Other considerations in the upstream sector

2.5.1. Contractual arrangements for upstream activities

Concession and Production Sharing Agreement ("PSA")

Companies seeking to carry out upstream activities in the Kingdom of Bahrain ("Participating Parties") are required to obtain the right to do so from NOGA. Generally, this is done via a concession arrangement under the terms of which the Participating Parties will make a recurring payment relating to the rights granted by NOGA for a given period of time. The payments may be made in cash or in kind.

Alternatively, the Participating Parties and NOGA may enter into a PSA which sets out the rights and obligations of all the parties, including their respective entitlement (share) in the production. PSAs may also envisage the payment of additional variable fees relating to the rights granted by NOGA to the Participating Parties.

Subject to these payments to NOGA, the Participating Parties are granted the right to explore and develop a specific area of the Kingdom of Bahraini territory (usually referred to as a "block", onshore or offshore) for production.

The awarding of block exploration, development and production rights by NOGA to Participating Parties is not considered as a transaction falling within the scope of VAT as NOGA is making these awards in a sovereign capacity. Therefore, NOGA is not expected to charge VAT on the payments received from Participating Parties.

Joint Operating Agreement ("JOA")

To carry out their activities under a PSA, Participating Parties may enter into a JOA which sets the rights, obligations and liabilities of each party. One of the Participating Parties is usually appointed to act as the JOA "Operator".

The Operator is appointed by the Participating Parties to take care of the exploration, development and production of the crude oil, natural gas and other hydrocarbons, while the products extracted and the related costs for these activities will be shared among the Participating Parties, based on their participating interests in the JOA. The Operator usually pays all the bills in respect of the JOA and charges its share of the costs to each Participating Party.

Costs incurred during the oil and gas exploration, development and production phase may be a significant financial burden to the Operator. In order to mitigate the cash-flow impact for the Operator, JOAs may provide for "cash calls" (i.e., request for funds) to be paid by all the Participating Parties in order to fund the upstream related costs.

Cash calls are cash contributions/payments made by the JOA Participating Parties, based on their interests in the JOA, in order to ensure that funds are available to the Operator to cover the various costs. These funds are then used by the Operator as and when the costs arise.

Cash calls are issued by the Operator to the Participating Parties either based on expenses that have already been identified and contracted, or before expenses are specifically identified and contracted.

The VAT implications of a JOA will depend on the exact role of the Operator under the JOA agreement. It is therefore important to determine the VAT implications of each JOA on a case-by-case basis.

Three main operating models can be identified from a VAT perspective:

a. The Operator acts as a principal

Under this model, the Operator acts in its own name and for its own account when carrying out the exploration, development and production.

The Operator supplies the Participating Parties with exploration/development/production services and, where necessary, sub-contracts to various third party suppliers. When contracting with the various suppliers, the Operator does so in its own name and for its own account. It is therefore expected that the related VAT invoices are issued by the suppliers to the Operator.

The consideration for the Operator's services to the Participating Parties corresponds to the expenses it incurs and periodically passes on to each Participating Party (in proportion to its respective interest in the JOA). The Operator is not required to apportion its invoices between its separate cost components as the total amount shown on the invoice is considered to be a global charge by the Operator for its exploration/development/exploitation services.

The services supplied by the Operator to the Participating Parties are, in principle, considered to be real estate related services for the purposes of the place of supply rules. Therefore, these services will be considered to take place in the Kingdom of Bahrain for VAT purposes when the exploration, development and production relate to a specific area/block located within the territory of the Kingdom of Bahrain.

Such services, when supplied in the Kingdom of Bahrain, will be subject to VAT at the zero-rate as they specifically relate to O&G upstream activities (i.e., exploration, development and production). The Operator, when registered for VAT in the Kingdom of Bahrain, will be required to issue VAT invoices for its supplies of services to the Participating Parties.

The services provided by the Operator should be regarded as continuous supplies of services for the purpose of determining their VAT due date. We refer you to section 5.2 of this guide for further details on VAT due date rules.

Under this model, cash call payments made by the Participating Parties to the Operator are usually considered as advance payments for the Operator's services and will trigger a VAT due date (VAT at the zero-rate) when the payments are received by the Operator.

Accordingly, the Operator will be required to issue a VAT invoice no later than by the 15th day of the month following the month during which that VAT due date was triggered.

b. The Operator acts as undisclosed agent

Under this model, the Operator acts in its own name but for the account of all the Participating Parties when procuring the exploration, development and production services (i.e., it is an undisclosed agent).

The Operator will contract with all third party suppliers in its own name and will recover the related expenses by way of recharges to each of the Participating Parties, in proportion to their respective interests in the JOA.

From a VAT perspective, the Operator will be deemed to (i) receive the supplies from the third party suppliers and (ii) make, in turn, the same supplies to the Participating Parties. The suppliers (if they are VATable persons in the Kingdom of Bahrain) will issue VAT invoices to the Operator and the Operator will issue VAT invoices to each Participating Party for its respective portion of the costs.

The VAT liability of the amounts recharged by the Operator to the Participating Parties will depend on the nature of the costs initially charged by the third party suppliers. It is therefore expected, where various costs are recharged at the same time, that the Operator identifies each cost separately and applies the relevant VAT treatment for the purpose of its VAT invoices.

Example

Three companies, ABC E&P Company ("ABC"), XYZ E&P Limited ("XYZ") and DEF Oil & Gas Limited ("DEF"), all established and VAT registered in the Kingdom of Bahrain, enter into a Joint Operating Agreement ("JOA") for the exploration and production of crude oil in Block 6 in the Kingdom of Bahrain. The three companies appoint ABC as the "Operator" while XYZ and DEF are collectively referred to as "the participating entities."

The Operator, as provided for in the JOA, incurs the development expenses in its own name, but for the account of the participating entities (i.e., it acts as an undisclosed agent). It then recharges each participating entity its respective share of these expenses.

As the Operator (in its capacity as an undisclosed agent) has incurred the development expenses on its own name, it is deemed to have received the supplies from the various suppliers and to have made the same supplies to the participating entities.

The Operator will be required to issue VAT invoices to the participating entities where it identifies each cost recharged and charges VAT as appropriate.

The suppliers, assuming they are VATable persons in the Kingdom of Bahrain, will have to issue VAT invoices to the Operator.

Under this model, when cash calls are paid by the Participating Parties to the Operator, the following may happen:

- Where cash calls are for future expenses that are specifically identified and contracted by the Operator, they will be considered as advance payments from the Participating Parties to the Operator. A VAT due date may be triggered upon receipt of payment by the Operator. The VAT liability of these advance payments (i.e., 10%, 0% or VAT exemption) will depend on the exact nature of each cost covered by the cash calls. The Operator will be required to issue VAT invoices to the Participating Parties within 15 days following the month during which the VAT due date was triggered.

- Where the cash calls are not linked to specifically identified and contracted expenses, their payments will not be considered as advance payments and will not trigger a VAT due date until such a time that these amounts are applied to specific expenses. Accordingly, there is no requirement for the Operator to raise VAT invoices on receipt of the cash call payments. The obligation to issue VAT invoices will occur at the time the cash received is allocated to specific expenses.

c. The Operator acts as disclosed agent

Under this model, the Operator acts in the name and on behalf of all the Participating Parties when procuring the exploration, development and production services (i.e., it is a disclosed agent).

The Operator will contract with third party suppliers in the name and on behalf of the Participating Parties and will ask each of the Participating Parties for a refund of the expenses it paid on their behalf (in proportion to their respective interest in the JOA).

When the Operator acts as a disclosed agent, all the Participating Parties are deemed to receive the supplies directly from the third party suppliers (for their portion of the supplies). Therefore, the suppliers (if they are VATable persons in the Kingdom of Bahrain) should issue VAT invoices to the respective Participating Parties for their portion of charges.

The amounts that the Operator pays to third party suppliers for which it asks the Participating Parties for a refund are considered as disbursements and, as a consequence, are outside the scope of VAT (i.e., the Operator is not liable to charge VAT on the refunds from the Participating Parties).

Under this disclosed agency model, cash call payments made by the Participating Parties to the Operator are outside the scope of VAT and do not in themselves trigger a VAT liability for the Operator. This is because these cash call payments are advance payments for disbursements as opposed to advance payments for supplies. Accordingly, these cash calls do not require the issue of VAT invoices by the Operator.

Example
The facts are the same as the previous example, but in this case the Operator incurs expenses in the name and on behalf of the participating entities (i.e., it acts as a disclosed agent).

As the operator has incurred the expenses in the name and on behalf of each participating entity, each participating entity is considered to have received the supplies directly from the various suppliers.

These suppliers, assuming they are VATable persons in the Kingdom of Bahrain, will have to issue VAT invoices directly to the participating entities for their respective portion of the supplies.

The Operator will use the cash paid by the participating entities earlier in the year and kept in a bank account (further to a cash call) to pay the amounts charged by the suppliers:

- *The cash paid earlier in the year is an advance disbursement and did not trigger any VAT event for the Operator at the time of its payment by the participating entities.*
- *The Operator is only acting as a paying agent between the suppliers and the participating entities and will not be required to charge any VAT on the amounts drawn from the bank account. Also, he will not be required to issue any VAT invoices to the participating entities.*

For completeness, should the JOA be structured as a formal joint venture ("JV") agreement between all the Participating Parties (i.e., an unincorporated JV), this JV (i.e., all the Participating Parties acting collectively) would be considered as operating separately from the participants for the purpose of VAT. The JV (i.e., all the Participating Parties acting collectively) should register for VAT separately from the Participating Parties and would operate for VAT under its own VAT Account number. The participants would have to appoint one of them (for instance the Operator) as the designated member to represent the JV with the NBR.

All JV participants remain jointly and severally liable for all the VAT liabilities and penalties arising from the JV's operations and breach of VAT compliance obligations.

In this scenario, the JV (i.e., all the Participating Parties acting collectively) would be deemed to be the recipient for all the costs incurred by the JOA and the VAT invoices from the various suppliers would have to be issued to the JV. The VAT charged on these costs (where any) can be recovered by the JV in its VAT return (subject to all the conditions for input VAT recovery being met).

2.5.2. Bahrain fixed establishment for non-Bahraini businesses

It is likely that a non-resident business carrying out exploration, development and production activities in a licensed area located within the territory of the Kingdom of Bahrain would be considered as carrying out its activities from a fixed establishment in the Kingdom of Bahrain. However, this is not automatically the case and would have to be determined based on the exact facts.

A fixed establishment (for VAT purposes) is defined as a fixed location with permanent presence of human and technical resources, from where the person conducts its business and that enables that person to supply or receive goods or services. In this respect, a fixed or floating rig/platform should be considered as a "fixed location" and may therefore result in the existence of a fixed establishment for VAT purposes.

Non-resident suppliers/contractors involved in O&G upstream activities may also be considered as having a fixed establishment in the Kingdom of Bahrain. The existence of a

fixed establishment in the Kingdom will depend on the nature of the suppliers' activities and the exact circumstances under which these activities are carried out.

A non-resident business/supplier with a fixed establishment in the Kingdom of Bahrain may have VAT obligations in the Kingdom such as VAT registration, charging VAT on its supplies of goods and services, issuing VAT invoices for these supplies and self-accounting for VAT under the reverse-charge mechanism on goods and services received from non-resident suppliers.

For the application of the VAT place of supply rules that depend on the supplier or the purchaser's place of residence, where a person has more than one place of residence (e.g., a place of business abroad and a fixed establishment in the Kingdom of Bahrain), it will be necessary to identify the place of residence most closely connected to the performance (when the person is supplying) or to the receipt (when the person is purchasing) of the services.

2.5.3. VAT registration and Input VAT recovery

Exploration, development and early production stages

Exploration, development and early production stages are characterized by incurring significant expenditure without making VATable supplies. At these stages, the VAT registration status of exploration and production businesses (i.e., the Participating Parties) is critical, not so much from an output VAT point of view (as there will not be VATable supplies performed immediately) but from an input VAT recovery perspective.

A person can register for VAT in the Kingdom of Bahrain, either on a mandatory or on a voluntary basis, if it carries out an economic activity independently for the purposes of generating income and it meets certain thresholds. Prospecting and preparation are considered an economic activity when the intention is, upon discovery or oil and/or gas, to extract and sell that oil and/or gas. Therefore, Participating Parties carrying out such prospecting and preparatory activities may be either required to register for VAT (e.g., when they receive services and goods from non-resident suppliers for an amount exceeding the VAT mandatory registration threshold) or eligible to register under the voluntary registration process.

We refer you to the relevant sections in the VAT Registration Guide for further details on mandatory and voluntary VAT registration.

In practice, applications for VAT registration in advance of making VATable supplies may be made by Participating Parties on the condition that existing arrangements provide for these Participating Parties to have shares in kind of the oil or gas produced, i.e., they will become the owners of the production, or part of it, and are entitled to sell it. They will be required to demonstrate their genuine intent to conduct business and to make VATable supplies. This can be done by providing the NBR with a copy of the relevant operating/production agreement(s) under the terms of which they are shown to be participants and entitled to a share in any oil or gas produced.

Once they are registered for VAT, they will be able to recover the input VAT incurred on their purchases and imports to the extent that these expenses and imports are made as part of their prospecting and preparatory activities, subject to the normal input VAT recovery rules.

We refer you to the “Input VAT recovery” section of the VAT General Guide for further details on input VAT recovery principles.

Given the scope of the zero-rate applicable to the O&G sector, most of the supplies received by Participating Parties during the exploration, development and production stages should be zero-rated. Therefore, the amount of recoverable input VAT is not expected to be significant.

Decommissioning

Decommissioning oil and gas facilities involves returning a site to the original state in which it existed prior to drilling and constructing the operating structure. For example, an oil rig could be dismantled at sea, detached and floated into port or, indeed, destroyed.

Input VAT on decommissioning costs should be recoverable (subject to the normal input VAT recovery rules) because these expenses are incurred for the purpose of and are still part of the O&G production activity.

Unsuccessful exploration

Even if exploration is not successful, i.e., it does not result in making VATable supplies in the form of crude oil, natural gas and other hydrocarbons, any input VAT that was initially recovered by the Participating Parties during the exploration and development phases will still be considered as recoverable, subject to the normal input VAT recovery rules.

Based on the above, Participating Parties, who initially recovered input VAT based on their genuine intention to make VATable supplies, should not be required to make any adjustment in relation to the amounts of input VAT recovered simply because the exploration was not successful.

Participating Parties will not be able to recover the input VAT charged on expenses incurred after the decision to stop the operations unless these expenses are incurred for the purpose of terminating the activities (e.g., decommissioning expenses).

Deregistration

Participating Parties will be required to deregister as soon as they meet the conditions for mandatory deregistration. They may also decide to voluntarily deregister if they meet the conditions for voluntary deregistration.

We refer you to the VAT Registration Guide for further details on VAT deregistration.

2.5.4. Supply of staff vs supply of services

In the upstream sector, it is not unusual for an Operator to use personnel supplied by a third party.

In some cases, the Operator will contract with a third party to be provided with personnel. In this case, there is a supply of staff by the third party. Such a supply falls within the general place of supply rules applicable to services. When the supply of staff occurs in the Kingdom of Bahrain and is made by a VATable person, such service is a VATable supply. If the staff supplied are technical personnel who are exclusively involved in the exploration or exploitation of existing or potential oil and gas sites, the supply will be zero-rated. If the staff are fully or partially involved in other activities such as administration, management, support functions etc, the supply will be standard rated. Activities such as specialist oil and gas accounting are regarded as administration/management activites, and the supply of staff to carry out these functions will be standard rated.

Where a supply of staff is split into two or more components involving the same individual staff member and that staff member is engaged in technical work under one component and administrative work under another, NBR will regard this as the supply of one person who is not exclusively involved in zero-rated technical activities, and the fees payable under both components will be subject to the standard VAT rate of 10%.

The value of a service of supplying staff is the total amount to be paid by the Operator for the staff put at his disposal (including the amounts corresponding to salary, GOSI payments and other benefits provided).

In other cases, the Operator will contract with a third party to be provided with a specific service (e.g., engineering services) that will require that third party's personnel to be deployed on site. In this case, the third party does not make a supply of staff, but a supply of the services that its personnel is due to deliver (e.g., engineering services). The VAT implications of such services will depend on their exact nature.

Whether the supply by a third party is a supply of staff or a supply of a given service will depend on the scope of the contract entered into with the Operator.

2.5.5. Use of oil and gas by Participating Parties for their own activities

There is no supply for VAT purposes when the oil or gas, which is produced by the Participating Parties, is consumed by these parties for their own operations. This is provided the relevant Participating Party is the sole owner of the products at the time of their consumption.

2.5.6. Return of goods from offshore

No import VAT is applicable (i.e., VAT exemption at import) when goods, which have previously been sent from the Kingdom of Bahrain out to a site located outside the territory of

the Kingdom of Bahrain, are returned to the Kingdom of Bahrain under the Returned Goods customs regime.

2.5.7. "Borrow and return" arrangements

Introduction

Businesses in the O&G sector enter into these type of arrangements based on demand and to ensure continuous running of operations and minimize any business disruptions. These types of arrangements are usually not made for a consideration in cash.

"Borrow and return" as a non-supply

The "borrow and return" of equipment or consumables are not supplies from a VAT perspective when there is no consideration paid for the borrowing and the equipment/ consumable borrowed are returned to their owner. Thus, there is no requirement to account for VAT and issue VAT invoices under this type of arrangement.

Example
Company X, a company established and VAT registered in the Kingdom of Bahrain, is drilling oil in Block 8 in the Kingdom. Company X borrows from Company T, a Company established and VAT registered in the Kingdom of Bahrain, a fishing tool (Junk Catch) to be used to remove debris from the well and returns it to Company T in the original condition once the drilling exercise is completed. *Such an arrangement is not a supply from a VAT perspective as there is no consideration paid by Company X to Company T and the equipment borrowed is returned to Company T.*

"Borrow and return" as a supply

The "borrow and return" of equipment or consumables is considered as a supply of goods from a VAT perspective if the equipment/consumables returned are not those originally lent by the owner. This is because the consumables or the equipment borrowed have been used by the borrower and those returned are similar ones (i.e., there is a swap of equipment/consumable).

From a VAT perspective, this swap is considered as two distinct supplies of goods:

a. A supply from the owner to the borrower, with a value equal to the fair market value of the goods returned by the borrower; and

b. A supply from the borrower to the owner, with a value equal to the fair market value of the goods initially lent by the owner.

Where the equipment/consumables supplied are used directly and exclusively for the exploration or exploitation of existing and/or potential oil and gas sites, their supply will be subject to VAT at the zero-rate. Both parties will be required to issue VAT invoices.

Cross border "borrow and return"

Where “borrow and return” arrangements involve a cross border component (e.g., equipment or consumables being brought into the Kingdom of Bahrain from abroad or being sent abroad from the Kingdom), the VAT implications will need to be considered on a case-by-case basis.

2.5.8. Damaged or lost equipment/tools

During exploration for oil and gas, some tools may be damaged (i.e., “damaged in the hole”) or lost (i.e., “lost in the hole”). As a result, the owner of these tools may charge a fee to cover for the damage or loss of the tools.

In determining the VAT implications of such charges, the nature of the charge (i.e., fee or penalty) should be considered based on the terms and conditions of the contract.

A fee called a “penalty” remains a fee if its true nature is one of a fee. Penalties are charges which are compensatory or punitive in nature; they are paid to compensate or to sanction a breach of duties by one of the parties to a contract.

Typically, the party charged with a penalty does not receive any specific supply in exchange for the payment made. Thus, penalties are outside the scope of VAT (i.e., not subject to VAT), and there is no requirement to account for VAT and issue VAT invoices.

On the other hand, if the charge is a fee for a supply, this is considered a supply from a VAT perspective. Where the tools were used directly and exclusively for the exploration or exploitation of existing and/or potential oil and gas sites, this charge will be subject to VAT at the zero-rate, and there will be a requirement to issue VAT invoices.

3. Supplies of goods and services in the midstream sector

3.1. Introduction

Midstream operations generally include the transportation and storage of oil, natural gas and other hydrocarbons.

After the crude oil and natural gas are extracted, gathering systems are used to transport and control the flow of the natural gas or oil from the oilfield to a main storage facility.

3.2. The distribution or transportation of oil, gas or other hydrocarbons

Even though it is usually classified as a midstream activity, the distribution or transport of oil, gas and other hydrocarbons may take place at any stage of the value chain (i.e., upstream, midstream and downstream). The place of supply for transportation/distribution services is where the transport begins.

Assuming the transport/distribution starts in the Kingdom of Bahrain, the following may apply:

- If distribution/transport of O&G products qualifying for the zero-rate as set out under sections 1.3.1 and 1.3.2 of this guide is by any means of transport including pipelines, such supplies will be subject to Bahrain VAT at the zero-rate.

- If distribution/transport of O&G products not qualifying for the zero-rate as set out under section 1.3 of this guide is by any means of transport including pipelines, such supplies will be subject to Bahrain VAT at the standard rate of 10%, unless they meet the conditions to be zero-rated under the provisions dealing with international transport or domestic transport.

Example

ABC Oil and Gas Distributors ("ABC") is a company based and VAT registered in the Kingdom of Bahrain. It provides transportation services to the O&G industry.

ABC has been engaged by XYZ E&P Limited ("XYZ") to transport crude oil and natural gas from its wells in Block 6 to a storage facility in the Kingdom of Bahrain owned by a third party (DEF Storage Operators) and subsequently from the storage facility to the refinery plant based in the Kingdom.

The transportation services provided by ABC will be subject to VAT at the zero-rate as they relate to oil and gas products that would qualify for the application of the zero-rate should they be sold in the Kingdom of Bahrain.

3.3. The storage of oil, gas or other hydrocarbons

Where the place of supply of the storage services is in the Kingdom of Bahrain, the following may apply:

- If the storage is for O&G products qualifying for the zero-rate as set out under sections 1.3.1 and 1.3.2 of this guide, the service will be subject to Bahrain VAT at the zero-rate.
- If the storage is for O&G products not qualifying for the zero-rate as set out under section 1.3.2 of this guide, the service will be subject to Bahrain VAT at the standard rate of 10%.

Example

Continuing on the previous example, the storage services provided by DEF Storage Operators, a company established and registered for VAT in the Kingdom of Bahrain, to XYZ will be subject to VAT at the zero- rate as they relate to O&G products that would be zero-rated if sold in the Kingdom.

3.4. Import, supply and lease of equipment and consumables that are used directly and exclusively for the transport or storage of oil, natural gas and other hydrocarbons

The zero-rating applies to the import, supply and lease of equipment and consumables that are used directly and exclusively for the transport or storage of oil, natural gas and other hydrocarbons as set out under section 1.3.2 of this guide when supplied in the Kingdom of Bahrain.

The following would notably fall within this category:

a. The import, sale and lease of equipment such as specialized oil tankers/pipelines used for the transportation of crude oil, unprocessed natural gas and other hydrocarbons.

   - If the equipment is directly and exclusively used for the transportation of O&G products qualifying for the zero-rate as set out under sections 1.3.1 and 1.3.2 of this guide, its import, supply or lease will be subject to Bahrain VAT at the zero-rate.
   - If the equipment is not directly or exclusively used for the transportation of O&G products qualifying for the zero-rate as set out under sections 1.3.1 and 1.3.2 of this guide, its import, supply or lease will be subject to Bahrain VAT at the standard rate of 10% unless it falls under the zero-rate applicable to the supply of means of transport as per Article 68 of the Executive Regulations.

Example

Continuing on the previous example, the import, purchase or lease of oil tankers by XYZ (exclusively used by XYZ for the transportation of crude oil), will be subject to VAT at the zero-rate as they are directly and exclusively used for the transportation of oil, natural gas and other hydrocarbons as set out under section 1.3.2 of this guide.

b. Import, sale and lease of storage tanks

- If the storage tanks are directly and exclusively used for the storage of O&G products qualifying for the zero-rate as set out under sections 1.3.1 and 1.3.2 of this guide, their import, sale or lease will be subject to Bahrain VAT at the zero-rate.

- If the storage tanks are not directly or exclusively used for the storage of O&G products qualifying for the zero-rate as set out under sections 1.3.1 and 1.3.2 of this guide, their supply, sale or lease will be subject to Bahrain VAT at the standard rate of 10%.

Example

Continuing on the previous example, the storage tanks imported, purchased or leased by DEF Storage Operators (exclusively used to store crude oil) will be subject to VAT at the zero-rate as they are directly and exclusively used for the storage of oil, natural gas and other hydrocarbons as set out under section 1.3.2 of this guide.

c. Import and sale of consumables that may include, but not limited to, parts or spare parts directly and exclusively used in oil tankers, storage tanks etc.

Where a VATable person in the Kingdom of Bahrain imports, supplies or leases equipment or consumables that will be used for both O&G activities and non O&G activities, such items will not qualify for the zero-rating. For example, the sale of parts that will be installed in a vehicle to be used for both O&G activities and non-O&G related activities will be subject to VAT at the standard rate of 10%.

4. Supplies of goods and services in the downstream sector

4.1. Introduction

Downstream operations include refining/processing crude oil, natural gas and other hydrocarbons, as well the sale of products derived from refining/processing.

4.2. Oil refining and gas processing services

The refining or processing of crude oil, raw natural gas and other hydrocarbons after extraction from the earth is subject to VAT at the zero-rate when the place of supply of these services is in the Kingdom of Bahrain.

Refining and processing includes all processes of converting raw crude oil, natural gas and other hydrocarbons to various products and by-products. It also includes, for VAT purposes, the regasification of LNG.

4.3. The sale of processed oil, natural gas and other hydrocarbons

We refer you to section 1.3.2 of this guide for the VAT treatment applicable to the sale of processed oil, natural gas and other hydrocarbons.

4.4. Import, supply and lease of equipment and consumables that are used directly and exclusively for the refining, processing and supply of oil, natural gas and other hydrocarbons

The import, supply and lease of equipment and consumables that are used directly and exclusively for the refining, processing and supply of oil, natural gas and other hydrocarbons will be zero-rated when supplied in the Kingdom of Bahrain. The following would notably fall within this category:

a. Import, sale and lease of oil refinery and natural gas and other hydrocarbon processing equipment (infrastructure).

Example
WRC Limited, a refinery company established and VAT registered in the Kingdom of Bahrain, imports specialized refinery equipment into the Kingdom. *The import of the refinery equipment will be VAT exempt. This is on the basis that the sale of such equipment would be subject to VAT at the zero-rate if it occurred in the Kingdom of Bahrain.*

b. Import, sale and lease of fuel dispensers used to pump petrol, diesel, gasoline, LPG etc.

> ***Example***
>
> *JEAKA Oil Distributors ("JEAKA") is a retail company based and VAT registered in the Kingdom of Bahrain. It sells oil and gas products in the Kingdom.*
>
> *JEAKA purchases fuel dispenser pumps from a supplier based in the Kingdom of Bahrain. The supplier will charge VAT at the zero-rate on the fuel dispenser pumps on the basis that they will be used directly and exclusively to pump oil, natural gas and other hydrocarbons products as set out under section 1.3.2 of this guide.*

c. Import and sale of consumables including, but not limited to, parts or spare parts directly and exclusively used in the refining, processing and supply of oil, natural gas and other hydrocarbons. This may include, but not limited to, the following:

- Refinery related: hoses, hoses nozzles, top drive bushings, valves, bolts, wash pipes, pump gaskets, fittings, hydraulic seat pullers, pipe wipers, meter sticks, shaker deck wedges and flanges;
- Other consumables: parts and spare parts exclusively used in oil tankers, fuel dispensers etc.

Where a VATable person in the Kingdom of Bahrain imports, supplies or leases equipment or consumables that will be used for both O&G activities and non O&G activities, such items will not qualify for zero-rating.

4.5. Construction of oil/gas refinery plants, petrol and LNG stations

The supply of construction services in relation to new buildings carried out by a VATable person together with goods supplied by a person making a supply of construction services in the course of providing construction services for a new building will be zero-rated.[3]

The following construction services qualify for the zero-rate when supplied in relation to a new building:

- Construction works
- Site clearance services
- A new extension to an existing building
- Services provided by engineers and surveyors and similar services of a supervisory nature.

[3] Article 76(A) of the Executive Regulations

A “building” is defined as a residential, commercial or industrial building such as a dwelling, office, factory, workshop, retail store, multi-story car park, power station, oil refinery, liquefied natural gas station or oil field.[4]

Accordingly, any services in relation to the construction of a new oil refinery, petrol or gas station etc. in the Kingdom of Bahrain, together with the goods supplied by the person supplying construction services, in the course of providing construction services will be subject to VAT at the zero-rate.

We refer you the VAT Real Estate Guide for more details on the VAT treatment of construction of new buildings.

Example

JEVO Construction Limited (“JEVO”), a company established and VAT registered in the Kingdom of Bahrain, signs a contract with a third party customer for the construction of a new petrol/gas station in the Kingdom.

JEVO will subcontract part of the construction work (construction of the distribution system) to a third party contractor. This contractor will build the distribution system and, as part of this work, will provide and install pipes and cables.

The construction services provided by JEVO will be zero-rated as they relate to the construction of a new building.

The construction services provided by the sub-contractor to JEVO, including the pipes and cables supplied, will also be zero-rated as the construction services and goods are provided in the course of constructing a new building.

4.6. “Swapping” of raw materials/crude oil

From a VAT perspective, the swap of raw material/crude oil is, in principle, considered as two distinct supplies of goods (i.e., barter). The value of each supply corresponds to the fair market value of the other supply.

These two supplies are subject to VAT at the zero-rate where the swapped raw materials/crude oil, if sold, would be subject to VAT at the zero-rate (see sections 1.3.1 and 1.3.2 of this guide for the list of products qualifying for the zero-rate). Both parties are required to issue VAT invoices under this type of arrangement.

[4] Article 76(B) of the Executive Regulations

Example

WRC Limited, a refinery company established and VAT registered in the Kingdom of Bahrain, is short of crude oil to continue its refinery processes. It contracts with ABC Refinery Limited, a company established and VAT registered in the Kingdom of Bahrain, to obtain crude oil (raw material) in order to continue with the refinery process.

The crude oil will be used in full and will not be returned. Similar crude oil will be returned instead. Hence, the swap will be considered as a barter transaction from a VAT perspective:

- *ABC Refinery Limited will be considered as making a supply of crude oil to WRC Limited for a value equal to the market value of the crude oil to be returned by WRC Limited*
- *WRC Limited will be considered as making a supply of crude oil to ABC Refinery Limited, for a value equal to the market value of the crude oil received from ABC Refinery Limited*

Each company should issue a VAT invoice for its respective supply.

These two supplies would be subject to VAT at the zero-rate due to the nature of the product that is swapped (i.e., crude oil).

4.7. Retailing

4.7.1. General

Generally, a petrol/gas station makes various supplies such as:

- Supply of O&G products;
- Supply of food/drinks and other goods in the convenience shop;
- Supply of services such as car wash and car servicing;
- Supply of space for a café/restaurant, or an ATM.

In principle, the supply of petrol/gas products will be subject to Bahrain VAT at the zero-rate if the products qualify for the zero-rate (refer to section 1.3.2 for the list of products). Any other products will be subject to VAT at the standard rate of 10%.

Supplies such as car washing, car servicing and convenience shop supplies will be subject to VAT at the standard rate of 10%, unless they are specifically exempted or zero-rated under the VAT Law.

Where car servicing includes changing oil or related products, the VATable person needs to assess whether the supply is a “single composite supply” or “multiple supplies” for VAT purposes. As such, the nature of the supply will need to be considered on a case-by-case basis.

If, as part of servicing the car, a VATable person provides an oil changing service together with the oil, this supply would, in principle, qualify as a single composite supply (of car servicing) for VAT purposes and be subject to VAT at the standard rate of 10% on the total

amount paid for the supply. This is even if the oil (lubricant) is subject to VAT at the zero-rate when supplied on a stand-alone basis.

On the other hand, if a customer purchases a specific type of oil for his vehicle from the shop and, for an additional amount, the seller takes care of changing the oil in the car, there would be two separate supplies, one of the oil (subject to VAT at the zero-rate, assuming it is an O&G product qualifying for the zero-rate under sections 1.3.1 and 1.3.2) and one for changing the oil (subject to VAT at the standard rate of 10%).

4.7.2. Petrol/gas station operating models

Petrol/gas stations may be operated under the following models:

a. Company Owned Dealer Operated model (“CODO”)

b. Company Owned Company Operated model (“COCO”)

c. Dealer Owned Dealer Operated model" ("DODO")

The VAT implications of the transactions carried out under each of these models need to be considered individually by taking into account who owns the petrol/gas station and the products to be sold.

In the Kingdom of Bahrain, CODO and COCO are the most common models used in the O&G retail businesses.

4.7.3. Company Owned Dealer Operated model (“CODO”)

The distribution company or a subsidiary owns the property, the refined/processed O&G products and the facilities (e.g., tanks and pumps). The dealer is entitled to a commission for the operation of the petrol/gas station. This commission is usually based on the sales of the O&G products made by the dealer (usually a percentage per liter sold).

Depending on the contractual arrangement between the distribution company and the dealer, the dealer may be acting either as a “disclosed agent” (i.e., the dealer is an intermediary who acts in the name and on behalf of the distribution company) or as an “undisclosed agent” (i.e., the dealer acts in its own name but for the account of the distribution company).

Under a disclosed agency arrangement:

- The supply of the O&G products is made directly by the distribution company to customers and the distribution company is required to issue VAT invoices to the customers; and

- The dealer charges a commission to the distribution company for its intermediary services. The commission charged by the dealer will be subject to VAT at the standard rate of 10% and the dealer will be required to issue VAT invoices (for the amount of the commission) to the distribution company.

Under an undisclosed agency arrangement, the undisclosed agent, acting in its own name, is interposed between the actual supplying party and the actual receiving party, who do not know each other and do not contract directly. The undisclosed agent is considered to be acting as a principal in the supply of the goods to the buyer. For VAT purposes, there are two separate transactions:

- A supply of goods from the actual supplier (i.e., the distribution company) to the undisclosed agent (i.e., the dealer); and
- A supply of the same goods from the undisclosed agent (i.e., the dealer) to the actual customer (i.e., the customers of the petrol/gas station).

The revenue earned by the undisclosed agent is the difference between the buying price of the goods (supply by the distribution company to the dealer) and the selling price of the goods (supply by the dealer to the customers), and is not treated as a separate supply for VAT purposes.

We refer you to the VAT General Guide for more details on the VAT treatment of “disclosed agents” and “undisclosed agents”.

Example

A petroleum distribution company, established and VAT registered in the Kingdom of Bahrain, owns a petrol station in the Kingdom of Bahrain and contracts with a local dealer in the Kingdom of Bahrain for the operation of the petrol station (i.e., for the sale of the petrol to customers).

As a result of this agreement, when purchasing the petrol, the customers will have a contractual relationship with the dealer (i.e., the dealer is an undisclosed agent, acting in its own name but for the account of the distribution company).

Under the agreement between the distribution company and the dealer, the selling price to final customers at the petrol station must not exceed 200 fils per liter (VAT at 0%) for Mumtaz. This is 10 fils more than the price agreed between the distribution company and the dealer (i.e., 190 fils, VAT at 0%).

From a VAT perspective:

- *The distribution company is considered to be selling the petrol to the dealer for 190 fils per liter (VAT at 0%) and will have to issue VAT invoices to the dealer; and*
- *The dealer is considered to be selling petrol to customers for 200 fils per liter (VAT at 0%) and will have to issue VAT invoices to customers.*

Usually, the dealer will pay a rental fee to the distribution company for the rent of the convenience shop. The rental of a convenience shop in the Kingdom of Bahrain is exempt from VAT if the arrangement is a supply of real estate under the VAT Law and its Executive Regulations. The distribution company is still required to issue a VAT invoice for this supply, even if it is exempt. We refer you to the Real Estate Guide for the VAT treatment of real estate supplies.

The dealer will usually own the goods sold in the convenience shop (some may be under a consignment arrangement). The dealer will therefore be liable to account for the correct VAT treatment for the sales of these goods to the customers. He will also be required to issue VAT invoices to the customers.

4.7.4. Company Owned Company Operated model ("COCO")

The distribution company owns and operates the petrol/gas station. Everything is owned by the distribution company (i.e., the land, facilities (tank, pump), the refined products, the goods in the convenience shop in the petrol/gas station, etc.).

Under this model the distribution company is liable to apply the correct VAT treatment, to account for VAT as appropriate and to issue VAT invoices for all the supplies it makes to customers.

4.7.5. Dealer Owned Dealer Operated model ("DODO")

The dealer is the owner and operator of the petrol/gas station. The dealer enters into dealer agreements with the distribution companies, whereby he will sell the O&G products in its own name but for the account of the distribution companies.

Under this model the dealer is liable to apply the correct VAT treatment, to account for VAT as appropriate and to issue VAT invoices for all the supplies it makes to the customers, including those of the O&G products.

5. Place of supply and VAT due date

5.1. Place of supply

5.1.1. Why is the place of supply important?

For the Kingdom of Bahraini VAT Law to apply and for the Kingdom of Bahraini VAT to be charged, a transaction must fall within the VAT jurisdiction or "territorial scope" of the Kingdom of Bahrain. It is therefore critical to know where a transaction takes place or is deemed to take place for VAT purposes.

The VAT Law defines the territory of the Kingdom of Bahrain as "including its lands and the territorial waters and where the Kingdom of Bahrain practices its rights of sovereignty, in accordance with international law".

For the sake of completeness, lands and territorial waters include airspace, subsoil and natural resources. Also, any area placed under a customs duty regime (e.g., a customs warehouse) is considered an integral part of the Kingdom of Bahrain's VAT territory.

5.1.2. Special rules for the supplies of oil and gas products through a distribution system

The place of supply of O&G products follow the place of supply rules for goods as set out in Article 14 of the VAT Law, except for supplies of O&G products through a pipeline distribution system which follow special place of supply rules as provided for by Article 15 of the VAT Law. We refer you to the VAT General Guide for further details on the place of supply rules applicable to goods.

Until such a time that the Kingdom of Bahrain recognizes other GCC Member States as Implementing States for VAT purposes, the place of supply of O&G products through a pipeline distribution system will be the place of consumption of those products.

In practice, the place of consumption is the place/premises to which the products are/will be delivered through the pipeline distribution system.

Example

XYZ Oil and Gas Company, a company based and VAT registered in the Kingdom of Bahrain, supplies gasoline via a pipeline distribution system to a purchaser based and registered for VAT in the UAE. The gasoline is distributed through a pipeline system for consumption at a place in Kuwait (i.e., where the purchaser has a working site).

The place of supply of the sale of gasoline by XYZ Oil and Gas Company is in Kuwait, i.e., the place of consumption of the product distributed via the pipeline system.

5.2. VAT due date

5.2.1. Why is the VAT due date important?

The VAT due date is important to ensure that VAT is accounted for in the correct period and VAT invoices are raised within the timeframes set out in the VAT Law.

5.2.2. How is the VAT due date determined?

Introduction

The general VAT due date rules apply for all supplies of goods and services unless a supply falls under a special rule. The VAT due date for an O&G supply depends on whether the supply is considered as a supply of goods or a supply of services.

VAT due date for one-off supplies

1. VAT due date for a supply of goods

   The VAT due date (or date of supply) for a supply of goods is the earliest of:

   - The date of the supply of goods;
   - The issue of a VAT invoice for that supply; and
   - The receipt of a payment for that supply (to the extent of the amount received).

   The date of the supply of the goods is:

   - On the date where the transport starts, where the goods are supplied with transport and the transport is supervised by the supplier.
   - On the date the goods are put at the disposal of the customer, where the supply is without transport or with transport which is not supervised by the supplier.
   - On the date on which the installation or the assembly of the goods was completed, where the goods are supplied with installation or assembly.

Example

Fertilizer Manufacturing Plant W.L.L., an entity established and VAT registered in the Kingdom of Bahrain, sells ammonia fertilizer for BHD 500,000 (excluding VAT) to XYZ Limited ("XYZ"), an Agricultural company in the Kingdom. XYZ made an advance payment of BHD 185,000 (excluding VAT) on 5 June 2022. The ammonia fertilizer is transported and delivered by the seller to XYZ on 20 June 2022 and a VAT invoice is issued on 5 July 2022. XYZ is obliged to pay the remaining amount due within 35 days of the product delivery.

There are two VAT due dates for this supply of goods:

1. *The advance payment received on 5 June 2022: VAT becomes due on the advance payment of BHD 185,000*

2. *The transport of ammonia fertilizer by the seller to XYZ on 20 June 2022: VAT becomes due on the amount remaining to be paid (i.e., BHD 315,000)*

2. VAT due date for a supply of services

The VAT due date for a supply of services is the earliest of:

- The date of the supply of the services;
- The issue of a VAT invoice for that supply; and
- The receipt of a payment for that supply (to the extent of the amount received).

The date of the supply of the services is the date on which the services are considered as completed, for example:

- When the agreed work is completed; or
- When the customer receives and explicitly approves the service; or
- When the customer issues a certificate of completion.

Example

Company A is established and VAT registered in the Kingdom of Bahrain. It has been asked by Company B, also established in the Kingdom, to carry out a seismic survey in a specific area of the Kingdom. Based on the service agreement, the full payment of Company A's fee will be made after the completion and delivery of the survey, and no VAT invoice will be issued prior to the service being completed.

The VAT due date for this supply will be the date of delivery of the survey final report to Company B.

VAT due date for continuous supplies

Some supplies will be considered as continuous supplies. These supplies will follow special VAT due date rules.

A supply is generally considered as continuous when it is provided on a continuous or recurrent basis for a period of time and under terms that provide for the consideration to be determined and/or payable periodically or from time to time (e.g., rental of an oil rig).

The VAT due date for a continuous supply is the earliest of:

- The date of issue of a VAT invoice (to the extent of the amount invoiced);
- The due date for payment as specified on the VAT invoice (to the extent of the payment due); and
- The date of receipt of the payment (to the extent of the amount received).

When twelve months have passed from the start of the contract or from the previous VAT due date (as determined above), a VAT due date will be triggered at the end of that twelve-month period.

Example

On 5 April, a business entered into a contract for the delivery of stationery at its offices in the Kingdom of Bahrain. The contract, signed for a one-year term, covers a fortnightly delivery of stationery with a monthly billing cycle and a payment due on the 10th of each month.

A VAT due date will be triggered on the 10th of each month to the extent of the amount actually paid (i.e., due date for payment), unless a VAT invoice is issued or a payment is received before that day.

We refer you to the “VAT due date” section of the VAT General Guide for further details on the VAT due date for supplies of goods and services.