

# Simplifying VAT for Agency Functions

## Introduction

An agency concept under VAT involves acting on behalf of another person while supplying the goods or services. Under VAT, a person can act as a ‘disclosed agent’ or ‘undisclosed agent’ and the VAT treatment under both cases is different.

Often the term ‘agent’ is extended to refer other commercial arrangements such as franchise, sole distributors, etc. The businesses would carefully need to evaluate whether the rules relating to agency under VAT would apply. Also, there is no common rule under VAT which applies to all arrangement.

This article explains the agency concept under VAT along with the VAT treatment and processes to be followed to ensure appropriate compliance. The concept is different from ‘tax agency’ under VAT. A tax agent is a person registered with the tax authority who is appointed on behalf of another person to represent him/her before the authority.



## Agency under VAT

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A business can be regarded as an agent under the following situations:

### Disclosed Agent

Under disclosed agency, the business acts in the name and on behalf of another person (usually referred as 'Principal').

The supply of goods and services would be from the principal supplier to the customer and not from the agent. The customer is aware that the supplies would be from the principal supplier.

Consequently, the principal supplier would be responsible for VAT obligations considering the underlying nature of supplies.

Separately, there would be a supply from an agent to the principal supplier, usually referred as agency services. This would be regarded as a distinct service from an agent to the principal supplier. If the agent and principal supplier are in the UAE, then the services would likely be taxable at 5%. If the principal supplier is outside of UAE; then the same could be zero-rated subject to the conditions specified in the VAT Executive Regulations.

It is important to note that if the services involve handling of goods or any services directly relating to the goods or a real-estate in the UAE, then the same may not be zero-rated.

### Undisclosed Agent

Under undisclosed agency, the supply of goods or services is undertaken through the agent. This would mean that there would be two distinct supplies, i.e. one from principal supplier to the agent and second from the agent to the customer. The customer is not aware that supplies is from the principal supplier. Both principal supplier and the agent would be responsible for their VAT obligations.

Usually, the agent earns margin on back-to-back supplies, however based on the business arrangement it is possible that the agent may earn additional commission from the principal supplier.

This would be regarded as a distinct service from an agent to the principal supplier and the VAT treatment needs to be determined accordingly.

# Complex Business Arrangements

Potential implications under VAT

## E - Commerce & Mobile Apps

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The traditional supply of goods or services undertaken physically, is now augmented with the supplies through / using electronic platform or mobile based applications. These electronic platforms or apps usually facilitate the transaction between the supplier and the customer. Based on the commercial arrangements between the e-commerce operator, supplier and the customer; arriving at the VAT treatment often becomes complex.

A plain vanilla model would be in a case where the e-commerce operator acts as an intermediary or marketplace between the supplier and the customer and is remunerated in form of commission (based on sales). While the supplier would be responsible for the VAT obligations, the VAT provisions allows the intermediary, i.e. an agent to raise invoice on behalf of the supplier.

The mechanism for invoicing should be agreed and documented by the e-commerce operator and the supplier. There shouldn't be a situation where invoices are being raised by both for same transaction. If tax invoice is raised by the agent, the invoice should appropriately reflect the supplier's name and Tax Registration Number (TRN). Usually, the payment for the supplies to the customer is collected by the e-commerce operator and then transferred to the respective suppliers after deducting commission and at periodic intervals. The e-commerce operator would have numerous deductions from different suppliers.

**The issue for the e-commerce operator would be to ascertain the date of supply for the commission which is deducted from the transfer to the supplier.**

The commission is generally accrued at the time of booking or executing the transaction or on delivery of goods. The e-commerce operator does have an option to raise summary tax invoice at the end of every month to each of the suppliers registered on their portal and may avoid raising invoices for each transaction / deduction. Often it takes time to prepare the statements or undertake reconciliations leading to invoices not being raised at the end of every month.

While the invoices may be raised in the subsequent month, however the date of supply should be the end of the previous month to avoid delay in payment of VAT. There is a possibility of seeking an administrative exception from the Tax Authorities to allow not raising of tax invoices provided there are adequate records to establish that it is not practical to raise tax invoices to each suppliers considering the business practice, volume of transactions, adequate proof available on VAT settlement, etc.

## Trading Businesses

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Often businesses operate as a sole distributor or as a franchise of an overseas supplier. Here, the businesses do represent the overseas supplier, however they do not facilitate supplies between the overseas supplier and the customer. In fact, the supplies are undertaken by the businesses on its own account. In other words, there would be two distinct transactions – one between overseas supplier and the business for import of goods and second between business and the customer – local sale. The arrangement between the business and overseas supplier would usually allow for recharge of costs incurred by the business for goods repaired under warranty including parts supplied, discount on subsequent supplies, certain supplies provided free of charge, etc. The VAT treatment needs to be evaluated for all such arrangements by the businesses.

**There could be potential VAT implications in cases where the overseas suppliers store goods in the UAE and sells to customers who are not registered under VAT in the UAE.**

The overseas supplier may have to apply for VAT registration as a non-resident and undertake compliances. However, if the customer is registered for VAT in the UAE, then the responsibility to pay VAT can be shifted to the customer (to account under reverse charge).

## Transportation Businesses

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The transportation eco-system includes certain businesses undertaking agency functions, i.e. acting on behalf of the feeding companies, shipping lines, freight forwarder, etc. Certain functions of the vessel agent or shipping agent appears to be on behalf of another person while other functions are performed in an individual capacity.

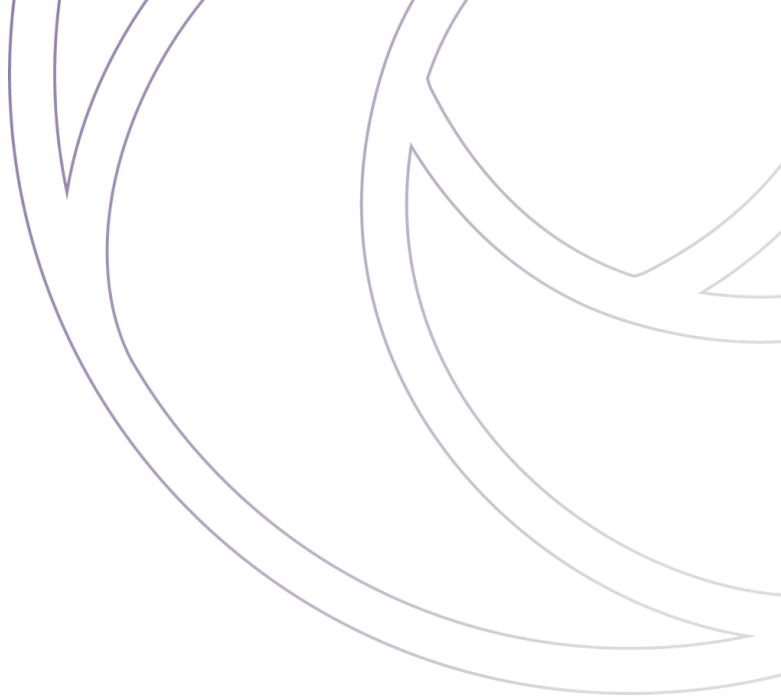
Businesses would need to carefully identify such services and categorize to determine the VAT treatment.

Also, certain expenses are incurred by the agent on behalf of the customer / shipping line. There is a possibility that such expenses can be regarded as 'disbursement' (out of scope) under VAT provided certain conditions are fulfilled. If the agent incurs expenses on its own account and recovers from another person then it should be viewed as distinct supplies from agent to another person to determine the VAT treatment.

## Conclusion

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In a nutshell, determining the VAT treatment for certain functions involving agency would be dependent upon whether the arrangement is disclosed agency, undisclosed agency or transactions are undertaken on principal basis. A careful understanding of the arrangement is required to ascertain the VAT treatment, managing documentation and simplifying the VAT compliance.



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