Why VAT and the digital economy are a challenging mix
In essence VAT is a tax based on consumption, meaning that in line with international principles the VAT should be due in the country where it is consumed and ultimately borne by the end-consumer. This used to be a relatively straightforward concept; where the VAT was due could be determined based on the movement of the goods. However, due to globalization and innovation, and the move away from consumption of goods to consumption of services, this is becoming increasingly hard to track – people move around the world accessing networks, Wi-Fi, and so on extensively.

Nowadays, we live in a digital world. We are surrounded by technology and applications (apps), are always connected, and would not know how to live without this scenario. Whether we are aware of it or not, every aspect of our life is affected by technology: either by using apps on our phone, accessing the internet, or by other entities such as a retailer or advertisement company who use technology to understand our shopping behavior and preferences. Even regular activities such as grocery shopping and electricity consumption use an internet connection and sophisticated technology. And with the introduction of VAT, and more technologies like block chain and artificial intelligence around the corner, the question arises as to how we can prepare for the day of tomorrow?

One of the core VAT issues with these types of services is the place of supply, i.e. knowing in which country the VAT is due. This is a recurring problem around the world, and the GCC will be no different. In this whitepaper we walk you through the place of supply rules in the GCC Agreement, the VAT definitions for Technology, Media and Telecommunications (TMT) services, and the expected challenges before and after the VAT implementation.

**Place of supply**

As previously mentioned, the core attribute of TMT services is their place within the international VAT framework. Globally there is a trend that governments seek to incorporate specific rules targeting telecommunication and electronically provided services and the consumption of end-customers.

For example, the EU introduced anti-avoidance rules for non-EU established services providers which provide telecommunication and/or e-services to private individuals. Later, in 2015, the EU introduced more specific place of supply rules with respect to telecommunication, media and e-services provided by EU suppliers to private individuals in order to capture the VAT in the country of consumption of the end-customer. Based on the 2015 rules, the place of supply for TMT services is deemed to be where the private individual has their usual residence. The introduction was followed by the VAT implementing regulation and further guidance from the European Commission on how these rules should be interpreted. These included the usage of presumptions on where the services would be deemed to be consumed.

Likewise, other countries, such as Japan and Australia, have introduced or announced similar rules. As of October 2015, Japan introduced the rule that digital supplies made by foreign providers to Japanese customers would be subject to Japanese consumption tax (JCT). The JCT makes a distinction in the treatment between B2B and B2C supplies of digital services, which is merely based on the nature and the terms of the contract of the digital services rather than the status of the customer. More recently, Australia announced plans to introduce a new law in order to apply GST to the supply of digital products to Australian customers.

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These global changes for TMT services are in line with the international principle that VAT should be due in the country of consumption and create a level playing field between domestic and foreign service providers. The GCC VAT system is based on international VAT principles and the place of supply rules in this regard. Article 20 of the GCC Agreement includes a special place of supply rule for telecommunication and electronically supplied services as follows:

“The place of supply for wired and wireless telecommunication Services and electronically supplied Services shall be the place of actual use of or benefit from these Services”

This will mean that VAT is due in the country where the recipient is using and enjoying the services irrespective of the contractual and payment arrangements.

As of now, the GCC Agreement does not provide any further guidance on the interpretation of the place of supply rule, leaving this to each of the GCC member states to implement in their laws and regulations. It remains to be seen how the actual use and benefit will be interpreted by each country and how it needs to be established and proved by the taxpayer.

In order to be able to establish and prove where the use and enjoyment of any services takes place, it is likely that businesses will be required to keep records of the actual use and enjoyment of each service. The GCC Agreement does not set out any evidence requirements.

In the EU the following evidence can be used to prove the place of use and enjoyment (but is not limited to):
- IP address of the device used by the customer
- Billing address of the customer
- Customer bank details
- Country code of the SIM card used
- The location of the fixed land line through which the service is supplied
- Other commercially relevant information (for example, product coding information which electronically links the sale to a particular jurisdiction).

Businesses within the TMT industry will need to make sure that their processes, procedures and IT systems are able to capture the use and enjoyment, and related requirements.

The EU has also introduced presumptions in order to ease the burden of proof. Under the presumptions, a business is allowed to assume that the place of residence of the customer is where the use and enjoyment of its customer takes place, and less supportive evidence is required to substantiate the place of residence. Depending on the type of service a different assumption can be taken, in which case no further evidence is required. This could be the place of the landline for services provided through a fixed landline, or the country of the mobile country code for services provided through the mobile phone network. For services which are not part of the presumptions list, two pieces of (non-contradicting) evidence should be collected.

As the GCC Agreement has not introduced any guidance on evidence it will be up to each of the GCC member states to introduce their own requirements for the use and enjoyment, i.e. the information to be gathered, pre-assumptions (if any) and what/how evidence should be retained.

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**B2B vs B2C**

It is important to note that article 20 of the GCC Agreement does not make any reference to or distinction between B2C and B2B customers. This could complicate the treatment of the supply of the services cross border, as it is not clear if and how the use and enjoyment place of supply rule would apply.

It will be interesting to see what approach the GCC member states will take. They will also need to consider the international agreements for cross border services. The International Telecommunications Union (in particular the Melbourne agreement) provides a framework for international telecommunication services, including the measures to avoid double taxation on international telecommunication services. Based on this agreement, countries are free to levy taxes on the services; however, international double taxation should be avoided. As most of the GCC member states are a signatory to the Agreement, we expect that the GCC countries will need to take this into account with respect to the treatment of international charges; however, it will be interesting to see how they will meet this requirement.

**Definitions**

What exactly are TMT services? It is difficult to define the terminology for the TMT industry as it is in continuous development, embracing new technologies and creating new products and/or services. The industry requires
flexible and broad definitions in order to be able to capture the different services and the services of tomorrow.

There is no definition for TMT services laid down in the GCC Agreement, and as such we will need to rely on the local laws. The only reference in the Agreement is in Article 20 where it mentions wired and wireless telecommunication services and electronically supplied services without any further clarification. This creates the opportunity for each of the GCC member states to develop and introduce their own definitions in their own law and regulations. Based on international principles, we expect that in the GCC TMT services will be defined perhaps along the following lines:

**Telecommunication services** such as services relating to the transmission, emission or reception of signals, words, images and sounds or information of any nature by wire, radio, optical or other electromagnetic systems, including related transfer or assignment of the right to use capacity for such transmission, emission or reception.

**Media services** such as broadcasting services including television, video and advertisement. In most cases media services use a (telecommunication, satellite or electronic) network to transmit the content.

**Electronically supplied services** are likely to be regarded as services which are delivered over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention, and impossible to provide in the absence of information technology.

From an international perspective these types of services are often already unclear and dependent on the peculiarities of the case at hand (e.g. qualification differences between distance learning, online class room training and recorded training), providing uncertainty that will need to be addressed during the design phase of the VAT implementation process. A complicating factor for the GCC is that the definitions will most likely be laid down in the regulations of each GCC member state. This could potentially lead to differences in definitions between the countries and hence differences in the treatment of similar supplies in particular for cross-border supplies of these services. As such, companies within the TMT industry need to carefully review their business transactions, and how they fit within the expected VAT law of each of the GCC member states.

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**Supply chain**
The supply chain within the TMT sector is complex. Take, for example, a regular app, for which several parties are involved: content supplier, network provider, platform, telecommunication provider, payment intermediary, etc. However from an end-user perspective, there is only once service recognized: the app. In addition, the contractual, financial and operational relationships between all parties involved make it difficult to determine who is liable for VAT, for what part and where the VAT should be accounted.

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**Vouchers**
Businesses should review the impact of VAT on vouchers and cards. As an example, there are different treatments expected for pre-paid and post-paid cards and plans. Vouchers can differ in treatment based on their type (e.g. multi-
purpose vs. single purpose), their billing (tax point on redemption vs. tax point on sale) and pricing (exclusive vs. inclusive of VAT). Specific considerations are required for the transitional period, in particular for cards and vouchers already on the market.

**Fixed establishment**
The GCC Agreement also introduced the definition of a fixed establishment in its article 1:

Any fixed location for a business other than the Place of Business (i.e. place of establishment) in which the business is carried out and is distinguished by the permanent presence of human and technical resources in such a way to enable the Person to supply or receive goods or services.

Considering the global trends within VAT and corporate tax/transfer pricing, and the fact that the GCC is basing their system on these global principles, companies should carefully review their presence in each of the GCC member states. For example, the presence of servers (and personnel) could trigger a fixed establishment and related VAT obligations based on a recent judgment of the European Court of Justice.

**Barter transactions**
Barters are common in the industry. From a VAT perspective, it is important that all transactions are recognized and accounted for. Where at present there may not be a requirement to legalize, document and invoice the barter transactions, this will be required going forward.

**Volume discounts**
In many cases it is common practice that the value of the supply is dependent on targets or volumes, e.g. a price is agreed based on the amount of clicks on or viewers of an advertisement. This could result in volume-based discounts which are provided at the end of a period or year. For these volume discounts the appropriate documents and reference should be issued and kept.

**The day of tomorrow**
As mentioned, the TMT industry is recognized for new concepts, products and services. From a VAT perspective, it will be key to understand what is provided, what are the roles of the parties involved, and where is the place of supply. As the GCC Agreement only provides for a specific place of supply rule for telecommunication services and e-services, further guidance from each of the GCC member states will be awaited.

Potentially, each of the GCC member states will introduce its own rules for the determination of the use and enjoyment, differences between B2B and B2C, and the evidence required.

With the international standards in mind and the pace of the developments in the industry, how then should businesses prepare for the day of tomorrow? Considering that at this point in time no detailed guidance from any of the GCC member states has been provided, preparation for the VAT implementation becomes even more challenging. As such, when designing the future state for the implementation of VAT, companies within the TMT industry should keep in mind flexibility and adaptability combined with a vision of the future.