Supreme Court rules on intra-GCC VAT liabilities

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In Federal Supreme Court case number 1066 of 2022, the primary focus was on the application of the Value Added Tax (VAT) within the context of the Gulf Cooperation Council (GCC) countries, specifically between the Kingdom of Saudi Arabia and the United Arab Emirates (UAE). The appellant, a Saudi Arabian entity, was involved in importing and introducing special equipment into the UAE for repair purposes, as well as purchasing goods from a local supplier within the UAE.

The key issues revolved around the applicability of VAT on these transactions and the eligibility for VAT exemption under the Unified VAT Agreement for GCC countries. The appellant contended that Saudi Arabia, being a non-implementer of VAT, should exempt them from this tax. However, it was established that Saudi Arabia does apply VAT, as evidenced by Royal Decree No. M/113 dated 2/11/1438 H and its subsequent amendments.

The court reasoned as follows:

“It is established that the legislator has decided that the law is the source of the obligation for the taxpayer to pay tax. Article 2 of the Federal Decree-Law No. 8 of 2017 concerning the Value Added Tax stipulates that every supply of a good in exchange for monetary compensation is subject to tax. The appellant acknowledged in their lawsuit that they imported and introduced their equipment into the United Arab Emirates from the Kingdom of Saudi Arabia for the purpose of repair, and consequently, they were charged with Value Added Tax for repair services from a local supplier in the UAE and

for their purchase of certain goods. Therefore, the provision of Article 75 of the same law, which allows the authority to exempt a taxpayer from this tax if they are from a GCC country that does not implement this tax, does not apply to them. This is because, according to the Unified VAT Agreement for GCC countries and the appellant's acknowledgment in their appeal that Saudi Arabia implements the Value Added Tax law, which is evidenced by Saudi Royal Decree No. M/113 dated 2/11/1438 H and amended by Royal Decree M/52 dated 28/4/1441 H and Royal Order No. A/638 dated 5/10/1441 H. Moreover, the non-applicability of Article 67 of the Executive Regulations of this law, issued by Cabinet Resolution No. 52 of 2017, which requires for the exemption eligibility that the supply should not have a place of supply in the state or belong to a GCC country that does not implement the Value Added Tax. Consequently, the appellant does not meet the legal conditions for exemption, making their second reason for appeal, regarding not considering Saudi Arabia as a country that does not implement the Value Added Tax law, irrelevant."

The finding of the court can be analyzed in three considerations:

1. **Article 75 – Exemption for Non-implementing GCC Countries**: The first aspect of the judgment concerns Article 75, which provides for the possibility of exempting taxpayers from VAT if they are from a GCC country that does not implement this tax. In this case, the court found that the provision of Article 75 does not apply to the appellant. This conclusion was based on the fact that the appellant's activities fell within the scope of the UAE's VAT law. Essentially, the exemption under Article 75 is designed for entities from GCC countries that do not have a VAT regime in place. Since Saudi Arabia, the country of the appellant, does implement VAT, the exemption was deemed inapplicable.
2. **Acknowledgment of VAT Implementation by Saudi Arabia**:

The court's decision also took into account the Unified VAT Agreement for GCC countries and the appellant's acknowledgment that Saudi Arabia implements VAT. This is corroborated by Saudi Royal Decree No. M/113 and its amendments. The acknowledgment is a crucial aspect of the judgment as it signifies the appellant's acceptance of Saudi Arabia's VAT regime, which in turn influences the applicability of VAT exemptions and liabilities under the UAE law.

3. **Article 67 and Non-Applicability of Exemptions**: The final aspect involves the interpretation of Article 67 of the Executive Regulations of the law, issued by Cabinet Resolution No. 52 of 2017. This article sets conditions for VAT exemption eligibility, including that the supply should not have a place of supply in the state or belong to a GCC country that does not implement VAT. In this context, the court ruled that the conditions for exemption were not met by the appellant. This part of the judgment underscores the specificity and strict compliance expected under the VAT law regarding the eligibility for exemptions.

In the context of sophisticated intra-GCC activities, companies, investors, and tax advisors should focus on advanced strategies like contractual and corporate structuring, and segmenting rights and liabilities. This involves designing contracts and corporate structures that are not only compliant with the VAT regulations of each GCC country but also flexible enough to adapt to changes in these laws. For instance, considering the court's findings, businesses should meticulously evaluate where and how their services and goods are supplied within the GCC to determine VAT liabilities and exemptions accurately.

Segmentation of rights and liabilities in contracts can be a key strategy. For example, in transactions involving countries like Saudi Arabia, which has implemented VAT, the contracts

should clearly stipulate the parties' responsibilities regarding VAT payments. This might include clauses specifying how VAT is to be handled in cross-border transactions. Moreover, corporate structuring should be such that it aligns with the most favorable VAT regimes within the GCC, considering exemptions and the place of supply rules.

Adequately managing multi-jurisdictional tax disputes is a crucial aspect for companies operating within the GCC. Given the diverse VAT regimes and the nuanced legal interpretations, as evidenced by the recent court findings, businesses need to develop robust strategies for dispute resolution. This involves creating clear, comprehensive documentation and maintaining detailed records of transactions to substantiate their VAT positions. Additionally, they should establish protocols for timely and effective communication with tax authorities across different jurisdictions. By doing so, businesses can navigate the complexities of multi-jurisdictional tax landscapes and mitigate the risks associated with tax disputes.

These sophisticated strategies require a deep understanding of both the letter and the spirit of VAT laws across the GCC. This understanding will enable entities to structure their intra-GCC activities in a way that optimizes tax efficiency while ensuring full compliance with the law..

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