

VAT on providing advertising space in social media platforms

The facts

An operator of a social media platform (the “Supplier”) has its Place of Establishment¹ in the UAE. A UAE client (the “Advertising Agency”) purchases advertising space in the above platform. So the contract is concluded between two residents of the UAE. The clients of the Advertising Agency (advertisers) are foreign businesses.

The question

Is provision of the advertising space by the operator of social media platform subject to UAE VAT?

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¹ In terms of UAE VAT legislation.

The summary

After considering the facts and the analysis below, we opine as follows:

- 1) UAE VAT is not applicable to the supply of the Platform services '*to the extent of the use and enjoyment of the supply outside the State*'.
- 2) Platforms services have their place of *use and enjoyment* outside of the UAE where an advertisement is not targeted at an audience in the UAE.
- 3) Location of the advertising business outside of the UAE may prove that Place of Supply is outside of the UAE if such business doesn't distribute its products to the UAE. Otherwise, other evidence shall be collected to prove that advertisement message doesn't mean to be disseminated in the UAE.
- 4) Generally, ads in the social media platforms may be broken down into two categories:
 - One is those where an advertiser specifies a target country. This category is outside the scope of UAE VAT if the chosen area doesn't include the UAE. It is safe option which is easy case to prove with the evidence.
 - The second is where an advertiser doesn't specify a target country but gives other features to determine the target audience. Here, the place of use and enjoyment of the advertising services may be also established from other data in the ads. This data may:
 - a) allow to establish a targeted market, or
 - b) at least, discern that the UAE is not the target.

The second category is more cumbersome in terms of collecting evidence. However, it is still possible for a person who has access to the accounts of advertiser to establish relevant facts.

- 5) The burden of establishing VAT-relevant facts falls on the supplier of the advertising services. The operator of social media platform is in a position to relieve its burden by adding into the template of an ad generating tool information on the target country, or at least to include in the template a field with information on whether the target audience or advertising business are located in the UAE (Yes or No).

We have examined the social network platforms to glean which industry practices may be exercised to relieve the burden of establishing the place of use and enjoyment of the Ads. Our review and recommendations are [included in the analytical part](#) of this Case Study.

- 6) To eliminate or mitigate the risks and fall-out, the operators of social media platforms are advised to consider:
 - a) Adjusting information which an advertiser shall submit in an add creating tool to include information on the Target Country and Location of Advertising Business (the UAE or elsewhere). This information

- may be either included into the algorithm of placing an ad or aggregated in a special section designed to collect tax relevant information along with tax residency;
- b) applying (charging and paying) UAE VAT to the transactions where the venue of the Targeted Audience is the UAE regardless of the location of the recipient of service, provider, server, etc.;
 - c) request a clarifications from the FTA to eliminate the risks.

The analysis

We have so concluded further to the considerations described below.

Social Media Business Model: VAT relevant features

1. This section represents research required to determine the key attribute of the services at hand relevant for VAT purposes in the UAE. The relevant conclusions of this research are placed at the end of this section. You may [head to them directly](#) to skip the details.
2. Para 82 of the Interim Report on the Tax Challenges Arising from Digitalisation (OECD, 2018)² sets out *'that user participation (e.g., reviews, provision of services) can play an important role in building up the trust and reputation of certain digital businesses and contributing to their brand and the growth of user networks.*



Para 38 of the [OECD's Interim Report](#) sets forth that ***'in some business models the collection through a digital platform of data and content contributions from users in a jurisdiction and the use of that data to attract other users to the platform and to direct advertising back at the users, are activities integral to the creation of value by the business that effectively take place in that jurisdiction, even if the platform is operated remotely'***.

Para 82 of [Interim Report](#) specifies that *'internet-enabled value networks include social networks that bring individuals together in a social capacity and **allow advertisers to target specific user groups'***

As per para 87, in *'cases, such as Instagram, Facebook, Twitter and Weibo, the business may, in what may be perceived by some countries as a type of barter transaction, offer access to the platform without a demand for financial compensation upon the user providing some input valuable to the platform operator. Such input could be personal information about the user's interests that can be employed **to generate revenue from targeted advertising'***.

3. Para 54 of Interim Report stipulates that:

² OECD (2018), Tax Challenges Arising from Digitalisation – [Interim Report 2018](#): Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.

- *'...it may be optimal for platform operators, depending on the magnitude of the indirect network externalities as well as on price elasticities, to provide goods or services free of charge to end-users on one (or potentially more) market sides.*
 - ***As a consequence, so-called barter transactions may arise, implying that goods or services are effectively traded, without monetary compensation, against other valuable inputs such as for example, user engagement, user data or user-generated content.***
 - ***Such a strategy is, for instance, adopted by many social networking platforms, email service or media providers. In these cases, end-users often benefit from "free" access to a specific service. However, platform operators typically compensate for this by extracting data from users and transactions and then by selling services based on that data to the other side of the market. The primary example is the sale of customer-targeted advertisements to advertisers on the other side of the market'.***
4. As per para 87 of the same [Report](#), *'in ... cases, such as Instagram, Facebook, Twitter and Weibo, the business may, in what may be perceived by some countries as a type of barter transaction, offer access to the platform without a demand for financial compensation upon the user providing some input valuable to the platform operator. **Such input could be personal information about the user's interests that can be employed to generate revenue from targeted advertising'**.*
5. The value of the business model of a social network supported by advertising revenue is explained in para 104 of the [Interim Report](#) in this way: *'The social network considered here is a multi-sided platform that collects user data and provides advertising services.*

This type of business model has two objectives:

- *First, on one side of the market it aims to provide a platform for users to connect to one another and share content. A user participates by linking to other users, where links are formed on the basis of relationships in the real world or on the basis of topical interest not necessarily dependent on a relationship between users (e.g., Facebook, LinkedIn, Nice, Kuaishou, Sina Weibo, Tencent Weibo, Twitter, and Qzone).*

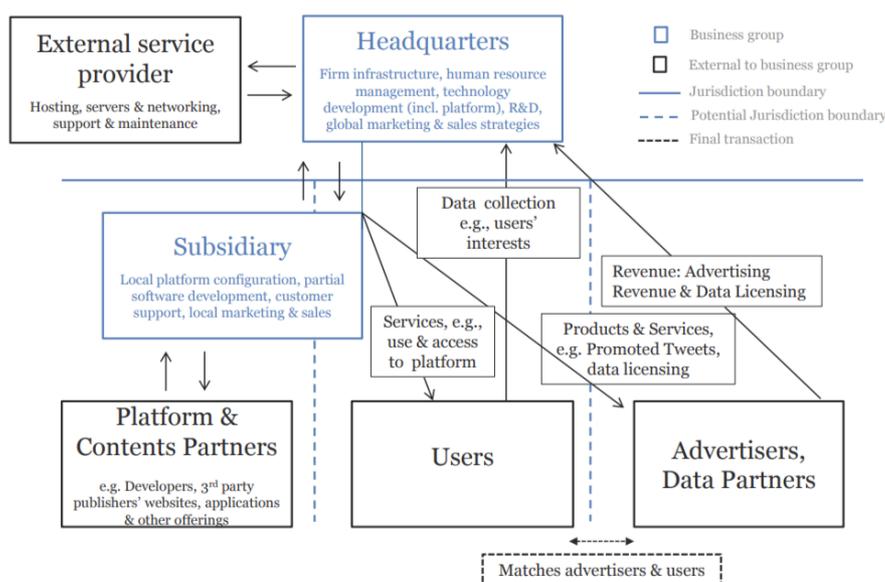
From a user's perspective, social networks operate by collecting the content generated by the set of users to whom an individual is linked into a web or news feed, a data format used for providing users with frequently updated content. Users access news feeds via the web or via apps, and access is generally provided without requiring the payment of fee. The traditional equivalent of this business model could be a membership-based social club.

- *Second³, on the other side of the market, **the social network aims to enable customers who wish to advertise on the platform to reach their target audiences** (i.e., the users on the other side of the market) in an effective and efficient manner. **Advertising space is purchased by parties wishing to advertise their ideas, brands, products and services, and amplify their visibility and audience reach.***

*Social network companies have a variety of means of offering advertising space on their platforms, including promotion of content that appears in news feeds, as well as promotion of trends and of certain user accounts. **The placement of advertising is based on attributes such as geography, demography, interests, content keywords, events and device type.** The traditional equivalent of this business can be seen in the placement of more traditional forms of advertising, such as television or radio commercials’.*

6. Para 106 of the Interim Report sets forth: ‘As typical of operators in multi-sided markets, the **two objectives of linking users and providing advertising services** are complementary: the fulfilment of the first objective provides market research for the second. Users of the social network provide data in the form of geographic and demographic information, volunteered content and behavioural data in the course of interacting with the network. This data allows the company to learn about its user base. From the company’s perspective, its **user communities are of value because they are the means of attracting the main commercial customers: advertisers.** The general social network business model is illustrated in Figure 2.6.

Figure 2.6. Schematic of a social network business model



7. Para 118 of the Interim Report says that ‘the recruitment of advertiser customers and the maintenance of relationships with advertising clients

³ Ibid, para 105.

*is one way in which social networks and traditional television companies are quite alike. Both require sourcing of businesses to which they can sell advertising space. **As social network users are spread globally, the businesses that it seeks to work with may also be global. This is in contrast to television networks, which generally operate in local regional markets due to regulatory barriers and language differences***'.

8. These provisions of the Interim Report allow it to be concluded that:
 - 1) The core of the services provided by a social media ad platform is targeted advertising.
 - 2) Therefore, a key value of this service is hitting the target.
 - 3) Attributes of the target may include geography, demography, interests, content keywords, events and device type.
 - 4) Underlying interest of the advertisers is promotion of their ideas, brands, products and services, and amplifying their visibility and audience reach.

VAT on Advertising in the UAE

9. For a supply to be within the scope of the UAE VAT regime, the supply needs to take place in the UAE. If a supply takes place outside the UAE, the supply is treated as outside the scope of UAE VAT and therefore UAE VAT will not apply⁴.

Clause 1 of Article 31 of the UAE [VAT Law](#)⁵ sets out that '*for telecommunications and electronic Services specified in the Executive Regulation of the Decree-Law, the **place of supply shall be:***

- a. *In the State, to the extent of the use and enjoyment of the supply in the State.*
- b. ***Outside the State, to the extent of the use and enjoyment of the supply outside the State***'.

Clause 2 of this Article specifies that '*the actual use and enjoyment of telecommunications and electronic Services shall be **where the Services were actually used** regardless of the place of contract or payment*'.

10. The cited provisions of the UAE VAT Law are in concert with Article (20) of the [Common VAT Agreement of the States of the Gulf Cooperation Council](#) (GCC), which provides: '*the place of supply for wired and wireless telecommunication Services and electronically supplied Services shall be the place of actual use of or enjoyment from these Services*'.

⁴ Section 2.5 of the FTA's *E-Commerce VAT Guide VATGECT*

⁵ Federal Decree-Law No. 8 of 2017 on Value Added Tax

11. Paragraphs (f) and (j) of Article 23(2) of the [VAT Executive Regulation](#)⁶ defines “*electronic services*” as ‘*services which are automatically delivered over the internet, an electronic network, or an electronic marketplace, **including ... supply of advertising space on a website and any rights associated with such advertising**; ...services of an equivalent type which have a similar purpose and function*’.
12. The FTA in section 4.1 of the [E-Commerce VAT Guide VATGEC1](#) elucidates: ‘*For a supply to fall under the special VAT rules for electronic services, the supply must, therefore, meet two conditions:*
- *the service in question must be one of the services mentioned in the above list of services; and*
 - *the service must be automatically delivered over the internet, an electronic network, or an electronic marketplace...*

The second requirement means that an electronic service should be automatically delivered over the internet, an electronic network, or an electronic marketplace with minimal or no human intervention. Thus, although a small degree of human intervention is acceptable to enable or complete a supply, this intervention should not change the nature of the delivery of a service as being essentially automated’.

Whose ‘use and enjoyment’ is relevant

13. First and foremost, the subject of the ‘use and enjoyment’ requires to be determined.

Para 2.2 of the OECD’s [Interim Report](#) elucidates on ‘*Indirect network effects*’: ‘*In contrast to direct network effects, indirect network effects arise in the context of multi-sided markets. As will be discussed in more detail below, they occur when **a specific group of end-users (e.g., users of a social network) benefit from interacting with another group of end-users (e.g., advertisers on a social network), for instance, via an online platform...***’. So, there are two groups of beneficial end-users:

- 1) users of a social network;
- 2) advertisers on a social network.

In the case of an advertisement, it is rather an advertiser (meaning a person whose name, service, goods, skills, etc., are being promoted), than a user (meaning a target, e.g. potential buyer).

This is why the example given in the [E-Commerce VAT Guide VATGEC1](#), where a customer who is ‘*a KSA resident orders an on-demand film to be watched on a computer with an IP address in the UAE*’, is irrelevant. In this example, the beneficial recipient of the service is a person who is

⁶ Cabinet Decision No. 52 of 2017 on the Executive Regulation of the Federal Decree-Law No. 8 of 2017 on Value Added Tax and its amendments.

downloading or streaming the movie. This is not the case with an advertisement, where the beneficial recipient is a different person and the person watching the movie is the target.

However, above conclusion shouldn't imply that an advertiser's location in a particular moment is the Place of Use and Enjoyment. Rather, the effect of Ad to hit the target shall predetermine this place. For example, if an advertiser from the UAE desires to impress the potential audience located in Germany, the Place of Use and Enjoyment is in Germany.

14. Section 8.3. of the [KSA's Imports and Exports Guideline](#) addresses the 'use and enjoyment' issue specifically regarding advertising services in the context of the GCC/KSA:

	Standard-rated	Zero-rated
Advertising services	In cases where customer or direct recipient (such as an affiliate supplying goods or services in the KSA) receives benefit of advertising in GCC/KSA	If recipient has no GCC/KSA place of residence and does not make supplies of goods/services from the GCC/KSA

Here we may see that use and enjoyment is established by determining whether the advertiser, directly or indirectly, has sales in the State to support an increase at which the advertisement is aiming.

Where does an Advertiser use and enjoy the Services?

15. In Section 4.2 of the [E-commerce Guide](#), the FTA clarifies: '*Since **the legislation does not provide any express rule regarding the indicators which should be used to determine the place of use and enjoyment**, this determination must be made on a case-by-case basis, and all of the facts of the supply must be considered.*

Nevertheless, the following principles may be used as high-level guidance in determining the place of use and enjoyment in various scenarios:

- *In the case of an **electronic service which is delivered to a physical place, the place of use and enjoyment of that service is that physical place.** For example, where electronic services content can be only accessed from a particular physical location, that location will be the place of use and enjoyment.*
- *In the case of electronic services provided on a portable device, the use and enjoyment may be **determined on the basis of the recipient's location at the time the services are supplied.** For example, where music is electronically delivered to a recipient located in the UAE, the place of use and enjoyment will be the UAE.*

For the purpose of determining the location of the recipient, some of the factors which may be indicative of the recipient's location are:

- **the internet protocol (“IP”) address of the device used by the recipient to receive the electronic service;**
- *the country code stored on the SIM card used by the recipient to receive the electronic service;*
- **the place of residence of the recipient;**
- **the billing address of the recipient; and / or**
- **the bank details used by the recipient for the payment.**

*In determining the location of the recipient, the supplier should give priority to the factors which give the most precise information regarding the actual place where the electronic services will be used and enjoyed. For example, **if a KSA resident orders an on-demand film to be watched on a computer with an IP address in the UAE, the use and enjoyment of the film will be in the UAE.***

With this valuable guidance, we should remember that IP address-based research is relevant for establishing the actual location of a social media platform user, rather than the place of use and enjoyment of the advertiser. The advertiser does not benefit from an ad targeting, for example, German customers if it is viewed by users in other parts of the world that are not within the advertiser's target audience.

Interpretation of the same wording in other jurisdictions

16. The lack of sufficient guidance in legislation and regulations in the UAE makes it expedient to research how similar wording is applied in other jurisdictions.
- 16.1. The same wording is used in UK VAT legislation. The HM Revenue & Customs (HMRC) [discloses](#) it with three examples:⁷

Example 1

*A UK business purchases digitised software from an Irish supplier **for use only in its branch in the Channel Islands.** Although the supply is received in the UK where the business belongs, it is used outside the UK and is outside the scope of UK VAT.*



Example 2

*A USA business purchases web-hosting services **for its international business, including its UK branch.** Although the supply is received in the USA, to the extent that it is used in the UK, it is subject to UK VAT.*

⁷ HMRC internal manual 'VAT Place of Supply of Services'. [VATPOSS15500](#) - Use and enjoyment: Electronically supplied services. Published 6 May 2016, last update 24 January 2022.

Example 3

A UK business purchases downloaded information from another UK business **for use both in its UK headquarters and its Canadian branch**. Although the supply is received in the UK, to the extent it is used in Canada, it is outside the scope of UK VAT. **UK VAT is due only to the extent of use by the UK headquarters**.

These examples proceed from the purpose of the purchase, i.e. from the intended (targeted) place of its use and enjoyment. Therefore, the determination is to be obtained from the intended use and intended target audience.

- 16.2. The European Union Council [Directive 2006/112/EC](#) of 28 November 2006 on the common system of value added tax includes the use and enjoyment rule in "Subsection 10 Prevention of double taxation or non-taxation".



Article 59a of this Subsection determines: 'In order **to prevent double taxation, non-taxation or distortion of competition**, Member States may, with regard to services the place of supply of which is governed by Articles 44 and 45, Article 54(1), second subparagraph, and Articles 56, 58 and 59:⁸

- (a) consider the place of supply of any or all of those services, if situated within their territory, as being situated outside the Community **if the effective use and enjoyment of the services takes place outside the Community**;
- (b) consider the place of supply of any or all of those services, if situated outside the Community, as being situated within their territory **if the effective use and enjoyment of the services takes place within their territory**.

However, this provision shall not apply to the **electronically supplied services** where those services are rendered to nontaxable persons not established within the Community'.

Council Implementing Regulation (EU) No 1042/2013 contains 'Explanatory notes on the EU VAT changes to the place of supply of telecommunications, broadcasting and electronic services'.

Section 1.2 of these Notes elucidates as follows: 'As from 1 January 2015, with changes being made to Article 58 B2C supplies of telecommunications, broadcasting **and electronic services** will, in all cases, be taxable in the country of the customer irrespective of where the supplier is established. If the services supplied **are actually consumed** outside the European Union, Member States **could decide to avail themselves of the effective use and enjoyment rule** provided for in point (a) of Article 59a and refrain from taxing the supply. Member States **can only**

⁸ Article 58 comprises electronically supplied services.

apply the effective use and enjoyment rule provided for in point (b) of Article 59a to tax services actually consumed within their territory if those services are supplied to customers that belong in a third country. This rule does not apply to services supplied to customers who belong in a country within the European Union'.

This Note shows that the EU equates the place of use and enjoyment with the place where services have been actually consumed.

- 16.3. Section 7.4.1.1 of the Explanatory Notes clarifies: *'As the physical presence of the customer at the location is needed for him to receive the services, it is also presumed that these services are effectively used and enjoyed at the place of that location. Only **services which do not require physical presence of the customer at the supplier's location can be used and enjoyed elsewhere***'.

A similar clarification is included in Section 4.2 of the [E-commerce Guide](#): *'In the case of an **electronic service which is delivered to a physical place, the place of use and enjoyment of that service is that physical place**. For example, where electronic services content can be only accessed from a particular physical location, that location will be the place of use and enjoyment*'.

In our opinion, this explanation may be extended to represent a connection between the location of an advertising object and the place where the targeted audience may consume an advertising feature.

For example, if advertised business doesn't make deliveries to the UAE, physical presence of the customer in other jurisdictions is required to reach the target of the advertiser.

Another example may include an advertisement of broadcasting services with no permitted access from the UAE. Such broadcasting and correspondent ads are incompatible by design with being used and enjoyed in the UAE.

- 16.4. The Court of Justice of the European Union (CJEU) interpreted the use and enjoyment rule in the connotation of advertising services in the case of *Athesia Druck* ([C-1/08](#)).



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In this case, a Austrian company (Athesia Advertising) *'engaged in operating an advertising agency,*

purchased, in its own name and on behalf of Austrian and German clients, advertising space from Italian media (newspapers, magazines, radio and television). It operated from Austria and did not have a fixed establishment in Italy.'

Italian media companies charged Italian VAT in respect of advertising services. Athesia Advertising then provided its own services to its clients.

Since VAT was paid in Italy, Athesia Druck⁹ claimed reimbursement of the tax from the Italian tax authorities.

The Italian VAT office refused such reimbursement and charged Athesia Druck with VAT *'on the basis ... that it had omitted to charge VAT on invoices in respect of the advertising services provided to Athesia Advertising's Austrian and German clients. The question as to the place in which those services were supplied thus arose indirectly'*.

Athesia Druck appealed against that decision to the Corte suprema di cassazione. The latter requested a preliminary ruling from the CJEU and received it in the Decision of 19 February 2009. The court ruled that:

- *'The country within which the effective use and enjoyment of the services take place, ... is to be understood, with regard to advertising services, as referring to the **country from which the advertising material is disseminated'**.*
- *'Irrespective of the fact that the **recipients of those services may be located throughout the world**, the **Italian media undoubtedly operates primarily in Italy'**.*
- *'The effective use and enjoyment of the advertising material must therefore, in circumstances such as those in the main proceedings, be regarded as taking place in Italy'*.
- Italian VAT is not applicable to advertising services provided by an intermediate customer established outside the Community to his own clients.

Extrapolating this judgment to the UAE, we may deduce that:

- If a social media platform *'operates primarily'* in the UAE, the place of use and enjoyment is within the UAE *'irrespective of the fact that the recipients of those services may be located throughout the world'*.
- If the social media platform *'operates primarily'* outside of the UAE, the place of use and enjoyment is outside the UAE *'irrespective of the fact that the recipients of those services may be located'* in the UAE.

There is no specific guidance on how to determine the place of use and enjoyment if media does not operate primarily in one jurisdiction only. However, for this scenario *'the general reference [is] to the country from which the advertising material is disseminated'*.

⁹ The subsidiary of Athesia Advertising which has no involvement in the supplies concerned (*'did not play any economic role in the supply of services in question'*) but was appointed as Athesia Advertising's VAT representative.

16.5. On 16 December 2019, the Spanish Tribunal Supremo considered the



use and enjoyment rule for the advertising of online gambling in the [Resolution No. 1782/2019](#).

The Tribunal referred to the Athesia Druck judgement, summarizing it as follows:

el país en que se llevan a cabo la utilización y la explotación efectivas... se considera aquel desde el que se difunden los mensajes publicitarios... sin perjuicio de que los destinatarios de dichas prestaciones pueden estar en cualquier lugar del mundo...	the actual use and exploitation ... place... is considered to be the one from which the advertising messages are disseminated ... without prejudice to the fact that the recipients of such benefits can be anywhere in the world...
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In this case, though, the lower court established that that the advertising services and other services provided 'were **directed to the Spanish market** with the purpose of attracting clients to participate in online games organized by the company resident in Gibraltar, from which it infers that "It must be considered that these services are used in Spanish territory." It could be also understood that the advertisement considered in this case was placed in 'magazines and newspapers **published and distributed in Spanish territory**'.

Location of server vs. targeted area

17. Determining the actual place from which advertising messages in social media are disseminated can be challenging due to the nature of digital platforms, where content can be served from servers located globally. However, there are some indirect indicators that may provide insights into the origin of dissemination:

- 1) Server Locations. Social media platforms typically have data centers and servers located in various regions. Analyzing the IP addresses of the servers serving the advertising content can give a general idea of the geographical origin.
- 2) Contractual Agreements. Reviewing contracts or agreements between advertisers and social media platforms may provide information about the location of servers or the point of origin for the dissemination of advertising.
- 3) Data Routing Analysis. Some technical analysis of data routing and content delivery networks (CDNs) used by social media platforms may reveal the paths taken by advertising content, although this can be quite complex and may not always provide definitive answers.
- 4) Platform Policies: Social media platforms often have policies and guidelines regarding locations for storing and processing data. Referencing

these policies may offer insights into where advertising content is typically disseminated from.

- 5) Digital Forensics: In cases of legal disputes or investigations, digital forensics experts may be able to trace the origin of the dissemination of content through more advanced technical methods.
18. However, to pinpoint the exact place from which advertising messages are disseminated on social media platforms, the nature of the services provided by the platform should be understood. It is clear that social media platforms themselves play a crucial role in disseminating advertising messages. However, platforms like Facebook, Instagram, Twitter, LinkedIn, and others provide advertising tools and services that allow advertisers to create, target, and distribute ads to their users rather than distribute advertising themselves.

To understand the place from which an ad is disseminated in a social media platform, it is useful to remove the virtual component from consideration. This may simplify the case to a level comparable with the facts in *Athesia Druck*. In doing so, we may describe the social media platform as a newspaper, magazine, etc., that is available for release in any part of the world with a different set of content. The production of physical copies for such print media can be placed anywhere in the world. The advertiser doesn't care where the printing took place. He is interested in whether these printed copies have been delivered to the specific area and disseminated there.

Thinking this way, we may see the difference between the factual background in the case of *Athesia Druck* and any potential dispute with social media advertising. In the *Athesia Druck* case, a mass media outlet has been released in Italy. The decision would hardly be the same if the Italian media business produced an edition of the newspaper in, say, the Arabic language, then delivered the edition to and distributed it in the UAE. It doesn't offer any justice. This doesn't mean that *Athesia Druck* doesn't cover ads placed in such newspaper. It means that the dissemination of the ad is started from the UAE rather than from Italy.

It is important to assess the role of the location of the servers of social media platforms. The role of these servers is the same as that of the factories where print media was produced or the transport which delivered the printed copies to the area from which they were disseminated.

This allows us to assume that a social media platform provides an advantage to disseminating an ad in the area where the target audience is located. E-advertising services *'can be provided remotely, without the service provider needing to establish a taxable presence in the jurisdiction to which the advertising is targeted'*.¹⁰ So, the area from which the advertising message is disseminated coincides with the place to which it is disseminated in spite of the lack of any physical presence or activity in this area. Therefore, the targeted area is a key to pinpointing the place from which the dissemination occurred.

¹⁰ Para 440 of the [OECD Interim Report 2018](#).

19. It is hard to imagine that the location of the server or activity shall determine the place of use and enjoyment for e-advertising since no part of this service has actually been used, consumed and enjoyed by the customer in this area. Imagine that a social media platform located in Qatar or Kuwait its servers from which ads are disseminated. Neither Qatar nor Kuwait VAT has implemented yet. Let's take an advertiser who sells his products in the UAE only. It is hard to rationalize factually or economically that the place of use and enjoyment is in Qatar/Kuwait since all use and enjoyment is in the UAE only. The only way to combine the concept of dissemination with common sense is to say that in the case of a social media platform, the place **from** which an ad is disseminated is the place **in** which the ad is disseminated. To be more accurate, we may say it is the same for traditional advertising. If print media has been produced in Qatar/Kuwait, delivered to the UAE for disseminating, the place from which dissemination is processed is the UAE rather than Qatar/Kuwait.

Place of production vs market targeted for sale

20. The location of the advertised business may give an understanding of the targeted area where the product of such business is commercialized only locally. Otherwise, its location may not be the sole factor in determining the place of the use and enjoyment.

For instance, if a business located in the UK distributes its product to the UAE along with other countries, the foreign location may not be accepted as sufficient evidence proving that the place of use and enjoyment is outside of the UAE. A review of advertising contracts between advertisers and social media platforms may also provide evidence as they may specify the geographical scope of ad placements.

However, if an advertiser designated the targeted region for the specific ad as Europe, this may evidence that the target is located outside of the UAE. Clearly, this evidence may be rebutted by the facts. For example, the content of the ad or the language used in it may show the opposite.

Target declared vs the actual outcome

21. A substantial mismatch between the target declared and the actual outcome may also be availed to demonstrate a hidden target. To determine the actual results, a fiscal authority may use:
- 1) IP Address Analysis. Analyzing the IP addresses associated with the social media platform's servers or the devices accessing the platform can provide clues about the geographical origin of the advertisements.
 - 2) User Profile Data. Social media platforms collect user data, including location information provided by users in their profiles. This data can be used to infer the likely location of users who saw the advertisements.
 - 3) Engagement Data. Analysis of the engagement metrics such as likes, shares, comments, and click-through rates may lead to understanding the demographics and locations of the audience engaging with the advertisements.

- 4) Digital Footprint Analysis tools may be availed to track the online activities and interactions of users who engaged with the advertisements, which can provide insights into their locations.

Besides, the ad's content may show that the actual targeted audience, or part thereof, was in the UAE:¹¹

Increase Ramadan Sales With Snapchat Ads

- Reach 90% of 13-34 year olds who use Snapchat to connect with family and friends.¹
- Connect with a uniquely engaged audience who open the app more than 30 times every day.²
- **Create and optimize your ads easily.** Start advertising with a single photo and get more value for your budget with Snapchat's advertising solutions.

First-time advertisers: Get an additional \$375 in ad credit when you spend \$350. Claim your ad credit today! [Learn more](#)

Create an Ad



Case Law on e-advertising

22. In the end, we again refer to the Spanish case law. On 22 January 2024, the Court referred to both precedents addressed above ([Athesia Druck](#) of the CJEU and [its own precedent](#) for advertising of online gambling). In the [Sentencia 88/2024](#), the court considered e-advertising, i.e. issue relevant to the case at hand. The court confirmed both:

- The dissemination concept.
- The targeted market concept to determine where ad messages have been disseminated from.

In this case, Softronic (the supplier of the services established in Spain) provided to foreign advertising agencies means to use its website for promotion. The judgment sets forth that *'the services are effectively used, not by the advertising agencies that are clients of Softronic, but by the clients of the agencies whose products are those that are effectively promoted with the services provided by the entity'*



Agencia Tributaria

The lower court established that a service is carried out by inserting advertising messages on the web pages of Softronic and its subsidiaries.

A person who accesses them is provided with free downloads of multiple software and applications as an incentivizing factor of the aforementioned access. The Agencia Tributaria took into consideration the ES domain of the pages but it also established that *'Internet users ... access precisely the content of the web pages with the ES domain using devices with an IP addresses **leading to locations in Spanish territory**, becoming, therefore, recipients of the advertising messages contained on said pages'*.

As per the facts of this case, the major part of the audience to whom the ad message was actually delivered was located in Spain.

¹¹ The screenshot is taken from [here](#).

<p>Sin embargo, como mantiene la Administración, en los servicios de publicidad prestados por vía electrónica a destinatarios no establecidos en la Unión (agencias de publicidad) no puede desconocerse una proyección en cuanto al uso efectivo de dichos servicios con relación a los usuarios finales con IP española conectados a la web de SOFTONIC (elemento de anclaje utilizado por la Inspección para determinar el lugar de utilización de los servicios) frente al total de los internautas finales conectados (IPs totales).</p>	<p>However, as the Administration maintains, in the advertising services provided electronically to recipients not established in the Union (advertising agencies), a projection regarding the effective use of said services cannot be ignored in relation to end users with a Spanish IP connected to the SOFTONIC website (anchoring element used by the Inspectorate to determine the place of use of the services) compared to the total of the final Internet users connected (total IPs).</p>
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This judgement confirms that the place from which advertising is disseminated shall be regarded as the area where a targeted audience is located rather than where the supplier of the services or its intermediate clients operate.

"Movable" Targets

23. Targeted audience may move and change location from one country to another. A person may visit or reside in the UAE.

However, such movement shall be assessed in interaction with a place of an advertisement object. As we demonstrated above, such movement is irrelevant where interaction with advertisement object is located in specific country or limited to a specific region.

24. Moreover, temporary nature of such movement shall not affect the place of the use and enjoyment.

There's no direct regulation to substantiate this conclusion. However, we may use any tax legislation where location of person is relevant.

On an international level, the freshest and most advanced clarifications for a place of effective management and control (POEM) were released on June 30, 2023 by the South African Revenue Service (SARS) in Issue 3 of [Interpretation Note 6](#) ('IN6').

As per IN6, POEM *'must be ascribed its ordinary meaning, taking into account international precedent and interpretation'*. SARS backs up its conclusion with the OECD's guidance, national and international precedents, etc.

As per para 4.2.1 of IN6:

- 1) *'The location of a company's head office, being the place where a company's senior management and their support staff are **predominantly located**...'*

2) *‘Various members of senior management may operate, from time-to-time, at offices located in the **various countries where the company operates. In these situations, the company’s head office would be the location where those senior managers are primarily or predominantly based or to where they normally return following travel to other locations...**’.*

25. Para 10 of [Circular no.6 of 24 January 2017](#) of India’s Central Board of Direct Taxes (‘CBDT’) deals with a same issue and address it as follows: ‘The above principles are **not to be seen with reference to any particular moment in time rather activities performed over a period of time, during the previous year, need to be considered**. In other words a **“snapshot” approach is not to be adopted**. Further, based on the facts and circumstances if it is determined that during the previous year the POEM is in India and also outside India then POEM shall be presumed to be in India if it has been **mainly /predominantly** in India’.
26. Section 7.4.1.2 of the above mentioned European Council’s Explanatory Notes considers place of supply *‘where the location is situated on board a ship, an aircraft or a train carrying out a passenger’*. In such scenario, *‘country of that location is therefore deemed to be the country of departure of the transport’*.

To illustrate this, *‘if a cruise **starts in Spain, calls at Portugal and France and completes its voyage in the UK** and the cruise operator provides telecommunications, broadcasting or electronic services in such a way that the physical presence of the customer is required (for example via a bespoke network) then **Spanish VAT should be paid by the supplier in relation to these services**’.*

This works only for services, which are not bind to physical location of the customer. However, as has been established earlier physical location of the advertising business is relevant. Therefore, this example is relevant as well.

27. Thus, if a user from targeted audience views an ad outside of the targeted area, it shouldn’t automatically mean that place of use and enjoyment moves to the location of a user. If there is no sales in this location, the advertiser does such visualization. The latter is incidental. It doesn’t correspond to the consideration paid by the advertiser to the operator of the platform, at least economically.

Principles established to pinpoint the place of use or enjoyment

28. In our opinion, above regulations and interpretations allow to conclude that:
- 1) The place of enjoyment and use of an ad by an advertiser rather than the user shall be established to determine the place of supply of electronic advertising services.
 - 2) Two features may characterize a place where an ultimate advertiser consumed (used and enjoyed) e-advertising services:

- a) the venue of the business (or other object) benefitting from its promotion by an ad, and
 - b) the targeted country, i.e. the state where persons whose attention to the advertising is being sought by the advertising object via placement of the ad.
- 3) The targeted country shall be determined in connection with nexus between the advertising object and person who is targeted since the advertising target is not only to promote information but also to engage the target to interact with the advertisement object.
 - 4) Direct and indirect evidence shall be collected by the supplier to determine these two features.
 - 5) IP address of the device used by the targets, the country code stored on the SIM card used by the targets are less relevant than intention of advertiser to cover targets able to interact with advertised business.

Applying the above principles to the situation at hand

29. Generally, a social media platform terms of service defines services as the display of the advertising materials in the context of a particular ad, in the relevant publication space.

Ad is often to be created using specified ad platform that specifies where, how, when and which advertising materials are to be displayed. Such platform works as software solution which provides an advertiser with the opportunity to create ads, make necessary actions for their placement in publication spaces, control and terminate their ads, and access the relevant statistics.

So, access to the ad platform is an integral part of the services. However, it shouldn't mean that the location of an advertiser predetermines where this part of the services is used and enjoyed. The use of this software is a part of a single composite supply. The principle component of this supply is distribution of an ad, rather than use of software to create it. The use of this software is an obligation for the advertiser rather than a right for which any part of the consideration is paid.

30. In practice, ads may be classified in two groups:

1st group is where a targeted country is identified.

2nd group is where it is not.

For the 1st group of Ads, one attribute of the 'place of use and enjoyment' of the services is easy identifiable. The target country predetermines it.

For the 2nd group, the identification of the target country (audience) requires analysis of the content for every particular ad and targeted channels. However, an analysis of all data on the platform related to a particular ad, allows the target audience to be established.

Anyway, usually the target audience (targeted audience) may be established for both groups. However, for the second group it is not as easy as for the first.

31. The second attribute (the venue of the advertised business¹²) requires an analysis of data in the ad for both groups. It is feasible to establish such venue but may require huge efforts to do this.

Introducing an additional field in the ad's template may substantially relieve the compliance burden for the supplier. This field may require:

- that information be provided on the location of the target audience (the State) or at least that information be provided on whether it is located in the UAE or not;
- that the same data be provided on the object of advertising, e.g. the venue (country) of advertising business. Again, for tax purposes, information on whether such object is located in the UAE or not is relevant.

'... to the extent of the use and enjoyment in the State'

32. The VAT Law employs the wording 'to the extent of the use and enjoyment of the supply in the State' and 'outside the State'. Section 4.2 of the [E-Commerce VAT Guide VATGEC1](#) explains: 'The reference to the "extent" in Article 31 indicates that a single supply may be apportioned for the purposes of a place of supply rules, so that it is treated as partly in the UAE and partly outside the UAE. This ability to apportion a supply is, however, limited to situations where a **sufficient distinction exists between the different parts of the supply** (i.e. services supplied) or consideration (amounts charged for such services) so **as it is practical and reasonable to divide them**'.

Reference 'to the extent' is used in the UK's VAT legislation. HMRC [discloses](#) it with the three examples cited [above](#), which are likely to be applicable in the UAE due to the similarity to the UAE in wording interpreted via these examples. They demonstrate that one supply for consumption in the State and out of it shall be apportioned and VAT-able to the extent that the portion corresponded to the in-State consumption.

33. It is the task of the taxpayer (supplier) to gain relevant information on supplies features, including those which are relevant to make out place of use and enjoyment of the services. Lack of sufficient efforts from the provider to obtain all relevant data may not justify the application of VAT where the underlying operation is not within the scope of the UAE VAT. The provider is rather in a position to pick up the slack in data, then charge VAT which does not correspond to the actual facts.

¹² Should include markets where business distribute or going to distribute its product or service.

'sufficient distinction exists between the different parts ...'

34. Section 4.2 of the [E-Commerce VAT Guide VATGEC1](#) cited [above](#) stipulates that *'this ability to apportion a supply is, however, limited to situations where a **sufficient distinction exists between the different parts of the supply (i.e. services supplied) or consideration (amounts charged for such services)** so as it is practical and reasonable to divide them'*.

We believe that the attribute of 'sufficient distinction' is absent where:

- 1) An ad's target audience is outside of the State but a targeted group or channel includes users located in the UAE.
- 2) Potential or actual impressions to such users is also not relevant for the purpose of use and enjoyment.

The reason that we opine so is that an advertiser is not being enjoyed by impressions that are not targeted. We have already this issue in ["Movable" Targets](#) section.

Single composite supply rules

35. The situation at hand shall be also considered with VAT rules determining the consequences of the supplies *'consisting of more than one component'*. Here such components are represented by an ad coverage as it may happen that an ad may be seen by persons located abroad and located in the UAE. Moreover, a person located in the UAE may theoretically buy an advertised product from a business located abroad. For the purpose of this section of the research, let's make an assumption that in such theoretical scenario, the ad is used and enjoyed in the UAE.¹³
36. Article 46 of the [VAT Executive Regulations](#) envisages the following rules *'for the purposes of the supply consisting of more than one component'*:
- 1) Where a supply is a single composite supply as provided in Article 4 of this Decision, the Tax treatment of the supply shall follow the Tax treatment of the principal component of the supply.
 - 2) Where a supply consisting of multiple components is not a single composite supply, the supply of each component is to be treated as a separate supply.
37. Article 4, referred to in Art. 46(1), sets forth: *'Where a Person made a **supply consisting of more than one component for one price**, the Person shall determine whether the supply constitutes a single composite supply or multiple supplies.*
- 2) *The phrase "single composite supply" means a supply of Goods or Services, where there is more than one component to the supply,*

¹³ The counter arguments against this approach are specified above. Assumption is taken here to establish proper consequences for this approach for a scenario where counter-argument are dismissed by the FTA.

and taking into account the contract and the wider circumstance of the supply.

- 3) *A single composite supply shall exist in the following cases:*
 - a) *Where there is supply of all of the following:*
 - 1) *A principal component.*
 - 2) *A component or components which either are necessary or essential to the making of the supply, **including incidental elements which normally accompany the supply but are not a significant part of it; or do not constitute an aim in itself, but are instead a means of better enjoying the principal supply.***
 - b) ***Where there is a supply which has two or more elements so closely linked as to form a single supply which it would be impossible or unnatural to split.***
- 4) *A single composite supply may exist under Clause 2 of this Article if all of the following conditions are met:*
 - a) ***The price of the different components of the supply is not separately identified or charged by the supplier.***
 - b) ***All components of the supply are supplied by a single supplier.***
- 5) *Where a Taxable Person supplies more than one component for one price and the supply is not a single composite supply, then the supply of the components shall be treated as multiple supplies’.*

The rules of a single composite supply are applicable to the advertising services which target is to promote foreign business located outside of the UAE where:

- part of the impressions of the ad falls on persons located inside the UAE at the moment of such impressions;
- the targeted channels include users who are from the UAE.

In such situations:

- the principal component is to develop business located outside of the UAE,
- the impressions to the users located in the UAE are incidental and perform this principal component,
- such impressions do not form *‘a significant part of’* the principal component,
- such impressions *‘do not constitute an aim in itself, but are instead a means of better enjoying the principal supply’* which serves business located abroad.

Allocation of Burden to Collect Relevant Facts' Data

38. Section 4.4 of the [E-Commerce VAT Guide VATGEC1](#) clarifies that 'the responsibility for accounting for VAT on any taxable supply of electronic services in the UAE **typically lies with the taxable supplier of those electronic services**'.
39. The [FTA's VAT User Guide 'Returns'](#) specifies that "Output tax" is '*the VAT a Taxable Person calculates and charges on its supplies of goods and services once it is registered for VAT... Once the date of the supply has taken place, the Taxable Person must account for the output tax in the VAT Return covering that Tax Period*'. Instruction for Box 1 of the Return instructs to exclude from 5%-rated supplies '*out of scope supplies*'.
40. Art. 61(1)(b) of VAT Law charges supplier (*a Registrant*) with obligation to '*adjust Output Tax after the date of supply..... if the Tax treatment of the supply has changed due to a **change in the nature** of the supply*'. Thus, a supplier is responsible for tax treatment of the supply be in line with a nature of the supply.
- Same conclusion may be deduced from Art. 76(5) of VAT Law establishing penalty for '*failure by the Taxable Person to issue a Tax Credit Note or an alternative document*'.
41. Article 47 of the UAE VAT Law authorizes the Cabinet to '*specify the controls to determine the Tax treatment of any supply consisting of more than one component for a single price, **where each component is subject to a different tax treatment***'. The Cabinet exercised this authority in Article 26 which deals with '*Apportionment of Single Consideration*'. With reference to Art. 47 of VAT Law, the Cabinet ruled that '*where the Consideration payable to the Taxable Person relates to ... two different supplies of Goods or Services, then **the Taxable Person** must identify the portion of the Consideration that is the market value of each part...*'. In situation at hand, at least certain part of the consideration is definitely corresponds to out of State supply and may not be treated as in-State supply¹⁴. Above rules obliges a Tax Person (the supplier in this case) to determine which part is taxable and which doesn't.
42. European Council specified in Section 7.4.1 of the Explanatory Notes that that '*applicability of each presumption has to be **assessed by the supplier** on the basis of available information (i.e. **any information a supplier has or should have had**)*'. Therefore, approach in the EU is not different from those set in the UAE.

¹⁴ See details [below](#).

Social networks review

43. Para 88 of the above-mentioned [Interim Report](#) from the OECD exemplifies the social network business model with reference to Facebook, Nice, Kuaishou, Sina Weibo, Tencent Weibo, Twitter, and Qzone.
44. Facebook (Meta) for an advertisement sold from Ireland to an Irish buyer doesn't refer to the place of use and enjoyment.

Instead, Meta applies Irish VAT: *'Your 'Sold To' address is in Ireland: Regardless of whether you're purchasing Meta ads for business or personal purposes, if the 'Sold By' entity on the receipt of your Meta ad purchase is Meta Platforms Ireland Limited and the 'Sold To' address we have for you is in Ireland, we add VAT at the applicable local tax rate to the cost of your Meta ad purchase'*.

This is very similar to the case at hand. However, the UAE VAT Law and Irish VAT legislation are different when it comes to the treatment of digital services.

Ireland determines 'the place of supply' as the place where the **customer** is established, has a permanent address, or usually resides.¹⁵ This rule is effective for both electronically supplied services and advertisement services.¹⁶ However, the use and enjoyment rule doesn't cover electronically supplied services. It is different from the UAE VAT Law, which put such services within the scope of the use and enjoyment exception.

45. Meta Ad targeting tools allow an audience to be targeted in a specific country.¹⁷

Audience Network

To target the Audience Network Rewarded Video placement:

```
curl \
  -F 'name=My Ad Set' \
  -F 'optimization_goal=OFFSITE_CONVERSIONS' \
  -F 'billing_event=IMPRESSIONS' \
  -F 'is_autobid=true' \
  -F 'daily_budget=40000' \
  -F 'campaign_id=<AD CAMPAIGN ID>' \
  -F 'targeting={"app_install_state": "not_installed", "geo_locations":{"countries":["US"]}, "fa'
  -F 'promoted_object={"application_id": "<APPLICATION_ID>", "custom_event_type": "PURCHASE", "c'
  -F 'status=ACTIVE' \
  -F 'access_token=<ACCESS_TOKEN>' \
  https://graph.facebook.com/<APIVERSION>/<AD_ACCOUNT_ID>/adsets
```

Such targeting would easily lead to the place to and from which the ad in Facebook and Instagram is designed to be disseminated.

¹⁵ Ireland VAT Consolidation Act, Section 34(m).

¹⁶ Ibid, 33.5.

¹⁷ <https://developers.facebook.com/docs/marketing-api/audiences/reference/placement-targeting>

46. Google advises his Poland customers that VAT *'might be applicable to your business, depending on its location'*.¹⁸

This idea fits conception taken above that business location is relevant to determine place of service (use and enjoyment) rule. However, the business shall be taken broadly. It should include markets where an ultimate advertiser commercializes his products or services.

In section ['Value Added Tax \(VAT\) and Google Ads status'](#), Google instructs:

- *'When you create your account, you'll be asked to confirm your account type, purpose of use of the account, and tax status. These settings will affect the way you assess and report VAT. They are permanent and can't be changed after you complete your billing sign up, so make your selection very carefully. These settings may also be used for advertiser identity verification'.*
- *'For the Account type, you can select either an Organization or Individual'.*
- *Choose 'Organization ... setting if you are signing up for someone other than yourself or other than in your name. For example, choose this setting if you represent a business, organization, partnership or educational institution, or choose this setting if you are a sole proprietor signing up under a trade name'.*
- *'Purpose of use'. 'Select Business if the purpose of use is for business or commercial services. Business use means that you'd like to see an **economic benefit from your advertising, such as increased revenue, sales, or signups**'.*

These instructions disclose economic benefits, link it to business, and further link business location to a place of use and enjoyment.

Any platform may take it away introducing similar sections in the accounts of advertisers. They may be amended to increase focus on 'use and enjoyment' rule. Such adaptation may be expedient as Google operates from Ireland which doesn't apply "use and enjoyment" rule for electronically supplied services.¹⁹

47. Akin to Meta, Google Ads location targeting allows ads to appear in the geographic locations that advertiser selects: countries, areas within a country, a radius around a location, or location groups, which can include places of interest, the advertiser's business locations, or tiered demographics.²⁰

¹⁸ <https://support.google.com/google-ads/answer/2375370?hl=en>

¹⁹ See [above](#).

²⁰ <https://support.google.com/google-ads/answer/1722043?hl=en#zippy=%2Ccompare-location-target-types-countries-areas-within-a-country-or-radius>



As per Google, 'location targeting is based on a variety of signals, including users' settings, devices, and behavior on our platform, and is Google's best effort to serve ads to users who meet your location settings. Because these signals vary, 100% accuracy is not guaranteed in every situation'. Therefore, a smart advertiser's behavior would leave a trace, which permits the targeted audience of an ad to be linked with particular locations.

The Google platform also proposes 'broad geo targeting': 'Before you set up your location targeting, consider how specific you'd like your settings to be. Broad geo targeting ("Presence or Interest") can help you reach people who not only exist in your targeted locations, but have shown an interest in your targeted locations'.

The Google Ads Platform allows a bulk list to be added of up to 1000 location targets at a time, rather than adding each location individually. Google also offers tools for bulk editing. So, if the UAE is not in the bulk list, the place of use and enjoyment is outside of the Emirates.

Finally, Google permits a specific country to be excluded from the list of targets. The platform discloses beneficiaries of this option as follows:

- A business that doesn't ship to or provide services in a city or region within a larger area.
- A business that offers a special promotion that isn't eligible in a few regions of a targeted area.

Hence, if the UAE is excluded, there is no way the Place of Use or Enjoyment can be in the UAE.

Furthermore, the platform permits data to be collected about actual impressions for the residents of the specific area:

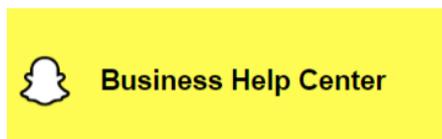
The screenshot shows a Google Ads interface. On the left, there is a section titled "View performance by location" with a sub-heading "You can use your geographic performance data to confirm that your ads are appearing in certain locations, as well as compare how your ads are performing in different locations. Use this information to pinpoint the areas that you'd like to focus on, and check out the tips in this list to help you make your ads more effective in each area." Below this is a green box labeled "Example" containing text: "You have a campaign that targets the entire country of Japan, but you're located in a different country. By viewing your geographic performance data, you confirm that your ads are getting impressions in cities throughout Japan. Also, you find that your ads do better in Tokyo and Kyoto, so you decide to come up with a new advertising strategy that targets those areas." On the right, there are two menu items: "Refine your location targeting" and "Target customers near an address with location assets". At the bottom right of the interface is the Google logo.

48. Snapchat in its 'Tax ID Requirements and Formats' says: 'A **VAT Tax ID needs to match the country of the organization in Ads Manager. If you set up your account with the incorrect country and are not currently spending, we recommend creating a new org with the correct information**'.

This may be implemented by any social media ad platform to identify the place of advertising business. An advertiser may be required to include information on the location of advertising business or another object of

advertisement with tax identification number (VAT TRN, etc.) or other data relevant to the advertising object.

49. Snapchat also provides opportunities to determine a targeted area.²¹

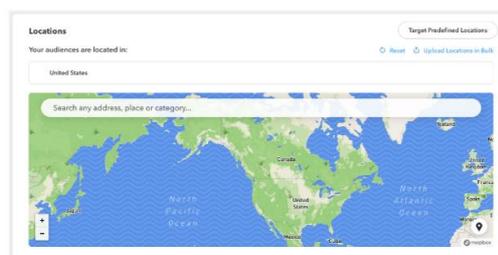
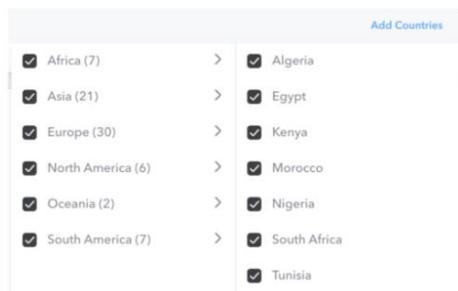


How Location Targeting Works

When *creating your campaign*, you have multiple options in how you target specific locations. At the ad set level under the **Locations** panel, your targeting will default to the country of your business, however you may add in additional countries to target within the location search bar.

By clicking **Target Locations on Map** you'll have the ability to drop a pin, and search for Location Categories (US only), countries, regions/states, metros/DMA's, postal codes, addresses, and latitude & longitude pairs.

Please Note: If you are targeting multiple countries, you must use targeting that is available in all selected countries.



50. Besides, SnapChat's Ad Specifications and Guidelines includes 'Commercial Specifications'. It states: '*Please Note: Commercials can target the following countries: AE, AU, AT, BE, BH, CA, CH, DE, DK, FI, FR, IE, IN, IQ, JO, KW, NL, NO, NZ, OM, QA, SA, SE, UK, US*'.²² The UAE is not in this list. This provision of the specification may be used to prove that the place of use and enjoyment of a commercial is located outside of the UAE.

A similarly constructed provision may be included by any social media platform either in the agreement with an advertiser, or in the accounts created for an advertiser and its clients, or in a published ad platform terms of service

51. TikTok mentions 'advertisement disclosure' in its Merchant Terms Of Service For Tiktok Shop:



*'Note that You must ensure that all Creator Content uses Our available ad labelling functionality, however, this functionality is not a replacement **for any other advertising disclosures that may be required by Applicable law, regulations and codes of conduct, or relevant policies**'.*²³

This may be an option for any social media ad platform to introduce an Advertising Disclosure Section into an ad creating process. Information collected in this section may be used separately from information required in other sections and thereby it does not affect an ad placement programmed by data included in other sections.

²¹ https://businesshelp.snapchat.com/s/article/location-targeting?language=en_US

²² https://businesshelp.snapchat.com/s/article/commercial-specs?language=en_US

²³ https://seller-uk.tiktok.com/university/article/agreement?knowledge_id=10001431&identity=1

52. In line with industry best practices, TikTok AdManager Location Targeting Options²⁴. TikTok Business Help Centre exemplifies it with this table:

Create an ad group		Location Targeting Options	
How to Create an Ad Group	▼	Location Type	Example
Placements	▼	City	Salt Lake City, Utah
Brand safety and suitability	▼	Country / Region	United States
Ad Targeting	▲	County	-Greater Manchester, United Kingdom -Door County, Wisconsin, United States
About Ad Targeting		Department	Rhône, France
Broad Targeting		District	Hannover, Lower Saxony, Germany
Location Targeting		DMA Regions (Designated Market Areas)	-Chicago, Illinois -Los Angeles, California
About Interest Targeting		Province	British Columbia, Canada
Behavior Targeting		State	Illinois, United States
Targeting Recommendation		Urban District	Koeln, Germany
Purchase Intent Targeting		Zip Code (Postal Code)	54211, 54212, 54234
About Smart Targeting			
Retargeting	▼		
Audiences	▼		
Custom Audiences	▼		

53. The above review shows that social media platforms have the means to apply properly the Use and Enjoyment Rule and may modify a customer's data collection process in a way that may simplify the application of this rule.

The disclaimer

Pursuant to the [MoF's press-release](#) issued on 19 May 2023 "a number of posts circulating on social media and other platforms that are issued by private parties, contain inaccurate and unreliable interpretations and analyses of Corporate Tax".

The Ministry issued a reminder that official sources of information on Federal Taxes in the UAE are the MoF and FTA only. Therefore, analyses that are not based on official publications by the MoF and FTA, or have not been commissioned by them, are unreliable and may contain misleading interpretations of the law. See the full press release [here](#).

You should factor this in when dealing with this article as well. It is not commissioned by the MoF or FTA. The interpretation, conclusions, proposals, surmises, guesswork, etc., it comprises have the status of the author's opinion only. Furthermore, it is not legal or tax advice. Like any [human](#) job, it may contain inaccuracies and mistakes that I have tried my best to avoid. If you

²⁴ <https://ads.tiktok.com/help/article/location-targeting?lang=en#anchor-0>

find any inaccuracies or errors, please let me know so that I can make corrections.

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