

**BACKGROUND MATERIAL
ON
UAE - VAT
FEDERAL DECREE LAW (NO.8) 2017**



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Foreword

UAE is one of the Member States of the Gulf Cooperation Council (GCC). All GCC Countries have agreed to implement VAT latest by January, 2019 and in that direction, have already unanimously passed the Framework, which is consumption based model, for common law. The Framework would be binding on all Member States who shall design their own VAT Law within it. Federal Decree-Law No. (8) of 2017 on VAT has been passed by UAE Government making the effective date of VAT implementation from January 1, 2018, and Executive Regulations when issued would lay down the procedural aspects of the Law.

The proposed implementation of VAT in UAE is akin to GST implementation in India in terms of new avenues and opportunity for professionals to prove themselves as caretakers of the financial health of the country. Let's be harbinger of change vis-à-vis VAT in UAE.

Appreciating the dynamic changes taking place in the tax regime in UAE with proposed implementation of VAT from January 2018, the Indirect Taxes Committee of ICAI has come out with the publication titled "**Background Material on UAE VAT**". This novel initiative of the Committee provides a comprehensive coverage of VAT law in simple and easy manner with tables, flow charts and illustrations etc. which allows the reader to easily comprehend the emerging law. ICAI, marking its global presence, through its Middle East Chapters which are planning to launch courses, seminars etc. to help the members as well as stakeholders of UAE for necessary knowledge dissemination and awareness.

Efforts put in by CA. Madhukar N. Hiregange, Chairman, CA. Sushil Kumar Goyal, Vice-Chairman and other members of the Indirect Taxes Committee of ICAI are appreciable for undertaking this task and preparing the material in short span of time.

I wish the readers a fruitful and enriching experience.

Date: 25.09.2017
Place: New Delhi

CA. Nilesh S. Vikamsey
President
ICAI

Preface

The first major tax reform i.e., implement of VAT from January,2018 in UAE being a member State of GCC Countries is going to be a game changer for doing the business. In this regard, Federal Decree-Law No. (8) of 2017 on VAT has already been passed by Government based on the framework on common law passed by GCC Countries and Executive Regulations providing the procedural aspects of the Law are expected to be launch soon. Considering this an opportunity for professional like ours to be proactive and ready to face the upcoming challenges and ICAI, marking its global presence, through its Middle East Chapters and Branch which are planning to launch courses, seminars etc. to help the members as well as stakeholders of UAE.

Taking these facts into account, the Indirect Taxes Committee of ICAI had prepared a background titled “Background Material on UAE VAT” which follows a sequence aligned with the flow of the topics discussed rather than being in the order of Articles in VAT Law. This publication contains variants of VAT Law and inter alia includes the analysis of various Articles of Federal Decree Law No. 8 of 2017/ Statutory Provisions of UAE VAT Law pertaining to definitions (inter alia Supply of goods, supply of services), scope of tax (Taxable Supply and Deemed Supply etc.), Registration (Mandatory, exceptions), Place of Supply of Goods and Services, Reverse charge mechanism, Transitional Provisions, penalties, right of the Authority to perform a tax audit etc. It also provides the GCC VAT Framework and its features, Overview of UAE Excise Law.

We would like to express our sincere gratitude and thanks to CA Nilesh Vikamsey, President, ICAI and CA. Naveen Gupta, Vice-President, ICAI, for their guidance and encouragement to the initiatives of the Committee. We would like to acknowledge the members of the Committee involved in this venture led by CA. Jatin Christopher and support by CA. Rajesh Kumar T R, CA. Jatin Harjai, CA. Ashish Choudhary, CA. Prakash Mehta, CA. Joseph Philip, CA. TP Anand and CA. George Kurian for their support in preparing this publication. We acknowledge the inputs by CA. Virender Chauhan, CA. Abhishek Sharma, CA. Rajan Mehta, CA. Pritam Mahure, CA. Susheel Kumar Gupta, CA. Ritu Madan and CA. Shrenik Gandhi while reviewing. Our Secretariat for their promptness and contribution to this publication. The services by CA Prabhdeep Singh the Regional Director needs to be appreciated as he kept up the pace with us who were in a hurry.

We would like the readers to make full use of this learning opportunity. Interested members may visit website of the Committee www.idtc.icai.org and join the IDT update

facility. We request to share your feedback at idthc@icai.in to enable us to make this publication more accurate, value additive and useful.

We wish the Members to a fruitful and enriching learning experience.

CA. Madhukar Narayan Hiregange

Chairman

Indirect Taxes Committee

CA. Sushil Kumar Goyal

Vice-Chairman

Indirect Taxes Committee

Date: 25.09.2017

Place: New Delhi

Message from the Chairman, Abu Dhabi Chapter, ICAI

UAE Economy is moving from a no tax economy to a low tax economy with the proposed implementation of the Excise Tax from 1 October 2017 and Value Added Tax from 1 January 2018.

The proposed taxes will generate additional revenue for Government and reduce dependence on hydrocarbon sector. At the same time, it offer a number of opportunities to the professional like Chartered Accountants and in this context I sincerely thank the Indirect Tax Committee and the UAE Chapters of the Institute of Chartered Accountants of India for coming forward and developing the Background material which will help not only in easy understanding the Excise Tax and Value Added Tax laws but also help in implementing the related provisions and advising the organization they are working for and to the clients.

My sincere thanks to the entire team involved in development and continuous improvement of the Background Material related to Excise and VAT.

CA. Suresh Panwar

Message from Vice-Chairman, Abu Dhabi Chapter, ICAI

The VAT training material will help us in getting the required knowledge and skills and thus will keep us in forefront of the business community. It is concise and easy to understand. The material is a great success in India and we look forward for same acceptability of the material in UAE.

I would like to thank whole heartedly to CA Nilesh Shivji Vikamsey, President, ICAI and CA Madhukar Narayan Hiregange, Chairman, IDTC for providing an opportunity to us to get prepared for one of biggest initiatives of UAE in finance field- VAT.

CA Aashish Bhandari

Message from Vice Chairman, Dubai Chapter, ICAI

The role of professional services provider has undergone sea-change. As the world is shrinking with newer and newer meanings of delivery of services, opening up new horizon like Introduction of VAT in UAE will increase opportunities of our members. I am delighted to know that ICAI has come up with a course on VAT. In this course, members will gain fundamental knowledge required to understand the mechanics of how a VAT system works. I am sure that members will gain a lot from the VAT course.

CA Naveen Sharma

Message from the Chairman - Ras Al Khaimah Chapter, ICAI

I am very pleased to note that Indirect Taxes Committee of ICAI has released Background Material on VAT. This demonstrates a very proactive approach to enhancing understanding of the operational mechanism of a new taxation regime that is being introduced by India's important trading partner(s) and therefore:

1. benefits a large number of Chartered Accountants who have not only operated within this region for many years but also collectively form a sizeable professional body
2. benefits ICAI as an authoritative accounting body with its increasing global footprint

I encourage ICAI to continue to strive towards enhancing its coverage to more global issues and would like to extend appreciation of the efforts of the team that was engaged in developing this background material.

CA. Manu Mehra

Message from Vice Chairman, Ras Al Khaimah Chapter, ICAI

Dear Professional colleagues,

As Vice Chairman of RAK chapter of ICAI, I am very pleased to note that Indirect Taxes Committee of ICAI has released background Material on VAT which will help the members in a big way to learn and understand the VAT applicability in UAE effective 1st January, 2018. VAT will provide our country with a new source of income which will contribute to the continued provision of high quality public services into the future. It will also help government move towards its vision of reducing dependence on oil and other hydrocarbons as a source of revenue. Introduction of VAT also brings in immense professional opportunities for the Indian Chartered Accountants settled in this region.

I hereby also take this opportunity to congratulate the Indirect Taxes Committee of ICAI for such proactive initiative.

CA. Pramod Kumar Chand

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Chapter – 1

Overview of UAE VAT

Introduction

Taxes are imposed by Government within the Constitutional power of the Country. Imposition of tax is necessary for States to collect money for its social spending, sovereign functions and meeting other objectives. The types of tax systems prevalent across the world are “Direct Taxes” and “Indirect Taxes”. Direct Tax, also called as “Corporation Tax”, is directly linked to the income or capital of the persons and collected by the States out of their income. Indirect Tax is tax levied on the goods or services rather on income or profits. We shall cover the fundamental concepts and important aspects of VAT in the ensuing discussion.

Variants of VAT

VAT has three variants, viz., (a) gross product variant, (b) income variant, and (c) consumption variant. These variants, could be further distinguished according to their methods of calculation, viz., addition method, invoice method and subtraction method.

Gross Product Variant

The gross product variant allows deductions for taxes on all purchases of raw materials and components, but no deduction is allowed for taxes on capital inputs. That is, taxes on capital goods such as plant and machinery are not deductible from the tax base in the year of purchase and tax on the depreciated part of the plant and machinery is not deductible in the subsequent years. Thus, deducting aggregate tax-exclusive value of purchase from the tax-exclusive value of sales, the economic base of gross product variant is equivalent to Gross National Product. If the input tax on capital goods is not refunded, it is called as gross product variant. In this variant of VAT, capital goods carry a heavier tax burden as they are taxed twice at the time they are purchased and also when the products they produce are sold to consumers. It therefore, discriminates against use of capital in the method of production. Modernization and upgrading of plant and machinery is delayed due to this double tax treatment.

Income Variant

The income variant of VAT on the other hand allows for deductions on purchases of raw materials and components as well as depreciation on capital goods. This method provides incentives to classify purchases as current expenditure to claim set-off. In other words, the input tax credit for capital goods is not refunded straightway but is refunded in accordance with the depreciation Schedule similar to the one used for income tax purposes. The Credit of capital goods will therefore, be spread over the life of the capital goods. Resultantly, the Net investment (i.e., gross investment minus depreciation) is taxed and, therefore, the economic base of the income variant is equivalent to the Net National Product. In practice, however,

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there are many difficulties connected with the specification of any method of measuring depreciation, which basically depends on the life of an asset as well as on the rate of inflation.

Consumption Variant

Consumption taxes may be defined as taxes that aim at taxing the private consumption of goods or services of private individuals. However, it may not be practically feasible for authorities to collect the taxes directly from the end consumer as this would lead to substantial increase in tax base. Alternatively, tax is collected from business entities which pass on the same ultimately to the end consumers and thus it is said to be consumption based taxation. Among the three variants of VAT, the consumption variant is widely used. Several countries of Europe and other continents have adopted this variant. The reasons for preference of this variant are:

Firstly, it does not affect decisions regarding investment because the tax on capital goods is also available for set-off against the VAT liability. Hence, the system is tax neutral in respect of techniques of production (labour or capital-intensive).

Secondly, it is more in harmony with the destination principle. Hence, in the foreign-trade sector, this variant relieves all exports from taxation while imports are taxed.

Finally, the consumption variant is convenient from the point of administrative expediency as it simplifies tax administration by obviating the need to distinguish between purchases of intermediate and capital goods on the one hand and consumption goods on the other hand.

In practice, therefore, most of the countries use the consumption variant. Also, most VAT countries include many services in the tax base. Since the business gets set-off for the tax on services, it does not cause any cascading effect.

Origin/destination principle

VAT is being implemented either under "origin" or "destination" principle.

Origin based tax is one which is levied, collected and retained by the State where the goods are produced. That is to say if the goods are taxed in the State where they are produced, it is said to be taxed on the basis of its place of production or origin. This is origin principle. Under the 'origin principle', value added domestically on all goods whether they are exported or internally consumed is subjected to tax. Consequently, tax cannot be levied on value added abroad and this principle confines VAT only to goods originating in the country of consumption. In short, exports are taxable under this principle while imports are exempt. It is mostly used in conjunction with income VAT and is unpopular for obvious reasons like under this principle VAT is imposed on the value added of all taxable products that are produced domestically and input tax credit is not given for the domestic purchase.

If a commodity is taxed in the State where it is consumed it is said to be taxed on the basis of

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its location of consumption or destination. This is destination principle. Under the destination principle VAT is imposed on the value added of all taxable products that are consumed domestically. Under 'destination principle', value added irrespective of the place of origin is taxable. All goods are taxed if they are consumed within the country. In this regime, exports are exempt while imports are subjected to tax. Destination principle is normally used along with consumption VAT.

The choice is clearly for the destination principle in the case of international trade. Design of VAT for international trade eminently suits the destination principle. VAT should be neutral as regards international trade. Exports should leave the country free of tax and VAT on the imported goods should be the same as the tax on the domestically produced goods. At export, all prior stage tax, indicated on purchase invoice can be rebated and at import, the mechanism of VAT ensures equal treatment with domestic goods.

In the GCC Framework, destination principle is preferred for taxation of products consumed within the various States of the country.

Another attractive feature of this principle is that it treats imported goods at par with domestic products unlike the origin principle which gives indirect protection and even preference to the producers abroad. The origin principle amounts to unfair treatment of domestic producers which is economically and politically inadvisable. In EEC countries, the origin principle was once considered for eliminating border controls and problems of valuation, but was subsequently given up as being impractical. Usually international trade flows are taxed on the destination principle. The country from which the goods are finally exported abroad bears the full cost of tax credit on inputs for the exported goods and the country into which the imports initially enter collects the tax on their value at the point of entry. Therefore, the destination principle is now followed.

Methods of computation of tax

There are essentially three methods of computing the VAT liability: addition method, subtraction method and the credit method (also known as the invoice method). The principal debate concerning choice of methods in computing VAT liability is normally restricted to the credit and subtraction methods. The credit method requires that the amount of VAT charged be explicitly stated on the invoice associated with any taxable transaction. The amount of tax a taxable person submits to tax authorities is simply the difference between the tax he collected on his sales and the tax he paid on his purchases.

Under the subtraction method, each taxable person's tax liability is computed by applying the applicable VAT rate to the difference between his total sales (inclusive of the VAT element in his sales price and his total purchases (inclusive of the VAT element in his purchase price).

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Hence, unlike the credit method, the amount of VAT connected with a taxable transaction is not required to be explicitly stated on the associated invoice.

The credit method therefore, is more transparent, whereby the effective tax rate on any commodity is easily identifiable as the rate applicable to the last transaction in that commodity.

Invoice (Credit) method

This is the most common and popular method for computing the tax liability under 'VAT' system. Under this method, tax is imposed at each stage of sales on the entire sale value and the tax paid at the earlier stage is allowed as set-off. In other words, out of tax so calculated, tax paid at the earlier stage i.e., at the stage of purchases is set-off, and at every stage the differential tax is being paid. The most important aspect of this method is that at each stage, tax is to be charged separately in the invoice. This method is very popular in western countries. In India also, under the Central Excise Law this method is followed. This method is also called the 'Tax credit method' or 'Voucher method' as he (the buyer) takes credit of the tax paid by him on the inputs purchased by him and deposits the balance amount with the VAT department. From the following illustration, the mode of calculation of tax under this method will become clear:

Stage	Particulars	VAT Liability	Less VAT Credit	Tax to Government
1.	Manufacturer/first seller in the State sells the goods to distributor for AED1,000. Rate of tax is 5%. Therefore, his tax liability will be AED 50. He will not get any VAT credit, being the first seller.	50		50
2.	Distributor sells the goods to a wholesale dealer for say AED 1,200 @ 5% and will get set-off of tax paid at earlier stage at AED 50. His tax liability will be AED 10.	60	50	10
3.	Wholesale dealer sells the goods to a retailer at say AED 1500. Here again he will have to pay the tax on AED 1500. He will get credit of tax paid at earlier stage of AED 60. His tax liability will be AED 15.	75	60	15

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4.	The retailer sells the goods to consumers at say AED 2,000. Here again he will have to pay tax on AED 2,000. He will get credit for tax paid earlier at AED 75. His tax liability will be AED 25.	100	75	25
	Total	285	185	100

Thus, the Government will get tax on the final retail sale price of AED 2,000. However, the tax will be paid in instalments at different stages. At each stage, tax liability is worked out on the sale price and credit is also given on the basis of tax charged in the purchase invoice. The invoice method is also known as “tax credit method” because the input tax paid is credited and adjusted with the final liability of tax. The series of tax credits taken by different industries and dealers is called VAT chain. If the first seller is a manufacturer, he will get the credit of tax paid on raw materials, etc. which are used in the manufacturing. From the above illustration, it is clear that under this method tax credit cannot be claimed unless and until the purchase invoice is produced. As a result, in a chain, if at any stage the transaction is kept out of the books, still there is no loss of revenue. The Department will be in a position to recover the full tax at the next stage. Thus, the possibility of tax evasion, if not entirely ruled out, will be reduced to a minimum. However, proper safeguards should be put in place to prevent the production of fake invoices to claim the credit of tax at an earlier stage.

Rate structure under VAT

VAT can operate either with a single rate or with multiple rates. When multiple rates are used, in addition to zero-rate, lower rates are prescribed for granting concessions. Multiple rates conveniently allow preferential treatment to certain commodities, firms or sectors and a zero rate is normally applied to exempt mass consumption articles. GCC Member States have agreed to charge tax at a fixed rate of 5% with exceptions/exemptions to certain priority sectors.

Merits and demerits of VAT

It has been explained earlier that when compared to the other systems of imposing sales tax on a transaction of sale, VAT has an edge over them. The working of VAT is quite simple. This is one of the reasons as to why a host of other countries adopted the system. The other merits of VAT are explained below.

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Neutrality

The greatest advantage of the system is that it does not interfere with the choice of decision for purchases. This is because the system has anti-cascading effect. How much value is added and at what stage it is added in the system of production/distribution is of *no* consequence. The system is neutral with regard to choice of production technique, as well as business organisation. All other things remaining the same, the issue of tax liability does not vary the decision about the source of purchase. VAT facilitates precise identification and rebate of the tax on purchases and thus ensures that there is no cascading effect of tax. A significant factor in the importance attached to VAT in the GCC countries is its ability to treat transactions between all Members States as also trade with other countries with complete neutrality, that too without any distortion by taxation. This is possible when the VAT is applied where the goods are consumed and not at the place where goods are produced.

Certainty and transparency

The VAT is a system based simply on transactions. The tax is broad-based and applicable to all sales in business leaving little room for different interpretations. Similarly, due to the basic feature that it gives credit of tax paid at earlier stage, the buyer will always ask for invoice. Thus, the scope of tax avoidance or evasion will be much less. The disputes will also be fewer. Thus, this system brings certainty to a great extent. So also, the buyer knows what exactly will be the tax component out of the total consideration paid for purchase of material. Thus, the system ensures transparency also.

Harmonized system of taxation

VAT became popular because of its built-in advantage of harmonizing the tax structure. It leaves very little room for interpretation. Even the entries prone to varied interpretations, under VAT, do not make any difference either to taxable persons or the Government. Ideally under VAT, there should be only one basic rate.

Better revenue collection and stability

The Government will receive its due tax on the final consumer/retail sale price. There will be a minimum possibility of revenue leakage, since the tax credit will be given only if proof of tax paid at an earlier stage is produced. This means that if the tax is evaded at one stage, full tax will be recoverable from the person at the subsequent stage or from a person unable to produce proof of such tax payment. Thus, in particular, an invoice of VAT will be self-enforcing and will induce business to demand invoices from the suppliers. Another attribute of VAT is that it is an exceptionally stable and flexible source of government revenue. The stability of VAT as a revenue source stems from the fact that if consumption is less volatile the income system provides a flexible instrument of taxation, since it is collected on a current basis. The

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decision about revenue can also be taken correctly as variance in rate of tax has direct relation with revenue collection.

Better accounting systems

Since the tax paid at an earlier stage is to be received back, the system will promote better accounting systems.

Effect on retail price

A persistent criticism of the VAT system has been that since the tax is payable on the final sale price, the VAT usually increases the prices of the goods. This could be true in GCC countries considering that there was no tax hitherto. However, considering the negative impact which could arise on inflation, the Government has exempted the goods and services of basic necessities so that negative repercussions are minimised.

Compliance cost to the business

It is argued that for compliance with the VAT provisions, the accounting cost will increase. The burden of this increase may not be commensurate with the benefit to traders and small firms. Under the VAT, books of account would require to be maintained in detail. In any case, the inherent benefit of simplicity of the system will overcome this difficulty.

Increase in working capital requirement

Another possible factor in the introduction of VAT, which will have an adverse impact on it is that, since tax is to be imposed or paid at various stages and not on the last stage, it would increase the working capital requirements and the interest burden on the same. In this way, it is considered to be non-beneficial as compared to the single stage-last point taxation system. This position may depend upon the facts of each case.

Regressive

VAT is a form of consumption tax. Since the proportion of income spent on consumption is larger for the poor than for the rich, VAT tends to be regressive. However, this weakness is inherent in all forms of consumption of tax. While it may be possible to moderate the distribution impact of VAT by taxing necessities at a lower rate, it is always advisable to moderate the distribution considerations through other programmes rather than concessions or exemptions which create complications for administration and compliance with uncertain results.

Key Features of VAT in UAE

UAE is one of the Member States of the GCC. All GCC Countries have agreed to implement the VAT latest w.e.f. 1.1.2019 and in that direction, have already passed the Framework for

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common law. The Framework unanimously passed by all GCC Countries is on consumption based model. The Framework would be binding on all Member States who shall design their own VAT Law within it. Federal Decree-Law No. (8) of 2017 on VAT has already been passed by the Government making the effective date of VAT implementation from 1.1.2018. Executive Regulations when issued under the Law would lay down the procedural aspects of the Law. Important features of the UAE VAT Law are outlined below:

- Tax on supply of goods or service: VAT is leviable on the supply of goods or services. What constitutes supply of goods or supply of services has been defined in the Decree Law. The term “supply of service” is broad enough to cover all such transactions which do not constitute supply of goods. Further, some deemed supply transactions have also been taken within scope of supply for levy of tax.
- Tax has to be paid by the supplier making taxable supplies of goods or services. In some cases, the liability has been cast on the recipient of goods or service, commonly called as Reverse Charge Mechanism. The person liable to pay tax is required to get itself registered under the Law to fulfil its obligations.
- The Place of Supply provisions have been defined for the “supply of goods” as well as “supply of services”. Tax would be levied in the State only when the place of supply falls within the State. In case of supply of goods, the place of supply of goods would generally be within the States. There are specific provisions for determination of place of supply in case of exports and imports. In case of supply of service, the place of supply shall be the residence of the supplier. In exceptional cases, place of supply shall be location of the recipient or place where the services are actually rendered/performed.
- There are specific provisions for determination of Date of Supply i.e. the point of time when liability to pay tax would arise. Normally it is the date of supply of goods or services or the date of receiving the advances, whichever is earlier. There are other specific instances to determine the date of supply which need to be observed in those specified cases.
- Each person making supply who has a place of residence in the State is required to obtain registration if the value of aggregate supplies made by him exceed the compulsory registration threshold of AED 375,000/- during the preceding 12 months. There is also an option to get oneself voluntarily registered if the value of supply or expenses exceeds AED 187,500/-. The concept of Tax Group has also been introduced to allow single registration to various entities working in a group.
- There are specific valuation provisions for determination of the value on which tax is to be charged. The value has to be determined based on the transaction value. If

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consideration is partly non-monetary, then monetary value + market value of non-monetary consideration is to be taken for determination of value for charging VAT. There are specific provisions to deal with discount, value of transactions with related parties, vouchers, profit margin based scheme, deemed supply cases etc.

- Certain sectors have been made zero rated which means resultant tax on supply of zero rated goods would be '0' (ZERO) but corresponding input tax may be recovered and claimed as refund. This is done in priority sectors. Exports of goods and services, international transportations of passengers or goods, Supply of means of transportation and related services, investment in precious metals, supply of residential buildings, crude oil or natural gases etc. are few cases which have been made zero rated.
- Exemptions have been granted to few other sectors where the person making supplies shall not have the right to recover the input tax. These include mainly financial service sector, supply of bare land, local passenger transports, basic healthcare services etc.
- From the VAT, that the taxable person is liable to pay can be deducted the VAT that is charged to him by other taxpayers. In addition, the person is also entitled to recover the input tax paid under reverse charge mechanism. There are conditions and mechanism for input tax recovery, its adjustment and for claiming refund. There is specific scheme for capital assets for recovery of VAT distributed over more than one tax period instead of full VAT in the year of purchase.
- There are specific cases for output tax adjustment which could arise on account of any event occurring post supply of goods or services. The person may issue credit note for any alterations in the value of supply including in cases of bad debts which would result in corresponding reduction of liability.
- Tax invoice is a very important document in the VAT regime as it records understanding of the parties, all ingredients of supply and applicable tax on such supplies. The tax invoice has to be in the specified format and may be raised either manually or electronically.
- There are detailed requirements for maintenance of records and documents. All taxpayers are required to maintain the account for specified period.
- Transitional provisions have been provided for smooth migration from non-VAT regime to VAT regime.
- To deal with the tax procedures related to the administration, collection and enforcement of Tax by the Authorities, separate Decree Law [Federal Law No. (7) of 2017] on Tax procedures has been notified. The law provides for concept of tax agent,

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Background Material on UAE VAT

audit by authorities, assessment, demand, administrative penalties, tax evasion, manner of claiming refund and other relevant aspects.

Conclusion

The VAT Law in UAE is framed in accordance with the GCC VAT Framework and has been designed considering the peculiar economic and social features of the region. The successful implementation of the VAT would largely depend upon the active participation of all stakeholders including Government. It is expected that the government would release all pending regulations at the earliest so that the business entities get sufficient time to get themselves prepared for this landmark change in the way of doing business in the region.

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Chapter - 2

GCC VAT Framework

A. Introduction

The six countries of Gulf region namely United Arab Emirates, Kingdom of Bahrain, Kingdom of Saudi Arabia, Sultanate of Oman, State of Qatar, and State of Kuwait, have formed the Gulf Cooperation Council (hereinafter referred to as GCC) with an aim of developing the existing cooperation and relations with regard to various fields.

In 2001 the GCC adopted the revised GCC Economic Agreement 2001 in place of the Economic Agreement of 1981. The objective of Economic Agreement is to enhance and strengthen the economic ties among Member States, and harmonizing their economic, financial and monetary policies, their commercial and industrial laws, as well as their customs regulations. Further it had an objective to reach advanced stages of economic integration, and develop similar legislation and legal foundations in economic and financial spheres, and with a desire to promote the GCC economy and proceed with the measures that have been taken to establish economic unity amongst member States. Accordingly, certain actions are already taken including framing a common customs law applicable to all GCC Countries.

In line with the said Economic Agreement 2001, based on the decision of Supreme Council of GCC, held in December 2015, and keeping in mind the uniformity in imposition of VAT by the GCC States, the decision to establish a unified legal framework for the introduction of a general tax on consumption in the GCC known as VAT was made. This is called as 'Unified VAT Agreement' or 'GCC VAT Framework'.

One of the reasons for introduction of VAT in GCC is that they are chiefly dependent on sale of Crude, Natural Gas, and other products of hydrocarbons to generate revenue for spending on public welfare. However, now they are looking for a new source of income so as to ensure high quality public services into the future on a continuous basis, without depending on oil as such.

B. Structure and purpose

The GCC Framework contains 15 Chapters consisting of 78 Articles covering different aspects starting from definitions, scope of tax and supplies, place of supply, tax due date, calculation of tax, value of supply so on. The Framework Agreement provides for various tax treatment of different types of transactions in different circumstances. Though the Framework Agreement covers most of the aspects of VAT law to be implemented in GCC countries, the final law to be implemented by the respective countries will be formulated by them and adopted.

The purpose of this Framework Agreement is to:

- (a) Provide uniform definition and taxing principles

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- (b) Prescribe special privileges in tax treatment in respect of transactions amongst GCC members
- (c) Introduce VAT in a time-bound manner in the regions to avoid imbalances

With this Framework Agreement, the entire region comprising of GCC members becomes a common block without disparity or deviation in imposing tax or the rules of interpretation of this tax. Necessary resolutions of the Supreme Council supported the move towards execution of this Framework Agreement. The individual VAT legislation of each member cannot be at variance with this Framework Agreement. At the same time, this Framework Agreement will not exert interpretative force in applying the respective VAT legislation so as not to permit this measure of cooperation to supplant sovereign authority of each member.

C. Laws to be enacted by GCC Countries

This framework agreement is not merely in the nature of guidelines; instead it is an agreement between the countries which has an international obligation upon the GCC countries.

Each of the member countries is obligated to frame its own laws as per its constitutional set up and implement the VAT law in its territory.

It is relevant to refer to the provisions of Article 78 of the Framework Agreement which clearly states that each Member country shall take domestic measures to issue its Local Law with the aim of implementing the Agreement. This includes laying down the required policies and procedures to implement the Tax in such manner not in conflict with the provisions of the Framework Agreement.

Though this Agreement requires that all the member States have to implement the local law to give effect to this Agreement, it has clearly stated that not implementing its Local Law shall be treated as being outside the scope of this Agreement until such time as its Local Law comes into force.

The Member country will work to settle any dispute which may arise between them concerning the framework agreement amicably. In case of impossibility of such an amicable settlement, there is a provision for referring the dispute to arbitration in accordance with the rules of arbitration to be agreed upon in the GCC Economic Agreement 2001.

D. Uniform Framework of Law

VAT is agreed to be imposed on goods and services on their supply and import into the territory. It is agreed that member States will enjoy special privileges in respect of transactions amongst Members. VAT will be imposed on the supply which includes transfer of property and transfer of right to use any property. Special cases of supply which may not conform to the

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definition of supply, are to be defined and included or excluded for tax purposes. VAT at a standard rate of 5% will apply unless special rates are notified.

Value of supply will be the consideration paid for the supply. GCC region understands the valuation principles from the experience with Unified Customs legislation. But here, the Framework seeks to limit the tax only to the money consideration paid for a taxable supply. Transactions that are likely to miss the acceptable valuation can be addressed by relying on the protective measures available in the valuation provisions of the Customs legislation of GCC.

It is agreed that a minimum registration threshold (MRT) be prescribed for businesses to become liable to VAT and comply with the requirements by seeking registration. Supplies that will be liable to tax will include import of goods and services. As such, in relation of import of goods, VAT would align itself to the customs declaration procedure that is applicable.

Goods are defined to mean 'tangible property' and includes water and energy. Services includes everything that is not goods. By these definitions, there is clarity in the categorization of supplies and application of the rules of place of supply. Real estate transactions are agreed to be brought within the scope of VAT not based on the completed property or land per se but by imposing tax on the underlying economic activity of bringing together the real estate. Services sector plays a significant role in the economic development of the region and hence it is not free from VAT. Services are plainly subject to tax subject to certain exclusions due to their importance or strategic nature.

Place of supply is interesting as it lays down the rules for identifying which is the 'tax collecting State' in case of transactions that may have one element taking place outside the State. Not only do export and import transactions have some part of the transaction taking place outside the State but other transactions too. For example, the buyer who is outside the State may require the goods to be delivered within the State or services may be utilized by the customer in relation to his exports and so on. Precise determination of place of supply is agreed to be the bedrock of this Framework.

Concepts such as reverse mechanism of tax collection and deduction of taxes are agreed. Reverse mechanism is when a taxable supply takes place where administration of tax through the customer is more expeditious than through the supplier. The Framework permits States to determine cases where use of this form of tax collection may be more efficient and to place this obligation on the customer. Deduction of taxes is a progressive step in tax law-making. Taxes payable on outward supplies are required to be paid to the State but after deducting the taxes already paid on inward supplies by the same person. This is a whole new field of tax law which requires a thorough understanding of the eligible inward supplies measures to eliminate

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ineligibles. Then to compute and aggregate these taxes that can be available at any time to be applied in payment of taxes due on outward supplies. Taxes paid on Capital assets are also permitted to participate in this arrangement of deduction of taxes.

Deduction of tax is acceptable only if the inward supplies continue to participate in taxable outward supplies. Suitable measures are agreed for the reversal or recovery of eligible tax deduction in case of diversion of use of the inward supplier or cessation of business operations.

It is agreed that the introduction of VAT should not disturb the legislative agreements for the establishment of free trade zones. The privileges allowed to free zone enterprises must be preserved. Supplies to free zone and duty free shops to be treated as exports and supplies into mainland from these areas as imports.

Supplies that are liable to VAT allows the supplier to reimburse himself of this VAT from the customers by charging VAT in addition to the consideration agreed. But the recoupment of VAT may fail for any commercial reason known to the parties. The liability to pay VAT therefore is agreed to be of the supplier and not contingent upon their commercial arrangement. It is agreed that except in case of reverse mechanism, VAT must be paid by the supplier on taxable supplies. This makes the definition of taxable person and taxable supplies very clear. It is interesting that the scope of tax agreed to be transfer of property in goods and transfer of right to use those goods. The clarity in the scope also excludes transactions such as barter, compulsory acquisition or assignment which occurs in business but are not subject to VAT.

Transactions involving immovable property are agreed to be included in the scope of VAT but to a limited extent where the property is being developed. Services are granted a special place due to their transient nature and need clear rules to determine their supply. Necessary allowance is made to impose VAT on internet economic transactions so as not to leave this growing area of commerce out of the tax net. Traders in water and energy are agreed to be brought into the tax net because of their ability to afford VAT when involved in commercial trade. The minimum threshold limit ensures that small businesses are not burdened with VAT and its associated compliances.

Exemptions occupy a special place in the Framework because certain industries hold a special place of historical growth and development of the region, whether it is due to their dependence by common citizens like passenger transport or their strategic significance like resources or military or diplomatic supplies. Necessary provisions to grant relaxation in the operation of VAT in relation to these articles.

Exports that are to enjoy exclusion from VAT are allowed to be zero-rated, that is, the tax deduction that would be available will still be available while charging zero per cent VAT. With

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outward supplies being taxed at zero per cent exporters are entitled to claim refund of deduction of taxes paid on inward supplies. This is a welcome measure to promote exports to the GCC States.

Compliances must be simple for any law to be effective and welcomed by trade. It is agreed that periodic compliances of summarized data are to be reported to regulator for 'information' purposes and not to verify or challenge. Self-governance is admitted as most efficient and it is agreed that businesses be allowed to determine their own tax dues and discharge them voluntarily. Data submitted is available for regulatory to call for questions in case of alarming variations with the volume of trade or other corresponding data points. Standardization of due dates is also agreed and mechanism of payment of taxes prescribed.

This Framework Agreement is remarkably granular in its deliberation of the various aspects of VAT that each member State is required to legislate that it almost supplies the template on which the respective VAT law may be drafted.

E. Special Privileges to GCC Members

VAT is applicable on taxable supplies in the State or where supplies move from one State to another member State, it will not be treated as taxable. But if the same supplies require movement outside GCC into any other country, that would also be taxed. This is a standing tribute to this common block that trade amongst GCC members should be undertaken as if no VAT were at all introduced. The tax-free flow of trade throughout the GCC region is agreed to be left undisturbed.

Transfer of goods between member States for temporary purposes or as part of a supply taxable in the destination State are excluded from the scope of tax. Avoidance of double taxation is yet another tenet of this Framework to ensure that transactions within the GCC region do not get inflated due to multiplicity of taxes.

Standard rate of VAT agreed at 5 per cent is a display of solidarity in the region and this decision demonstrates the confidence that a nominal rate of tax on a large tax base can bring the resources needed to be deployed in developmental activity. The cooperation seen in introduction of VAT could continue in deployment of this new-found resource for the development of the entire GCC region.

Where tax revenues are required by any State in respect of supplies received from other member States, it is agreed that the recipient-State is welcome to impose VAT on reverse mechanism so as not to affect the supplier-State as well as collect taxes on inward supplies. This clause preserves the sovereign freedom of each State to impose tax without disturbing the trade-freedom enjoyed throughout the GCC region.

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F. Simultaneous introduction of VAT

The purpose of this Framework is not only to agree on a uniform tax system but also provide for its introduction in all member States at the same time. Not only does this avoid imbalances but also allows member States to draw mutual support and cooperation in addressing VAT implementation challenges.

Simultaneous introduction can bring the economic advantage that VAT has delivered across the world to the GCC region too. The Supreme Council recognized that implementation of VAT will not be free from concerns both from trade and administration. Cooperative roll-out facilitates preparation in advance to address all implementation concerns and share experience with each other.

Uniformity in the law serves better if its interpretation and implementation are also uniform. Cooperative introduction allows opportunity for consistency in interpretation of transactions that are common across the region. This manner of VAT introduction gains strength from jointly leveraging the tax resources from the economic activity in each State without causing trade disruption or mutual competition.

Consensus regarding the standard rate of VAT is one aspect but consensus regarding the minimum registration threshold is altogether of a different order. There is no doubt that the Framework Agreement brings great clarity in approach to the implementation of VAT in each State so that there will be no disruption in trade but only benefits from this source of revenue.

G. Relationship between GCC Countries ¹

As far as relationship between the GCC Countries, is concerned, it is so designed that trade between the GCC member countries will be conducted within the framework of a customs union covering

- (a) A common external customs tariff (CET);
- (b) Common customs regulations and procedures;
- (c) Single entry point where customs duties are collected;
- (d) Elimination of all tariff and non-tariff barriers, while taking into consideration laws of agricultural and veterinarian quarantine, as well as rules regarding prohibited and restricted goods.
- (e) Goods produced in any Member State shall be accorded the same treatment as national products.

¹ Based on GCC Economic Agreement 2001

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When it comes to International Economic Relations, they are to operate together to secure better terms and more favorable conditions in their international economic relationships. The Member countries would draw their policies and conduct economic relations in a collective fashion in dealing with other countries, blocs and regional groupings, as well as other regional and international organizations.

Further the GCC countries have agreed for a relationship wherein the natural and legal citizens are given the same treatment in all GCC Counties as accorded to its own citizens, without differentiation or discrimination, in all economic activities, as to movement and residence, work in private and government jobs, pension and social security, engagement in all professions and crafts, engagement in all economic, investment and service activities, real estate ownership, capital movement etc.,

GCC Countries for the purpose of achieving a monetary and economic union between Member countries, including currency unification, have agreed to achieve a high level of harmonization between them in all economic policies, especially fiscal and monetary policies, banking legislation, setting criteria to approximate rates of economic performance related to fiscal and monetary stability, such as rates of budgetary deficit, indebtedness, and price levels.

As regards investment climate also, GCC countries have agreed to provide for unified law relating to all their investment; accord national treatment to all investments owned by GCC natural and legal citizens; Integrate financial markets in Member States, and unify all related legislation and policies; Adopt unified standards and specifications for all products, according to the Charter of the GCC Standardization and Metrology Organization.

Similarly, the GCC Countries have agreed for dealing with different aspects together. Some of those aspects are as follows:

- (a) Regional and International Aid;
- (b) Development integration;
- (c) Policies for Oil, Gas, and Natural Resources integration
- (d) Agricultural development
- (e) Environmental Protection

H. Relevance of Agreement after enactment of Laws by GCC members

The framework agreement is not merely a one-time document; instead it is a continuing obligation upon the GCC member countries to follow the same. This agreement will be operational till the relationship between the GCC countries continue. This is also clear from Articles 75 which provides that the Ministerial Committee shall have jurisdiction to consider matters related to the application and interpretation of the framework Agreement and its

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decisions shall be binding on the Member countries. Further Article 76 provides for dispute resolution between the member countries while implementing the framework agreement. Article 77 provides for amendment of the framework agreement upon the approval of all the Member countries based on the proposal of any of these States.

Conclusion

Consensus on so many granular aspects demonstrates the strength of the process that started as early as one of the goals in the 2001 Economic Agreement and the forward-looking view taken by the Supreme Council way ahead of the times. And to make such a concerted effort to reach a goal 17 years later with full preparedness is a tribute to the surefootedness and resolve in the introduction of this new legislation for the imposition of Value Added Tax.

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Chapter – 3

Legal Background

1. Law Making Process

The United Arab Emirates is comprised of seven emirates, viz., Abu Dhabi, Dubai, Sharjah, Ajman, Ras Al Khaimah, Fujairah and Umm Al Quwain. Each Emirate has a Ruler and the seven Rulers together form the Federal Supreme Council. As per the Constitution of the UAE the Ruler of Abu Dhabi is the President and Ruler of Dubai shall be the Vice President and Prime Minister of the Federal Government.

The Federal Supreme Council is the highest constitutional authority that has the legislative and executive powers to ratify Federal laws, decrees, plans and general policies. Its jurisdictions are derived from Egyptian, French, Roman and Islamic Laws.

There are five Federal institutions as per the Constitution of UAE. The Federal Supreme Council, The President and Vice President, Council of Ministers of the Union, Federal National Council and the Judiciary of the Union.

The Federal National Council which is the Parliament of the Country is a body which is largely consultative and does not have the powers to veto or initiate laws. It does have the powers to examine and amend proposed legislation. The Federal National Council also has the powers to question the Minister or its own members.

The Federal National Council (herein after referred as FNC) is made up of 40 members of whom 20 members are elected by 7000 notables who are chosen by the local governments to represent the various social groups and tribes. The other 20 members are nominated by Ruler of each Emirate. Abu Dhabi and Dubai have 8 members each in the FNC; Sharjah and Ras Al Khaimah have 6 members and the other emirates, viz., Ajman, Umm Al Quwain and Fujairah have 4 members each.

The Ministers draft various decrees and various decisions which are adopted in the Council of Ministers meeting. The Council of Ministers is headed by the Prime Minister of the Country (Ruler of Dubai) who work on the directions of the President of the Country (Ruler of Abu Dhabi).

The basis of the legal system in the UAE is Sharia or Quranic Law. Islam is identified in the Constitution as the religion of the State as well as the principal source of law for the country. The direct influence of Sharia is seen in the social laws such as family law, divorce and succession.

According to Article 144 of the Constitution, any amendment to the Constitution is to be drafted by the Federal Supreme Council and must be approved by a two-thirds majority of the Federal National Council, after which the amendment is signed into law by the President.

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Part 5 of the Constitution explains the process of legislation in the UAE. The Process of law making in UAE is as follows:

Federal Laws are drafted by the Council of Ministers and are submitted to the FNC. The FNC sends the draft law to a proper committee. If the appointed proper committee makes any amendment to the draft law, the amended law is then sent to the Legal and Legislative Committee. After the Legal and Legislative Committee has accepted the amended law it is taken up for debate on the floor of the FNC. The FNC then sanctions the final draft and approves the same. The Final draft is then presented to the President. The President then issues the Decree under his signature for the promulgation of the Law and within two weeks the law is published in the Official Gazette of the Union.

The beginning and termination of the legislative session is determined by the Presidential Decree issued by the President of the UAE.

2. Distribution of Legislative & Executive Powers & Powers of HH for Imposition of Tax Laws

Part Seven of the 'Constitution of UAE' describes the distribution of powers between Union (Federal Government) and Local Government (Emirates). As per entry no. 6 of Article 120 of the Constitution, the Union has exclusive legislative and executive powers for matters in relation to "Union Finance, Union Taxes, Duties and Fees". Further as per Article 121, the Union has exclusive legislative powers in relation to penal law, civil and commercial transactions and company law procedures before the civil and criminal laws. Further matters in relation to technical and industrial property and copyrights also comes within the domain of Union (Federal Govt.).

As per Article 122 of the Constitution, the Emirates (Local Govt.) is having jurisdiction in all matters not assigned to the exclusive jurisdiction of the Union.

Under Article 54 (4) of the Constitution the President has the powers to Sign and Promulgate the Federal Laws, Decrees, and Decisions sanctioned by the Supreme Council. Under these powers the President of the UAE His Highness Sheikh Khalifa Bin Zayed Al Nahyan issued Emiri Decree 13 of 2016 for setting up the Federal Tax Authority (FTA). The new law was published in the Official Gazette on 29th September 2016.

3. Sharia Law Applicability in Relation to VAT, Excise and Customs

The Sharia Law is governed by the Quran. Though the core principles of Law in UAE are drawn from Sharia Law, most of the legislations are comprised of a mix of Sharia and European concepts of civil law. The principles of Sharia Law are applicable to business

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transactions and have influenced the development of the commercial code. These principles have influenced the drafting and interpretation of laws in the UAE.

The five core principles of Sharia are:

- (a) Charging of interest is forbidden – money is not a commodity that can be traded nor does its value change over a period of time and hence interest earned is unjust income
- (b) Risk shall be shared – as income cannot be derived from interest, the investors share the profits or losses in the proportion of the amount they invest into the transactions
- (c) Uncertainty in a contract is prohibited – the parties involved in a contract must undertake the contract with full knowledge of all the terms
- (d) Competence – parties should have the legal capacity to understand and assume the obligations under the contract
- (e) Consent – parties to the contract should give their consent under free will without any coercion or duress

The Principles of Sharia Law have been considered in the VAT Law, Excise Law and Customs Law though there is no direct reference.

4. Reliability of English Translation of Authorised Arabic Legislation

Translation of Arabic text into English is very difficult and is highly complex. There are 28 alphabets in Arabic as opposed to 26 in English and it is pertinent to note that there are some Arabic letters which have no equivalent in English. One word in Arabic need not be translated into one word in English. The Translator may have to express “how something is said” in Arabic rather than literal translation of “what is said”.

The Law is always promulgated in Arabic, as it is the official language of the State. There are Legal Translation Experts who are authorised and registered with the Ministry of Justice and English Translation approved by such Legal Translation Experts is valid. In case of any ambiguity in the meaning of any provisions of Law or Regulations or Procedures between the Arabic version and the English version then the Arabic version will prevail.

It is always better to get the Arabic to English translation done by an authorised Legal Translation Expert and have the document duly stamped by such expert before relying on the English Version. In order to avoid doubts and to make the document complete, it is an accepted practice to execute documents in both English and Arabic (bilingual documents).

5. Past Experience of Translation Differences Resolution

There are a large number of firms and individuals who offer the Translation service in UAE and many of them do not have the requisite qualification and experience to translate a

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technical or legal document. Literal translation of a document from English or Arabic will not give the same meaning and effect. The same applies to literal translation from Arabic to English, particularly for a legal or technical document.

There are occasions when differences arise in a translation due to the lack of understanding or inexperience of the person involved in the translation exercise. These differences are best resolved through an amicable dialogue and not through legal route, i.e., litigation. Need to bear in mind that the Arabic Version will prevail at the end and hence a lack of understanding or knowledge of the language is not an excuse.

The only solution is to engage a professional organisation which provides translation services which is recognised and approved by the Ministry of Justice, U.A.E.

6. Applicability of Indian or other Jurisprudence

The UAE follows a civil law system heavily influenced by French and Roman systems. A strong Egyptian influence is present in the legal and Judicial system being one of the most modern legislations in the Arab World.

One of the distinguishing features of the UAE Legal System is the co-existence of parallel judicial systems. The UAE has a federal judicial system with a Court of First Instance, Court of Appeal and Court of Cassation. However, interestingly, this is followed only by four emirates, viz., Sharjah, Ajman, Fujairah and Umm Al Quwain. The other three Emirates, viz., Abu Dhabi, Dubai and Ras Al Khaimah have their own independent judicial systems parallel to the Federal system.

All Courts in UAE have three different branches to deal with Civil, Criminal and Family Matters. The Family and Personal Laws predominantly follow the Sharia Law. The Personal matters and family matters are hence handled by Sharia Court.

Since the UAE follows a civil law system, court proceedings are significantly different from the Courts in India. There are no witness examinations or discovery of documents. The pleadings submitted by the parties have a crucial role in the outcome of the dispute. A major part of the proceedings in the litigation is conducted through written submissions of both parties. Choice of lawyers and briefing to the lawyers, who appear for the case and provide the written submissions and explanations, plays a vital role. The Courts also seek expert opinion on matters involving technicalities and there are qualified experts in each industry who are empanelled with the Courts. In most of the cases the reports of the Experts is followed in full by the Courts and their opinion is reproduced in the judgement.

The official language of the State being Arabic, all documents have to be translated into Arabic and submitted to the Courts in UAE (except the DIFC Courts) as the Court proceedings are conducting only in Arabic. The parties are required to translate all documents in Arabic

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and submit the same to the Court or to the court appointed Expert. This may be an expensive and onerous exercise depending upon the volume and technicality of the documents.

While the UAE follows the “civil law” there is also a judicial body that administers justice under the “common law” system. The Courts in the Dubai International Financial Centre (DIFC Courts) follow the common law system. This is a very bold and innovative initiative taken by the Ruler of Dubai to provide the much needed comfort and relief to foreign investors from countries where the common law is followed (like India). The Government of Dubai has recently extended the jurisdiction of the DIFC Courts and has authorised to hear disputes arising out of transactions between parties outside the DIFC. The emergence of DIFC Courts by following “common law” is a great initiative which has provided the much needed relief and comfort to the Foreign Investors in Dubai.

In short, the UAE Legal system is a complex system which has adopted the best practices from different parts of the world while the core is still revolving around the Sharia Law.

7. Accepted Legal Maxims

The following are some of the generally accepted Legal Maxims under the Sharia Law:

1. Al-umuru bi-maqasidiha: Acts are judged by the intention behind them
2. Ad-dararu yuzal: Harm must be eliminated
3. Al-yaqinu la yazulu bish-shakk: Certainty is not overruled by doubt
4. Al-'addatu muhakkamatun: Custom is the basis of judgement
5. Al-mashaqqatu tujlab at-taysir: Hardship begets facility

8. Summary

The legal system in UAE is complex as there are parallel judicial systems within the country.

Dubai has integrated with the rest of the world by forming DIFC Courts which follows the “common law” while the UAE legal system is predominantly built on “civil law”.

The Judiciary works differently and relies on written submissions and opinion of experts on all technical matters.

Sharia Courts handle mainly the personal law relating Family Matters like Divorce and Succession.

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Chapter – 4

Trade Background

1. Forms of Business Enterprise Permitted In UAE

Types of business entities

There are mainly three types of business entities permitted by law in the UAE and they are:

- (a) Professional
- (b) Commercial
- (c) Industrial

It is important for the promoters of a business to choose the right type of business entity and this would entail the permitted activities to be performed by the business entity. In other words, the type of business depends on the nature of activities to be performed by the business entity.

Professional License is issued to professionals, artisans and craftsmen. The Professional License is for rendering professional services which entirely depends on the skills, knowledge and experience of the professional concerned. The holder of professional license is not permitted to import or export any goods and thus is not permitted to engage in any trading or manufacturing activity.

Commercial License is issued to business entities which are involved in commercial activities of buying and selling of goods, imports and exports, transportation and all other commercial activities which are performed with the intention of making profits. Commercial License is generally taken for business activities like trading, retail, hotels, warehousing, transporting, etc. In trading business, the license can be for specific trading or general trading. The General Trading License will allow the licensee to deal in any product whereas specific trading will be restricted only to specific products. For example, a Business Entity which has a specific food items trading license can deal only in food items and not in building materials. On the other hand, a General Trading License permits the business entity to deal in both food items as well as building materials.

Industrial License is issued to business entities which are involved in the manufacturing or industrial activity which involves value addition or conversion of the input into a different output. The manufacturing or industrial activity involves transforming the raw material into semi-finished or finished goods. The transformation can be in the structure or usage or appearance or stage of finish etc. The manufacturing process could involve use of machinery or could be manual.

Jurisdictions

The following are the three jurisdictions that are recognized and practiced in the UAE:

- (a) Mainland Business is located in the UAE mainland and can conduct business across mainland of UAE. The businesses in the mainland are regulated and licensed by the Department of Economic Development.
- (b) Free Zone Business is located in a specific free zone and can conduct business within the designated free zone. If they want to do business, in the main land, their additional regulations are to be followed. The Free Zone businesses are formed, regulated and licensed by the various Free Zones that are existing in the UAE.
- (c) Offshore Business is located in one of the Free Zones and conducts business only offshore. In other words, the offshore company will do transactions outside the jurisdiction of UAE and its free zones. The Offshore Business license is generally issued by the various Trade Free Zones in the UAE and are governed by the respective Free Zones. An Offshore Company can open and operate a Bank Account in the UAE.

Forms of Business Enterprise

The various forms of business enterprises permitted in the United Arab Emirates are as follows:

- (a) Sole Establishment – Sole proprietary Organisation which can be formed only by UAE Nationals or GCC Citizens. Sole Proprietary Establishment is generally formed in the name of the individual owner. The liability of the Sole Owner is unlimited and hence the owner needs to meet all the obligations of the business.
- (b) One Person Company – A One Person Company is also like a Sole Establishment as it is owned by one individual. One Person Company can be formed by a UAE National or GCC Citizen. It is a Limited Liability Company formed with only one person and hence the owner's liability is limited to the extent of the share capital of the company.
- (c) Civil Company – A civil company is formed for professionals like Doctors, Lawyers, Accountants and Engineers. A Civil Company can be owned by a person of any nationality but if the owners of the Civil Company are other than UAE National or Citizen of GCC then the Civil Company should have a UAE National as its "Service Agent". In the case of Civil Company in Engineering business UAE National should be a Partner owning minimum 51% of the Share Capital.
- (d) Company – A company incorporated under the Commercial Company Law (CCL). Article 9 of the CCL has prescribed five different forms of companies, viz., (i) Joint Liability Company; (ii) Simple Commandite Company; (iii) Limited Liability Company; (iv) Public Joint Stock Company and (v) Private Joint Stock Company. With the exception

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of Joint Liability Company and Simple Commandite Company, which shall be entirely owned by UAE Nationals, every Company shall have one or more UAE Nationals holding at least 51% of the Share Capital of the Company.

The Joint Liability Company will have two or more partners who shall be UAE Nationals and they are jointly and severally liable for all the obligations of the Company.

The Simple Commandite Company is a company which will have one or more UAE Nationals as partners. This is a form of company where it is permitted to have silent partners whose liability is limited to the share capital contributed by them. The active partners will have unlimited liability and will be jointly and severally liable for all the obligations of the Company. The General Partners whose liability is unlimited should be UAE Nationals and the Limited Partners can be nationals of other countries.

Limited Liability Company in short called as “LLC” – which can be formed by two or more partners of whom one shall be UAE National holding minimum 51% of the share capital of the company. This is the most popular form of organisation in the mainland. The LLC should have minimum two shareholders/partners and can have a maximum of 50 shareholders/partners. The Liability of a Partner/shareholder is limited to the extent of the Share Capital contributed by him. While it is compulsory to have one or more UAE Nationals holding minimum 51% of the share capital, the partners can agree to have a differential profit sharing ratio. In other words, though the UAE Nationals are holding 51% of the Share Capital they may be eligible for a much lesser share of profits as the business is predominantly managed and run by the other partners.

A **Public Joint Stock Company** is a company where the shares are offered to public for subscription. The shares are listed in the Stock Exchange, for example the PJSC in Dubai will have the shares listed in Dubai Financial Market (DFM) whereas a PJSC in Abu Dhabi will have the shares listed in Abu Dhabi Securities Exchange (ADX). The Liability of the shareholder is limited to his share of the Share Capital of the Company. Five or more persons can form a PJSC and as Promoters/Founders they shall contribute 30% to 70% of the Share Capital and the rest shall be offered to public through a Public Issue of Shares. However, the Founders are not allowed to subscribe to the shares offered in the Public Issue. A PJSC shall be managed by an elected Board of Directors and the Chairman and majority of the Board members shall be UAE Nationals.

A **Private Joint Stock Company** is a company where the number of shareholders is minimum two and maximum of two hundred. The Capital of the company is divided into equal shares to be paid in full but not offered to public. A shareholder shall be liable only to the extent of his share of the Capital of Company. The minimum issued capital of Private Joint Stock Company shall be AED 5 Million.

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All the five forms of companies under Commercial Company Law are titled as Partnerships as the Shareholders are referred to as Partners in the Act.

- (e) Partnership – A Partnership Company is a form of organisation where there are two or more partners who are contributing to the business. The name of the company shall have the name of the one of the partners in addition to a word that signifies the nature of business.
- (f) Branches –
 - (i) Branches can be established for Foreign Companies. The branch office shall carry on the activities of the Parent Entity. The Branch Office should have a local agent who shall be a UAE National.
 - (ii) Branch also includes branch of a UAE based company where the branch is 100% owned by the parent company.
 - (iii) Branches can also be branch of GCC based company where the branch is 100% owned by the parent company which is headquartered and based in one of the GCC countries.
 - (iv) Similarly, a Free Zone Company can have a branch in mainland.
- (g) Representative Office – office set up in the UAE to represent a Foreign Company which can only perform the liaison function and is not permitted to import or export goods. The Representative Office can solicit business and do business promotion but cannot directly engage in any trading activity. A UAE National should be appointed as “Service Agent” for the Representative Office.
- (h) Intelaq – Home Office owned by a UAE National for conducting any type of professional, trade or artisan business. The business must be such that can be operated from a residential unit without causing any harm to the environment. The legal form of the business can be Sole Establishment or LLC or Civil Company or Partnership.
- (i) SME License – UAE National can also obtain SME License which is valid for 3 years for any activity.

2. Forms of organisation with limited scope to undertake trade

1. A Civil Company with professional license cannot undertake trading activities unless it is registered as an Engineering Company.
2. A Representative Office which is in UAE for liaison, order procurement and mere local presence to be in touch with the clients and prospects cannot undertake trading activities.

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Background Material on UAE VAT

3. A Free Zone entity is expected to do trade on within the Free Zone or with the outside world, i.e., outside UAE. In other words, the Free Zone Entity cannot have trade with the mainland companies. However, the Free Zone Entity can obtain its services from a mainland company.
4. A Trading Company with specific objectives cannot undertake trade in other commodities or products unlike a General Trading Company.
5. A Limited Liability Company which is formed with specific activities listed in the Trade License cannot embark into other areas of business unless the relevant activity is added to the list of activities in the Trade License.

3. Defacto and Dejure Role of Local Arab Partner in Business

The requirement of UAE National being a majority stakeholder in the business is only in Mainland and is not applicable to Free Zone entities. However, if the Business Entity is being set up by a GCC National then there is no requirement for having UAE National as the local partner holding 51% of the Share Capital. The requirement of UAE National as the local partner is applicable only to Non-GCC Nationals who want to set up business in the mainland for either Commercial or Industrial activity. In the case of Professional Services the UAE National is needed only as a "Service Agent" and hence 100% of the ownership rests with the professional.

Though the UAE National holds 51% of the Share Capital in a Commercial or Industrial entity owned by Non-GCC Nationals, there is no requirement for the company to share the profits in the same ratio of the share capital. Companies generally resort to a differential arrangement whereby even the UAE National who holds 51% of the Share Capital gets only differentially agreed portion of the share of Profits. The day-to-day management of the business is with the expatriate partner. Bank Account operation and dealing with all Government Agencies can be handled by the Expatriate Partner without any interference of the UAE National.

In reality, the Mainland entity is beneficially owned and managed by the Expatriate Partner though as per Law the UAE National holds 51% of the share capital. The 51% share capital contributed by the UAE National is generally covered by a Loan Agreement between the Expatriate Partner and the UAE National. This interest free loan is given by the Expatriate to the UAE National to facilitate his contribution to the share capital of the company.

In addition to the above the UAE National is paid a sponsorship fee every year which gets reflected in the face of the Statement of Profit or Loss as "Sponsorship Fee".

The Loan Agreement to cover the Share Capital contribution; lesser profit share which actually is again beneficially owned by the Expatriate Partner and the Sponsorship Fee which is paid annually for the services rendered by the UAE National are all the measures taken by Expatriate Partner to ensure that his interest is protected.

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4. Concept of Free Zone Enterprises

The Concept of Free Zone Enterprises was introduced to protect the interests of Business Owners who wanted to use UAE as a Trading Hub or Transshipment Centre. The Free Trade Zone is a secluded area which is properly fenced and the goods that are imported into the Free Trade Zone are brought in without payment of any Customs Duty. The goods are meant for other countries outside the UAE and are destined to leave the shores of UAE and hence are allowed to be brought in without any payment of Customs Duty.

The Free Zone Enterprises are also given immunity from Tax and enjoy tax free existence as the Free Zone area is considered as being outside of the UAE. However, if the goods are moved from the Free Zone into Mainland then it would attract Customs Duty. Free Trade Zones exist in all the 7 Emirates in UAE.

The Business activities that can be performed by the Free Zone Enterprises is decided by the respective Free Trade Zone Authority. However, the Owners and Employees of Free Zone Enterprises are given residence visa of UAE so that they can live in the UAE and conduct the business out of the Free Zone.

5. Inapplicability of Local Arab Partner in Free Zones

The Free Zone Enterprises do not generally have any trade ties with the mainland and hence the requirement of having a UAE National as 51% partner does not apply to Free Zone Enterprises. Thus, a Free Zone Enterprise can be set up with 100% foreign ownership. The Free Zones enterprises are expected to operate within the Free Zone and with the rest of the world with no connection with the Mainland. In view of the above it was felt by the Government that the involvement of a UAE National may not be required in the Free Zones. Hence 100% foreign ownership has been allowed in all the Free Zones across UAE.

6. Inter Free Zone Entity Transactions/Limitation

The Free Zone entities in different Free Zones can have transactions within the rules and regulations of the respective Free Zones. For instance, if the entity in Jebel Ali Free Zone wants to transfer goods to Hamriyah Free Zone in Sharjah then the documentation should be made as per the JAFZA requirements for exit of goods and similarly proper documentation should be made as per Hamriyah Free Zone for the goods to enter that Free Zone area. If the particular goods are not allowed to be transferred on a Duty Free basis then the goods have to be brought through the mainland by payment of customs duty.

7. Free Zone Entity and Mainland Transactions - Limitations

The Free Zone Entity is not permitted to deal with mainland companies to offer and sell its

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products and services. The restrictions apply to each Free Zone entity based on the rules and regulations in force in the respective Free Zone.

The Free Zone entities can transfer goods to the mainland at any stage by payment of customs duty as the transaction is treated as an Import into UAE when it enters the mainland, provided it is permitted by the respective Free Zone Authority.

If the goods in the mainland had already suffered Customs Duty, they can be transferred to Free Zone as it will be treated as an Export from the mainland to the Free Zone. If the Trader is aware in the beginning that the goods imported into mainland is destined for the Free Zone, then he could bring the goods into the mainland on “Import for Re-export Bill of Entry” whereby 180 days time is available for re-export of the goods. In such cases the importer need not pay Customs Duty on the goods as it is meant for re-export. However, if the importer fails to re-export the goods within 180 days then the customs duty has to be paid on 181st day.

8. Incorporation, Maintenance and Liquidation of Business Entities

Incorporation

Formation of a business entity needs to be done by following the rules and regulations depending on whether the entity is in Mainland or Free Zone. The steps to be followed can be summarized broadly as follows:

1. Name Approval

The entity should first seek name approval for the name of the business and generally the name should reflect the activity. For instance, if the business entity is offering Accounting Services then the name should include the phrase “Accounting Services” and the activities to be performed by such entity will be limited to Accounting Services and related activities only.

2. Leasing of Office

The Second step in the Incorporation of Business is leasing of office premises. The number of Visas that the business is eligible will be determined based on the size of the Office Premises. Having a place of business is a pre-requisite for the formation of a business in the UAE and hence this is a very crucial step which needs to be addressed as soon as the name of the business is approved by the concerned Government Department or Free Zone Authority.

3. Trade License

Once the Leasing of premises is finalized then the Business Entity needs to be registered and a Trade License has to be obtained. If the business entity is owned by more than one person then the Shareholders Agreement, Memorandum of Association and Articles of Association have to be executed as the case may be. These contracts can be executed only in the presence of the Notary Public. The Contract between the Shareholders/Partners is required

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for getting the Trade License and also for registering the entity with the Chamber of Commerce.

4. Investor Visa/Employment Visa/Residence Permit

Once the Trade License is obtained the Visa formalities have to be done to get the Investor Visa for the Promoters/Partners and also the Employment Visa for the employees of the Business Entity. Once the Visa is obtained the Investor/Employees should get their residence permit stamped on the passport.

5. Commencement of Business

Upon incorporation of the business by obtaining the Trade License the business entity can start its activities. In order to commence the business, the first step would be opening of Bank Account in the name of the business entity.

Maintenance

Maintenance of the Business Entity would entail renewal of the Trade License every year. Depending on the jurisdiction the requirements have to be met for the renewal purposes. Some of the Free Zones require Audited Accounts to be submitted each year for renewal of the Trade License. The requisite Trade License Fee has to be paid and all other requirements have to be met for the Trade License to be renewed. Irrespective of the jurisdiction the renewal of Trade License is an annual feature as the Trade License issued by the Government Authority or Free Zone Authority is valid only for one year in most cases.

Liquidation

While starting a business is fairly simple and easy the closure of business is quite complex. To start a business it may take few days in most of the jurisdictions. However, liquidation of business would mean first settling all liabilities of the business, whether it is amounts due to Government Departments or Banks or Financial Institutions or Suppliers or Vendors or Employees. All dues of the business have to be fully settled and all registrations have to be properly closed. Finally, the business will get liquidated if all the formalities are fully complied with as per the requirements of the Government or Free Zone Authority. The normal time span for liquidation of a business in the UAE can be anywhere between 12 to 18 months as the process is quite complex and tedious.

9. Summary

1. The three types of licenses that are issued in UAE are Professional, Commercial and Industrial.
2. There are primarily two jurisdictions in UAE, viz., Mainland and Free Zone and technically we could have the Offshore Companies as the third jurisdiction in the Free Zones.

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Background Material on UAE VAT

3. The various forms of Organisation in UAE are Sole Establishment, Civil Company, Partnership, Company, Branch, Representative Office, Intelmaq and SME
4. The requirement of a Local UAE National as Partner holding 51% of Share Capital is only in Mainland that too for Commercial and Industrial Activity.
5. Free Zones offer the flexibility of 100% foreign ownership and tax exemption for life time.
6. Free Zone entities have restrictions in having dealings with Mainland Companies and the rules and regulations are prescribed in this regard by the respective Free Zone Authority.
7. Forming a Business is quite simple, easy and fast in the UAE irrespective of the Jurisdiction.
8. Maintenance of the Business requires fulfilment of all the requirements of the Government Authority or Free Zone Authority as the Trade License needs to be renewed every year.
9. Liquidation of a business is quite complex and time consuming as the legal requirements are far too demanding and comprehensive.

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Chapter-5

VAT Law

Chapter-I

Important Definitions

In the application of the provisions of this Decree-Law, the following words and expressions shall have the meanings assigned against each, unless the context otherwise requires:

State: United Arab Emirates

Minister: Minister of Finance

Authority: Federal Tax Authority

The definition of 'State' is relevant as it determines the taxing jurisdiction. In the context of UAE VAT Decree-Law, the law extends to the territory of UAE State. The Ministry of Finance is responsible for strengthening the financial and economic interest of the Federation at the global level and for this purpose it has a major role in the implementation of VAT in the State. Federal Tax Authority established under Federal Law No. 13 of 2016, shall be managed by the members of Ministry of Finance, who shall oversee the administration, collection and enforcement of federal taxes (including VAT) and penalties and distribution of tax revenues.

Value Added Tax: A tax imposed on the import and supply of Goods and Services at each stage of production and distribution, including Deemed Supply.

Tax: Value Added Tax (VAT)

The Decree Law has been framed to empower the State to levy tax on import and supply which is to be called as Value Added Tax (hereinafter referred to as "VAT"). The scope of taxation under the Decree would be as under:

- Supply of goods or services: The Decree-Law encompasses levy of Tax both on the supply of goods and supply of services. Title 3 (Articles 5 to 10) of the Decree Law define what is treated as supply of goods or supply of services. The tax incidence would arise on occurrence of any of the events of supply as mentioned in the Title 3.
- Import of goods or services : There is separate reference of imports of goods and services as tax would be imposed on importation also. VAT imposed on importation of goods would be in addition to Customs Duty.

Tax is imposed on all stages of value chain starting from production to distribution. As the name itself indicates, the tax would be levied on value addition in each of these stages till the goods or services reach the final consumer. Entire incidence of tax is permitted to be transferred to be borne by consumer. There could be instances where consumption is by business. In such cases, the tax burden would be on such business which may be recovered either in the form of recoverable input tax or by imposing tax on the deemed supply.

The definition of VAT covers tax levied on "deemed supply". The deemed supply has

relevance across VAT laws of all the countries. The instances covered within scope of deemed supply may not fall within the definition of supply as per their natural meaning but by way of deeming fiction created by Decree Law, they are given the status of supply resulting in treatment similar to what is applicable for supply of goods or services. Chapter 2 of the Decree Law defines what is deemed supply including exceptions thereof i.e. circumstances wherein the supply shall not be treated as deemed supply.

Wherever the law has reference to the word “tax”, it shall connote the Value Added Tax payable under this Decree- Law.

GCC States: All countries that are full members of The Cooperation Council for the Arab States of the Gulf pursuant to its Charter.

Implementing States: The GCC States that are implementing a Tax law pursuant to an issued legislation.

The member States of the Cooperation Council for the Arab States of the Gulf (GCC), namely:

- United Arab Emirates,
- Kingdom of Bahrain,
- Kingdom of Saudi Arabia,
- Sultanate of Oman,
- State of Qatar, and
- State of Kuwait

All the member States have agreed to roll out the VAT in their States latest from 1 January, 2019. United Arab Emirates and Kingdom of Saudi Arabia are the first two States implementing it from 1 January, 2018. Other States are also expected to implement the same within the agreed time frame. In the UAE VAT Law, for instance, references can be found to ‘Implementing States’. Although the GCC Framework Agreement has been signed by six GCC member States, only when each sovereign enacts its own VAT legislation and implements that law, will that member State enjoy the treatment of ‘Implementation State’ under the respective VAT laws of other member States.

This reference to implementing States assumes significance considering that special status is given to transactions taking place between Taxable Person of (say) UAE and Implementing State(s). Any State would fall within definition of the implementing State from the date it implements the VAT. Till such time, though part of the GCC States, any transaction taking place between Taxable Person of UAE and Person of such non-Implementing States would be dealt with in similar way as would be in case of transactions with persons of other countries outside GCC territory in rest-of-world

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Background Material on UAE VAT

Goods: Physical property that can be supplied including real estate, water, and all forms of energy as specified in the Executive Regulation of this Decree-Law.

- There is specific definition of “goods” within the Decree Law which requires this definition of goods to be observed in the entire law though there could be separate definition of the goods in other laws of the State. The definition of goods is very specific as it covers only physical property i.e. tangible goods. Classification issues may arise as to the treatment of intangible property i.e. software installed in physical form viz. DVD and supplied off the shelf. Relevant point for consideration may arise whether DVD which is used as medium to convey intellectual content could be said to be physical (tangible) property or intangible property considering the fact that value of software/intangible portion is significantly higher than the medium used to convey it.
- In addition to all physical properties which are capable of being supplied, few things have been specifically included in the definition of goods. First is “real estate”. ‘Real estate’ is a wide term which could include bare land, semi developed plots, immovable property under construction or completed immovable property. Important feature would be that it should have characteristics of immovability. Supply of real estate *per se* is considered as goods. But any right in the real estate, which could be certain limited interest or interest equivalent to the shares giving the holder thereof *de jure* or *de facto* rights of ownership or possession of immovable properties would be regarded as goods or not would be interesting to evaluate. The detailed discussion on this is made in the Chapter – II: Levy of VAT.
- Water and all forms of energy have also been specifically covered within the definition of goods. Specific inclusion would avoid any ambiguity of the tax treatment of the same.

It is pertinent to note that the scope of real estate, water and energy which could be covered within definition of goods shall be specified in the Executive Regulations of the Decree Law.

Services: Anything that can be supplied other than goods.

VAT being consumption tax has been made very wide to cover consumption of all nature by expanding the scope to include anything within definition of service which is not in the nature of goods. Hence, transfer of title in goods is “supply of goods” whereas temporarily providing the goods for usage is “supply of services”. The distinction between goods and services is very vital from the perspective of eligibility of exemptions, place of supply provisions etc. It is relevant to observe that intangible properties which have been excluded from the definition of goods would get covered within definition of services. It would be interesting to see the implications on issuance of shares, securities etc. by business as to whether it constitute goods or services.

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Import: The arrival of Goods from abroad into the State or receipt of Services from outside the State.

Importer: With respect to importing Goods, it is the Person whose name is listed as the importer of the Goods on the date of Import for customs clearance purposes. With respect to Services, it is the Recipient of these Services.

Import of goods within territory of UAE has been subject to Customs Duty as per Unified Customs Law of all GCC States. The definition of imports cover both only goods under Unified Customs Law which are additionally brought within the levy of VAT and import of services that are not covered by Unified Customs Law come within the levy of VAT Law (in certain instances) on reverse charge mechanism. Import of goods is when the goods are brought within territory of UAE from abroad which means not only from outside GCC countries but also from any of the GCC countries. Accordingly, importation of goods from KSA to UAE would be covered within definition of imports, subject of course to mutual cooperation exclusions and exemptions, if any. Here one need to distinguish between definition of imports as given under 'the Decree law' and 'Common VAT Agreement of the States of the GCC'. In the later, importation of goods covers entry of goods into any Member State from outside the Council Territory in accordance with provisions of Unified Customs Law.

Similar to goods, receipt of services in the UAE State from outside the State get covered within the definition of import under VAT Laws. The person whose name is listed as importer on the date of importation for Customs clearance purpose is defined as importer.

Designated Zone: Any area specified by a Cabinet Decision issued at the suggestion of the Minister, as a Designated Zone for the purpose of this Decree-Law.

- UAE has many Free Trade Zone (FTZ) to promote the international trade and economic activities in the region. These areas are regarded as outside the State and any goods brought to the FTZ from mainland and *vice versa* are treated for customs purpose, similar to international trade.
- The designated zones (DZ) are special areas which are notified to be as such for the purpose of the Decree Law. These are regarded as outside State and may or may not coincide with the FTZ. The final decision to designate the zone rests with the Cabinet at the suggestion of Minister.

Concerned Goods: Goods that have been imported, and would not be exempt if supplied in the State.

Concerned Services: Services that have been imported, where the place of supply is in the State, and would not be exempt if supplied in the State.

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'Concerned Goods' and 'Concerned Services' have been defined in the context of importation of goods and services. Where any goods or services are imported in the State and they are not exempted in the State when supplied locally, these shall be designated as 'concerned goods' and 'concerned services' irrespective of their taxability status in the country of exportation. It gains relevance under reverse charge mechanism where liability to pay tax on importation of goods or services would depend upon whether they are exempted or not when supplied within State. A detailed discussion on Reverse Charge Mechanism is made in Chapter – II: Levy of VAT of this BGM.

Export: Goods departing the State or the provision of Services to a Person whose Place of Establishment or Fixed Establishment is outside the State.

- Movement of goods from the State to outside State is covered within ambit of export of goods. The movement of goods is alone relevant and not the location of the exporter/importer.
- Qualifying Exports are those which do not have their 'place of supply' within UAE. Qualifying Exports is a sub-sect of all Exports undertaken by an exporter in UAE. Qualifying Exports applies to both goods and services based on the rules for determination of their respective 'place of supply'.
- Qualifying Export of Goods will be treated as 'zero-rated supplies'. Accordingly, no tax would be payable on such supplies but the exporter will be eligible to recover and claim refund of corresponding recoverable input tax.
- Similar to export of goods, the export of service has also been defined. It denotes a situation where services are supplied to a person who has place of establishment or fixed establishment (collectively called as place of residence) outside the State.
- It should be noted that the location of performance of service may not be relevant, except in the specified cases, to determine the nature of services as export of services.
- Qualifying Export of Services are at par with the export of goods and are not liable to tax being zero rated. Tax paid on the inward supplies of goods or services used for making export of services can be recovered and adjusted against liability arising on other domestic supplies or claimed as refund.

Person: A natural or legal person.

Taxable Person: Any Person registered or obligated to register for Tax purposes under this Decree-Law.

Taxpayer: Any person obligated to pay Tax in the State under this Decree-Law, whether a Taxable Person or end consumer.

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All natural and legal persons have been included within the definition of person. When a person gets himself registered under the Decree Law, whether compulsorily or voluntarily, he becomes a taxable person. Further, a person who is liable to get registered as per Decree Law whether or not get himself registered gets covered within definition of taxable person.

The liability to get registration is distinguished from liability to pay. In some instances, the onus to pay tax has been put on recipient of supplies also. Such person, though not a taxable person, still gets covered within the ambit of taxable person.

Tax Registration: A procedure according to which the Taxable Person or his Legal Representative registers for Tax purposes at the Authority.
Tax Registration Number (TRN): A unique number issued by the Authority for each Person registered for Tax purposes.
Registrant: The Taxable Person who has been issued with a TRN.
Tax Return: Information and data specified for Tax purposes and submitted by a Taxable Person in accordance with a form prepared by the Authority.

On making application for registration, each person shall be assigned a unique number which needs to be used for invoicing, communication with authorities and all other purposes under the Law. Once a person is allotted TRN, he shall be considered as Registrant. Tax Return is a form wherein information and data specified for Tax purpose has to be submitted by the taxable person periodically at given intervals. Being in possession of a valid TRN the person enjoys special treatment under 'place of supply'.

Recipient of Goods: Person to whom Goods are supplied or imported.
Recipient of Services: Person to whom Services are supplied or imported.

Transactions involving more than two persons, could result in an ambiguity as to who should be treated as the 'recipient' for filing the return of inward supplies, paying tax on reverse charge basis, determining whether the relationship with the supplier will impact valuation, etc. This requires determination of recipient of service/recipient of goods. VAT Law being based on the 'place of supply' of goods and services, 'recipient' would be the person who contracts with Supplier for the supply regardless of the site of delivery of the goods and the place of consumption of services.

Taxable Trader: A Taxable Person in the Implementing States, whose main activity is the distribution of water and all types of energy as specified in the Executive Regulation of this Decree-Law.

The Taxable Trader is defined with special reference to taxable persons engaged in main activities of distribution of water and all types of energies as specified in the Executive Regulations. Such person may be in any of the Implementing States.

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Consideration: All that is received or expected to be received for the supply of Goods or Services, whether in money or other acceptable forms of payment.

The following aspects need to be noted:

- It refers to the payment received by the supplier in relation to the supply. There is no reference as to the person who is required to pay consideration. Therefore, a third party to a contract can also contribute towards consideration.
- Consideration, therefore, is not the amount that the recipient pays but the amount that the supplier collects whether from the recipient or any third party. This would be particularly relevant in dealing with complex arrangements in digital economy and new-age business. It is also relevant that consideration includes not only what has been paid but also which supplier may expect to receive in future.
- Consideration can be in the form of **money or other acceptable 'forms' of payment**. With technological advancement, there are many other forms of settlement of consideration which represent money such as wire transfer, online transfer, e-payment, pre-paid instruments or digital wallets. In view of the words 'other forms of payment', it can be understood as deriving its meaning from 'money' or expanded to include 'any form of consideration'. Interpretation cannot travel beyond the words used by the law-maker. Words of the definition should be read in its entirety and not by selecting parts of it although isolating certain words may be helpful to examine the effect it produces on the rest of the context. If 'anything' can be consideration then the reference to money in the later part of the definition would be rendered otiose. And if this later part of the definition must be given its due meaning, the definition cannot receive such a significant, profound and expanded meaning by interpretation with some grammatical liberties. When the law-making body was free to use clear expressions to include non-monetary consideration in the definition of consideration, the restrictive words used must also be admitted to be used deliberately.

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- Consideration can be in the form of **'whether' in money or other acceptable forms of payment**. With technological advancement, there are many other forms of settlement of consideration which represent money such as wire transfer, online transfer, e-payment, pre-paid instruments or digital wallets. The word 'whether' appearing before the words 'other forms of payment', appears to indicate an indifference as to the manner in which the consideration may be paid. Particularly, with the opening words 'all that is received' which allows the supplier to be the judge of 'what' he is willing to receive as consideration. These words appear to accommodate barter and non-monetary consideration also. While a supplier may be willing to accept 'anything' as

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consideration, VAT Law must be understood as depending on the supplier to be the judge of what is acceptable as consideration. But, it is a surprise that the law-making body, being aware of the non-monetary forms that consideration can take, chose to leave such an important issue to interpretation or the whims of the supplier about – what is or isn't consideration – who may change his mind depending on the outcome of his choice. Or perhaps this divergence arises because we are relying on a translation of the original draft.

- Whatever is received or expected to be received by the supplier, should be in relation to supply of goods or services. This requires existence of nexus between supply of goods / services and consideration.
- There is no specific mention as to whether deposits form part of the consideration. There could be a possible view that lumpsum refundable deposits not directly attributable to supply of goods or service may not form part of consideration. However, deposits should be distinguished from advances as the later is very well within the purview of consideration at the time of receipt.

Business: Any activity conducted regularly, on an ongoing basis and independently by any Person, in any location, such as industrial, commercial, agricultural, professional, service or excavation activities or anything related to the use of tangible or intangible properties.

- An activity may be within the purview of taxation law provided it is done in the course of business. A transaction shall be treated as conducting a business only if it is conducted in a regular manner i.e. a single stray transaction of sale of goods or services shall not be covered under the purview of business.
- Business displays intention, competence – qualification or preparedness, not accidental (activities), licensed organization, regularity, profit motive, etc. are indicative of Business.
- The word “independently” is very significant in the definition of business. One could infer the meaning of ‘independently’ with reference to Article 10 of EU VAT Directives, where the term ‘independent’ excludes employed and other persons from VAT in so far as they are bound to an employer by a contract of employment or by any other legal ties creating the relationship of employer and employee as regards working conditions, remuneration and the employer’s liability.
- The activities given in the definition are illustrative nature as they are preceded by the word “such as”. Hence, there could be any other activities of similar nature to be covered within definition of business.

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- Above activities may be carried out in relation to tangible as well as intangible properties.

Taxable Supply: A supply of Goods or Services for a consideration by a Person conducting Business in the State, and does not include Exempt Supply.

Exempt Supply: A supply of Goods or Services for consideration while conducting Business in the State, where no Tax is due and no Input Tax may be recovered, except according to the provisions of this Decree-Law.

Deemed Supply: Anything considered as a supply and treated as a Taxable Supply according to the instances stipulated in this Decree-Law.

- Taxable Supplies: Important features of taxable supplies are:
 - (a) There should be “supply of goods” or “supply of service”
 - (b) Such supply should be for consideration.
 - (c) The supply must have been made in the course of business.
 - (d) The supply must have been made by a person in the State wherein he is conducting business. The law makers have specifically chosen the word “person” instead of “taxable person” as there could be supplies where liability arises irrespective of registration status of supplier.
 - (e) Exempted supplies are not included within the definition of taxable supplies. However, zero rated supplies (i.e. exempted supplies with right to recover input tax) would be taxable supplies.
- Exempted Supplies: Important features of exempted supplies are:
 - (a) The supplies must be made in the course of business. Activity which is not in the course of business does not get covered within the definition of exempted supplies.
 - (b) There is no tax due on the supply.
 - (c) The supplier cannot recover the tax paid on inward supplies of goods or services used for making such supplies. Exempted supplies should be distinguished from zero rated supplies where tax is not due on outward supplies but corresponding input tax may be recovered.
- Deemed Supplies are such supplies which may not fall within the normal meaning of supply but by virtue of deeming fiction created in the law, would be considered as deemed supplies and subject to tax. The instances of deemed supplies and its exceptions are covered in Article 11 and Article 12 of the Decree law respectively.

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Input Tax: Tax paid by a Person or due from him when Goods or Services are supplied to him, or when conducting an Import.

Recoverable Tax: Amounts that were paid and may be returned by the Authority to the Taxpayer pursuant to the provisions of this Decree-Law.

Output Tax: Tax charged on a Taxable Supply and any supply considered as a Taxable Supply.

Due Tax: Tax that is calculated and charged pursuant to this Decree-Law.

Payable Tax: Tax that is due for payment to the Authority.

- Input tax is tax paid/payable by a person on goods or services which are supplied to him. This also includes the tax paid/payable on importation of goods or services under reverse charge mechanism.
- Recoverable tax is that portion of input tax which a taxable person can adjust against tax due on his supplies. There could be instances where input tax may not be recovered as being used for making supplies not in the course of business or for making exempted supplies or specifically excluded from the recoverability as per provision of the Decree Law or Executive Regulations issued thereunder. Only Taxable Person (registered or obligated) is allowed to recover tax.
- Output tax is tax charged on the taxable supplies. Tax payable under RCM is also covered within purview of Output Tax. Further, any tax charged on the deemed supplies are also termed as output tax.
- Payable Tax is net tax dues payable to Authority. This is net of output tax minus recoverable input tax deducted in the tax period.

Tax Invoice: A written or electronic document in which the occurrence of a Taxable Supply is recorded with details pertaining to it.

Tax Credit Note: A written or electronic document in which the occurrence of any amendment to a Taxable Supply that reduces or cancels the same, is recorded and the details pertaining to it.

The Tax invoice is a document which records the transaction between parties and is required to have all details to be disclosed therein as are mandated by the Decree Law or regulations issued thereunder. The Tax invoice may be issued either physically or it could be an electronic document. Tax Credit Note is amendment to the Tax Invoice under circumstances which results in the reduction or cancellation of taxable supply or tax thereon charged previously based on the tax invoice. Credit Note is a medium for adjustment or correction in originally reported tax liability and can be issued under specified circumstances.

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Background Material on UAE VAT

Government Entities: Federal and local ministries, government departments, government agencies, authorities and public institutions in the State.

Activities conducted with Sovereign Capacity: Activities conducted by Government Entities in their sole competent capacity, with or without Consideration.

Charities: Societies and associations of public welfare not aiming to make a profit that are listed within a Cabinet Decision issued at the suggestion of the Minister.

Government entities are specified entities in the State which are stated by

- Federal and local ministries,
- Government departments,
- Government agencies, Authorities and
- Public institutions in the State.

There is separate tax treatment for supplies made by the government entities depending upon the nature of supplies i.e. activities conducted in a non-sovereign capacity or in competition with the private sector.

Charities have also been defined to include such non-profit organisations which are listed/designated by the Cabinet decision. Such entities may not carry out economic activities in the course of business and hence not within purview of the tax ambit.

Mandatory Registration Threshold: An amount specified in the Executive Regulation of this Decree-Law; if exceeded by the value of Taxable Supplies or is anticipated to be exceeded, the supplier shall apply for Tax Registration.

Voluntary Registration Threshold: An amount specified in the Executive Regulation of this Decree-Law; if exceeded by the value of Taxable Supplies or taxable expenses or is anticipated to be exceeded, the supplier may apply for Tax Registration.

Tax Group: Two or more Persons registered with the Authority for Tax purposes as a single taxable person in accordance with the provisions of this Decree-Law.

- A person making taxable supplies is required to take registration if the value of taxable supplies or anticipated value of taxable supplies exceeds the mandatory threshold of registration. Where taxable supplies made by a person do not cross the minimum threshold limit for mandatory registration but cross/expected to cross voluntary threshold limit, he may apply for voluntary registration.
- In lieu of registration as separate taxable persons, two or more related persons can get themselves registered as tax group where single registration shall be allotted to the

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entire group instead of individual registration for each of the person forming part of the group. Tax Registration as a tax group can be taken only if all the conditions specified in Article 14 are satisfied. Any transaction taking place between members of tax group shall not be subject to VAT implications.

Transport-related Services: Shipment, packaging and securing cargo, preparation of Customs documents, container management, loading, unloading, storing and moving of Goods, or any another closely related services or services that are necessary to conduct the transportation services.

The transport related services are intended to cover services which are incidental or ancillary to transportation of goods.

Place of Establishment: The place where a Business is legally established in a country pursuant to the decision of its establishment, or in which significant management decisions are taken and central management functions are conducted.

Fixed Establishment: Any fixed place of business, other than the Place of Establishment, in which the Person conducts his business regularly or permanently and where sufficient human and technology resources exist to enable the Person to supply or acquire Goods or Services, including the Person's branches.

Place of Residence: The place where a Person has a Place of Establishment or Fixed Establishment, in accordance with the provisions of this Decree-Law.

Non-Resident: Any person who does not own a Place of Establishment or Fixed Establishment in the State and usually does not reside in the State.

- Place of establishment denotes the place where business is legally constituted or where central decision making or management functions are undertaken. This could be registered office, corporate office or any other place satisfying the criterions
- Fixed establishment indicates the place where business is carried on but is not the place of establishment. The following three elements are critical to determine whether a place is a 'fixed establishment':
 - (a) Having a sufficient degree of permanence;
 - (b) Having a structure of human and technical resources; and
 - (c) Other than a 'Place of Establishment'.

The following aspects need to be noted:

- The person should undertake supply of goods or services or should receive and use goods and services for own needs in such place;

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- Not every temporary or interim location of a project site or transit-warehouse will become a fixed establishment of the taxable person.
- Temporary presence of staff in a place by way of a short visit to a place or so does not make that place a fixed establishment;
- The fixed establishment should have integral connection with the making or receipt of supply. Mere presence of persons at one location for the purpose of temporary or non-integral functions i.e. accounting or billing etc., ipso facto, cannot be considered as existence of fixed establishment.
- The definition of fixed establishment specifically includes the branch office within its definition.
- The place of establishment or fixed establishment, as the case may be, is considered to be place of residence. This is relevant for determining the place of supply and place where registration has to be obtained.
- A person who does have a place of residence or does not normally resides in the State is considered to be non-resident person. A person making taxable supplies exceeding the compulsory threshold limit is required to take registration in the State. But there are specific provisions for non-resident to take registration and computation of threshold of the same.

Related Parties: Two or more Persons who are not separated on the economic, financial or regulatory level, where one can control the others either by Law, or through the acquisition of shares or voting rights.

Transactions between related parties are prone to distortion and this requires specific provisions in the tax laws to curb such practices. The 'Related parties' have been defined to have following essential aspects:

- A. Where two or more persons are not separable from each other on account of:
 - a. Economic;
 - b. Financial; or
 - c. Regulatory leveland
- B. One of them can control other/s either by:
 - a. Law or
 - b. Acquisition or (i) shares or (ii) voting rights

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Customs Legislation: Federal and local legislation that regulate customs in the State.

The UAE Federal Custom Authority specifies the rules and procedures for import to and export from the State. These rules and procedures are derived from the GCC Common Custom Law which specify the rules for the GCC member States. As per the UAE Custom Law, the territory has been divided into two - Mainland and Free Trade Zones. These Free Zones are considered outside the Custom Territories i.e. import and export duties are not applicable. However, if goods or services are exported from Free Zones to UAE Mainland, duties shall be leviable. Moreover, each Free Zone has its own Regulatory Authority and Laws subject to some regulations from UAE's Relevant Authority.

Voucher: Any instrument that gives the right to receive Goods or Services against the value stated thereon or the right to receive a discount on the price of the Goods or Services. Vouchers do not include postage stamps issued by the Emirates Post Group.

- 'Voucher', for the purposes of VAT, means an instrument which gives its holder a right to receive goods or services against the value stated thereon. At the same time it is an obligation for the holder to accept it as consideration (wholly or partly) for a supply. Therefore, a voucher is an asset for the recipient, and without a recipient, a 'voucher' would lose its meaning. Therefore, in the case of a supplier issuing a voucher to a recipient of goods, on his making a purchase from the supplier, the voucher is not being viewed as an additional outcome of the supply made to the recipient. Rather, it is an instrument that can be used in place of money (or other consideration) which can be used on effecting yet another inward supply. E.g. coupons, tokens, promo-codes, etc.
- Sometimes, instead of entitling the recipient to receive the goods or services, the voucher entitles the recipient to claim discount on the price of goods or services.
- With technological advancement, the voucher need not necessarily be in physical form. It can be in digital forms also so long as it satisfies the essential attributes to claim right to receive goods or services or discount on their prices.
- Sale or issuance of voucher will be considered as supply only when consideration received exceeds the advertised monetary value of voucher. In all other cases, sale or issuance of voucher will not be considered as supply.

Capital Assets: Business assets designated for long-term use.

Capital Assets Scheme: A scheme whereby the initially recovered Input Tax is adjusted based on the actual use during a specific period.

- Capital assets are in the nature of business assets which are designated for long term use. Long term use has not been defined in the Decree Law. This could be said to be

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assets used or intended to be used for more than one year. The usage indicates that the economic useful life of the asset should be for longer duration.

- When the assets are used for longer period, it may not be proper to recover the entire input tax thereon in the year of purchase. To match the tax paid on purchase of high value assets and economic benefit accruing from the usage of assets, capital asset scheme mechanism is designed wherein initially recovered input tax may be spread across longer period and is adjusted based on the usage of assets during a specified period. The methodology of the same is to be determined by Executive Regulations.

Administrative Penalties: Amounts imposed upon a Person by the Authority for breaching the provisions of this Decree-Law or Federal Law No. (7) of 2017 on Tax Procedures.

Administrative Penalties Assessment: A decision issued by the Authority concerning to Administrative Penalties due.

- Separate Tax procedures have been issued vide Federal Law No. (7) of 2017 to provide for procedural and regulatory aspects of tax assessment, rights and responsibilities of tax payers and authorities and consequences for non-compliance of the law.
- Administrative Penalties may be imposed on any person either under this Decree Law or under Federal law on tax Procedure.
- Separate authority is to be constituted for tax assessment purpose and decision of the authority for concerning due penalties is called as administrative penalties assessment.

Excise Tax: A tax imposed on specific Goods.

The UAE has proposed to implement the duty of excise from 1 October, 2017 -which shall be at 100% on Tobacco products and health drinks and @50% on fizzy drinks. The tax is leviable on activities of production, imports, release of excise goods from designated zone and stockpiling of excise goods. Federal Decree-Law No. (7) of 2017 has been issued for levy and collection of Excise Tax.

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Chapter – II

Levy of VAT

Article 2 – Scope of Tax

Article 2: Tax shall be imposed on:

1. Every Taxable Supply and Deemed Supply made by the Taxable Person.
2. Import of Concerned Goods except as specified in the Executive Regulation of this Decree-Law.

Introduction

The VAT Law seeks to cover under VAT the following:

1. Every Taxable Supply and Deemed Supply made by the Taxable Person.
2. Import of Concerned Goods except as specified in the VAT Law.

Not all transactions are liable to VAT under the VAT Law. The boundaries are set by this article in two ways. Firstly, transactions that come within the definition – Taxable Supply – are liable to VAT and those transactions that (admittedly) do not come within the definition are forcibly brought within the definition by a fiction of law - Deemed Supply. Then, persons who are to come within the operation of the law – Taxable Persons – are also specified.

Now, from the whole range of transactions that take place, we will need to delve into a very specific sub-sect of those transactions to identify where the liability to VAT stands attracted.

Analysis

Taxable Supply

Taxable Supply is defined in Article 1 as “a supply of Goods or Services for a Consideration by a Person conducting Business in the State, and does not include Exempt Supply”. From this definition, we can observe the following ingredients to be flowing into Article 2 regarding Scope of Tax:

- Goods or Services must be involved in a transaction of supply
- Consideration must exist as an equitable exchange for the goods or services
- Two Persons must be involved in the transaction
- Transaction must occur in the course of Business of the Person
- Such Business must be organized and undertaken in the State of UAE
- It should not be an expressly Exempt Supply

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From the above paraphrased presentation of Article 1, further discussion, in detail, may be taken up.

Goods and Services

Goods and Services being defined in a mutually exclusive manner appear to include all property. Immovable property is also included in the definition of goods. Although immovable property appears to be included, it is included only when it is in the form of 'real estate'. Real estate appears to be limited to 'property under development' – for sale or lease – and not land, rights in land and building after its completion. Energy will also be goods provided it is specified in Executive Regulations. Services appear to include 'non-physical' property along with 'anything' else that can be supplied. Services must be understood not merely as a verb but a noun that is capable of encompassing all transactions that escape the definition of goods. Transactions involving immovable property other than real estate (as explained above) would also come within the coverage of services. For example, transfer of lease rights to immovable property, grant of rights to exploit natural resources, mining rights, roof-rights and rights-to-open spaces and so on.



It can be seen from the above representation that Services is a large super-sect of transactions and goods is a sub-sect. Services can easily include goods and transactions involving goods due to the definition. But, services leave room for goods by the exclusion.

Consideration

Consideration appears to be limited to money consideration. Though, it is defined with the words 'all that' is received or expected to be received 'for' the supply, the definition concludes with the words 'money or other acceptable forms of payment'. Consideration in money can be paid in various forms such as cheques, bank drafts, online payment, credit cards and digital wallets, if approved. The practice of issuing "post-dated" cheques may be only a manner of financing and may not be considered as payment of the consideration.

Further, it can be inferred that exchange of 'goods for goods' or 'services for services' or 'goods for services' would not come within this definition of consideration due to the words 'forms of payment'. Barter is not a 'form' of money but the goods or services that are

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exchanged. In fact, arrangements involving ‘non-monetary inducements’ would not be consideration even if they motivate delivery of goods or services. It is important to demonstrate that it is this consideration which motivated the supply and not a mere coincidental, simultaneous and cross-cancelling transaction that takes place in a particular case to be regarded as consideration.

Person

Person includes natural persons and legal persons and such Persons must possess lawful authority to undertake the supply and with an active intention. Any transaction that accidentally takes place resulting in goods or services reaching another person would not attract VAT. Transactions by the Sovereign also can be liable to VAT.

But it is important to note that since ‘consideration’ is necessary to undertake Supply, we can infer that ‘two’ Persons are necessary to complete a Taxable Supply. It is not possible for one Person to pay the Consideration to himself. Further, branches of the same Business located in different Emirates also do not satisfy this requirement of ‘two’ Persons and hence there cannot be a Taxable Supply between branches even if one of them is outside the Emirates. Transactions between a Partner and a LLP would also not be liable to VAT as the Partner and the LLP are not ‘two’ different Persons.

Business

“Any activity conducted regularly, on an ongoing basis and independently by any Person, in any location, such as industrial, commercial, agricultural, professional, service or excavation activities or anything related to the use of tangible or intangible properties”

Business starts with an intention visible in the form of an organized effort demonstrating an ability to make a valid offer – to supply goods or services – to a potential customer, enter into negotiations until acceptance and finally fulfil the offer by delivering the goods or services. In fact, business is not a ‘business’ until ‘income generating capacity’ can be demonstrated. For example, construction of a factory is not business until the factory is ready and trial production is complete because until then all activities are merely exploratory and no capability to meet the requirements of a customer has been established. Further, commercial motive and intention require existence of possibility of profit (even it is not realized) along with regularity of transactions to demonstrate this intention. Stray transactions that are business-like cannot be equated with business even if such transactions result in some profit incidentally.

In other words, if an employee receives salary from the employer the receipt of salary cannot be treated as Business. It should be independent activity performed and an employee cannot perform his part of the job without the support and involvement of others in the organisation.

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'In' UAE

Business 'in' UAE is another important aspect in this Article. Supply would be Taxable in this Part in the case of Person conducting Business 'in' UAE. The Supply is not to be undertaken 'in' UAE nor is the Consideration to be received 'in' UAE. The sole requirement for Taxable Supply is that the Business that recognizes a Supply to have been undertaken must be 'in' UAE. Business established in UAE with branches outside UAE will not come within the Scope of Tax because the Person (Entity) may well be 'in' UAE but for VAT to apply, the Business in relation to which VAT is levied must be 'in' UAE.

There is much clarity in these words where the attention is focused to the Business vis-à-vis the Supply and not the Person (Entity) or Consideration or any other factor.

Exempt Supply

Exempt Supply is one which contains all the ingredients of a Taxable Supply but no tax is due. Tax Due will be 'nil' not only when a person is excluded from Registration but also when the Goods or Services are supplied in circumstances where tax is not applicable or the Supply is excluded by Regulations. Exempt Supply must not be misconstrued as a transaction that fails to satisfy the requirements of Taxable Supply under this VAT Law.

Deemed Supply

Even where one or more of the ingredients of Taxable Supply are missing, yet if the VAT Law considers such Supply to be Taxable, then it will be so. VAT Law furnishes the missing ingredients through various Articles such as Articles 7, 11 and 12 where those transactions which are not Taxable Supply are specifically regarded as Taxable.

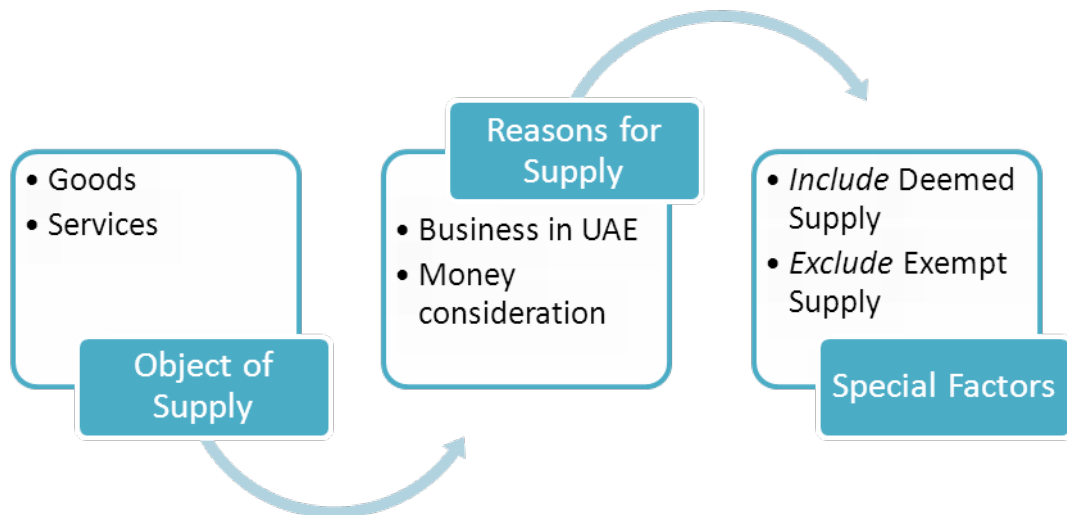
'Deemed' is a word that is powerful enough to convey the meaning that is not normally available to the word or phrase in relation to which it is used. Since such a powerful word is used in the VAT Law, the lacunae in the ingredients in the transactions that are 'deemed' to be a Taxable Supply will not prevail and come within the Scope of Tax.

Scope of Tax – Domestic

Now, it is clear that there are various transactions that may escape the incidence of VAT due to one or other ingredient not being present. Only when all the ingredients are present it will be a Taxable Supply.

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From the above representation, it can be seen that a large number of transactions may fall outside the scope of VAT for want of one or other ingredient even though they may be undertaken in UAE. It is evident that the Scope of Tax applies in the Domestic limb of the Article, applies only when these specific circumstances exist.

Scope of Tax – Import

Import of Concerned Goods is also liable to VAT. Import refers to “arrival of goods from abroad into the State....”. Although import of services is also covered by the definition, services are not part of the Scope of Tax in this limb of import.

‘Arrival’ does not signify the ‘cause’, even if the goods reach UAE on their own, VAT would be attracted. It is important to identify the ‘cause’ so as to know if VAT applies even on ‘transit or transshipment’ cargo.

Even though the different ingredients in Domestic limb are missing here, the reference to Concerned Goods is sufficient to attract all those ingredients. It is interesting to note that Concerned Goods are defined to mean those Goods that ‘would not be exempt if supplied in the State’. So, Goods that would be liable to VAT ‘had they been’ supplied would be liable even when they are imported into UAE. The ‘sequence chart’ provided at the end of discussion in Domestic limb would apply to Import limb with equal force.

Refer Chapter 8: Unified Customs Law for a detailed discussion on Import. The ingredients discussed in relation to Domestic limb will not apply in a transaction liable to VAT under Import limb.

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Conclusion

Scope of Tax contains two parts – Domestic and Import – as discussed above. A ‘standard rate’ of VAT is imposed on Taxable Supply and Import of Goods. Only transactions undertaken with ‘commercial intent’ would be liable to tax.

Article 3 – Tax Rate

Article 3 : Without prejudice to the provisions of Title Six of this Decree-Law, a standard rate of 5% shall be imposed on any supply or Import pursuant to Article 2 of this Decree-Law on the value of the supply or Import specified in the provisions of this Decree-Law.

Introduction

Levy of tax is one aspect but the quantification of the levy requires two things - the rate of tax and the valuation – this Article provides the rate of tax that is to be applied in VAT.

Analysis

Standard Rate

All Taxable Supplies will be liable to VAT at 5 per cent.

It is interesting to note that the VAT Law does not prescribe a higher rate of VAT with the power to notify the rate from time to time. As a result, any requirement to revise the rate of VAT requires an amendment to the Law itself.

It is also noteworthy that there is absolute clarity in the rate of VAT in UAE. All Taxable Suppliers – Domestic and Import – will be liable to the ‘standard’ rate of VAT. This single rate in itself may avoid a number of complexities and issues of classification.

Special Rates

This Article is subservient to Title Six – Zero-rated supply and exemptions – so that the purpose of those Articles are not in conflict with this Article. Accordingly, where Article 44 to 52 of the VAT Law exclude applicability of VAT on transactions that are zero-rated or are granted specific exemptions, the rate of tax prescribed in those Articles will apply and not the standard-rate prescribed in this Article. It is expected that too many rates or higher rate may not be specified.

Conclusion

VAT in UAE will be imposed at a standard rate of 5 per cent unless special rates are prescribed in the VAT Law or through the Executive Regulations of the Law.

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Article 4 – Responsibility to Tax

Article 4 : The Tax imposed shall be the responsibility of the following:

1. A Taxable Person who makes any supply stipulated in Clause (1) of Article 2 of this Decree-Law.
2. The Importer of Concerned Goods.
3. The Registrant who acquires Goods as stated in Clause (3) of Article 48 of this Decree-Law.

Introduction

Tax levied is meaningful only when the persons who are fastened with the obligation to discharge this liability are identified. This Article deals with this important aspect.

Analysis

Taxable Person

In the case of Domestic transaction, the Taxable Person who ‘makes’ the Taxable Supply will be responsible to deposit the tax. In the case of Import of Concerned Goods, the Importer will be responsible.

Recovery of Tax

It is common that the incidence of an indirect tax such as VAT is always passed on to customers when the Taxable Supply is made by charging VAT ‘in addition’ to the price. While this Article imposes the responsibility to pay VAT – Supplier or Importer – there is no mention of any ‘right’ to recover this tax from the customer.

Therefore, it is important to bear in mind that the ‘right to recover VAT’ is not a statutory right but a contractual right. And to this end, all contracts / purchase orders must be accepted on terms ‘taxes extra’ so that the negotiated price reaches the supplier intact. In other words, if the customer is not obligated to pay VAT through the terms of the contract of supply, then it is responsibility of the Supplier to bear the VAT.

Forward or Reverse

Later there is a discussion about reverse charge, in the context of Concerned Services, but right in this Article, it is noticeable that the VAT being imposed on the Importer is in effect a tax applied on reverse charge basis.

To the extent VAT is imposed on Domestic limb of the Supply, it is a forward charge. That is, the supplier is liable to pay this tax on the ‘outward’ transaction effected and the importer is liable to pay this tax on the ‘inward’ transaction undertaken.

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In order to give effect to the recovery of tax on reverse charge basis under Article 48, the person who obtains registration (whether the supplier or not) under that Article, such person is made responsible for payment of tax by this Article.

Conclusion

The Tax imposed is the responsibility of the Taxable Person, Importer, Registrant as the case may be.

Article 5 – Supply of Goods

Article 5 : The following shall be considered as supply of Goods:

1. Transfer of ownership of the Goods or the right to use them to another Person according to what is specified in the Executive Regulation of this Decree-Law.
2. Entry into a contract between two parties entailing the transfer of Goods at a later time, pursuant to the conditions specified in the Executive Regulation of this Decree-Law.

Introduction

Express 'purpose' of an arrangement resulting in Supply is provided in this article in respect of Goods. Goods as discussed earlier are physical property including real estate, water and specified forms of energy. There can be various commercial arrangements involving goods but not all of them can be brought to tax. This article details the arrangements that qualify as Supply and then takes such arrangements into article 2 for the levy of VAT.

Analysis

Super-set of Supplies

This article does not specify forms of Supply but lays down the 'purpose' of any form of Supply. There can be many 'forms' that an arrangement can take but if its ultimate result is as specified in this article, then it would be Supply.

Illustrated 'Forms' of Arrangement	Ultimate 'Purpose' of Arrangement	Supply or Not
Sale	Transfer of ownership	Yes
Barter	Transfer of ownership	Yes
Free stocks/gift	Transfer of ownership	Yes
Lease/Hire/Rental	Transfer of Right to Use	Yes
Hire-Purchase	Transfer of Right to Use with Transfer of ownership	Yes

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There can be yet other arrangements that do not satisfy the requirements of Supply. It is therefore, important to examine the ultimate 'purpose' of the arrangement if it satisfies the requirements of the article in order to determine whether it is a Supply or not.

Illustrated 'Forms' of Arrangement	Ultimate 'Purpose' of Arrangement	Supply or Not
Transfer	Compulsory acquisition	No
Disposal	Discard unserviceable article	No
Destruction	Permanent loss of article	No
Transport loss	Uncompensated loss of article	No
Storage loss	Uncompensated loss of article	No
Stock transfer	Movement of goods	No
Trial/demo stocks	Test usage without transfer of ownership	No
Land rights	Not Goods	No

Where any arrangement does not satisfy the ultimate 'purpose' specified in this article, then such arrangement will not be Supply. Hence, it can be seen from this article that FDL lays down a 'super-set' that can be regarded as Supply. This article does not specify a list of transactions that will be regarded as Supply. It provides a 'test' or 'purpose' that must be identified by examining the facts in every arrangement in order to conclude if it would be a Supply or not.

Goods

Please also note that Goods are defined to include real estate, water and specified forms of energy. Real estate, as discussed in an earlier chapter, has been discussed to be 'property under development' – sale or lease – and not land or completed building. Now, it is important to discuss this aspect further.

Goods is understood as moveable property and not limited to physical property. And therefore excludes immovable property and derivatives of immovable property. To assume that all forms of immovable property are included in the definition of Goods would be a disservice to the time-testing expression in international trade and commerce. But this view needs to be substantiated because the definition appears to deviate from the natural meaning and if it was intended to so deviate, then using the word 'Goods' was not necessary if the objective was to impose tax on all these articles – movables and immovables.

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Firstly, goods is 'physical' and 'property' – this itself excludes articles that are non-physical such as brand name, goodwill, software (not on any media) and even electricity and light. It also excludes those which are not legally permitted to be owned or have proprietary rights over living beings/phenomena/objects such as wild animals, free natural resources, human beings and human organs (available for medical purposes). The words 'physical property' help you to understand the limited extent to which VAT is to be imposed. Non-physical and non-proprietary objects are not included in 'Goods'.

Secondly, 'goods' specifically includes real estate, water and specified forms of energy – this indicates that either these were not already included in the first part of the definition or that even though included, these are being expressly declared to be included. For the reasons stated in respect of the first part of the definition, all these three cases appear not to be included in the definition but are being expressly included. This inclusive limb of the definition does not appear to be clarificatory in nature but rather a legislative fiction. When such fiction is present in law, the fiction must be carefully applied without attempting to expand beyond the express language used. Nothing in this limb appears to permit expansion of the list of such articles which are to be treated as Goods.

Immovable property is not synonymous with real estate. Immovable property is referred to as 'real estate' only when it is an object of inventory in Business. If immovable property such as highway, mountain, river bank, desert land or bridge will never be referred to as 'real estate', it follows that some of these examples may have been 'real estate' at some point of time but ceased to be 'real estate' once they were permanently established and came to be identified by a more accurate name such as highway, bridge or land.

Water is a natural resource that is free and unregulated. This word does not qualify the kind of water – river water, salt water, industrial water, potable water or distilled water. Nothing appears to restrict the coverage. Hence, water that no one can exercise proprietary rights over and is therefore excluded from the general understanding of physical property is expressly included in the definition. All forms of water are declared to be Goods.

Specified Forms of Energy

Energy is available in various forms and can even be industrially produced. But, energy generally is present in machines and in humans. Goods cannot possibly include energy because energy is the manifestation of an activity – man or machine – and requires some guidance. Due to the special nature of this article, the specific forms of energy are to be specified by Executive Regulation. Please note that merely because it can be specified, the Executive Regulation cannot go beyond the basic understanding of goods to specify any form of energy. It is only to avoid any contest or challenge that the power to specify is given to the

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Executive Regulation. Hence, energy is specified as Goods only when the process of its production is otherwise escaping tax such as operating a generator or working of a solar plant.

Transfer of Ownership

Armed with this understanding of Goods, it is now important to discuss briefly about 'ownership' and 'transfer of ownership'. Ownership is the vested right over the subject matter with a person or entity. This right can be inherent or acquired. Rights are inchoate or in-formation and become vested only after some event occurs, also referred to as vesting condition or event. Rights must be availed or action taken to realize them. Rights that have not yet vested can be lost if no action is taken to realize those rights.

For example, a person who has won a lottery but came to know after 4 days of draw has the right to claim prize money on the date of draw but does not realize this right until after 4 days when he goes to recover his claim. If the time allowed (say, 10 days) has lapsed, he can lose his 'unrealized' right.

Ownership is when the right over the subject matter is realized. Ownership allows a person to hold the article, use the article and enjoy its benefits. He can allow another person to use and enjoy it. He can give away his right or even destroy the article freely. Therefore, ownership is not one right but a 'bundle of rights'. Transfer of ownership is a complete and irreversible alienation of all these rights without any hold or control or reversionary option. Transfer is complete only if it is absolute.

Articles are often attached with some responsibility or conditions such as duty to use it carefully or obligation not to cause harm to others or use it in certain specified conditions or locations. Transfer of ownership transfers these conditions too. Articles being attached with such conditions do not render the transfer any less absolute.

Transfer of ownership requires the following ingredients; if they are missing, it will fail:

- Two legally capable persons
- Legally valid ownership in existence
- Both willing for the transfer
- Clearly recognizable 'object' of transfer
- Permanent alienation of the object
- Legally acceptable consideration agreed

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Right to Use

Now, an article whose 'benefits of use' alone are given away by its owner to another person for the enjoyment by such other person is also 'transfer' but only of the 'right to use'. Please note that the other person who acquires this 'right to use' must not be limited as to the right so received by him. That is, the person who receives the right to use must be free to use the article without being answerable or seeking permission from the owner. This is also referred to as 'absolute' right to use. Transfer is not complete if the transfer is not absolute.

If there is any limitation on the transfer, then it is not a transfer of right to use but "mere use" such as when we enter into a taxi, we do not receive the right to use but the service of transportation.

In order to give effect to a transfer, not only physical custody but lawful possession must be handed-over to the receiver or his representative.

Deferred Transfer

This article also refers to a delayed or deferred transfer of ownership. It is common for arrangements to provide a time-based payment schedule along with an immediate delivery of lawful possession so as to enable the receiver to enjoy the benefits of the article but place a condition that the absolute ownership is to pass only after all payments are made. This is not to retain possession over the article but to retain right of repossession in the event of a default but with a clear understanding that the receiver can commence enjoyment of the article from the commencement of this arrangement. Since, the benefits have reached the receiver, this article recognizes such an arrangement specifically to be a Supply.

This part of the article could not be making reference to 'right to use' because if right to use is transferred then possession is required to be given away. But if this is deferred to a later point in time, then no possession will be given immediately. And without possession, there can be no transfer of right to use.

In recognizing such 'deferred transfers', certain conditions are permitted to be specified by Executive Regulation.

Conclusion

This article recognizes three super-sets of transactions as Supply, namely:

- Transfer of ownership
- Transfer of right to use
- Deferred transfer of ownership

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Please note a thorough understanding of ‘inclusion’ and ‘exclusion’ from the definition of Goods is extremely important in order to appreciate the scope and coverage of Supply of Goods.

Article 6 – Supply of Services

Article 6 : A supply of Services shall be every supply that is not considered a supply of Goods, including any provision of Services specified in the Executive Regulation of this Decree-Law.

Introduction

Services are not ‘services performed’ in the form of a verb signifying some action being performed. Services are everything that is not goods. Service therefore can include transactions involving all those articles that are excluded from the definition of Goods as discussed previously. Supply of Services therefore requires a careful examination of the circumstances laid down in this article.

Analysis

Supply of Services

Not ‘any’ supply but ‘every’ supply that is not ‘considered’ a Supply of Goods is a Supply of Services. Also, ‘provision of specified services’ is also a Supply of Services. There are two aspects to this article.

Firstly, a transaction that is ‘not’ considered a Supply of Goods is a Supply of Services. Please note that for a transaction not to be considered a Supply of Good requires that it should first display all the ingredients of Supply and must be disqualified for a specific reason. If it was not at all a Supply, then it cannot become a Supply but of Services.

Once the transaction is established to be a Supply though not of Goods, it then becomes a Supply of Services. There could be several reasons for a transaction to have failed to be ‘considered’ as Supply of Goods. In ‘every’ one of those instances, this article seeks to impose VAT by regarding them to be a Supply of Services. Supply of Services is not merely when the object of Supply is ‘not’ Goods. Supply of Services is satisfied even when entire arrangement is a Supply – it must be a transfer of ownership, transfer of right to use or deferred transfer – where the object is not Goods. There is no other ‘transaction’ referred to in the case of Supply of Services. A transaction may not be a Supply of Goods for only two reasons:

- Object of supply was not Goods
- Transaction was none of the three – transfer of ownership, transfer of right to use or deferred transfer of ownership

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Background Material on UAE VAT

And in either case, it will be a Supply of Services. Goods which are exempted or zero-rated will not fall into Supply of Services because they are still considered Supply of Goods but the Tax Due is 'nil'.

Taxable Supply includes Supply of Services. Refer detailed discussion on Title Two that must be applied in relation to Services.

Secondly, transactions which are declared by Executive Regulation to be Services will be Services. Surely, the Executive Regulation will not proceed to declare something that is not at all a service to be Services. The guidance that the Executive Regulation would rely on is present in the first limb of this article. If Supply 'other than' Goods alone is Supply of Services, then there would have been no requirement for this second limb.

Therefore, it is required to examine the arrangement in a transaction and determine the reasons for not being considered as Supply of Goods. Such an exercise would yield valuable information to find out how a transaction can fail being regarded as Supply of Goods. And then applying tax on such transactions would be greatly simplified. For example, material handling facility allowed to an importer in a warehouse without granting necessary possession would not be a case of 'transfer of right to use' the cranes-hoists and as such can be treated as a Supply of Services.

Services

Services are defined as 'anything' that can be supplied excluding Goods. So, in order to be Services, it must be 'an object of Supply'. Supply for Consideration in Business in UAE is a Taxable Supply. Services are, therefore, those that can lawfully be supplied. In order to understand the definition of Services, it is important to understand definition of Goods and examine if the object here is not Goods then, can it be Services? For example, software (available for download) is non-physical property and does not fit the definition of Goods and as such would be Services.

Exclusion from the definition is not 'transactions' that fail to satisfy the definition but 'objects' that fail to satisfy definition of Goods. Services, therefore, will include all non-physical property and free non-proprietary objects. Articles that have been expressly included in the definition of goods such as real estate, water and specified forms of energy do not also come within the scope of Services because these specific inclusions are by legal fiction. Once something is implanted into the definition of Goods (whether by legal fiction or otherwise), it gets excluded (by that same process) from the definition of Services.

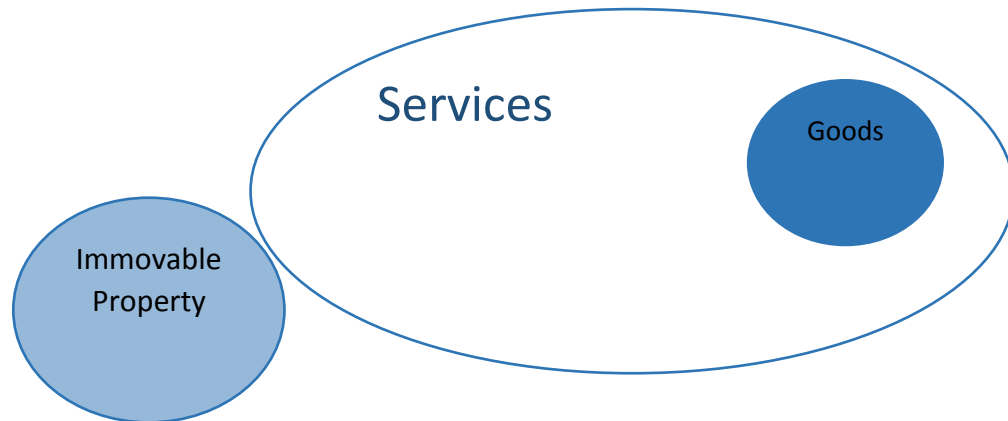
Transactions involving immovable property appear to be included in definition of Services but are not so in reality. If definition of Goods includes all movable property, then by the present

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definition of Services, all immovable property would be included as Services. But the definition of Goods is far more limited – it refers only to physical property and three specific articles – and therefore, Services will only be those that escape this definition of ‘physical property’ and do not travel beyond to include immovable property. Support to this understanding comes from:

- specific inclusion permitted by Executive Regulation which will include certain transactions involving immovable property and no others, and
- established UAE law regarding transaction involving immovable property discussed in ‘Chapter I: Important Definition’ which clearly lays down the legislative embargo on transfer of property in immovable property



The scope of the expression ‘anything’ in the definition of Services requires one more consideration with respect to its coverage. The definition of Value Added Tax provides the boundaries of this FDL, that is, “a tax imposed on the import and supply of Goods and Services at each stage of production and distribution, including Deemed Supply”. Herein lies the final word as to the purpose of this FDL and does not contain even a mention of intent to impose VAT on immovable property. Transactions involving land being so significant in implications merit express and not obscure mention in this important legislation.

Conclusion

Supply of Services is a mirror image of Supply of Goods in the structure of the transaction, although the object of supply stands substituted here. Supply of Services demands a careful consideration of the contractual arrangement in order to recognize that a supply could not be equated with Supply of Goods and arising out of that consideration to fall within Supply of Services. And take this finding into article 2 to accept liability to VAT.

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Article 7 – Supply of Special Cases

Article 7 : As an exception to what is stated in Articles (5) and (6) of this Decree-Law, the following shall not be considered a supply:

1. The sale or issuance of any Voucher unless the received Consideration exceeds its advertised monetary value, as specified in the Executive Regulation of this Decree-Law.
2. The transfer of whole or an independent part of a Business from a Person to a Taxable Person for the purposes of continuing the Business that was transferred.

Introduction

Transactions that already come within Supply of Goods or Supply of Services are now excluded from that Supply and treated as not being Supply. This exception is conditional and it is restricted for specific reasons. This article provides the nature of this conditional exclusion of Supply.

Analysis

Voucher

Voucher is a poorly understood but modern adaptation in trade especially in trade in digital economy. Vouchers are often used interchangeably with three different practices and before clarifying which of these is truly a voucher, we may discuss these three:

- When a customer purchases goods from a shop and receives a coupon that entitles him to a 'benefit or points' which can be adjusted against his next purchase at the same shop – here is a case where the 'issuer' of the points is the 'satisfier' of the incentive or benefit by reducing the liability (on next purchase) to the extent of 'benefit or points' awarded (from previous purchase). Reduction in the 'amount payable' in the (next) purchase through the issue of this coupon is 'discount'
- When a customer pays money to purchase a 'gift-card' bearing the value of money paid which can be surrendered at the time of making payment towards a purchase – here is a case where the gift-card is a bearer instrument that represents 'stored value of money' that is accepted as payment of consideration. This gift-card (by whatever name called) is nothing but money. It is a 'form of money' and is included in the definition of Consideration
- When a seller issues 'redeemable cards' that can be purchased by paying an amount that is generally 'below par' for onward distribution during promotion of any other goods/services so that the bearer of these redeemable cards becomes entitled to

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surrender these cards against a valuable purchase – here the customer does not pay any money to acquire these cards and the supplier who accepts these cards at the time of its surrender is entitled to collect payment from the issuer of these cards.

Of the above three, the last case alone is a ‘voucher’ and not the earlier two. Vouchers can be issued for surrender at the time of Supply of Goods or Supply of Services. Vouchers by themselves are neither Goods nor Services. Vouchers represent a point in the chain of transactions leading up to the completion of a transaction of Taxable Supply eventually. Vouchers that are unused may be allowed to lapse due to the terms of its usage and therefore the question of collecting tax on these Vouchers needs to be suitably provided in the legislation.

Transfer of Business

Business is represented by the deployment of assets in various income-generating activities which involves various liabilities being admitted into this Business. It is like a moving train because financial information is only ‘as at’ a specific date and by the time this information reaches the users, the Business has moved on and the information has changed. Business is therefore the sum total of all aspects – assets including those that may not be recorded like goodwill and liabilities including those that are uncertain or contingent – represented in its financial information although as at a particular date.

Business is not a legal entity but an operational aspect representing the Business. A single legal entity is free to undertake more than one business. For example, a LLC may have a trading license and sell electronic goods in Sharjah and it may also have a service license to provide technology consultancy services in Abu Dhabi. Please refer to Chapter 4: Trade Background regarding trade licensing restrictions and permissions in UAE for a detailed understanding. Business is not the sum total of all activities of this LLC but the operational aspects – all assets and liabilities – of the trading business independent of the operational aspects of the services business without any overlap and interconnection. The LLC can be said to have two businesses – trading and services – and each can be continued or discontinued without dependence on the other. Please also refer to Chapter 4: Trade Background regarding laws on identification, classification and reporting of financial information of business segments or business verticals.

Transfer of Business refers to the complete transfer of this Business in its entirety without leaving behind anything that forms an integral whole of this Business. In the same example, transfer of the trading business would be regarded as transfer of business even though the LLC continues with the service business. Further, both the businesses – trading and services – can be independently transferred leaving behind the LLC without any business but the cash from transfer. Owners are free to commence yet another business.

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Transfer of the shares held by the Owners in the LLC is a case where the Business(es) continue to remain in the LLC but the Owners are replaced by New Owners and the sale proceeds go to the Owners. Transfer of Business, on the other hand, refers to the transfer of the Business(es) by the LLC in favour of the Purchasers so that the sale proceeds come to the LLC and the Business(es) move out of the LLC to the Purchasers.

Exclusion

This article provides that the following transactions will NOT be considered a Supply:

- Issuance of Voucher where the 'paid value' and the 'carried value' are identical
- Transfer of Business with the condition that (a) buyer is a Taxable Person and (b) intended to continue the same Business

Accordingly, it can be seen that if the above two activities are not undertaken in the circumstances specified above, it would be a Supply. This exclusion is a conditional exclusion.

Conclusion

In very specific circumstances, transactions involving issuance of voucher and transfer of business are excluded from Supply. It, therefore, merits considering the requirements or qualifications to enter this exclusion so as to be immune from VAT.

Article 8 – Supply of more than one component

Article 8 : The Executive Regulation of this Decree-Law shall specify the conditions for treating a supply made of more than one component for one price, whether such components are Goods or Services or both.

Introduction

Business transactions do not always present supply in a 'plain vanilla' manner. Often, goods or services or either can be bundled together and supplied for a single price. This may be to compel the supply of both jointly or promote the supply of one of them or for any other reason.

Analysis

Component

This article refers to the Goods or Services as a 'component' of the supply. It is very interesting terminology which indicates that each of them – goods or services – appear to fulfill the supply together and not individually. There need not be only two such components, there can be more. Further, there can be any combination of these components, that is, goods and goods or goods and services or services and services.

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Whether the components are 'linked' to each other or can be 'individually' supplied is not specifically stated. For this reason, all transactions where two or more components are identified to be supplied attract this article.

One Price

Another interesting aspect that emerges from this article is that the 'price' at which 'all' components are supplied is a single unified amount. That is, although the components are individually in existence and identifiable, the price offered is not individual but consolidated.

One Price appears to be a pre-condition in order to attract this article in addition to the requirement for the existence of two or more components.

Specification

When two or more components are supplied for one price, the Executive Regulations are entrusted with the function of specifying conditions applicable to the manner of treatment of such supply. Please note that even though there may be a supply – of two or more components for a single price – the conditions applicable to them require an Executive Regulation.

Conclusion

It is recognized that One Price supply of several Components is not uncommon and that Executive Regulation is to be awaited to realize the treatment that is to be extended to such supplies.

Article 9 – Supply via Agent

Article 9

1. The Supply of Goods and Services through an agent acting in the name of and on behalf of a principal is considered to be a supply by the principal and for his benefit.
2. The Supply of Goods and Services through an agent acting in his name is considered to be a direct supply by the agent and for his benefit.

Introduction

Agents play a significant role in facilitating commerce and their contribution is invaluable. Agency cannot be assumed. Agency must be express and sometimes its implicit existence must be unequivocal. Often, the term agency is unwittingly used even though the arrangement is on Principal-to-Principal basis such as an ad agency or HR agency where there is no authority to be permitted to enter into binding obligations. This article expressly provides the treatment in VAT to transactions involving Agents.

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Analysis

Agent-Principal

Existence of an Agent presupposes the existence of a Principal. An Agent is one who has the authority to bind the Principal to obligations towards third parties. The Agent's actions, if they are within the scope of their agency, even without prior intimation can bring binding obligations that the Principal must fulfil.

Persons who are Agents for one thing can be assumed by third parties to be agents of all other things belonging to the same Principal. Agency can be created by 'holding out' to be an agent. However, if the agent makes promises to third parties beyond the scope of his agency, then the Principal is not obligated. Third parties generally inquire into the exact scope of agency before transacting with Agents and Agents generally disclose the scope of their agency.

Agent can do nothing more than the Principal and Principal can do everything that Agent can. Agent gets his authority by delegation from the Principal. Agent himself is not liable to third parties and does not take upon himself any of the consequences arising from the transaction. Agency can be summarized as 'delegated authority' and 'detached consequences'. If any person acts without duly delegated authority and accepts consequences himself, does not augur well with Agency and is rather indicative of a superior relationship.

Agency Transactions

This article provides for two situations:

- Where the Agent performs all activities 'in the name of' the Principal,
- Where the Agent performs all activities 'in own name',

And overcomes the fundamental effect of agency – bring binding obligations to Principal – by relying on the nature of representation made. That is, whether in the course of the activities, the Agent discloses the Principal or not.

When the Agent supplies in the name of the Principal, this article leaves the Agent aside and regards the supplies to have been made by the Principal. But, if the Agent supplies in his own name, this article limits all obligations to the Agent and does not travel up to the Principal.

When Agency contracts are entered into, for the reasons stated in this article, it becomes important for the Principal to clearly make known 'how' the Agent must undertake the supplies, as there are visible consequences by the fiction in this article. Accordingly, suitable measures to collect and manage funds must also be put in place so as to help the Principal realize the

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proceeds from the supplies and discharge VAT obligations. And if the Agency is to be carried out in the name of the Agent, then the contract may need to be suitably prepared taking into consideration that VAT obligations rest on the Agent.

Rights, duties and obligations of Principal-Agent cannot be overruled by VAT law. The general law of UAE (discussed in detail in Chapter 1: Overview of VAT) continues to govern the commercial arrangement *inter se*. And without disturbing those commercial implications, for the limited purposes it is meant, a special or unique treatment is provided in respect of tax payable by the legal fiction in this article. As regards Supply *per se*, reference may continue to be had to the discussion in the earlier part of this chapter, even in respect of supplies regarded to be undertaken by the Agent under this article.

Activities undertaken by commercial agencies that do not satisfy the strict attributes of 'Principal-Agent' relationship but loosely go by the name 'agency' do not attract the fiction and hence the treatment prescribed in this article.

Taxable Supplies

There are more than one transaction involved in case of 'Supply via Agent'. For example, ABC LLC (Principal) appoints XYZ LLC (Agent) for distribution of Computers of all brands in EMEA region.

Supplies	Price	Supply in Agent's name	Supply in Principal's name
Supply of Computers by manufacturer to Principal	Dh 80	Supply (to Principal)	Supply (to Principal)
Receipt of stock of Computers by Agent from Principal	Dh 100	Supply (to Agent)	Not Supply
Supply of Computers to third party buyers	Dh 120	Supply (by Agent)	Supply (by Principal)
Commission Services of Agency to Principal	Dh 10	Not Supply (merged into Supply by Agent) *	Supply (to Principal)

*** when the entire value of Supply of Goods is taxed in the hands of Agent, then the Commission earned by Agent from Principal cannot again be taxed as a Supply of Services. These Services are included into the value of Supply of Goods**

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Conclusion

Agency must first be identified and then the 'name' that will be credited with the supplies so that it will be clear whether the Agent or Principal will be accountable for the due and proper discharge of tax applicable on the Supply of Goods or Services effected in this manner.

Article 10 – Supply by Government Entities

Article 10

1. A Government Entity is regarded as making a supply in the course of business in the following cases:
 - a. If its activities are conducted in a non-sovereign Capacity.
 - b. If its activities are in competition with the private sector.
2. A Cabinet Decision shall be issued at the suggestion of the Minister determining the Government Entities and their activities that are considered as conducted in a Sovereign Capacity and instances where its activities are considered not in competition with the private sector.

Introduction

Government activities must be differentiated between 'Activities by Government' and 'Activities of Governance'. This article provides for making such distinction based on objective criteria or tests.

Analysis

If Government activities occur in the following two circumstances, then they are regarded as Supply for purposes of VAT:

- Activities in non-Sovereign capacity
- Activities in competition with private sector

Although the above are objective and can be administered by anyone, this article provides that a Cabinet decision may be sought to declare when an activity is supposed to be considered as part of either of these two area. The occasion to rely on Cabinet decision for such a declaration may arise when there is ambiguity as to whether an activity is non-Sovereign or in competition with private sector and, therefore, attracting this article. Only in these circumstances are the supplies 'by' Government taxable.

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Supply 'in the course of' indicates that the entire chain of events that are unbroken and integrally interrelated to each other come within the sweep of this article. Private suppliers who supply Goods or Services to the Government are to take care that their supply continue to be taxable and it is only the supplies made 'by' the Government that are regarded as non-taxable if the specified circumstances do not exist.

Conclusion

Activities undertaken by Government require differentiation to examine the applicability of this article. It is important to note that the 'entire' activity covered by this article is immune from VAT even if there are elements involved that, on stand-alone basis, would not appear to come within the ambit of this article.

Article 11 – The Cases of Deemed Supply

Article 11

The following cases shall be considered as Deemed Supply:

1. A supply of Goods or Services, which constituted the whole assets of a Taxable Person or a part thereof, but are no longer considered to be as such, provided that the supply was made without Consideration.
2. The transfer by a Taxable Person of Goods that constituted a part of his business assets from the State to another Implementing State, or from the Taxable Person's business in an Implementing State to his Business in the State, except in the case where such transfer:
 - a. Is considered as temporary under the Customs Legislation.
 - b. Is made as part of another Taxable Supply of these Goods.
3. A supply of Goods or Services for which Input Tax may be recovered but the Goods or Services were used, in part or whole, for purposes other than Business, and such supply shall be considered as deemed only to the extent of the use for non-business purposes
4. Goods and Services that a Taxable Person owns at the date of Tax Deregistration.

Introduction

When a supply does not come within the definition of Supply and should still be brought to tax, enlisting them specifically does not suffice. It requires furnishing the missing ingredients. But

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there are so many of them that it may be difficult to provide all those ingredients. And that's when 'deeming fiction' is used by law makers. Deeming fiction simply supplies the meaning that otherwise would not have been available. In this article we find all the Cases of Deemed Supply.

Analysis

Specific Cases

Since the article lays down four specific classes of transactions, it makes it interesting to identify transactions that are included in these classes and those that still get excluded. And each of these classes needs to be carefully discussed because they are not interlinked.

Change of Asset-Use

When assets of a Taxable Person are 'no longer considered to be such', it is a case of Deemed Supply. Questions that arise are:

- What are the 'assets' involved here?
- Why would assets 'not' be considered assets?
- When exactly would this be deemed to be a Supply?

A Supply already made comes to be admitted by a Taxable Person as 'business assets'. Once these assets are so treated, input tax reduction would be availed unless disallowed for any reason. Then if these business assets, for any reason, are not to be considered as business assets, it would be deemed to be a Supply. Since this change occurs 'after' the business assets have been supplied, the same would be deemed to be a supply 'on' the date of such change.

Since this is a 'mere' change in the intended end-use of the business asset, it occurs immediate before business assets are diverted by the owners (for themselves or for others). If this diversion is 'for consideration', then it would anyway be a Supply. But if such diversion is 'without consideration', then this provisions deems it to be a Supply.

Business assets may be capitalized as fixed assets or retained in inventory as current assets: for example, donations, gifts, samples, promotions, demo stock, destructive tests, etc.

Please note that the above provision applies to 'Goods and Services'.

Stock Transfer

Taxable Person in one Implementing State (any GCC member country) may make 'stock transfers' to/from another Implementing State. This is a transaction where 'only one Person' is

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involved, that is, the Taxable Person. These transfers may 'go out' or 'come in' but within GCC countries and not outside GCC region. This provision deems such stock transfers to be Supply.

In case, such stock transfer is considered, by the Unified Customs Law, to be a 'temporary transfer' or in case when such stock transfer is via an Agent and the supply is included as a Taxable Supply by the Agent, then this provision will not apply. Please refer chapter 8: Unified Customs Law regarding 'temporary transfers'. Stock transfer outside GCC is discussed in chapter 8: Unified Customs Law under 'exports'.

Please note that the above provision applies to 'Goods' only.

Non-business Use

Once input tax is recovered, there is a duty assumed by the Taxable Person to apply the supplies in making taxable outward supplies so as to maintain the tax chain. Having recovered input tax, if the supplies are used for any non-business use, it means that to that extent, there will be no payment of tax. The condition for permitting recovery of tax is that there will be a Tax Due on a further Supply. Any use for non-business purposes would effectively be a failure to satisfy this condition. The tax recovered is not to be restored but the use itself (not otherwise taxable) is deemed to be taxable.

Cases where there is a non-business use of supplies includes destruction of inputs, theft, deterioration, personal consumption, pre-production material used, etc.

Please note that the above provision applies to 'Goods and Services'.

There appear to be two clauses covering this aspect – change of asset-use and non-business use – and the difference between two clauses are as follows:

- Change of asset use applies where such change is 'without consideration'
- Non-business use applies only where input tax is 'recovered' and for any reason they are used for non-business purposes

These two clauses are not in conflict with each other but are complementary to each other.

Stocks on Deregistration

On the date of deregistration, all supplies available will at once be deemed to be Supplied. Deregistration may become necessary for various reasons (refer detailed discussion in Chapter XIII on registration / deregistration). There is no reference to whether 'input tax recovery' is involved or not. It appears this is assumed. But, even if not assumed, stocks on date of deregistration will be deemed to be a Supply.

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Please note that the above provision applies to 'Goods and Services'.

Conclusion

A comparative review of the four classes which are deemed to be a Supply will provide a good overview:

Class of Deemed Supply	Applicability	Conditions	Remarks
Change of asset-use	Goods and Services	No consideration involved	Actual change or only accounting reclassification?
Stock transfer	Goods	Not considered temporary transfer or included as supply by another person	Transfer-out or transfer-in within GCC?
Non-business use after input tax recovered	Goods or Services		Is it okay to use for non-business use if input tax is not recovered?
Stocks on deregistration / shut-down of business	Goods and Services		How do you monitor 'services' held on date of deregistration?

Article 12 – Exceptions to Deemed Supply

Article 12

A supply is not considered as deemed in the following cases:

1. If no Input Tax was recovered for the related Goods and Services.
2. If the supply is an Exempt Supply.
3. If the recovered Input Tax has been adjusted for the Goods and Services pursuant to the Capital Assets Scheme.
4. If the value of the supply of the Goods, for each Recipient of Goods within a 12-month period, does not exceed the amount specified in the Executive Regulation of this Decree-Law, and the Goods were supplied as samples or commercial gifts.

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5. If the total Output Tax due for all the Deemed Supplies per Person for a 12-month period is less than the amount specified in the Executive Regulation of this Decree-Law.

Introduction

While cases of Deemed Supply have been very specifically provided in article 11, this article provides certain exceptions. Please carefully consider, if this article is an exception to article 11 or is it an exception to article 5 and 6.

Analysis

There are five specific classes of exception in this article where the transactions are NOT considered Supply. The opening words of this provision appear to indicate that the classes listed are 'deemed non-Supply' but before that, the nature of this exception may be considered

No Tax Recovered

When input tax has 'not' been recovered, then supply of those Goods or Services will not be a Supply. Reading this provision into 'change of asset use' in article 11, it would appear that in a case where input tax has not been recovered, supply of such supplies would not be a Taxable Supply. But, such an interpretation has the effect of overriding article 5 and 6 and hence article 2. If this were really the intention, then its implication would demand an express provision to this effect rather than leaving it to mere inference. Alternatively, this provision can be understood as providing support to 'non-business use' in article 11 which would be deemed to be a supply but only when tax is recovered. It appears that this later interpretation is more palatable and to read this provision as a corollary to article 11.

Exempt Supply

Once a supply is exempted for any reason, it is always exempt and even by deeming fiction cannot be rendered taxable. Salutary words are found in this provision. The provision exempting a supply from tax will prevail over any deeming fiction.

Capital Assets Scheme (CAS)

Article 60 provides for this CAS where the extent of input tax recovery is regulated (refer Chapter II: Levey of VAT for detailed discussion on CAS). In case tax recovered is duly adjusted in accordance with CAS, then such supplies will not be deemed to be a Supply. Having specifically dealt with the tax recovery in respect of Capital Assets, the same supplies cannot again be subjected to tax. This provision effectively operates to save supplies that have complied with CAS from the effects of article 2.

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Samples-Gifts

Deemed supply includes both these transactions but this provision excludes such transactions 'up to a value' to be specified by Executive Regulation from the operation of the provisions of article 11. This is to ensure that deemed supply does not extend to minor value transactions. Value limit will be based on the value of such supplies over a 12-month period.

Threshold Exemption

Though supplies may be taxable, supplies 'up to a value' to be specified by Executive Regulation will be excluded from the applicability of tax provisions. Value limit will be based on the value of such supplies over a 12-month period.

Conclusion

This article appears to carve an exception to Deemed Supply as well as Supply itself. A comparative table provides a good overview:

Exceptions to Deemed Supply	Affected Article	Remarks
No tax recovered	Article 11 – non-business use	
Exempt Supply	Article 11 – all classes	When exempt supplies are involved in deemed supply, no tax will be applicable
Capital asset scheme	Article 5/6 – supply	Specific provision of CAS will prevail
Sample gifts	Article 11 – change of use and non-business use	Not taxable unto value limit
Threshold exemption	Article 2 – supply	Not taxable unto value limit

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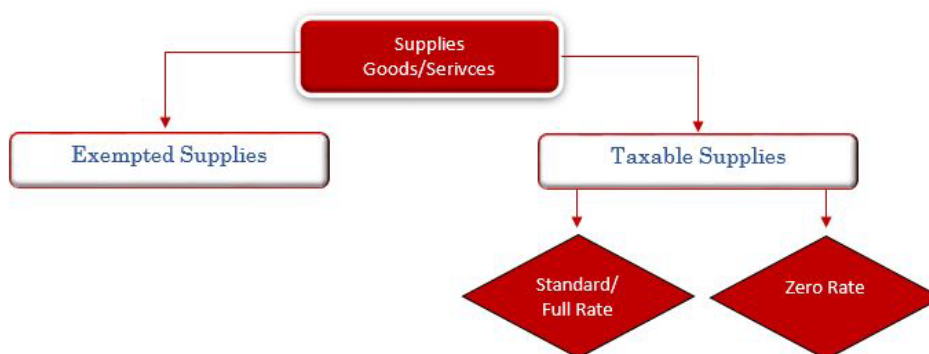
Chapter – III

Exempted Supply and Non-Supply

Types of Supply

Types of supply can be mainly categorized into exempted and taxable supplies. Zero rate supplies form a sub-category within taxable supplies. Article 45 and 46 of Federal Decree Law No. 8 of 2017 on VAT deal with Zero rated supplies and exempted supplies.

UAE VAT is classified as below:



(A) Difference between Zero-Rated VAT, Exempt VAT & Non-Taxable Supplies

Standard Rated and Zero-Rated Supply

Standard-rated or zero-rated supplies are considered to be 'taxable supplies' under law. The supply of goods and/or services is generally subject to VAT at the standard rate (5%), unless such supply is specifically zero-rated or exempt in terms of the VAT Law, Article 45 & 46 respectively.

A zero-rated supply is a taxable supply on which VAT is levied at the rate of 0%. No output tax will be payable to the tax authorities in respect of zero-rated supplies. Registered VAT entities making zero-rated supplies are entitled to claim their input tax deductions in respect of tax paid on goods or services acquired in the course of making such taxable supplies.

Exempted Supply:

An **Exempt Supply** is defined as a supply of goods or services for consideration while conducting Business in the State, where no tax is due and no Input Tax may be recovered, except according to the provisions of this Decree-Law.

Article 46 of Federal Tax Law describes supplies that are exempt from Tax.

Background Material on UAE VAT

Thus, an exempt supply (i.e. not taxable supply) is the supply of goods or services on which no VAT rate is chargeable. Registered VAT entities cannot claim an input tax deduction in respect of tax paid on goods or services acquired in the course of furtherance of making exempt supplies. A person that makes only exempt supplies cannot register for VAT as they are not providing taxable supplies as per the VAT Act.

As per Article 46, the following supplies are exempt from levy of VAT

1. Financial services that are specified in the Executive Regulations
2. Supply of residential buildings through sale or lease, other than that which is zero-rated
3. Supply of bare land
4. Supply of local passenger transport

(B) Exempt business: The following features emerge in case of a business which is fully exempted from levy of VAT:–

1. Exempt supplies are free of VAT levy and hence, no VAT is calculated on their price.
2. No Input tax will be recoverable in providing VAT exempt supplies.
3. Value of exempt supplies will not be included in calculating taxable threshold limit.

(C) Registration: No registration is required under law for a business engaged in providing fully VAT exempt supplies. However, in case of partly exempt business registration provisions will apply accordingly for taxable supplies and threshold will be computed accordingly.

(D) Returns: No returns are required to be submitted under law by exempt business. In case of partly exempt business, the taxable person will be required to submit tax returns for each specified period containing all information and data as specified about supplies of all kinds provided during the relevant period and details of input VAT reclaimed.

Supply of goods and services at Zero rate:

Article 45 of Federal Tax Law describes supply of goods and services that are subject to Zero rate tax.

The following items are subject to zero rates:

- Export [direct or indirect] of goods and services outside the GCC region;
- International air passenger transport [including those that pass through its territory];

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- Air passenger transport in the State [if considered at “international carriage”]
- Transport of goods and passengers by air, sea and land;
- Goods and services used for operation, repair, maintenance of means of transport through air, sea and land
- Supply of Aircrafts and vessels designated for rescue and assistance by air or sea.
- Supply or import of precious metal for investment purposes
- First supply of residential buildings within three years of their completion.
- First supply of buildings specifically designed to be used by charities either through sale or lease.
- First supply of buildings converted from non- residential to residential either through sale or lease
- Supply of crude oil and natural gas
- Supply of nurseries, preschool, elementary education.
- Supply of higher educational institutions owned or funded by Federal or Local Govt. as specified in the Executive Regulation
- Supply of specified preventive and basic healthcare services and related goods and services.

The listed items and services have VAT at zero %, thus the actual VAT is NIL

(E) Partly exempt business: Article 47 describes mixed supplies.

The following features emerge in case of a business which is partly exempted from levy of VAT :-

1. VAT is not levied on exempted supplies, whereas it is levied on other supplies.
2. No Input tax will be recoverable in providing VAT exempt supplies.
3. Value of exempt supplies will not be included in calculating taxable threshold limit.
4. Registration provisions apply normally as they apply to VAT taxable business.

(F) Non-Supply Items: These are items which falls beyond the ambit of ‘Supply’ boundary and hence, are outside the scope of VAT law. It can also be termed as ‘Out-of-Scope’ Supplies. There is no question of levying VAT on such supplies. Examples of out of scope supply are -

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Background Material on UAE VAT

- Supply of goods or services, other than those to be specified in the VAT Executive Regulations
- Supply of goods made outside the UAE region;
- Supplies made by a person who does not belong to and is located outside the UAE region and falls outside the scope of imported services;
- Business below the threshold limit;
- Supply within or between Designated Zones under Article 51;
- Government supply except as envisaged under law; and
- Purchases made from unregistered businesses and private individuals. These purchases do not appear at all on the VAT Return, as they fall completely outside the VAT system.

Further, non-business supplies are also outside the ambit of VAT as a **Taxable Supply** is defined by UAE VAT law as that made for a consideration, by a person “conducting business” in the State;

(G) CASE STUDY

- M/s Khwaja LLC made the following supplies for VAT purposes. All supplies are inclusive of VAT.
- Standard rate of VAT is 5%
- Expenses incurred in making total supplies amounted to AED 85,000 (VAT included)

(Amount in AED)

	Scenario 1		Scenario 2	Scenario 3	Scenario 4
	Value	%	Value	Value	Value
Standard-rated supplies	60,000	60%	100,000	-	-
Zero-rated supplies	10,000	10%	-	100,000	-
Exempt supplies	30,000	30%	-	-	100,000
Total supplies	100,000	100%	100,000	100,000	100,000
Net VAT due to / (refundable by) Khwaja LLC will be calculated as follows:					
Output VAT on-					

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Exempted Supply and Non-Supply

• Standard-rated supplies	2,857.14	4,761.90	-	-
• Zero-rated supplies	-	-	-	-
• Exempt supplies	-	-	-	-
Total output VAT	2,857.14	4,761.90	-	-
Less: Apportioned input VAT on expenses to make standard-rated and zero-rated supplies [(85 000 x 60% x 5/105) + (85 000 x 10% x 5/105)]	2,833.33	4,047.62	4,047.62	-
Net VAT due / (refundable)	23.81	714.28	(4,047.62)	-

Conclusion:

A. Output Tax	2,857.14	4,761.90	-	-
B. Input Tax on Taxable Supplies	(2,833.33)	(4,047.62)	(4,047.62)	-
C. Net VAT Payable / (Refundable)	23.81	714.28	(4,047.62)	-

Notes:

A. Output Tax Calculation:

$$\text{Sales (including VAT)} \times \frac{5}{105}$$

B. Input Tax on Taxable Supplies Calculation:

Total Supplies (-) Exempted Supplies = Net Taxable Supplies

$$\frac{\text{Net Taxable Supplies} \times \text{Input Tax Paid}}{\text{Total Supplies}}$$


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C. Net Payable / (Refundable) Tax Calculation:

Total Output Tax (-) Input Tax on Taxable Supplies = Net Tax Payable / (Refundable)

Thus if

Payable or Due  when Total Output Tax is > Input Tax on Taxable Supplies

Refundable  when Total Output Tax is < Input Tax on Taxable Supplies

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Chapter – IV

Transaction with GCC

1. Introduction

GCC i.e. Gulf Cooperation Council is a political and economic alliance of six middle eastern countries- Saudi Arabia, Kuwait, UAE, Qatar, Bahrain and Oman. The GCC was established in Saudi Arabia in May 1981. The objective of the GCC is to achieve unity among members based on their common objectives and their similar political and cultural identities. In line with their objective the GCC has come up with a unified agreement for VAT which sets out the **framework** under which VAT can be implemented in each of the GCC member states. Each member state can draft its own local law and implement VAT. The framework paves the way for implementation, allowing basic rate of VAT with certain supplies of goods and services zero rated or VAT exempt to member states

2. GCC VAT AGREEMENT is a framework agreement signed by all the six GCC countries.

Basic Features:

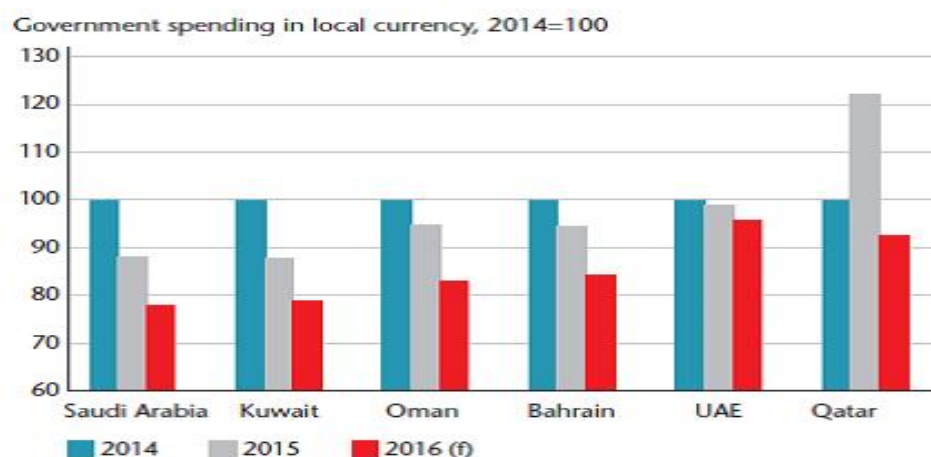
- Broad framework that mainly states provisions for intra GCC trade
- Gives countries discretion to choose treatment in certain sectors where it does not affect intra-GCC trade
- Mutual agreement on some provisions such as the standard rate of VAT and the registration threshold



3. Factors leading to introduction of VAT in GCC

- GCC countries have always been highly dependent on oil, the largest revenue contributor to most of these countries' economic growth. The region has witnessed an acute deterioration in its external and fiscal balances over the past three years however, primarily due to weak oil prices. Although large fiscal buffers provided some cushion to GCC countries, sustained weakness in oil prices has forced the Gulf nations to adopt a series of reforms.
- GCC countries' recent budget announcements included subsidy reforms and plans to diversify the economy to the non-oil sector and reduce wasteful expenditure.
- In January 2016, the UAE's Ministry of Energy increased Super 95 and E Plus-91 prices by 5.0% MoM and 12.3% MoM, respectively. Diesel prices increased 3.1% MoM, effective from February 2017. Earlier, in 2015, the UAE reformed its fuel policy and linked gasoline and diesel prices to international prices.

Figure 1: Major cuts in government spending



- The GCC region's government, in their 2017 budget announcements, estimated higher revenues through diversification and an increase in oil revenues due to the anticipation of higher oil prices. Most GCC countries expect oil prices to average USD45-50/bbl in 2017.
- GCC countries signalled political willingness to address oil price volatility and deficit concerns. The price hikes are likely to increase revenues for the government. Rationalizing subsidies is expected to bring in fiscal savings and improve efficiency in

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the use of resources. It will also help governments channelize the funds toward broader fiscal diversification.

- GCC governments are taking various measures to increase non-oil revenue, such as divestment, the levy of taxes and fees, and the removal of subsidies from some sectors.
- Considering all the above issues, GCC countries plan to introduce a Value Added Tax (VAT) of 5% in January 2018 in a bid to increase government revenue. According to IMF, revenue from VAT would contribute 2.1% to the UAE's GDP. Qatar and Kuwait are expected to generate around 1.1% and 2% of the GDP, respectively, through the implementation of VAT.

4. Definitions-Article 1

In the application of the provisions of this Decree-Law, the following words and expressions shall have the meanings assigned against each, unless the context otherwise requires

- **State:** United Arab Emirates
- **Minister:** Minister of Finance
- **Value Added Tax:** A tax imposed on the import and supply of Goods and Services at each stage of production and distribution, including the Deemed Supply
- **Tax:** Value Added Tax (VAT).
- **GCC States:** All countries that are full members of The Cooperation Council for the Arab States of the Gulf, pursuant to its Charter.
- **Implementing States:** The GCC States that are implementing a Tax law pursuant to an issued legislation.
- **Goods:** Physical property that can be supplied including real estate, water, and all forms of energy as specified in the Executive Regulation of this Decree-Law.
- **Services:** Anything that can be supplied other than Goods
- **Taxable Supply:** A supply of Goods or Services for a Consideration by a Person conducting Business in the State, and does not include Exempt Supply.
- **Deemed Supply:** Anything considered as a supply and treated as a Taxable Supply according to the instances stipulated in this Decree-Law.
- **Import:** The arrival of Goods from abroad into the State or receipt of Services from outside the State
- **Concerned Goods:** Goods that have been imported, and would not be exempt if supplied in the State.

Note:

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Background Material on UAE VAT

- **Concerned Services:** Services that have been imported, where the place of supply is in the State, and would not be exempt if supplied in the State.
- **Recipient of Goods:** Person to whom Goods are supplied or imported
- **Person:** A natural or legal person.
- **Taxable Person:** Any Person registered or obligated to register for Tax purposes under this Decree-Law
- **Taxpayer:** Any person obligated to pay Tax in the State under this Decree-Law, whether a Taxable Person or end consumer
- **Taxable Trader:** A Taxable Person in the Implementing States, whose main activity is the distribution of water and all types of energy as specified in the Executive Regulation of this Decree-Law.
- **Tax Registration:** A procedure according to which the Taxable Person or his Legal Representative registers for Tax purposes at the Authority.
- **Consideration:** All that is received or expected to be received for the supply of Goods or Services, whether in money or other acceptable forms of payment.
- **Business:** Any activity conducted regularly, on an ongoing basis and independently by any Person, in any location, such as industrial, commercial, agricultural, professional, service or excavation activities or anything related to the use of tangible or intangible properties.
- **Mandatory Registration Threshold:** An amount specified in the Executive Regulation of this Decree-Law; if exceeded by the value of Taxable Supplies or is anticipated to be exceeded, the supplier shall apply for Tax Registration.
- **Voluntary Registration Threshold:** An amount specified in the Executive Regulation of this Decree-Law; if exceeded by the value of Taxable Supplies or taxable expenses or is anticipated to be exceeded, the supplier may apply for Tax Registration
- **Place of Establishment:** The place where a Business is legally established in a country pursuant to the decision of its establishment, or in which significant management decisions are taken and central management functions are conducted
- **Place of Residence:** The place where a Person has a Place of Establishment or Fixed Establishment, in accordance with the provisions of this Decree-Law.
- **Fixed Establishment:** Any fixed place of business, other than the Place of Establishment, in which the Person conducts his business regularly or permanently and where sufficient human and technology resources exist to enable the Person to supply or acquire Goods or Services, including the Person's branches

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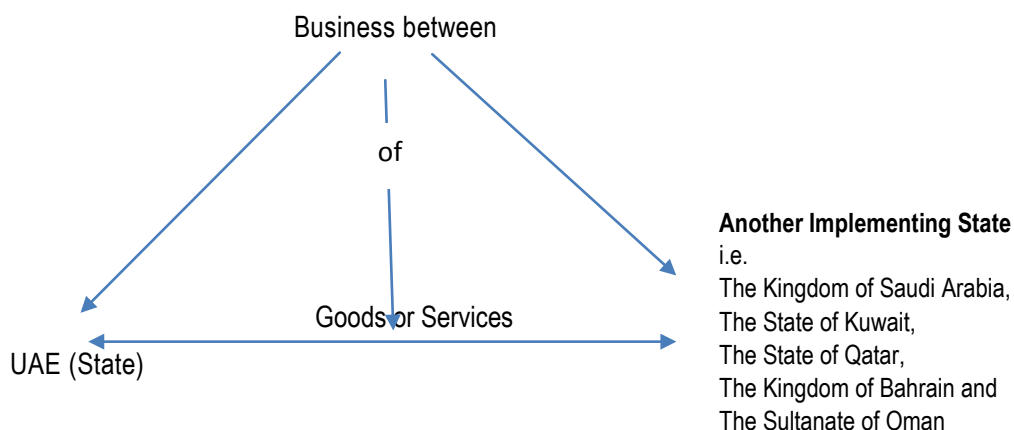
- **Exempt Supply:** A supply of Goods or Services for Consideration while conducting Business in the State, where no Tax is due and no Input Tax may be recovered, except according to the provisions of this Decree Law
- **Input Tax:** Tax paid by a Person or due from him when Goods or Services are supplied to him, or when conducting an Import.
- **Non-Resident:** Any person who does not own a Place of Establishment or Fixed Establishment in the State and usually does not reside in the State.
- **Another Implementing States:** The GCC States other than UAE that are implementing a Tax law pursuant to an issued legislation.

5. Why does the UAE need to coordinate the VAT implementation with other GCC countries?

The UAE is part of a group of countries which are closely connected through “The Economic Agreement Between the GCC States” and “The GCC Customs Union”. The GCC group of nations have historically worked together in designing and implementing new public policies as we recognize that such a collaborative approach is best for the region.

6. What does a business transaction between UAE and another implementing state mean?

- A business transaction between UAE (State) and another implementing state related to goods or services.
- The transaction should be of taxable supply as per definition of taxable supply in article 1.



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7. Scope of Tax – Article 2

- Every Taxable Supply and Deemed Supply made by the Taxable Person.
- Import of Concerned Goods except as specified in the Executive Regulation of this Decree-Law.

8. What could be considered as deemed supply while doing a transaction with another implementing state? - Article 11

Deemed supply, under UAE VAT law shall be the one implemented through a transfer by a Taxable Person of Goods forming part of his business assets from the UAE to another implementing state, or from the Taxable Person's business in another implementing state to his business in the UAE, **except in the case where such transfer**

- Is treated as temporary under the Customs Legislation;
- Is made as part of another Taxable Supply, under UAE VAT law, of these Goods

If any person transfers the goods which are part of business asset from UAE to any other implementing business asset, then such transfer will be deemed as supply. However, such deeming provision will not be applied when such transfer is treated as either a temporary transfer as per customs legislation or if it was taxed as part of another taxable supply.

9. Who is required to have mandatory Tax registration while doing a transaction with another implementing states (Article 13 to be read with article 18 and article 48 (1) of UAE VAT law)

Every (Natural or Legal) Person, who is not already registered for Tax and who has a **Place of Residence** either in UAE or other **implementing State**, **shall register** in the **following situations** (Please refer with article 18 and article 48 (1))

- When, the total value of all supplies, defined in Article 19 exceeds the threshold for Mandatory Registration, over the previous 12-month period
- When the value of the mandatory threshold, for all supplies, as defined in Article 19 is anticipated to be exceeded in the upcoming thirty (30) days

Explanation: If a person has a place of residence in KSA and provides total value of taxable supplies to UAE that exceeds the threshold limit under UAE VAT law, then that person (having place of residence in KSA) has to be registered under UAE VAT law.

Definition of Place of residence as given in Article 1 is as follows:-

"The place where a Person has a Place of Establishment or Fixed Establishment, in accordance with the provisions of this Decree-Law."

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10. VAT registration for a Non-resident- Article 18

A non-resident person may be required to take registration in UAE. For that purpose following may be excluded from his total value of supplies to ascertain his registration threshold:-

- The value of goods supplied by him where the importer is liable to pay tax on such imports in terms of provisions of Clause 1 of Article 48.

11. Place of Supply of Goods while dealing with another implementing states- Article 27

For Exports or Imports the place of supply (POS) of goods, under UAE VAT Law, will be as follows

- **POS: Inside UAE :- In the following cases Place of supply shall be taken to be inside UAE.**

- For exports outside the Implementing States.

Explanation: Goods exported from UAE to INDIA, the POS would be UAE

*Here, even though the place of supply of exports is taken as inside UAE, later in Article 45 the same has however been classified as Zero rated, thereby giving ultimate benefit to the exporters.

- Exports to a customer in another implementing states and if the customer is not registered for VAT in that another implementing state and if the value of the exports to that another implementing state does not exceed the mandatory registration threshold of that another implementing state

Explanation: A dealer exported goods from UAE to an unregistered customer in KSA and the total value of supplies (exports) made by such dealer to KSA is below mandatory registration threshold in KSA i.e. he is not required to get himself registered in KSA, then in such a case, POS will be UAE

- When the receiver of goods is not VAT registered in UAE and the total value of imports from a supplier from another implementing state exceeds the Mandatory registration threshold of UAE

Explanation : A dealer in KSA exports goods to a person unregistered in UAE and the value of all exports by such dealer from KSA to UAE is higher than the mandatory threshold limit of UAE, then the person exporting the goods from KSA has to get mandatory registration in UAE, and POS in such case will be UAE (Article 13 of UAE VAT law)

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Background Material on UAE VAT

Exporting State	Importer Registered / Unregistered	The value of total exports by exporting dealer is below/above the mandatory registration threshold	POS is Inside UAE or outside UAE
UAE	Importer -Not registered in his Implementing state	Below mandatory registration Threshold in implementing state of Importer.	Inside UAE
Another Implementing State	UAE Importer -Not registered in UAE	Above mandatory registration Threshold in UAE.	Inside UAE

- **POS: Outside UAE**

- When the supply, includes an export to a client in another implementing state who is registered for tax purpose

Explanation : When a person in UAE is exporting goods to a registered importer in KSA as per KSA VAT laws, then the place of supply would be KSA i.e. outside UAE.

- When the recipient of goods in another implementing state is not registered in that implementing state and the value of all exports made by such exporter from UAE to that implementing state exceeds the mandatory registration threshold of that implementing state

Explanation : When an exporter in UAE exports goods to a client who is unregistered in KSA as per KSA VAT laws and the value of total exports by such exporter from UAE to KSA, exceeds the mandatory threshold limit in KSA VAT law then the exporter of UAE has to register himself in KSA and the POS would be outside UAE (i.e. KSA)

- When goods are received by a person not registered in UAE as per UAE VAT laws, and the goods are imported from a person who is registered in another implementing state and the total value of imports in UAE from such supplier does not exceed the mandatory registration threshold of UAE.

Explanation : A person registered in KSA as per KSA VAT laws, exports goods to a person who is unregistered in UAE as per UAE VAT law and the value of export by such registered person in KSA is less than the mandatory registration threshold in UAE, then the POS would be Inside KSA (i.e. outside UAE).

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Exporting State	Registered / Non-Registered	The value of total exports by exporting dealer is below/above the mandatory registration threshold	POS is Inside UAE or outside UAE
UAE	Importer -Not registered in his Implementing state	Above mandatory registration Threshold in implementing state of Importer.	Outside UAE
Another Implementing state	UAE Importer -Not registered in UAE	Below mandatory registration Threshold in UAE.	Outside UAE

12. Place of Supply of Water and Energy while dealing with other implementing states- Article 28

- POS: Place of residence of the taxable trader
 - In the list of supply of water and all forms of energy, as specified in the executive regulation of UAE VAT Law, where supply is done through a distribution system, the POS would be the place of residence of the taxable trader, if the distribution was made by a VAT registered person having a Place of residence in UAE to a taxable trader having a place of residence in another Implementing State
 - The supply of water and all forms of energy specified in the Executive Regulation of this Decree-Law through a distribution system, shall be considered to have occurred at the place of actual consumption, if distribution was conducted by a Taxable Person to a Non-Taxable Person.

Explanation: In case of distribution of water and energy by a distributor who is registered in UAE and has a place of residence in UAE as per UAE VAT Law to a taxable trader who has a place of residence in KSA, the POS is Place of residence of the taxable trader i.e. KSA in our explanation. However, if such supply was made to a non-taxable person then the place of supply will be the place where it is actually consumed.

13. Place of Supply (POS) of Services Article 29 read with article 30 and 31

- Basic rule POS = Supplier’s place of residence.

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Exception to basic provision for Place of Supply of Services while dealing with other implementing states

- **Case 1:** Where the Recipient of Services has a Place of Residence in another Implementing State and is registered for Tax therein, the place of supply shall be the Place of Residence of the Recipient of Services.

Explanation: When a person in UAE is providing a service to a registered person in KSA according to KSA VAT Law and the registered person in KSA has a place of residence in KSA then place of supply would be KSA

- **Case 2:** If the supplier of service is from another implementing state and the recipient of the service is a registered person in UAE then the place of supply, under UAE VAT law would be UAE

Explanation: A person from KSA (a non-UAE resident) is rendering services to a person registered in UAE as per UAE VAT law then POS would be UAE

- **Case 3:** For the Supply of Services related to Goods, such as installation of Goods supplied by others, the place shall be where said Services were performed.

Explanation: A person from UAE is providing services of installation of goods in KSA, POS would be KSA

- **Case 4:** For the Supply of means of transport to a lessee who is not a Taxable Person in the State and does not have a Tax registration number in another Implementing State, the place shall be where such means of transport were placed at the disposal of the lessee

Explanation: If a person not required to be registered in UAE as well as not required to be registered in another implementing states provide a service of supply of means of transport and place the means in INDIA, the POS would be INDIA

- **Case 5:** For the Supply of restaurant, hotel, and food and drink catering Services, the place shall be where such Services are actually performed.

Explanation: If an architect's services are provided by a UAE person to KSA person for a Hotel in KSA then the POS would be KSA as per UAE VAT law

- **Case 6:** For the Supply of any cultural, artistic, sporting, educational or any similar services, the place shall be where such Services were performed.

Explanation: A singer from UAE provided services in KSA at a cultural event then the POS would be KSA, as per UAE VAT law

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- **Case 7:** For the Supply of Services related to real estate as specified in the Executive Regulation of this UAE VAT Law, the place of supply shall be where the real estate is located.

Explanation: In case of service provided as specified in executive regulation as per UAE VAT Law from UAE to KSA in relation to real estate situated in KSA the POS would be KSA, as per UAE VAT Law

- **Case 8:** For the Supply of transportation Services, the place of supply shall be where transportation starts. The Executive Regulation of this Decree-Law shall specify the place of supply for transportation Services if the trip includes more than one stop.

Explanation: For a person providing transport services from UAE directly to KSA, the POS would be UAE in this case as per UAE VAT Law

- **Case 9:** For telecommunications and electronic Services specified in the Executive Regulation of the Decree-Law, the place of supply shall be:

- In the State, to the extent of the use and enjoyment of the supply in the State
- Outside the State, to the extent of the use and enjoyment of the supply outside the State
- Regardless of the place of contract or payment, POS will be where the services are actually used

Explanation: If the services are used in KSA for the services provided by UAE irrespective of where the payment is made, the POS will be KSA

14. Is Supply of Goods and Services from UAE to another Implementing State Subject to Zero Rate? - Article 45

- Export of Goods and services from UAE are applicable to zero rate provided such services are provided to other than another implementing state (Article 45 of UAE VAT Law) e.g. Supply of goods from UAE to KSA would be export of goods from UAE but that export is to a state in GCC so it would not be eligible for zero rate as specified in article 45 (1) of UAE VAT Law)

15. What is a reverse charge transaction? - Article 48

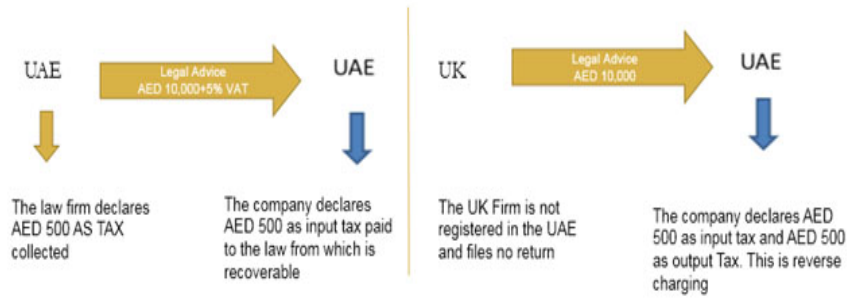
- A mechanism under which the recipient of goods or services is required to pay VAT instead of the supplier, when the supplier is not a taxable person in the member state where the supply has been made.

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Background Material on UAE VAT

Explanation: When goods are imported in to UAE from UK, the importer of goods will pay VAT under reverse mechanism, if the same goods were taxable in UAE and importer would account for Input VAT and at the same time for output VAT as if he was making the supply, under UAE VAT Law, to himself (Fig 1)

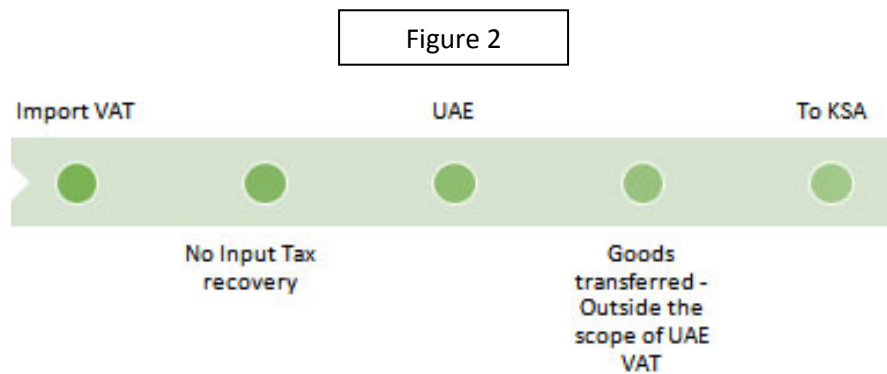


Net result of Reverse Charging = Puts local and international suppliers on the same footing

16. What is the exception to reverse charge mechanism Article 48 clause 1 when the transaction is between UAE and another Implementing state under UAE VAT Law?

- Where goods are imported into UAE and it is intended that these goods will be transferred by the importer into another Implementing State, the place of supply of import is still UAE BUT the importer must pay import VAT and cannot recover this VAT

Explanation: When goods are imported to UAE from UK and then further exported to KSA (implementing state), then normal provision of reverse charge will apply, UAE being the importer will pay the Importing VAT under reverse charge but to the exception of clause 1 of article 48 of UAE VAT Law it will not be eligible to claim as an Input credit on the same (Fig2)



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17. Recoverable Input Tax while conducting transaction with another implementing state-Article 54

- Where Goods are imported by a Taxable Person through another Implementing State and the intended final destination of those Goods was UAE at the time of Import, then the Taxable Person shall be entitled to treat the Tax paid in respect of Import of Goods into the other Implementing State as Recoverable Tax subject to conditions specified in the Executive Regulation of UAE VAT Law.

Explanation: When UAE importer imports goods from KSA, goods to be utilized in UAE itself then subject to condition in Executive Regulation, The VAT tax paid by UAE importer to KSA would be eligible for Input tax credit

- Where Taxable person acquires goods within another state implementing VAT that are subsequently moved into the UAE, then he is entitled to treat the tax paid in respect of the goods in the Implementing State as Recoverable Tax subject to the conditions specified in the Executive Regulation of this UAE VAT Law

Explanation: When an importer imports goods in KSA and subsequently moved the goods in UAE then subject to condition in Executive Regulation, The VAT tax paid by importer in KSA, would be eligible for Input tax credit in UAE as per UAE VAT Law

- Any Input VAT credit regarding the tax paid according to Article 48 Clause 2 of this law is not recoverable by any taxable person

Explanation: When goods are imported to UAE from UK and then further exported to KSA (implementing state), then normal provision of reverse charge will apply, UAE being the importer will pay the Importing VAT under reverse charge but to the exception of Article 48 Clause 1 of UAE VAT Law it will not be eligible to claim as an Input credit on the same (above Fig. 2))

18. Input VAT paid before registration date while conducting a transaction with another implementing state (Article 56)

- VAT tax paid before the registration date shall not be recovered in case of goods that have been moved to another implementing state before the Tax registration date in the state

19. What are the documents of supplies to be provided to another Implementing state (Article 66 read with article 65 of UAE VAT Law)

- Read with article 65 of UAE VAT Law, registrant who supplies Goods or Services considered as supplied in any of the another Implementing States, shall provide the

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Background Material on UAE VAT

Recipient of Goods and Recipient of Services with a document that includes all the information that must be included in the Tax Invoice and any other information as specified in the Executive Regulation of this Decree-Law, provided that this document is not labelled "Tax Invoice" and does not include any Tax charged.

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Chapter – V

Export

General Note on Exports under UAE VAT Law

Exports are generally well understood but in the context of UAE VAT Law, it is important to understand that export will be those supplies whose 'place of supply' happens to be outside UAE and accordingly, enjoy zero-rate on their supply as provided in article 45. Also, certain transactions, considered as special cases, are accorded the benefit of zero-rate on their supply by this Article.

To appreciate the scope of exports and the zero-rate on their supply, it would help to peruse the definitions of certain terms:

- (a) Export: Goods departing the State or the provision of Services to a person whose place of establishment or fixed establishment is outside the State.
- (b) Goods: Physical property that can be supplied including real estate, water, and all forms of energy as specified in the Executive Regulation of this Decree-Law.
- (c) Services: Anything that can be supplied other than Goods.
- (d) Place of Establishment: The place where a Business is legally established in a country pursuant to the decision of its establishment, or in which significant management decisions are taken and central management functions are conducted.
- (e) Fixed Establishment: Any fixed place of business, other than the Place of Establishment, in which the Person conducts his business regularly or permanently and where sufficient human and technology resources exist to enable the Person to supply or acquire Goods or Services, including the Person's branches.
- (f) State: United Arab Emirates
- (g) Export: Goods departing the State or the provision of Services to a Person whose Place of Establishment of Fixed Establishment is outside the State.

Thus, to qualify as export, goods should be departing from UAE whereas to qualify as export of services, it is necessary that services should be provided to a person (i.e. recipient) whose place of establishment or fixed establishment is outside the UAE.

As per Article 50 the designated zones (Free Zones), would be considered to be places outside the UAE. Thus, transfer of goods / services to such zones may also be considered as Export. Any export of goods from one designated zone to another could be without VAT. Rules in this regard are expected to be specified by the executive regulations.

Determining the Place of Supply

Under Article 2 VAT will be applicable on taxable supply made by a taxable person. The term taxable supply is defined to mean 'supply of goods or services for a consideration by a person conducting business in the State'. Thus, if the goods / services are supplied within the UAE, then such supply shall be taxable in the UAE. Given this, it is critical to establish the place of supply of goods / services in order to determine its taxability in the UAE.

In this regard, for place of supply of goods, reference can be had to Article 27 and for place of supply of services, Article 29. Further, there are specific Articles for determining place of supply for water, energy, tele-communication etc. which may also be referred to examine the taxability in those cases. Export would be one whose place of supply is outside UAE as concluded from an application of these Articles.

Place of supply for goods

In the following cases, supply is determined to have taken place within the UAE:

- (a) Supply is made to a place outside the GCC (Ex. India, Pakistan, China etc.)
- (b) If the recipient of goods in another GCC country is not registered for tax and total exports from UAE to that country for the supplier does not exceed the mandatory registration threshold for that State.

(Eg. ABC LLC in UAE supplies goods to an unregistered recipient XYZ LLC in KSA. If XYZ is not a tax registered dealer and the total sale to KSA of ABC is less than AED 375,000, then place of supply is determined to be UAE and tax is payable in the UAE)

- (c) If the recipient of goods in the UAE is not registered for tax and total exports from same supplier from another GCC country to the UAE exceeds the mandatory registration threshold.

(Eg. A recipient ABC LLC, which is not a tax registered dealer in UAE, receives goods from XYZ LLC from KSA. Here, if the total sales from XYZ LLC of KSA is more than AED 375,000, then the place of supply would be UAE).

In the following cases, the supply is determined to have taken place outside the UAE:

- (a) Supply to a tax registered customer in one of the GCC countries.
- (b) If the recipient of goods in another GCC country is not registered for tax and total exports from UAE to that country for the supplier does exceed the mandatory registration threshold for that State.

(Eg. A supplier ABC LLC in the UAE supplies goods to unregistered recipient XYZ LLC in KSA. If XYZ LLC is not a tax registered dealer and the total sale to XYZ LLC is more

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than AED 375k (assuming this being threshold in KSA), then the place of supply is determined to be outside UAE)

- (c) If the recipient of goods does not have a tax registration number and the goods are imported from a supplier registered for tax in any of the implementing States from which import is made, and the total imports from the same supplier to the State does not exceed the mandatory registration threshold

(Eg. XYZ LLC in KSA supplies goods to unregistered recipient ABC LLC in UAE. If ABC is not a tax registered dealer and the total sale from XYZ of KSA is less than AED 375k, then the place of supply is determined to be outside UAE)

In case of supply of installed or assembled goods, if the assembly was done outside UAE, it will be treated as an export of goods.

In cases where supply requires the goods to exit UAE and then re-enter, these will not be deemed as exports. In this regard, Rules shall be specified in Executive Regulation.

Place of supply for services

According to Article 29, the place of supply of services shall be the place of residence of the supplier. However, eight exceptions to Article 29 are carved out in Article 30 (such as where the recipient of services has a place of residence in another implementing State and is registered for tax therein, the place of supply shall be the place of residence of the recipient of services).

Further, there is Article 31 which determines the place of supply in case of tele-communication and electronic services.

Rate of Tax on Exports

According to Article 45, supply of goods and services made by a taxable person would be taxable supply, subject to the zero rate. In Article 46, fourteen instances (such as exports, international transport etc.) are specified on which zero rate will be applicable. Rules regarding direct and indirect exports shall be specified in the executive regulations.

All supplies which are subject to zero rate are treated as taxable supplies for the purpose of the law. Thus, to determine the mandatory and voluntary registration threshold, even zero rated supplies shall be included.

Recovery of Tax on Exported Goods

Any input tax paid by the business in making an export shall be recoverable against output tax. In case there is no output tax to be set off, the business can claim refund of the input tax

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paid from the tax authority. Recovery of tax is the expression used for claiming credit of taxes paid on the inward supply of inputs used in the outward supply towards exports.

Refund of Tax on Exported Goods

In special cases, where goods are being exported by a non-resident from the UAE, the authority may grant refund of the tax paid (Eg. A tourist buys an iPhone in Dubai for the purposes of carrying it back to the home country). Rules in this regard shall be specified in the executive regulations.

Records Keeping Requirements

All taxable persons are required to keep proper records of exported goods and services. The time limit for maintenance shall be specified in the Executive Regulations.

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Chapter - VI

Designated Zones

Introduction

Designated Zones [DZs] will assume special significance, against the backdrop of implementation of Excise Tax and VAT in GCC countries over coming months. The GCC Framework Agreement endorsed by all member countries in February 2017, has left the tax treatment of businesses in the DZs to each country's discretion while framing its own laws. The Excise Tax and VAT laws and related Executive Regulations are currently in the process of being issued by each member country within the agreed framework.

This background material highlights key regulatory aspects applicable to Designated Zones in the GCC in general, but with specific reference to the United Arab Emirates [UAE] which has already enacted Decrees 7 and 8 under UAE law for Excise Duty and VAT respectively and the Executive Regulations for VAT are expected to be notified shortly. This has wide ramifications on businesses operating from around 40 Free Zones in the seven Emirates comprising the UAE, 20 of which are in the Emirate of Dubai. Though DZ presence is relatively limited in the other GCC countries, they are expected to come up with broadly similar laws as per discretion permitted in the GCC Framework Agreement. Saudi Arabia the largest GCC member country, does not have any Free Zone while Bahrain has four, Oman two, Kuwait one and Qatar has two or more.

The GCC countries comprising of oil rich economies are attracting major global investments and an increasing number of expats from around the world are also setting up business in the GCC as these countries adopt the mechanism of Free Economic Zones, or "Free Zones". Basically, a Free Zone is a designated enterprise zone where businesses can be set up in preferential conditions, (including tax exemptions and various incentives to draw investors in). As a country's strategy, the underlying purpose of these Free Zones is to allow and encourage global trade as well as exports of value added products with least amount of procedures and importantly no tax.

When setting up a company in a UAE Free Zone now, the present statute permits

- 100% business ownership and capital repatriation for expatriates
- 50 years of tax holiday for corporate and personal income tax, but says nothing about VAT.

Definition

Article 50 of Decree No. 8 of VAT UAE defines a **Designated Zone** as one that meets the conditions specified in the Executive Regulation of this Decree-Law and shall be treated as being outside the State. Executive Regulations of VAT in UAE are yet to be issued.

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On the other hand, Designated Zone under Article 1 of Excise Law [Decree No. 7 of UAE is defined as any fenced area intended to be a free zone (no tax for imported and exported goods). The entry and exit are only through a designated road. It also includes any area designated by the Authority as being subject to supervision of a warehouse keeper in accordance with the regulation. Warehouse keeper has been defined to be any person approved and registered by the Authority in accordance with the executive regulation.

As discussed above, 'Designated Zone' could have a different meaning under different statutes and it would be wrong to assume that a DZ is automatically linked to a Free Zone. By this yardstick, the existing free zones seen in some GCC countries may not necessarily be a VAT-free Designated zone.

The UAE VAT Law introduces the concept of "**Designated Zones**" and defines it as any area designated as such by a UAE Cabinet decision (at the recommendation of the UAE Minister of Finance). It seems likely that some existing UAE Free Zones may get a VAT Free status or new areas within the free Zones will be granted a VAT Free Status.

Implications of indirect tax statutes on Designated Zones

A. Customs duty

The UAE has ratified the GCC unified customs duty law under which all imports within a GCC country, including imports from a Free Zone into the mainland, are subject to a customs duty at a flat rate of 5%. This levy is on the total value of the cost, insurance and freight. Tobacco and alcohol are subject to a higher customs duty.

Import of goods into Free Zones, is exempt from Customs duty as these Zones are deemed to be outside the UAE.

With an aim to reduce and remove tariffs, the UAE through the GCC has signed numerous free trade agreements, including the Greater Arab Free Trade Area Agreement (GAFTA).

B. Excise Tax

Requirements of Designated zones for Excise Tax purposes

Designated zones for excise tax purposes are warehouses, zones or areas in which the levy of Excise Tax may be suspended (i.e., Excise Tax will not be levied in the designated zones).

Registration: In order for a warehouse, zone or area to be classified as a designated zone, the warehouse keeper or the relevant zone or area authority will need to specifically register and apply for a license to operate as a designated zone.

Conditions: Bonded customs warehouses or free zones will not automatically fall outside the scope of Excise Tax. The specific criteria for a warehouse, zone or area to be eligible to apply

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for the license will be set out in the UAE Excise Tax Law. However, it is expected that the warehouse, zone or area will need to meet certain conditions in terms of area separation, control, and security over the area.

Excise Tax Levy: In accordance with UAE Excise Tax Law, Excise tax applies to certain goods produced, imported, removed from designated zone and stockpiled and only such businesses need to be registered for Excise Tax.

Although both VAT and Excise tax are indirect taxes, where VAT is a tax on goods and services on each stage of the supply chain, Excise tax is only paid to the government when the good subject to tax is imported or produced by the manufacturer. Once it is sold to the retailer, this price will include the excise tax, which is then passed on to the consumer by the retailer. Initially Excise tax of 50% to 100% will be levied on Tobacco, Energy drinks and Fizzy Drinks. Taxability and rates for other items are likely to be notified in future after Excise Tax law is implemented.

Sam tax rules as for taxable businesses will apply to goods and services sold by businesses in the Designated Zones, if they do not meet or maintain the requisite conditions for exemption.

Inter-Designated Zone transfers and activities: Article 14 provides that Excise Tax is not expected to be triggered for transfer of goods from one Designated Zone to another Designated Zone provided the products are not released for consumption nor altered during the course of transport. Methods for storing, preserving, processing of goods in the DZ would be as specified in the Excise regulations.

Such transfer of goods from one DZ to another can be done without any tax payment subject to the procedures specified in the regulation.

Article 13 of UAE Excise law also specifies that the regulations would set out the conditions when the business so conducted within the Designated Zone shall be treated as being conducted in the State and consequently be liable to tax.

Registration as Warehouse Keeper: Any person who intends to operate or operates (as on 1st October) a Designated Zone shall apply as specified in the regulation, as he cannot operate as warehouse Keeper without registration. Exception from registration requirement is available to any person who either imports or releases from Designated Zone provided such person can demonstrate that he will not regularly conduct such activity as prescribed in the regulation.

However, such person shall intimate the Excise Authority of any change in the circumstances such as intention to trade etc. as per the regulation. In such an eventuality, the person will be liable to pay the due tax and administrative penalties.

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Violations and penalties: Failure to follow conditions for preserving, receiving, storing, processing and transferring of excise goods in a Designated Zone, is a violation that makes the person liable to penalties.

C. Value Added Tax

The VAT status of Free Zones, gives rise to some complex issues in terms of the implementation of VAT and consideration should be given to the following:

- Whether the Free Zone will fall within Designated Zone category as per Executive Regulations,
- VAT classification and treatment of goods and services obtained inside the free zone, brought from outside the free zone and from overseas.
- VAT treatment of entities operating in Free Zones (fenced) and Free Zones (unfenced) and whether this will be different.
- VAT treatment of supplies from one free zone to another Free Zone
- Organizational and structural changes required if any, to optimize competitiveness.

VAT applicability in the UAE’s Free Zones

As of date, it is still unclear how the UAE will treat supplies made in free zones. It remains to be seen whether the Executive Regulations will clarify whether some or all Free Zones will be Designated Zones, or whether the UAE Cabinet will issue separate decisions in this respect.

Designated Zones will be treated as being outside of the UAE for VAT purposes. The UAE VAT Law states that goods may be transferred from one Designated Zone to another without any VAT becoming payable.

Article 52 specifies the exception to Article 50 of this Decree-Law, by stating that the Executive Regulation of this Decree-Law shall specify the conditions under which the business conducted within the Designated Zones will be regarded as being conducted in the UAE for VAT purposes.

The Executive Regulations are also expected to set out the procedures and conditions for the transfer of goods to and from a Designated Zone, as well as the required method for keeping, storing and processing such goods in Designated Zones.

Notwithstanding the position that a movement of goods between two free zones may not have any tax due, the business entity has to check whether it needs to report such revenue or sale in its VAT return. If moving from one Emirate to another, it may be required to record this as a VAT invoice, even though no tax is due.

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Having a separate VAT code for such exempt sales, in the Automated Tax software could facilitate reporting & analytics. Such software should flag and zero-rate the eligible VAT transactions for any entity or warehouse whether of the business or of any customer located in a VAT-free Zone,

Conclusion

The VAT implications for Designated Zones discussed above, serves as a current status overview. Since the statute and Executive Regulations are still evolving in each GCC member country, relevant provisions will become clearer as these are issued and approved by the tax authorities.

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Chapter – VII

Date and Place of Supply

Article 25 – Date of Supply

Article 25: Tax shall be calculated on the date of supply of Goods or Services, which shall be earlier of any of the following dates:

1. The date on which Goods were transferred, if such transfer was under the supervision of the supplier.
2. The date on which the Recipient of Goods took possession of the Goods, if the transfer was not supervised by the supplier.
3. Where goods are supplied with assembly and installation, the date on which the assembly or installation of the Goods was completed.
4. The date on which the Goods are Imported under the Customs Legislation.
5. The date on which the Recipient of Goods accepted the supply, or a date no later than (12) months after the date on which the Goods were transferred or placed under the Recipient of Goods disposal, if the supply was made on a returnable basis.
6. The date on which the Services were completed.
7. The date of receipt of payment or the date on which the Tax Invoice was issued.

Introduction

The tax which has been levied and needs to be assessed requires that one specific date be appointed for taxpayer and tax administration to carry out the quantification. This article provides for the manner of determining the 'Date of Supply'.

Analysis

In the case of supply of goods and services, the date of supply is appointed by this article. In other words, it is not a question to be determined by the taxable person but for every taxable person to search within the facts of each supply firstly which clause of this article is applicable and secondly after identifying the relevant clause ascertain which is the date so appointed by this article.

1. In a case where the transfer is under the supervision of the supplier, the date of supply will be the date when the goods are transferred. It is important to understand how the transfer is agreed upon in the supply to be given effect. In other words, the contract can contemplate this in which the transfer is to be given effect. Transfer is not just delivery of custody of the goods but recipient being put in lawful possession of the goods. Although transfer of property requires this kind of transfer to take place not all cases of

taxable supply involve such a transfer of the goods, for example, transfer of right to use, transfer at a future date, deemed supply, etc. Therefore, it is evident that this clause will not have universal applicability but will apply only those cases where this kind of transfer is feasible. In cases where transfer is not so possible, it must be concluded that this article this clause will not apply. And to decide the date of supply, reference must to be had to the clauses of this article. This clause will apply only where the transfer is agreed to take place under the supervision of the supplier

2. In a case where transfer is not required to take place under the supervision of the supplier and the recipient himself takes up such responsibility, the date of supply will be the date when the recipient takes possession of the goods. Clearly, this provision requires that the recipient must not merely be in custody of goods but in lawful possession of the goods, the difference between custody and position being that in the form of beer control over the goods passes to the recipient and in the latter control along with associated responsibility and liability passes to the recipient. It is important to confirm from the terms of the contract letter that the collection of the goods by the recipient is in such a manner that it extinguishes is any right to reject the goods after they reach their destination which may be your warehouse or factory or other premises of the recipient. In other words, all risks and rewards should have passed from the supplier to the recipient in order for this clause to be applicable. An example could be 'ex works' sale of goods.
3. In case where the supply involves an installation of the goods, as far as the supplier of the goods which are to be unassembled or installed, the date of supply will be the date when the assembly or installation is completed. It is noted noticeable here that the date of transportation of the goods by the supplier – to the site where such assembly installation is required to be carried out – is not the date of supply. Rather, the date when the services – of assembly and installation – are completed would be the date of supply in relation to the goods so transported. This clause contemplates a situation where there may be a goods for delivery of goods to the customer, which is not the date of supply but a date that contemplated when assembly or installation is to be undertaken. The completion of assembly or installation is also a question to be answered not by looking into the activity of assembly or installation carried out by the supplier part of completion of acceptance tests and signing-off by the recipient that the assembly or installation carried out have been carried out satisfactorily so as to discharge the supplier from any liability or for the responsibility in relation to the AO and proper completion of the assembly or installation. Assembly or installation is a generally understood term but is not a static term as it varies from site to site, and customer to customer. What is the exact activity involved in assembly or installation must be determined from the terms of the contract villages expressly provided or from the understanding in the relevant trade where it is not expressly provided in the contract.

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4. In the case of imports, the date of supply will be the date of import of the goods. Reference is made to customs legislation to provide the answer as to what is this date of import. It is important to note that date of entry of the vessel into UAE should not be assumed to be the date of import. Date of import is a finding provided by the implementation or working of the customs legislation based on the peculiar facts in each case of import of goods. So much emphasis is being given to the question of date of import only to highlight the fact that what may be the date of import apparently may not necessarily be the date of import as per customs legislation. This clause requires eliciting the information about date of import from customs legislation and not to furnish this information on the basis of personal observation of a transaction.
5. Sometimes goods are delivered to the recipient with an obligation on the recipient to accept and use them but with the flexibility to do so 'if and when' the recipient chooses. Such actions are commonly referred to as 'sale on approval'. The characteristic of such a transaction is that the goods are delivered by the supplier with an intention to sell but only if the recipient chooses. In other words, the decision to sell has been made by the supplier and for this reason the goods are delivered to the recipient but the decision to accept the sale has not yet been made by the recipient. Such transactions are very common in a 'buyer's market'. The date of supply in such cases will not be the date when the goods are delivered to the recipient but be the date when the recipient of service the goods lapse of 12 months from the date of delivery by the supplier. Acceptance of the goods by the recipient can be communicated by the recipient to the supplier. Acceptance of the goods can also be established in if recipient does anything to the goods so that the recipient is rendered incapable of returning the goods to the supplier. In such case, the date of supply will be the date of such acceptance. But if recipient does not accept the goods within 12 months from the date of delivery by the supplier, even though the understanding may be that the recipient can continue to retain the goods without communicating his acceptance, the law this clause places a limit of 12 months because date of supply cannot be indefinitely kept in abeyance. Please note in the case of date of supply being left undetermined due to the period of 12 months not having lapsed, it will be necessary for the supplier to maintain satisfactory proof that the goods are in existence, safe keeping with recipient, good and usable condition and without any form of deterioration so as to render it incapable of being accepted when the recipient so chooses. A suitable system to monitor goods so sent to as little as the condition of the goods until acceptance or lapse of 12 months must be developed and followed. Date of supply in such cases must be exactly the date when the action is communicated by the recipient to the supplier as they may be an interval of time for such communication to reach the supplier. This interval of time must not be unreasonable.

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6. In case of services, the date of supply will be the date of completion of the services. Services are so peculiar that many steps may appear to be the date of completion of the services. However, what is required is not the completion of the primary service but the entire service as contemplated in the terms of understanding or contract between the parties. It must be examined in each case what is the contract understanding or the trade expectation as to the last step that defines services will be completed. Party cannot create artificial steps to design the completion of any relationship to the expectation of completion of the service. A suitable system to record the date of completion of the service may be developed and maintained in order to substantiate the date of completion of the service which will be the date of supply of the service. Please also note that many transactions involving goods are liable to tax as being a service. In all such cases, it is imperative that the supplier is aware that this clause regarding date of supply of services is applied and not the earlier provisions that are applicable to supply of goods from this article.
7. In any of the above cases, the date when either payment is received or tax invoice is issued will be the date of supply. One may wonder how to resolve the conflict that this clause brings up. In other words, the question that may arise is, will the date of supply as determined by any of the above clauses must be followed or the date of supply as specified in this clause must be followed? Firstly, in cases where of supply where transfer of goods / completion of service takes place before payment is received/tax invoice is issued, this clause will not apply and the respective clause determining the date of supply will prevail. Secondly, in cases where transfer of goods/vision of service takes place final simultaneously along with receipt of payment/issuance of tax invoice, this clause will again not apply. Lastly, only in those cases where receipt of payment/Issuance of tax invoice occurs before the actual transfer of goods/completion of service, will this clause come into operation. It is very important to identify when this clause is applicable rather than to rush into applying this clause even though any of the other clauses of this article may already be applicable. The real question that arises is – when would receipt of payment/Issuance of tax invoice take place before transfer of/completion of service? This would be a case where payment is received in advance or tax invoice is issued in anticipation of transfer of goods/completion of service. However, if transaction is not a Taxable Supply, mere receipt of payment cannot be alleged to attract tax based on the 'date of supply' provisions. Hence, mere receipt of advance cannot itself attract tax in the absence of supply. There may be various reasons why payment is received and none of them maybe in respect of a taxable supply for example, earnest money deposit, security deposit, lease deposit, mobilisation advance, machinery advance, etc. This clause therefore may be understood as providing the 'date' of a Supply only where no other 'date' can be determined for any

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reason. And when tax invoice has been issued, whatever may be the reasons, that would be the date of supply even though the transfer of goods/provision of service may not have occurred. Reference may be had to Chapter XV: Account and Records for detailed discussion on tax invoice and when it is required to be issued.

This article provides seven specific cases along with the date of supply applicable to each case. Care must be taken to identify from the facts of a given case as to which of the clauses of this article are attracted and whatever may be the other facts, the date of supply cannot deviate from the one appointed by the respective clause in this article of the VAT law.

Conclusion

Description	Applicability	Date of Supply
Transfer supervised by supplier	Goods	Transfer of lawful possession
Supervision by supplier not required	Goods	Collection with lawful possession
Assembly and installation	Goods	Completion of assembly or installation
Import under customs legislation	Goods	As per by customs legislation
Delivery towards 'sale on approval'	Goods	Acceptance or 12 months from delivery
Provision of services	Services	Completion of service
Receipt of payment/issuance of tax invoice	Both	Actual date

Article 26 – Date of Supply in Special Cases

Article 26

1. The date of supply of Goods or Services for any contract that includes periodic payments or consecutive invoices is the earliest of any of the following dates, provided that it does not exceed one year from the date of the provision of such Goods and Services:
 - a. The date of issuance of any Tax Invoice.
 - b. The date payment is due as shown on the Tax Invoice.
 - c. The date of receipt of payment.

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2. The date of supply, in cases where payment is made through vending machines, shall be the date on which funds are collected from the machine.
3. The date of Deemed Supply of Goods or Services is the date of their supply, disposal, change of usage or the date of Deregistration, as the case may be.
4. The date of a supply of a voucher is the date of issuance or supply thereafter.

Introduction

Apart from the cases discussed in the previous article, special provisions are required to deal with data supplied in cases which do not conform to the situations covered by article 25. This article covers supplies which are unique in some way as specified in article 7 and article 11.

Analysis

This article is for special cases of supply and appoints the date of supply to be considered in each of these cases, namely:

1. in the case of contracts that are continuing in nature which provides for regular or intermittent payments required to be made before the completion by the supplier under the contract of all issuance of invoices periodically. It is important to note that not all contracts which have an extended duration for the completion will come under the scope of this clause. It must be a contract whose performance can be seen to contain sub-parts and each of these may be entitled to payment or require issuance of invoice. If it is the 'standing contract' which is basically a single agreement containing multiple contracts in the form of a Master Agreement. Such type of arrangements will continue to be covered by article 25. Once it is identified that this clause will be applicable, it provides that the date of supply would be the earliest of:
 - a) date of tax invoice
 - b) due date of payment as shown in the tax invoice
 - c) date of receipt of payment

it is important to note that it appears very likely that one of the three events specified above will always occur first but, if we were to identify correctly long-term supply contracts that are generally followed in business, it can provide for any of the other events specified above to occur earlier. Hence, identification of the supplier to whom this provision applies cannot be emphasised any more. It must also be noted that the contract that qualifies for the applicability of this provision should not be one where the interval of time between payment/invoice and date of supply are more than one year apart.

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2. It is common to find that suppliers place machines containing goods that can be operated by customers and without the presence of a salesperson present, the machine itself dispenses the goods. Delivery of the goods by the supplier to store such goods into the machine, due to this provision, is not to be considered a supply. The dispensing of the goods by the machine to the customer is also not to be considered a supply. But when the supplier visits the place where such machines are located and unload the payment that has been deposited into the machine by the customer in order to activate the machine into dispensing the goods stored in such machine, it will be treated as the date of supply of the goods so dispensed to the customer.
3. In cases specified in article 11 – deemed supply - the date when the events specified in that article occurs, namely:
 - a) deemed supply
 - b) disposal
 - c) change of use
 - d) deregistration

Reference may be had to chapter II: Levy of VAT for a detailed discussion on article 11 to recollect the various types of supply

4. in the case of supply of voucher as specified in article 7 - special cases of supply - the date of supply is:
 - a) issuance of voucher
 - b) redemption of voucher

Reference may be had to chapter II: Levy of VAT for a detailed discussion on article 11 to refresh ourselves regarding the various special cases of supply so as to identify the circumstances when issuance of certain types of vouchers would not amount to supply. Only the date of their redemption and not the date of their creation would be deemed to be the date of supply.

Conclusion

Date of supply is required only after the transaction is determined to be a supply liable to VAT. Mere occurrence of events specified in this article cannot remain when the transaction amounting to supply itself has not yet occurred. This principle has been well brought to repeatedly so as to point out that supply must first occur in order for two be required. Date of supply is merely required to quantify the tax that has already been levied.

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It is interesting to note that this article does not separately provided clauses for supply of goods and for supply of services. All clauses in this article apply uniformly whether the supply is of goods or of services.

Article 27 – Place of Supply

- Article 27
1. The place of supply of Goods shall be in the State if the supply was made in the State, and does not include Export from or Import into the State.
 2. The place of supply of installed or assembled Goods if exported from or imported into the State shall be:
 - a. In the State if assembly or installation of the Goods was done in the State.
 - b. Outside the State if assembly or installation of the Goods was done outside the State.
 3. The place of supply of Goods that includes Export or Import shall be as follows:
 - a. Inside the State in the following instances:
 1. If the supply includes exporting to a place outside the Implementing States.
 2. If the Recipient of Goods in an Implementing State is not registered for Tax in the state of destination, and the total exports from the same supplier to this state does not exceed the mandatory registration threshold for said state.
 3. The Recipient of Goods does not have a Tax Registration Number in the State, and the total exports from the same supplier in an Implementing State to the State exceeds the Mandatory Registration Threshold.
 - b. Outside the State in the following instances:
 1. The supply includes an Export to a customer registered for Tax purposes in one of the Implementing States.
 2. The Recipient of Goods is not registered for Tax in the Implementing State to which export is made, and the total exports from the same supplier to this Implementing State exceeds the mandatory registration threshold for said state.
 3. The Recipient of Goods does not have a Tax Registration Number and the Goods are Imported from a supplier registered for Tax in any of the Implementing States from which import is made, and the total imports from the same supplier to the State do not exceed the Mandatory Registration Threshold

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4. Goods shall not be treated as exported outside the State and then reimported if such Goods are supplied in the State and this supply required that the Goods exit and then re-enter the State according to the instances specified in the Executive Regulation of this Decree-Law.

Introduction

Of all the important aspects to be determined, place of supply is most important because it is the determination of the place of supply that provides the information as to which state is entitled to collect the tax in respect of the taxable supply effected by the taxable person on the date of supply.

Analysis

Territory

VAT law imposes tax in the territory and this territory is not the geographical boundaries of UAE because economic activity involves cross-border trade. While dealing with cross-border trade, it becomes necessary to identify where the substance of the economic activity lives, whether within the territory of UAE or outside. This exercise of identifying the territory which is entitled to impose tax under this law is the exercise of determination of place of supply.

State-GCC-RoW

It is important to understand the relationship between the following jurisdictions:

- a) State – UAE
- b) GCC – all other member States
- c) Rest of World

VAT law provides a certain manner of treatment when supply is taking place between “State and GCC” and “State and RoW”. This is evident on a careful consideration of this article. In order to appreciate this principle, it is necessary to identify the place of supply appointed in the VAT law. While stating that the place of supply is ‘appointed’, it needs to be considered that place of supply is an expression used to refer to what the law considers to be the ‘tax collecting State’ and not the site where the supply actually takes place. It is a legally appointed place and not the site evident from the facts. If the place of supply is ‘within UAE’ then VAT is payable and if the place of supply is ‘outside UAE’ then, VAT is NOT payable.

Destination of Supply

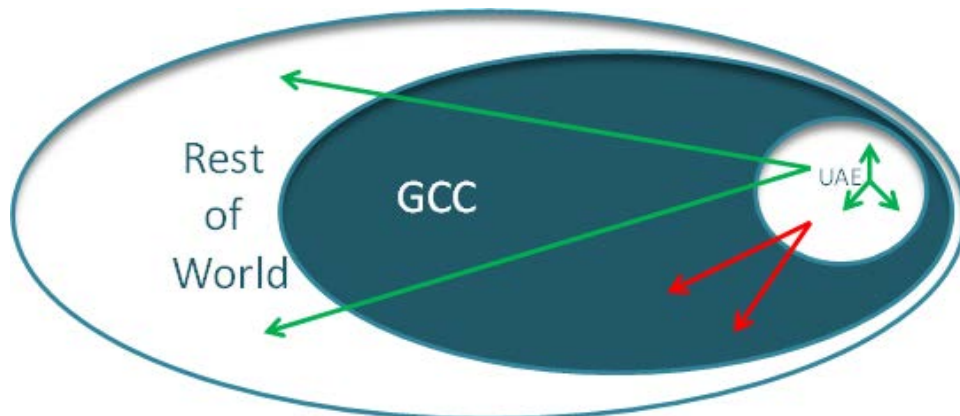
When a transaction is referred to as ‘supply made’, it can refer to the location of the supplier at the time of effecting the outward supply or refer to the location of the goods at the time of effecting the supply. Except in the case of import of goods reverse charge mechanism

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operates reverse charge in its true sense under this VAT law applies only in the case of services.

Article 48 discusses 'Concerned Goods' in the context of reverse charge and goes on to indicate that reverse charge applies only to import of goods. Hence, while examining the concept of 'where supply is made' it would help in understanding this article to understand supply of goods leaving out import of goods and supply of services.



- **Green arrows indicate that 'place of supply' is UAE in case destination is within UAE or outside GCC**
- **Red arrows indicate that 'place of supply' is not in UAE in case destination is outside UAE but within GCC**

Place of Supply

Place of supply is important to know whether tax is payable in UAE or not. If place of supply is within UAE then VAT is applicable on those supplies and the taxable person shall be liable to discharge VAT as prescribed. This article puts the places of supply in three categories, namely:

- A. where supply is made within UAE
- B. where supply is made outside UAE but within GCC
- C. where supply is made outside GCC to the rest of the world (RoW)

From our earlier discussion regarding destination of supply principle, we have seen that this article creates a legal fiction regarding the principle to be followed. In relation to supply of goods, factual information as to the destination of the journey of the goods is relevant. The location of the buyer is not as important as the location of the actual recipient of the goods

Note:

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supplied. The buyer may very well be in any other location and that fact will be ignored in determining the place of supply. Recipient of the goods refers to the actual person (buyer himself or his nominee) and his role in a given supply is relevant. The whole discussion about the place of supply in each of the three categories identified above, has been summarised in the table below for ease of understanding.

Table A – Place of Supply ‘in UAE’

Transaction	Origin of Journey	Destination of Journey	Recipient	Additional Facts of Recipient	Place of Supply
Supply	UAE	UAE	Any	Registered or unregistered in UAE	UAE
Assembly	UAE	UAE	Any	Registered or unregistered in UAE	UAE
Supply	UAE	RoW	Any	-	UAE
Supply	UAE	GCC	In GCC	<ul style="list-style-type: none"> Recipient unregistered in GCC Supplies ‘less than’ MRT 	UAE
Supply	GCC	UAE	UAE	<ul style="list-style-type: none"> Recipient unregistered in UAE Supplies ‘more than’ MRT 	UAE

MRT means Minimum Registration Threshold

Where place of supply is ‘in UAE’ the supply will be liable to VAT notwithstanding the destination of journey of the goods.

Table B – Place of Supply ‘Outside UAE’

Transaction	Origin of Journey	Destination of Journey	Recipient	Additional Facts of Recipient	Place of Supply
Supply	UAE	Outside UAE	Any	-	Outside UAE
Assembly	UAE	Outside UAE	Any	-	Outside UAE
Supply	UAE	Within GCC	In GCC	Registered in GCC	Outside UAE
Supply	UAE	Within GCC	In GCC	<ul style="list-style-type: none"> Recipient unregistered in 	Outside UAE

Note:

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Date and Place of Supply

				GCC	
				<ul style="list-style-type: none"> Supplies 'more than' MRT 	
Supply	GCC	UAE	UAE	<ul style="list-style-type: none"> Recipient unregistered in UAE Supplies 'less than' MRT 	Outside UAE

MRT means Minimum Registration Threshold

Where place of supply is 'outside UAE' the supply will not be liable to VAT as it would be an export as per article 45 and kindly refer to Chapter V for detailed discussion on export.

Exports from UAE

As regards exports, the place of supply is provided in article 27(3)(a)(1)/(2) and 27(3)(b)(1)/(2) and the same may be understood as follows:

Export from UAE into GCC		Export from UAE into R-o-W		
<i>Recipient unregistered in GCC</i>		<i>Recipient registered in GCC</i>	<i>Recipient registered in GCC</i>	<i>Recipient unregistered in GCC</i>
<i>Export 'more than' MRT</i>	<i>Export 'less than' MRT</i>			
UAE	Outside UAE	Outside UAE	Outside UAE	UAE

Exports to Unregistered Recipients

From the perspective of unregistered recipients, the place of supply in article 27(3)(a)(2) and 27(3)(b)(2) and the same may be understood as follows:

Recipient of Supply Unregistered	Destination of Goods	Supply Below MRT	Supply Above MRT	Place of Supply
Unregistered in GCC	GCC	Yes	-	UAE
Unregistered in GCC	GCC	-	Yes	Outside UAE

Imports into UAE

As regards imports, the place of supply is provided in article 27(3)(a)(3) and 27(3)(b)(3) and the same may be understood as follows:

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Import into UAE from GCC supplier (registered)		Imports into UAE from R-o-W
Recipient unregistered in UAE		
<i>Imports 'more than' MRT</i>	<i>Imports 'less than' MRT</i>	
UAE	Outside UAE	UAE

Imports by Unregistered Recipients

As regards imports, the place of supply is provided in article 27(3)(a)(3) and 27(3)(b)(3) and the same may be understood as follows:

Recipient of Supply Unregistered	Origin of Goods	Destination of Goods	Supply 'less than' MRT	Supply 'more than' MRT	Place of Supply
Unregistered in UAE	R-o-W	UAE	-	Yes	UAE
Unregistered in UAE	GCC	UAE	Yes	-	Outside UAE

Immovable property

Special mention is merited in respect of transactions involving immovable property because the definition of goods includes real estate. Immovable property is not synonymous with real estate. Immovable property is referred as 'real estate' only when it is an object of inventory in Business. Immovable property such as highway, mountain, river bank, desert land or bridge will never be referred to as 'real estate'. It therefore follows that some of these examples may have been 'real estate' at some point but ceased to remain 'real estate' once they were permanently established and came to be identified by a more accurate name such as highway, bridge or land. Further support may be had from article 45 and 46 which provides for an exclusion from VAT. Article 5 provides for zero rating of certain transactions involving Immovable property and article 46 provides for exclusion from tax. Existence of exemption can indicate the extent of its inclusion. Transactions listed in article 45 can be understood as included within the scope of supply of goods and transactions listed in article 46 can be understood to be clarified as not at all included within the scope of supply of goods.

Place of supply of goods in relation to real estate may be attended to with caution after considering all attendant facts related to the nature of the arrangement between the parties in relation to such real estate.

Conclusion

On a careful consideration of this article, the principle that may be understood are summarised below:

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- A. place of supply of goods is the destination of those goods
- B. if recipient is unregistered in UAE (for imports) and GCC (for exports) and supplies are 'less than' MRT, place of supply will be the origin

Article 28 – Place of Supply of Water and Energy

Article 28	
1.	The supply of water and all forms of energy specified in the Executive Regulation of this Decree-Law through a distribution system, shall be considered as done in the Place of Residence of the Taxable Trader in case the distribution was conducted by a Taxable Person having a Place of Residence in the State to a Taxable Trader having a Place of Residence in an Implementing State.
2.	The supply of water and all forms of energy specified in the Executive Regulation of this Decree-Law through a distribution system, shall be considered to have occurred at the place of actual consumption, if distribution was conducted by a Taxable Person to a Non-Taxable Person.

Introduction

Supply of water and energy (specified forms) does not follow the general principles of place of supply in view of the significance of economic activity involving water and energy. In this article we will find the specific provisions relating to place of supply of water and energy.

Analysis

as mentioned earlier, place of supply is a legal fiction appointing the authority to collect tax to be UAE or not. For this reason, in relation to supply of water and energy the following table may be referred:

Description	Supply By	Supply To	Place of Supply		Effective Place of Supply
Water and Energy	Taxable Person	Taxable Trader	Place of Residence of Taxable Trader	Within UAE	UAE
				Within GCC	Outside UAE
	Taxable Person	Non-taxable Person	Actual consumption	Within UAE	UAE
				Within UAE	Outside UAE

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Taxable trader is a taxable person. Further, his main business is the distribution of water or energy.

Place of residence refers to the place of establishment of his business as per article 32. The most proximate location involved in the supply will be taken into consideration to identify the place of supply under this article.

Conclusion

Provisions of this article apply in specific cases where the supply is by a taxable person to a taxable or non-taxable person. This article does not apply to import or export of water or energy. When the specific cases covered by this article are not involved in a supply then place of supply cannot be determined under this article.

Article 29 – Place of Supply of Services

Article 29 : The place of supply of Services shall be the Place of Residence of the Supplier.

Introduction

Services hold an important place in the VAT law and enjoy a very expansive definition compared to goods. Prescribing what the place of supply of services should be is again not left to the facts of a case but the prescriptions of this article.

Analysis

Place of Supply

The brevity of this article is remarkable both in clarity and the potency of the contribution that services are expected to make in the economic development of UAE.

Place of supply of services will be the place of residence, as determined in accordance with article 32, of the supplier of the services. Reference may be had to 'Chapter I: Important Definition' for detailed discussion on place of residence. It is sufficient at this point to mention that place of residence follows a hierarchy, namely:

- a) place of establishment of the supplier who has a single location in GCC
- b) fixed establishment located elsewhere and most proximate to the supply of services
- c) place of the usual residence

it is important to identify from where the services are supplied. For example, a business consultant having his office in Dubai may travel to various locations while discharging his responsibilities towards his customer. Every such site that he visits while discharging his responsibilities does not become the place of establishment of his business. They are merely

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the site of discharge of responsibilities and not the place of establishment. Hence, the place of supply of services of this business consultant will continue to remain Dubai for all contracts.

Export of services and import of services are not to be subject to the general provisions of this article as they are separately discussed in the next article.

Conclusion

in relation to supply of services, VAT follows the principle of origin.

Article 30 – Place of Supply in Special Cases

Article 30 : As an exception to what is stipulated in Article (29) of this Decree-Law, the place of supply in special cases shall be as follows:

1. Where the Recipient of Services has a Place of Residence in another Implementing State and is registered for Tax therein, the place of supply shall be the Place of Residence of the Recipient of Services.
2. Where the Recipient of Services is in Business and has a Place of Residence in the State, and the Supplier does not have a Place of Residence in the State, the place of supply shall be in the State.
3. For the Supply of Services related to Goods, such as installation of Goods supplied by others, the place shall be where said Services were performed.
4. For the Supply of means of transport to a lessee who is not a Taxable Person in the State and does not have a TRN in an Implementing State, the place shall be where such means of transport were placed at the disposal of the lessee.
5. For the Supply of restaurant, hotel, and food and drink catering Services, the place shall be where such Services are actually performed.
6. For the Supply of any cultural, artistic, sporting, educational or any similar services, the place shall be where such Services were performed.
7. For the Supply of Services related to real estate as specified in the Executive Regulation of this Decree-Law, the place of supply shall be where the real estate is located.
8. For the Supply of transportation Services, the place of supply shall be where transportation starts. The Executive Regulation of this Decree-Law shall specify the place of supply for transportation Services if the trip includes more than one stop.

Introduction

Not only are export of services and import of services in need of specific provisions to

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determine their place of supply but there are also various other cases that are regarded as special. This article provides the legislative intention of the place of supply as appointed by the VAT law.

Analysis

This article carves out an exception to the previous and in so doing effectively overrides the notion of what the place of supply should be in these cases. It is therefore important to correctly identify whether the circumstances detailed in this article are rightly identified in each case and then the place of supply prescribed by this article can be applied.

Place of supply which is generally the origin of the supply in the following cases will be the destination of the supply, namely:

1. where the recipient is registered in GCC
2. where import of services involved by supplier not registered in UAE and recipient registered
3. where services (in relation to goods) are actually performed
4. where services of lease (of means of transport) are delivered to recipient unregistered in UAE
5. where services of articles of food and drink are actually furnished for consumption
6. where services of entertainment of culture, art, sports, education or others are actually performed
7. where services (in relation to real estate) are actually provided at the site or location
8. where services of transportation commence

It is interesting to note that the place of supply is determined not with reference to the supplier but to service. It therefore emerges that place of supply will not change based on the fact that the service is supplied by the principal supplier or any subcontractor. The place of supply continues to be guided by the services supplied and not the position of the supplier with reference to the ultimate consumer of those services. A word of caution here is that the nature of the services supplied by the supplier need not always be the same as those services received from subcontractors. If a principal supplier were to receive services from subcontractors whose services are of a completely different nature, then the place of supply corresponding to the services of such subcontractor will be applicable and not the place of supply as that of the principal supplier.

It is also not uncommon to find that in the course of supply of services goods may also be received by the supplier and consumed, but the nature of supply continues to remain supply of

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services and not a supply comprising of more than one component as discussed in article 8. Facts of every transaction will provide the information necessary to determine whether article 8 is applicable or not. Accordingly place of supply under this article needs to be followed only if the component involved is a service listed in these special cases under this article.

Conclusion

Although the general regarding place of supply appears to be the origin, this article provides the exception to the principle, place of supply of services in relation to special cases deviates from principle of destination principle except in the case of transportation service.

Article 31 – Place of Supply in Telecommunication and Electronic Services

Article 31

1. 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.
2. The actual use and enjoyment of all telecommunications and electronic Services shall be where these Services were used regardless of the place of contract or payment.

Introduction

Telecommunication and Electronics services are a new and expanding area of economic activity. The remote and nonphysical nature of the services involved in this industry makes it difficult to determine the place of supply based on general principles and for this reason this article provides the specific manner of determining place of supply in relation to elect Telecommunication and Electronic services.

Analysis

At the outset, Telecommunication and Electronic services covered by this article are to be notified by Executive regulation.

This article very simply focuses on the location of use and enjoyment of the services and not the location of payment or contract. The manner of determination of the location of use and enjoyment requires a certain amount of evidence gathered from the supplier’s digital network particularly where services are enabled with great amount of mobility along with use of portable devices. Supply of devices required for enjoying the services will be covered within

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the provisions dealing with place of supply of goods but the services enjoyed using those devices alone are covered by this article. Many telecommunication services are enabled using devices or chips or other articles which are placed in the hands of the consumer not in order to supply those articles to the consumer but to facilitate the access and use of the services offered by the supplier. For example, SIM card placed in the hands of a consumer always remains the property of the telecommunications services supplier. The consumer is not aware about the working of a SIM card when he purchases the SIM card as goods. The consumer merely contracts with the service supplier to provide telecommunications services and in order to avail those services, the supplier requests the consumer to carry, hold or install the SIM card in his mobile device. Telecommunication services are very sophisticated and accordingly examination of the contract is important but more importantly, understanding the nature of the telecommunication business becomes even more important in order to rightly identify what the object of supply involved is– Is it for supply of SIM card or is it for supply of telecommunication services by installing the SIM card in the consumer device? Distinction must be made between inseparable ‘services and goods’ and separable ‘services and goods’. For example, SIM card and mobile telephony service cannot be separated whereas mobile phone and telephony services can be separated. Goods which are separable from the service will be liable to VAT as supply of goods whereas goods which cannot be separated from services will be liable to VAT by being included within the supply of services if the services are what the consumer expects from the supplier.

Conclusion

Not all services involved in the Telecommunication and Electronics sector come within the operation of this article. Specified services alone will enjoy the determination of place of supply under this article based on the location of their use and enjoyment. Here too, we find that this article follows the destination principle similar to the previous article.

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Chapter – VIII

Tax Deduction

Any VAT Law cannot be thought of without the mechanism of Input Tax Credit. Credit of taxes paid on inputs and input services used for manufacturing of finished goods or for trading of goods or provision of services is essential for any VAT law to be a tax on value addition only. UAE VAT law has also allowed credits of such taxes paid on Inputs and Input services through various Articles under the Decree Law no 8 of 2017.

In order to understand the tax deduction concept certain definitions relating to Recoverable tax and input tax are to be seen first: -

Definitions

Input Tax: Tax paid by a Person or due from him when Goods or Services are supplied to him, or when conducting an Import.

Thus, all the taxes paid for any purchase of goods or services or imports will be classified as input tax. However, the recovery of the same shall be as per the conditions specified in Title 7.

Output Tax: Tax charged on a Taxable Supply and any supply considered as a Taxable Supply.

Recoverable Tax: Amounts that were paid and may be returned by the Authority to the Taxpayer pursuant to the provisions of this Decree-Law. It is important to verify whether recovery of tax is allowed to every 'tax payer' or only to 'taxable persons'. Tax payer is one who is liable to pay tax whereas taxable person is one who is registered or obligated to register. Considering that recovery of tax is possible only through a tax return, it appears likely that recovery of input tax will not be allowed to every tax payer but only those who are registered or obligated to register, that is, taxable persons. Unregistered persons who are obligated to register have been allowed a limited window by Article 56 to recover taxes paid prior to registration.

Due Tax: Tax that is calculated and charged pursuant to this Decree-Law.

Payable Tax: Tax that is due for payment to the Authority.

The same shall be calculated in the manner specified in Article 53.

Tax Period: A specific period of time for which the Payable Tax shall be calculated and paid. The tax period may be Quarterly, Yearly or monthly or any other period specified in the executive regulation as per Article 71.

Tax Invoice: A written or electronic document in which the occurrence of a Taxable Supply is recorded with details pertaining to it.

Tax Credit Note: A written or electronic document in which the occurrence of any amendment to a Taxable Supply that reduces or cancels the same is recorded and the details pertaining to it.

Capital Assets: Business assets designated for long-term use.

Capital Assets Scheme: A scheme whereby the initially recovered Input Tax is adjusted based on the actual use during a specific period. This scheme is given in Article 60.

Recovery of Input Tax

The whole essence of the VAT system is in the credit of input tax. This means that taxes paid to procure all goods / services which have been utilised in supply of taxable goods / services by the business can be set off against the output tax payable.

Such a system of credit or recovery of input tax ensures that there is no cascading effect of taxes, only the value added at each stage is taxed and thus double taxation is avoided. The provisions related to Input Tax Credit are contained in Title Seven which are discussed here.

Tax Payable (Article 53)

The payable tax at the end of each tax period is arrived at by using the formula:

$$\text{Tax Payable} = \text{Output Tax payable} - \text{Total Recoverable tax}$$

The output tax is the tax payable in accordance with the UAE VAT law during the tax period. The recoverable tax is also to be taken for the same period calculated as per Article 54.

Total Recoverable Tax (Article 54)

Total Recoverable Tax for any tax period is the total of input tax paid for the goods which are used or intended to be used in the for the following:

- (a) Taxable Supplies
- (b) Such supplies made outside UAE, which would have been taxable in UAE if made within UAE.
- (c) Such Specified supplies made outside UAE, even if such supplies would have been exempt if made within UAE.

Clauses (b) and (c) above signify the cases where the Input tax credit is made available even if tax is not payable to the State on the outward supplies made by taxable person using these inward supplies.

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Clause (b) allows the credit of Inputs if the inputs are used for making supplies outside UAE, which could be classified as taxable in UAE, even though tax was not paid on such outward supplies.

Clause (c) allows the credit of Inputs if the inputs are used for making supplies outside UAE, even if such supplies are classified as exempt in UAE when they are made inside UAE.

For example, if timber is taxable in UAE and someone supplies timber outside UAE, then such supply may be zero rated and no tax would be payable. Even then the input tax will be recoverable to the supplier on the inputs used in making such supplies as per these provisions.

It is important to note that taxable supplies include supplies taxable at zero rate. Thus, any person supplying zero rated goods may claim credit of tax paid, but a person supplying exempt goods cannot claim credit since exempt supplies are not taxable supplies. However as per clause (c) in some of the exempted supplies cases also such supplies would be specified by executive regulation.

Credit is available in few more cases under Article 54 of the UAE VAT Law. These are discussed hereunder:-

1. Credit is available for import of supplies from another GCC country whose final place of destination is the UAE and where tax has been paid in that GCC country, subject to conditions mentioned in the executive regulation. In this case even if the tax has been paid in the other GCC (implementing State), it has been deemed as recoverable tax for the purpose of UAE VAT Law, thus allowing an extended benefit to the taxable person in UAE.
2. When goods are acquired in another GCC country and then moved into the UAE by the same person, he can claim credit of tax paid in that country, subject to conditions mentioned in the executive regulations.

Having provided the credit of input tax in the above cases Article 54 specifies a few cases where credit of input tax could not be obtained. These are as follows:-

1. No credit is available for tax paid on goods entering the UAE for the purpose of transit to another GCC country. Such cases shall be guided by the executive regulations. In such cases credit would be made available in the GCC country where the goods is finally destined.
2. The executive regulations shall provide further instances where tax credit cannot be claimed.

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Method of claiming Input Tax credit (Recovered tax) (Article 58)

The regulations shall specify the method of recovery where a taxable person does activities that are not in the course of doing business.

The regulations shall further specify the mechanism for adjusting input tax in cases where:-

- (a) the input tax is attributed to making taxable supplies, but the use / intended use is changed prior to making such supply.
- (b) the input tax is attributed to making exempt supplies / activities outside conduct of business, but the use / intended use is changed prior to making such supply. (Article 59)

Thus, it is clear from Article 59 that in case the goods acquired for making taxable supplies are used in making exempt supplies then the credit will be subject to adjustment (i.e. reduction) as per executive regulation. And in a vice versa situation the executive regulation will decide regarding the allowance of Input tax credit on goods which are acquired for making exempt supplies and are subsequently used for making taxable supplies.

Period of recovering input tax (Article 55)

The input tax can be claimed against the output tax in the period in which both the following conditions are satisfied:

- (a) The tax invoice or other duty paying document (in case of imports) has been received and kept in the records;
- (b) Consideration for the supply has been paid.

For deducting recoverable input tax, both the conditions must be satisfied i.e. receipt of Invoice and making of payment. In case payment is not made against a supply then the credit of input tax on such supply received could not be taken.

Further, if any of the conditions are not satisfied due to which credit could be taken during a tax period then the same may be taken in the subsequent tax period when both the conditions are met. However, if such input tax could not be deducted in the subsequent tax periods then it cannot be deducted at all subsequently in a later tax period.

The law clearly specifies that credit is available in the subsequent tax **“period”** and not **“periods”**. Thus it is available only to the next period but not later. It is always to be ensured for checking of records regarding any due credit which should have been taken or otherwise it may lapse.

From the above, it follows that entitlement to claim recovery of input tax is a right that arises in the tax return and not in the fact that recoverable taxes have been paid by the taxable person.

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Failure to file tax return abrogates this right though the liability to pay Output Tax on the taxable supply continues until it is discharged.

Recovery of input tax if paid before registration (Article 56)

The taxable person can claim credit of input tax paid prior to tax registration, in the first return submitted after registration. Such claim can be made on:

- (a) Supply of goods / services made to him prior to registration
- (b) Import of goods by him prior to registration

It is imperative here that for recovery of such input tax paid earlier than registration of the taxable person one must ensure to file return for the first tax period after registration carefully analysing all the exceptions as discussed below and use of such inward supplies. After, filing of return of first tax period such recoverable tax credits could not be taken.

Further a proviso has been given under clause (1) of Article 56, which says that such recovery of recoverable input tax credit will only be allowed if such goods and services were used to make supplies that give the right to Input Tax recovery upon Tax Registration.

Right to input tax recovery shall arise if the goods/services satisfy the conditions prescribed under Articles 54 and 55 as discussed before.

In the following cases, input credit cannot be claimed in relation to goods/services acquired prior to registration:

- (a) Receipt of goods / services for the purpose of making non-taxable supplies. It need to be noted that zero-rated supplies are taxable supplies)
- (b) Tax credit related to part of capital assets depreciated before date of tax registration. If part of the asset is depreciated then Input tax cannot be recovered on such assets to the extent such assets are depreciated.
- (c) Service received more than 5 years prior to the date of tax registration. (Here credit in relation to goods has not been restricted, thus if goods are in possession and are being used as specified in Articles 54 and 55, credit will be available).
- (d) Where the goods were moved to another GCC country before tax registration.

Special rules for Government Entities and Charities (Article 57)

The recovery of input vat for such entities will be decided on the basis of a Cabinet decision, but subject to the following exceptions:

- (a) Tax excluded from recovery as specified in the executive regulations (i.e. no recovery on items specified specifically as non-creditable in the executive regulation)

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- (b) Tax paid on goods and services used to perform exempt supplies.

Apportionment and adjustment of input tax (Article 58)

The executive regulation shall specify the method of calculation of input tax in following cases:-

- 1. If Input Tax is paid for Goods or Services to make supplies that allow recovery under Article (54)
- 2. If Input Tax is paid for Goods or Services to make supplies that do not allow recovery
- 3. Activities conducted that are not in the course of Business

Conditions and Mechanism of Input Tax Adjustment (Article 59)

Subject to the conditions specified by the executive regulation, the Recoverable tax shall be adjusted (increasing or reducing) in following cases:-

- 1. When input tax is attributed to making taxable supplies (partially or fully) and credit of input tax has been obtained but before making taxable supplies use or intended use of such goods or services has been changed i.e. they are no longer to be used for making taxable supplies thereby making such supplies ineligible for recovering input tax.
- 2. In a vice versa scenario, when input tax is attributed to making exempt supplies (partially or fully) and credit of input tax has not been obtained but before making taxable supplies use or intended use of such goods or services has been changed i.e. they are no longer to be used for making exempt supplies thereby making them eligible for recovering input tax.

Capital Assets Scheme (Article 60)

The input tax paid on purchase of capital assets shall be deferred over the period of use of such asset. Executive regulation shall specify estimated useful life, methods of adjusting capital assets and the manner in which credit can be taken. Records related to capital assets are required to be kept at least for 10 years depending on the estimated useful life of the asset. Through this provision the law has deferred the recovery of input tax of capital assets in such a way that it spreads through the life of the capital asset.

Further to this, the executive regulation shall specify following :-

- (a) Capital Assets subject to the provisions of this Decree-Law and their estimated useful life.
- (b) The method of adjusting Capital Assets and the periods for which adjustments should be made.

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- (c) Instances where the period for keeping records of Capital Asset records is extended.

Adjustments to Tax after the Supply Date (Article 61)

Subsequent to the supply, output tax may require adjustment (increase/reduction) in the following cases:

- (a) Cancellation of supply.
- (b) Change in tax treatment of supply.
- (c) Alteration of consideration paid / payable.
- (d) Return of goods / services in full or part.
- (e) Error in charging tax in invoice.

In the above cases whenever required the output tax may be increased or decreased from the amount that has been earlier declared in the Invoice or return. However, cancellation of supply is not a case where the goods supplied are retained by the recipient. In order to qualify as cancellation of supply, the underlying goods supplied must be returned to the supplier. Transit loss, measurement loss, etc, are not be regarded as cancellation of supply

Sub-clause (e) of this clause will not be applicable in cases where at the time of sale, place of supply identified as inside State as per Article 27(1) and later during movement of material it was found that the supply would finally materialise as being outside State.

Conditions for adjusting output tax amount charged in the invoice - Article 61(3)

Any of the following conditions should be met to adjust the output tax as a result of events specified above in clause (1) of Article 61:-

- (a) Tax charged in the invoice is different from the amount of tax chargeable in the invoice
- (b) Amount of tax calculated incorrectly during filing of return.

Manner of adjustment of output tax (Article 62)

The output tax adjustment as specified in Article 61 can be done in the following manner:

- (a) In case the actual tax due is more than what was previously levied, a new tax invoice for additional amount shall be issued during the period when such increase was identified.
- (b) In case the actual tax due is less than what was previously levied, a tax credit note shall be issued for the differential amount. This shall reduce the output tax of the supplier and input tax of the recipient. (Article 63).

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Tax Credit Note

A tax credit note may be issued under Article 70 by a registrant to reduce his output tax as per Article 62. The same is to be delivered to the recipient of goods or services.

In case of deemed supply also a tax credit note can be issued by the registrant for the purpose of reduction in output tax liability and he has to keep the copy of the same in his records.

The executive regulation shall further specify the following regarding the tax credit note:-

- (a) Basic data that should be included in the Tax Credit Note in instances where the Taxable Person is required to issue this Note.
- (b) The conditions and procedures required for the issuance of an electronic Tax Credit Note.
- (c) Instances where the Registrant is not required to issue and deliver a Tax Credit Note to the Recipient of Goods or the Recipient of Services.
- (d) Instances where other documents may be issued in place of the Tax Credit Note as well as conditions for the issuance of such document and the data to be included therein.
- (e) Instances where another person may issue a Tax Credit Note on behalf of the registered supplier.

Adjustment due to the Issuance of Tax Credit Notes (Article 63)

In case of reduction of output tax due to tax credit note the tax specified in tax credit note shall have the following twin impacts:-

- (a) A reduction of the Output Tax for the issuer of Tax Credit Note.
- (b) A reduction of the Input Tax by the Recipient of Goods or Recipient of Services for the Tax Period during which the Tax Credit Note was received.

Adjustment for Bad Debts (Article 64)

The law provides for reduction in output tax for those supplies where the amount due has not been recovered from the customer leading to a bad debt. Following conditions are required to be fulfilled in this regard:

- (a) Goods and Services have been supplied and Due Tax has been charged and paid.
- (b) The amount due has actually been written off in the books either in part or full.
- (c) More than 6 months have passed from the date of supply.
- (d) The customer has been notified of the amount of write off made.

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The recipient of goods / service will have to reduce his input tax if the following conditions are met:-

- (a) Supplier has reduced his output tax and has notified the recipient about the consideration being written off.
- (b) Recipient has actually received the goods and services and already taken the credit of input tax. This implies that in case the input tax is not deducted earlier by the recipient then he is not liable to reduce his tax liability now.
- (c) He has not paid the consideration in full or in part for the supply for more than 6 months.

All these adjustments shall be made in the tax return of the period during which such write-offs are made. The amount of adjustment shall be equal to tax related to the consideration written off (Pro-rata).

Recovery of Tax (Article 74)

Where the input tax exceeds the output tax, excess of such recoverable tax shall be carried forward to the subsequent tax period to be used for payment of tax or penalties. This can be done for any number of periods until such excess is fully utilised.

In cases where some balance is still remaining, the executive regulations shall specify the procedures for claiming a refund from the authority.

Record keeping

The taxable person shall keep records to indicate purchase of goods and services where credit of input tax was not claimed.

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Chapter – IX

Payment of Payable Tax

Every registered person is required to **charge tax on supplies made by him during the tax period and pay the tax collected on those supplies to the tax Authority** on periodic and regular basis.

The tax due payable by the registered person to tax authorities is defined as “**Payable Tax**” by the Decree-law.

Here in this section, we will discuss and understand the following aspects:

- a) Calculation of Payable Tax
- b) Due date & Procedure for Payment of Payable Tax

CALCULATION OF PAYABLE TAX

Definitions of relevant words & expressions

- a) **Output Tax:** Tax charged on Taxable Supply and any supply considered as taxable supply.
- b) **Input Tax:** Tax paid by a person or due from him when Goods or Services are supplied to him, or when conducting an Import.
- c) **Recoverable Tax:** Amounts that were paid and may be returned by the Authority to the Taxpayer pursuant to the provisions of the Decree-Law.
- d) **Tax Period:** A specific period of time for which the payable tax shall be calculated and paid.
- e) **Payable Tax:** Tax that is due for payment to the Authority.
- f) **Implementing States:** The GCC States that are implementing a Tax law pursuant to an issued legislation.

Now, let's understand the above expressions in detail-

A. OUTPUT TAX:

It is the VAT charged or collected by the registered person on taxable supplies or Deemed supplies made by them during specific tax period.

The registered person shall remit such tax charged or collected to the Authority as per the provisions of Decree-Law.

Example 1:

Mr. X is a registered person and is engaged in trading in the following products. The details of products and total sales of each product in August 17 are as follows:

(Amount In AED)

Particulars	Product-A	Product-B	Product-C	Total
Tax Rate	Exempt	5%	0%	
Sales (Excluding Tax)	200	300	400	900
Tax Charged on Sale	-	15	-	15
Sales (including Tax)	200	315	400	915
OUTPUT TAX	-	15	-	15

Adjustment of Output Tax:

As per Article (61) of the Decree law, the registered person can make adjustments to the Output Tax on supply after the date of supply in any of the following instances:

1. If the supply was cancelled.
2. If the tax treatment of the supply has changed due to a change in the nature of the supply.
3. If the previously agreed consideration for the supply was altered for any reason.
4. If the recipient of Goods or Services returned them to the Registrant in full or in part and the consideration was returned in full or in part.
5. If the tax was charged in error.

Conditions to be satisfied

- Output Tax charged on the supply stated in the Tax Invoice does not match the Tax that should actually be charged on the supply as a result of any of the instances mentioned above, or
- If the Registrant submits a Tax Return for the Tax Period during which the supply occurred and an amount was incorrectly calculated as Output Tax due as a result of any of the instances mentioned above.

Exceptions: Where the place of supply was treated as supply made in the State, which does not include Export from or Import into the State. But due to movement of Goods, it turned out to be treated as supply which includes an Export to a customer registered for Tax purposes in

Note:

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one of the Implementing States and the place of supply is outside the State. In such a case, Registrant can't adjust output tax, if the tax was charged in error.

Mechanism for Adjustment of Output Tax (Article 62)

- 1. Output Tax due for the supply > Output Tax Charged by the Registrant**
 - Registrant shall issue new Tax Invoice for the additional amount of Tax, and
 - Calculate the additional Tax due for the Tax Period during which such an increase was identified.
- 2. Output Tax due for the supply < Output Tax Charged by the Registrant**
 - Registrant shall issue a Tax Credit Note according to the provisions of Article (70) of the Decree-Law.
 - Tax stated in Tax Credit note shall be:
 - (a) reduced in Output Tax for the supplier, and
 - (b) reduced in Input Tax for the Recipient.

Example 2

In Example 1, Mr. X had charged the tax and remitted the same to Authority. After filing the return, the following transactions took place:

- (a) One invoice worth of AED 50 (with 5% rate) was cancelled and recipient returned the goods
- (b) Due to certain reasons, one invoice (with 5% rate) worth of AED 40 was increased to AED 70
- (c) It was noted that in one invoice sale value (with 5% rate) was wrongly mentioned as AED 80 instead of AED 40

Suggest the treatment and course of action to be taken by Mr. X in each of the above situations.

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Solution:

Particulars	Sales (before adjustment)	Sales (after Adjustment)	Tax (before Adjustment) - Charged by X- (A)	Tax (after Adjustment)-due for supply- (B)	Difference (B-A)	Course of action & Treatment
Case (a)	50	-	2.5	-	(2.5)	X shall issue Tax Credit note & reduce Output tax
Case (b)	40	70	2	3.5	1.5	X shall issue new Tax Invoice/debit note & add to Output Tax
Case (c)	80	40	4	2	(2)	X shall issue Tax Credit note & reduce Output tax

Adjustment for Bad debts

As per Article (64) of the Decree Law, the registrant can/shall make adjustment of tax on the Bad debts subject to the following conditions:

(A) Conditions-Supplier:

The registered supplier can reduce the Output Tax in a current Tax Period to adjust the Output Tax paid for any previous Tax Period, if all the following conditions are satisfied:

- i) Goods or Services have been supplied and the Due Tax has been charged and paid;
- ii) Consideration for the supply has been written off in full or part as a bad debt in the accounts of the supplier;
- iii) More than six (6) months have passed from the date of the supply; and
- iv) The supplier has notified the Recipient of Goods or Services of the amount of consideration that has been written off by him.

(B) Conditions-Recipient:

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Background Material on UAE VAT

The registered Recipient of Goods or Services shall reduce the Input Tax for the current Tax Period received during any previous Tax Period where the Consideration has not been paid and all of the following conditions are met:

- i) The registered supplier has reduced the Output Tax as stated above;
- ii) The Recipient has received a notification from the supplier about the amount of Consideration being written off;
- iii) The Recipient received the Goods and Services and the relevant Input Tax was deducted; and
- iv) The Consideration was not paid in full or in part for the supply for over (6) six months.

The amount of reduction by the supplier and recipient shall be equal to the Tax on the Consideration which has been written off.

Reverse Charge Mechanism (Article 48):

In addition to regular charge of output tax, there are some cases where the registered person has a specific obligation to consider/charge tax in some situations (as a Recipient) which are stated below:

- (a) If the Taxable Person imports **Concerned Goods or Concerned Services** for the **purposes of his Business**, then he shall be treated as making a **Taxable Supply to himself**, and accordingly shall be responsible for all applicable Tax obligations and accounting in respect of these supplies except in the case where the final destination of the Goods when entering the State is another implementing State.
- (b) If a Registered person makes a Taxable Supply in the State to another Registered person of any crude or refined oil, unprocessed or processed natural gas, or any hydrocarbons, and the Recipient of these Goods intends to either resell the purchased Goods as the same products, or use these Goods to produce or distribute any form of energy, **then the recipient of the goods** is responsible for paying tax in respect of such supplies subject to following conditions:
 - (i) If Recipient has not provided a written confirmation to the supplier before the date of supply that his acquisition of the Goods is for the **purpose of resale**.
 - (ii) If Recipient has not provided a written confirmation to the supplier before the date of supply that he is a **Registrant** and the supplier has not verified the Tax Registration of the Recipient.
 - (iii) If Taxable Supply would be subject to Tax at the **rate of 0%**.
 - (iv) If Taxable Supply includes a supply of Goods or Services **other than the Goods referred to above**.

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- c) Where a Recipient of Goods of any crude or refined oil, unprocessed or processed natural gas, or any hydrocarbons confirms in writing to the supplier that he is a Registrant for the purposes of applying Reverse charge mechanism, the following shall apply:
 - i) The supplier shall not be responsible for calculating the tax in relation to the supply unless he was aware or was supposed to be aware, that the Recipient was not a Registrant at the Date of Supply.
 - ii) The Recipient shall be liable for the calculation of any Due Tax in respect of the supply.
- d) If the Supplier of any crude or refined oil, unprocessed or processed natural gas, or any hydrocarbons is supposed to be aware that the Recipient of Goods was not registered at the Date of Supply, the supplier and the Recipient of Goods shall be jointly and severally liable for Tax and relevant penalties in respect of the supply.

Hence the total output tax is equal to an amount of tax charged on supply of goods & services and tax paid as per Reverse charge mechanism during the tax period.

B. INPUT TAX

It is the Tax paid by the registered person on the purchase of Goods or Services and also on business related expenses.

Recoverable Input Tax (Article 54):

1. It is the total Input tax paid for any tax period by the registered person for Goods or Services which are used or intended to be used for making any of the following:

- (a) Taxable Supplies.
- (b) Supplies that are made outside the State which would have been Taxable Supplies had they been made in the State.
- (c) Supplies specified in the Executive Regulation of Decree-Law that are made outside the State, which would have been treated as exempt had they been made inside the State.

2. Where Goods are imported by a Taxable Person through another Implementing State and the intended final destination of those Goods was the State of taxable person at the time of Import, the Taxable Person shall be entitled to treat the Tax paid in respect of such import of goods into the Implementing State as Input Tax subject to conditions specified in the Executive Regulation of Decree-Law.

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3. Where goods were acquired by a Taxable Person in another Implementing State and then moved into the State, the Taxable Person shall be entitled to treat the Tax paid in respect of the goods in the Implementing State as Input Tax subject to the conditions specified in the Executive Regulation of Decree-Law.

Conditions to be Complied with to Recover the Input Tax (Article 55)

The Input Tax can be claimed by the taxable person in the Tax Return during the Tax period only if the following conditions have been satisfied

1. Keep Tax Invoices/ any other document (which contains details of supply) in relation to the supply or Import on which tax was paid.
2. Pays the consideration for the supply or part thereof as specified in the Executive Regulation of Decree-Law.

In case, the Taxable Person failed to recover the Input Tax during the Tax Period in which the conditions stated above have been satisfied, he may include the Input Tax in the Tax Return for the subsequent Tax Period.

Input Tax Paid before Tax Registration (Article 56)

A Registrant may recover Input Tax paid before Tax Registration for the first Tax Period following Tax Registration, which has been paid for any of the following:

- (a) Supply of Goods and Services made to him prior to the date of Tax Registration.
- (b) Import of Goods by him prior to the date of Tax Registration.

Provided that these Goods and Services were used to make supplies that give the right to Input Tax recovery upon Tax Registration.

Exceptions:

Input Tax paid before registration may not be claimed in any of the following instances:

- (a) The receipt of Goods and Services for purposes other than making taxable supplies.
- (b) Input Tax related to the part of the Capital Assets that depreciated before the date of Tax Registration.
- (c) If the Services were received more than five years prior to the date of Tax Registration.
- (d) Where a Person has moved the Goods to another Implementing State prior to the Tax Registration in the State.

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Example 3

Mr. X is a registered person and is engaged in trading of following products. The details of products and total purchases for each product in August 17 are as follows:

(Amount in AED)

Particulars	Product-A	Product-B	Product-C	Total
Tax Rate	Exempt	5%	0%	
Purchases (Excluding Tax)	100	200	300	600
Tax Charged	-	10	-	10
Purchases (including Tax)	100	210	300	610
INPUT TAX	-	10	-	10

Calculating the Recoverable Input Tax (Article 58)

The Executive Regulation of Decree-Law shall specify the method in which the Input Tax that may be recovered is calculated in cases where Input Tax is paid for Goods or Services during a specific Tax Period that allow recovery; other cases that do not allow recovery and for activities conducted that are not in the course of doing the Business.

Input Tax Adjustment (Article 59)

The Executive Regulation of Decree-Law shall specify the conditions and mechanism for adjusting Input Tax attributed fully or partially to make-

1. Taxable Supplies, but where use, or the intended use, of those Goods or Services prior to making the Taxable Supplies.
2. Exempt Supplies, or for activities that do not fall within the conduct of Business, but changed the use or the intended use of those Goods or Services was changed, prior to making Exempt Supplies.

Excess Recoverable Input Tax (Article 74)

The Taxable Person shall carry forward any excess of Recoverable Tax to the subsequent Tax Periods and offset such excess against the following until such excess is fully utilised-

- (I) Payable Tax, or
- (II) Administrative Penalties imposed under Decree-Law or Federal Law No. (7) of 2017 on Tax Procedures in subsequent Tax Periods.

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Background Material on UAE VAT

Conditions:

Taxable person shall carry forward excess recoverable Tax and offset such excess in subsequent Tax Periods in the following cases:

- (a) Recoverable Input Tax > Output Tax payable for the same Tax Period.
- (b) Tax paid to the Authority > Payable Tax as per provisions of Decree-Law, other than the above instance.

In case, if any excess for any Tax Period remains even after being carried forward for a period of time, the Taxable Person may apply to the Authority to reclaim the remaining excess. The Executive Regulation of Decree-Law shall specify the time limits, procedures and mechanisms of returning any remaining excess to the Taxable Person.

Tax Recovery in Special Cases (Article 75)

The Authority may return the amount of Tax paid for any supply received by or Import carried out by anyone of the following, according to the conditions, restrictions and procedures specified in the Executive Regulations of Decree-Law:

1. A citizen of the State in respect of the Goods and Services related to the construction of a new residence that is not part of the Person's Business.
2. A Non-Resident, who is not a Resident of an Implementing State and conducts a Business and is not a Taxable Person.
3. A Non-Resident, for Goods supplied to him in the State that will be exported.
4. Foreign governments, international organisations, diplomatic bodies and missions according to treaties that the State is a party to.
5. Any Person or classes listed in a Cabinet Decision issued at the suggestion of the Minister.

Input tax paid on Business Expenses:

In addition to the VAT paid on the purchase of Goods & Services claiming as Input Tax, the registered person/ business who incurs tax on its business expenses, can also claim as input tax in full subject to following conditions

- The business must be a **taxable person** (the end consumer cannot claim any input tax refund).
- VAT should have been **charged correctly** (i.e. unduly charged VAT is not recoverable).

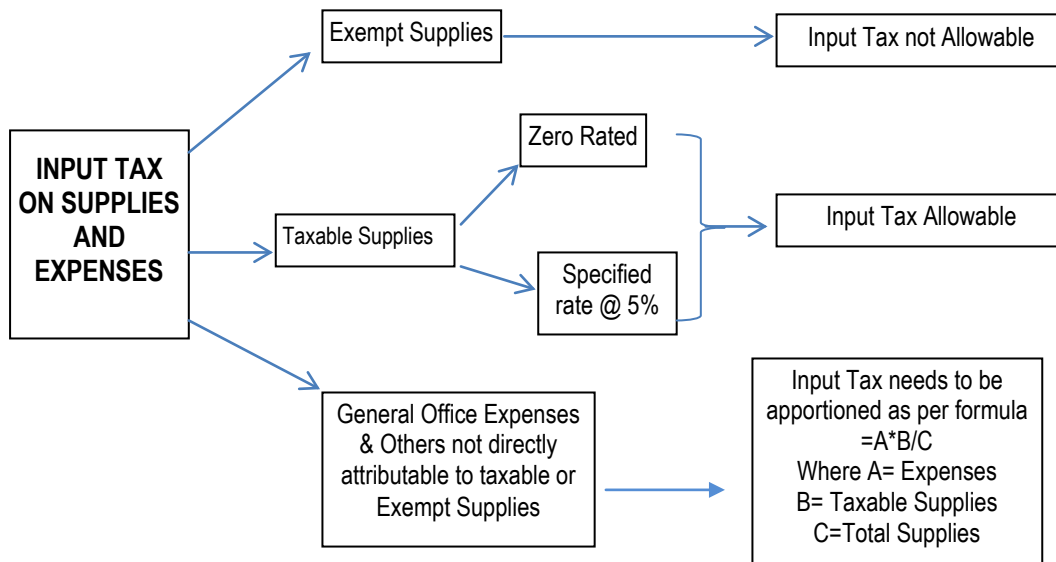
Note:

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- The business must hold documentation showing the **VAT paid** (e.g. valid tax invoice).
- The goods or services acquired are used or intended to be **used for making taxable supplies** (e.g. must not be exempt supplies),
- Input tax refund can be claimed only on the amount paid or intended to be paid **before the expiry of 6 months** after the agreed date for the payment of the supply.

In certain situations, an expense may relate to both taxable and non-taxable supplies made by the registered person (such as activities of the banking sector). In these circumstances, the registered person/ business would need to apportion input tax between the taxable and non-taxable (exempt) supplies.

Furthermore, input tax cannot be deducted if it is incurred in respect of specific expenses such as entertainment expenses e.g. employee entertainment.



C. PAYABLE TAX

The Payable Tax for any Tax Period is an amount equal to the total Output Tax less the total Input Tax by said registered person over the same Tax Period. (i.e. PAYABLE TAX= OUTPUT TAX – INPUT TAX)

If Output Tax is greater than Input Tax, then registered person have to pay tax to the Authority.

If Output Tax is less than Input Tax, then registered person have to reclaim the tax from the Authority.

Note:

Background Material on UAE VAT

DUE DATE AND PROCEDURE FOR PAYMENT OF PAYABLE TAX

The Executive Regulation of Decree-Law shall specify the time limits and procedures for payment of Tax stated as payable Tax in the Tax Return according to the provisions of Decree-Law. It is in general on quarterly basis and in some specific cases may be other than the quarterly.

Example 4

FARMER → MANUFACTURER → WHOLESALER → RETAILER → END CUSTOMER
 (Registered) (Registered) (Registered) (Registered) (Unregistered)

(Amounts in AED)

Particulars	Farmer	Manufacturer	Wholesaler	Retailer	End Consumer
Purchases (including VAT)	-	105	210	315	420
Tax on purchases (INPUT TAX) @ 5%-(A)		5	10	15	20
Sales (Excluding Tax)	100	200	300	400	0
Tax on sales (OUTPUT TAX) @ 5%-(B)	5	10	15	20	0
Sales (including Tax)	105	210	315	420	0
PAYABLE TAX (B-A)	5	5	5	5	0

Hence the total vat tax paid to authority by various Registered persons is AED 20

Example 5

Let us now assume that a wholesaler is selling 3 kinds of products the details of which are as follows:

Particulars	Product-A	Product-B	Product-C	Total
Category of goods	Non-Taxable (i.e. Exempted goods)	Taxable @ Standard Rate of 5%	Taxable @ Zero rated	
Purchase Value (excl Tax)	100	200	300	

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Payment of Payable Tax

Tax on purchases (INPUT TAX) @ 5%- (A)	-	10	-	
Sales (Excl Tax)	200	300	400	
Tax on sales (OUTPUT TAX) @ 5%- (B)	-	15	-	
Sales (including Tax)	200	315	400	
PAYABLE TAX (B-A)	-	5	-	

Hence the total vat tax paid to authority by Wholesaler is AED 5

Example 6

FARMER → MANUFACTURER → WHOLESALER → RETAILER → END CUSTOMER
(Unregistered) (Registered) (Registered) (Registered) (Unregistered)

(Amounts in AED)

Particulars	Farmer	Manufacturer	Wholesaler	Retailer	End Consumer
Purchases	-	100	210	315	420
Tax on purchases (INPUT TAX) @ 5%- (A)		-	10	15	20
Sales (Excluding Tax)	100	200	300	400	0
Tax on sales (OUTPUT TAX) @ 5%- (B)	-	10	15	20	0
Sales (Including Tax)	100	210	315	420	0
PAYABLE TAX (B-A)		10	5	5	0

Hence the total vat tax paid to authority by various Registered persons is AED 20

Example 7

Mr. X is a registered person who is engaged in trading of various categories of supplies. Here are the details of his business during specific month. Calculate the Payable Tax

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Background Material on UAE VAT

Particulars	Supplies	Debit Note issued	Credit Notes Issued
5 % Rated	5000	500	250
Zero Rated	3000	200	180
Exempt	2000	100	320

Particulars	Supplies	Credit Notes Received
Allowable Expenses-Purchases	7000	1000
Allowable Business Expenses	500	0
Mixed Business Expenses	250	0

All the above amount is exclusive Tax.

Solution

Calculation of Payable Tax

Particulars	Amount (AED)	Output Tax (AED)	Particulars	Amount (AED)	Output Tax (AED)
Supply of Goods			Purchases of Goods		
5 % Rated	5000	250	5 % Rated	4000	200
Zero Rated	3000	0	Zero Rated	2000	0
Exempt	2000	0	Exempt	1000	0
Total (A)	10000	250	Total (A)	7000	200
Debit Notes Issued					
5 % Rated	500	25	Business Expenses		
Zero Rated	200	0	Allowable Expenses	500	25
Exempt	100	0	Mixed Expenses (as calculated below)	200	10
Total (B)	800	25	Total (B)	700	35

Note:

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Payment of Payable Tax

Credit Notes Received					
5 % Rated	800	40			
Zero Rated	200	0			
Exempt	0	0			
Total (C)	1000	40			
Credit Notes Issued					
5 % Rated	(250)	(12.5)			
Zero Rated	(180)	0			
Exempt	(320)	0			
Total (D)	(750)	(12.5)			
Bad Debts Adjustment-(E)	(400)	(20)			
Total Output Tax (A+B+C-D-E)		282.50	Total Input Tax (A+B)		235
Less Total Input Tax		235.00			
Payable Tax		47.50			

Calculation of Allowable portion of Mixed expenses & Input Tax

Mixed Business Expenses - AED 250

Total Supplies – AED 10,000

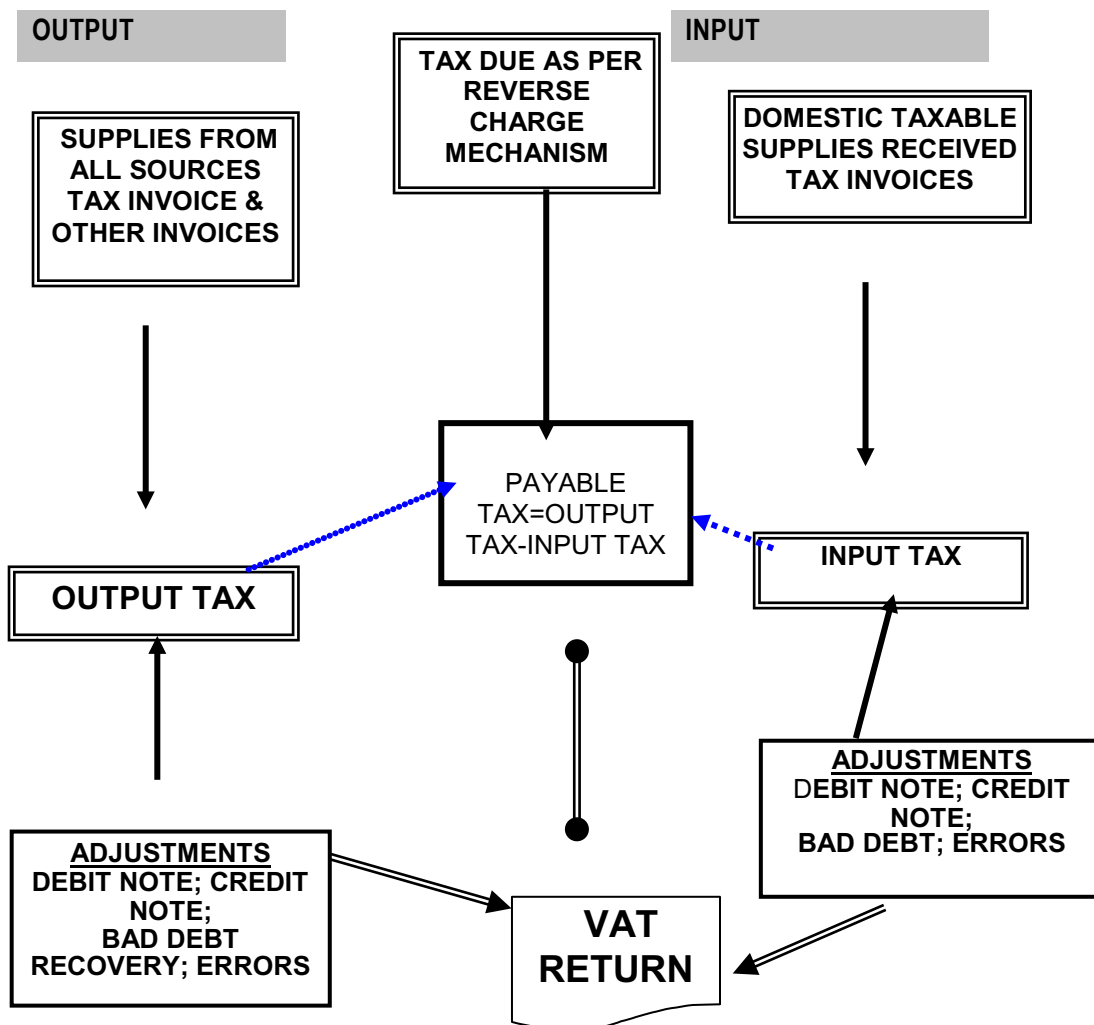
Taxable Supplies (including Zero rated)- AED 8,000

Mixed Business Expenses allowable= $250 \times 8000 / 10000 =$ AED 200

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FLOW CHART FOR PAYABLE TAX CALCULATION



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Chapter x

Valuation of Supply

Value of Supply – Article 34

Valuation of Goods or Services for consideration has to be done in order to determine the VAT payable / Chargeable on the value of Goods supplied or Services provided.

What is Consideration?

Consideration is defined in Article 1 of this Decree law inter alia as *All that is received or expected to be received for the supply of Goods or Services, whether in money or other acceptable forms of payment.*

The following aspects need to be noted with reference to consideration:

- (A) It refers to the payment received by the supplier in relation to the supply. There is no reference as to the person who is required to pay consideration. Therefore, a third party to a contract can also contribute towards consideration;
- (B) Consideration, therefore, is not the amount that the recipient pays but the amount that the supplier collects whether from the recipient or any third party. This would be particularly relevant in dealing with complex arrangements in digital economy and new-age business. It is also relevant that consideration includes not only what has been paid but also which supplier may expect to receive in future.
- (C) Consideration can be in the form of **money or other acceptable forms of payment**. With technological advancement, there are many other forms of settlement of consideration. Two views have been expressed in Chapter I on Important Definitions which may be referred for a detailed understanding of consideration.
- (D) Whatever is received or expected to be received by supplier, it should be in relation to supply of goods or services. This requires existence of nexus between supply of goods / services and consideration.
- (E) There is no specific mention as to whether deposits form part of the consideration. There could be a possible view that lumpsum refundable deposits not directly attributable to supply of goods or service may not form part of consideration. However, deposits should be distinguished from advances as the latter is very well within the purview of consideration at the time of receipt.

The value of supply of Goods or Services for consideration shall be as follows:

- (A) If the entire consideration is monetary, the value of supply shall be the consideration (exclusive of tax).

Background Material on UAE VAT

- (B) If consideration is not monetary in full or part, the value of supply is calculated as the overall monetary part plus market value of the non-monetary part of the consideration (exclusive of tax)

$$\begin{array}{l} \text{Overall monetary portion} \\ + \\ \text{Market value of Non-Monetary portion} \end{array} = \left. \vphantom{\begin{array}{l} \text{Overall monetary portion} \\ + \\ \text{Market value of Non-Monetary portion} \end{array}} \right\} \text{Value of Supply}$$

(VAT has to be charged on the value of supply as above)

- (C) If a taxable person imports concerned goods or services for the purposes of his business, then he shall be treated as making a taxable supply to himself accordingly liable for applicable tax payment on the value of such supply under Reverse charge mechanism as per article 48(1). The value of supply shall be equal to the market value of the goods or services received (exclusive of tax).
- (D) If the consideration is related to matters other than the supply of Goods or Services, value of supply shall be equal to part of the consideration that is related to supply of goods or services as stated in the executive regulations of this decree law.

The Executive regulations of this Decree law shall specify the rules to determine **market value**.

VALUE OF IMPORT – ARTICLE 35

(A) In the case of normal import transactions,

Import value of Goods consist of	
Value of Goods (FOB Value)	100,000
Add: Value of Freight and Insurance	<u>10,000</u>
Customs Declared Value (CIF Value)	<u>110,000</u>
Add: Customs Duty (on the above)	<u>5,000</u>
Total Value of Import	<u>115,000</u>
Add: VAT (on the above) @ 5%	5,750
Total Imported value (Inclusive of VAT)	120,750
In the case of Excise dutiable items such as, Tobacco, Energy drinks etc,	
Total value of Import (as above)	115,000
Add: Excise Duty @ 100%	<u>115,000</u>

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Valuation of Supply

Total Import value of Excisable Goods	<u>230,000</u>
Add: VAT (on the above) @ 5%	<u>11,500</u>
Total Imported value (Inclusive of VAT)	<u>241,500</u>

- (B) In the case of non-availability of value pursuant to above, value shall be determined based on the alternative valuations, as per Customs Rules similar to fair market value or catalogue value or value assessed by the UAE Customs authorities.

VALUE OF SUPPLY TO RELATED PARTIES – ARTICLE 36

(This is an exception to other valuation rules Article 34 & 35)

Value of supply or Import of Goods or Services between related persons shall be considered equal to the market value if the following conditions are met:

1. When the value of supply is less than the market value
2. If the Recipient (related person) doesn't have the right to recover full Input tax on the taxable supplies of goods or services received.

For example, A and B are related parties as per the given definition in Article 1 of this Decree law; wherein A is a supplier of water & electricity and B is engaged in letting/leasing out of both commercial and residential properties. A charged AED 10,000/- for supplies made in a month which has market value of AED 12,000/-

Case (i) : A is supplying water & electricity services taxable at 5% to B. In this case, B is not eligible to recover full Input tax on the input services received from A because the said input services would also be used by B in a provision of letting out of residential properties, being exempted supplies under Article 46(2). Thus, the value of supply in this case would be market value of such service i.e. AED 12,000/- which is different from actual consideration charged.

Case (ii) : In the above case, if the said services were used by B only in provision of letting out of commercial property which is fully taxable . B would be eligible to recover full input tax paid on the said input services. Thus, the provisions of Article 36 does not apply here and value of such supply will be the actual consideration charged i.e. AED 10,000/-.

Deemed Supply – Article 37

(This is an exception to other valuation rules Article 34 & 35)

If a taxable person purchases Goods or Services to make a taxable supply, but doesn't use the same for a taxable supply, then the value of the supply will be equal to the total cost incurred by the taxable person to make this deemed supply of Goods or Services. The instances of deemed supply are covered under Article 11. As there is no explicit consideration

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charged in such cases, cost incurred for making deemed supplies itself is taken as consideration.

TAX INCLUSIVE PRICES – ARTICLE 38

In the case of taxable supplies, displayed price / advertised price shall include the tax. Instances where prices do not include tax shall be determined by the executive regulations of this Decree law.

VALUE OF SUPPLY IN THE CASE OF DISCOUNT / SUBSIDIES – ARTICLE 39

- (A) Value of a supply shall be reduced in proportion to discounts made before or after the date of supply. Further, Executive regulations of this Decree law specify conditions and restriction for calculating tax when discounts are made.
- (B) Value of supply shall be reduced in proportion to the subsidies provided to the supplier by the Government.

VALUE OF SUPPLY OF VOUCHER – ARTICLE 40

Advertised Monetary value of voucher	AED	400
Less: Actual receipt of consideration by supplier	AED	<u>100</u>
Value of Supply of voucher	AED	<u>300</u>

In this case VAT has to be calculated on the Value of Supply of Voucher (i.e, AED 300)

VALUE OF SUPPLY OF POSTAL STAMPS – ARTICLE 41

Value = Amount shown on the stamp

The value of supply for postage stamps that allow the user to use postal services in the state shall be the amount shown on the stamp.

TEMPORARY TRANSFER OF GOODS – ARTICLE 42

When Goods are temporarily transferred from domestic market to Designated Zone (DZ) or Outside the state for completion of manufacture or repair in order to re-import them into the state, the value of supply when re-imported shall be the value of services rendered. In simple words, tax shall be charged on the total value addition made on such goods in the form of manufacturing or repairing done in the DZ.

For example,

Value when transferred to DZ	=	AED 10,000
Value of services rendered /Value addition made	=	AED 5,000

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Total value after manufacturing/ repair or further process = AED 15,000

Value of Supply When- Re-Imported = Value of I services rendered/ value addition made = AED 5,000. Hence, VAT has to be charged on AED 5,000/-

Tax Based on Profit Margin – Article 43

In the case of profit margin business, in any period, a registered person has to calculate and charge the tax based on the profit margin earned on the taxable supply. For example, In case a second-hand car dealer buys a car for AED 20,000, and sells the car for AED 30,000, the margin earned is AED 10,000, and the VAT has to be charged on AED 10,000 and not on the total value of Supply i.e. AED 30,000.

In this case, the registered person has to notify the method of valuation adopted to the Authority.

In the above cases, Executive regulations of this Decree law shall specify the following:

1. List of taxable supplies on which profit margins scheme would be applicable
2. The conditions to be met for the application of the provisions of this article.

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Chapter – XI

Job-work

Job-work is the activity of procuring the skill of the job-worker to perform any process or completion activity on the goods belonging to a customer. The relationship between the customer and job-worker is at arm's length and principal-to-principal basis. The goods provided by the customer are not 'transferred' to the job-worker but 'issued' for carrying out the work allotted. Services of the job-worker is a taxable supply by the job-worker to the customer. Job-working contracts provide for the nature of work to be performed, consideration and quantity measurement of input and output. Damage of the goods sent and failure to return the goods sent for job-working will attract penalty approximating the cost of the goods sent that have not been returned apart from the job-worker not being entitled to charge for the work carried out on the goods which have been damaged.

Apparently, VAT law does not expressly provide for tax treatment of job-work. But the principles of place of supply provide the necessary guidance in each of the scenarios:

Issue of Goods to Job-worker and Return after job-working						
Location of Issuer #		Location of Processing #		Place of Supply		
				Issue of Goods for job-working	Return of Goods after job-working	Job-working charges
Customer	UAE	Job-worker	UAE	Not applicable	Not applicable	UAE
Customer	UAE	Job-worker	GCC *	Not applicable (temporary)	Not applicable	UAE (reverse charge)
Customer	GCC *	Job-worker	UAE	Not applicable (temporary)	UAE (import of goods)	Outside UAE
Customer	R-o-W	Job-worker	UAE	UAE (imports) @	UAE (not export) @	UAE
Customer	UAE	Job-worker	R-o-W	UAE (not export) @	UAE (imports) @	UAE (reverse charge)

* GCC is used as a common reference to Implementing States

Assumed to be duly registered in respective home-State

@ Expect exemption on import for job-work and re-export as conditional imports under article 105 of Section VII of under Customs legislation

Chapter – XII

Transitional Rules

Article 80 specifically deals with Transitional Rules. If the supplier receives consideration or part thereof or issues an invoice for Goods or Services before the Decree Law comes into effect i.e. 1st Jan 2018, the date of supply shall be the same as the effective date of the Decree Law i.e. 1st Jan 2018 in the following instances if they occur after the effective date of the Decree Law i.e. 1st Jan 2018:

- (a) Transfer of Goods under the supervision of the supplier
- (b) Placing the Goods at the recipient's disposal
- (c) The completion of assembly or installation of the Goods
- (d) The issuance of the customs declaration
- (e) The acceptance by the recipient of goods of the supply

If a contract has been concluded prior to the enforcement of this Decree Law, regarding a supply to be wholly or partly made after the effective date of this Decree Law, but such contract doesn't contain clauses related to Tax on the Supply, it shall be treated as follow:

- (a) The consideration shall be considered inclusive of tax if chargeable according to this Decree Law.
- (b) Tax shall be calculated on the supply regardless of whether it has been taken into account when determining the consideration for the supply.

The Executive Regulation of this Decree Law shall set forth special provisions related to the implementation this Decree Law where a contract has been concluded before the effective date of this Decree Law but the supply under the contract is wholly or partly made after the effective date of this Decree Law.

Introduction

VAT law will be introduced without interrupting the continuity of ongoing business transactions. This requires that transactions that have already been contracted prior to the effective date of implementation of VAT law and concluding after the introduction of VAT requires to be suitably addressed. For this reason, this Article lays down the applicable rules.

It is also important to bear in mind that prior to the implementation date of VAT law, UAE did not have any tax applicable to transactions carried out in the course of business. Therefore, transactions may have been entered into without contemplating the levy of any tax and this too requires a suitable transition rule.

Analysis

Taxability

The transition rules that are prescribed under this Article require the monitoring of activities that amount to supply as specified in Title Three, from Article 5 to Article 12. It is declared under this Article that even though consideration may have been received prior to the date of implementation and even though invoice may have been issued prior to the effective date, the transaction will be liable to VAT if any of the following activities occurs after the effective date:

- (a) transfer of goods by supplier
- (b) collection of possession of goods by recipient
- (c) completion of assembly or installation of goods
- (d) declaration before customs for import of goods
- (e) acceptance of goods in case of sale on approval

Collection of tax

As explained in an earlier Chapter the right to collect tax from the customer is not statutory right but contractual right of the supplier, in respect of transactions already entered into prior to the effective date, in the absence of any specific provision in the contract, it is provided in this Article that the consideration agreed shall be inclusive of tax. Accordingly, the supplier will have to pay for the tax from within the consideration itself and not be entitled to recover tax in addition to the consideration agreed.

This provision is significant, as on the date of entering into the contract, though it would not have been possible for the parties to agree that the recipient is liable to pay in addition to the consideration, a further amount towards VAT. But this Article does not provide any relief to such predicament. It therefore becomes necessary that in respect of contracts being entered into even prior to the effective date that suitable clauses relating to VAT would apply if the actual activity of supply occurs after the effective date. To alleviate this precarious position of the supplier, the executive regulation is expected to prescribe measures of relief.

Conclusion

Transition rules are necessary so as not to frustrate contracts already entered into prior to the effective date. This Article lays down clearly the manner of treatment that will be extended under the VAT law in respect of ongoing contracts i.e. contracts/ transactions which have been initiated in pre-VAT era and to be completed in VAT era. In short in most of the transactions the date of supply will be the implementation date; however executive regulations are expected to provide deserving relief whereby contract has been concluded in pre-VAT era, where under the supply has been completed post implementation of VAT.

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Chapter – XIII

Registration

Article 13: Mandatory Tax Registration

Statutory provisions

1. Every Person, who has a Place of Residence in the State or an Implementing State and is not already registered for Tax, shall register in the following situations:
 - a. Where the total value of all supplies referred to in Article (19) exceeded the Mandatory Registration Threshold over the previous 12-month period.
 - b. Where it is anticipated that the total value of all supplies referred to in Article 19 will exceed the Mandatory Registration Threshold in the next thirty 30 days.
2. Every Person, who does not have a Place of Residence in the State or an Implementing State and is not already registered for Tax, shall register for Tax if he makes supplies of Goods or Services, and where no other Person is obligated to pay the Due Tax on these supplies in the State.
3. The Executive Regulation of this Decree-Law shall specify the time limits that a Person has to inform the Authority about his liability to register for Tax and the effective date of Tax Registration.

Introduction

Article 13 provides for mandatory registration for every person effecting taxable supplies. Registration of a business with the tax authorities implies obtaining a unique registration code, which shall be known as the tax registration number (TRN), from the concerned tax authorities so that all the data relating to a business entity can be aggregated and correlated. In any tax system, this is the most fundamental requirement for identification of the business for tax purposes and for having any compliance verification mechanism.

Analysis

- Every person having a place of residence in the State of UAE or any other implementing State shall be required to get registration if the total value of supplies made by such person exceeds or is expected to exceed the threshold limit as mentioned in Article 19.
- Registration is compulsory once the threshold limit is crossed. It is relevant to note that the limit fixed is not with respect to financial year but to immediately preceding 12 months from the date it crosses the limit. Therefore, those establishments whose current 12 months turnover is below the threshold limit need to regularly monitor the moving-12 month turnover to ascertain if it has reached the threshold limit so that they can promptly take action for registration, if required.

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- Further if the value of supply is 'likely' to cross the threshold limit in the next 30 days, the person is required to obtain compulsory registration. The term 'Likely' should not be understood as hopeful but imminent due to (say) contract awarded which would take the turnover across the threshold.
- As per Article 19, the value of taxable supplies, in the mandatory threshold limit, include zero rated supplies as well (as discussed earlier). However, if a person is engaged only in making zero rated supplies, he may not be required to be registered under VAT [detailed discussion made under Article 15(1)]
- Place of establishment or any fixed establishment shall be construed as having a place of residence in the State or an Implementing State. This provision has already been discussed in under the head 'Important Definitions'.
- The person who does not have a place of residence in the State or in any implementing State will be required to take tax registration if such person makes taxable 'outward' supplies in the State where no other person is obligated to pay such tax. Also, the threshold limit for registration shall not apply in such cases. This could cover instances where a non-resident makes supply of goods or services to another consumer/unregistered person in the State in the course of his business.
- The mandatory limit for the purpose of tax registration has been set at AED 375,000. Moreover, as per Article 50(2) of the Agreement, the Ministerial Committee has the right to amend such limit after it has been in force for three years.

Article 14: Tax Group

Statutory provisions

1. Two or more persons conducting Businesses **may** apply for Tax Registration as a Tax Group if all of the following conditions are met:
 - a. Each shall have a Place of Establishment or Fixed Establishment in the State.
 - b. The relevant persons shall be Related Parties.
 - c. One or more persons conducting business in a partnership shall control the others.
2. The Executive Regulation of this Decree-Law will determine the instances where the Authority may reject the application to register a Tax Group.
3. Any Person conducting Business is not allowed to have more than one Tax Registration Number, unless otherwise prescribed in the Executive Regulation.
4. If Related Parties do not apply for Tax Registration as a Tax Group under Clause (1) of

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this Article, the Authority may assess their relation based on their economic, financial and regulatory practices in business and register them as a Tax Group if their relation was proved thereto according to the controls and conditions specified by the Executive Regulation of this Decree-Law.

5. The Authority may deregister the Tax Group registration in accordance with this Article as per the conditions specified in the Executive Regulation of this Decree-Law.
6. The Authority may make changes to the Persons registered as a Tax Group by adding or removing Persons as requested by the Taxable Person or in accordance with the instances mentioned in the Executive Regulation.

Analysis

- The VAT Law has provided an **option** for persons conducting business to apply for registration as a tax group. Persons can apply for Tax registration as a Tax group if all of the following conditions are fulfilled:
 - Each person should have a place of establishment or a fixed establishment in the State of UAE.
 - Such persons should be related parties as per the definition mentioned in this VAT Law
 - One or more persons conducting business in partnership shall control the other.
- For example, ABC LLC has a place of establishment in Dubai and has three more companies in the group having presence across different places in UAE. Instead of having separate registrations for all such entities, they could opt for single registration for all companies in the group as “Tax Group”.
- Such tax group shall be treated as one registrant in the eyes of the Law i.e. any transactions amongst such persons shall be out of the ambit of VAT applicability. This would give them an advantageous position where such persons could reduce their compliance and cash flow burdens.
- Such application could be subject to rejection by the tax authorities and the Executive regulations of this VAT Law shall determine the instances where such rejection could take place.
- The Authority has the right to assess the relation of persons based on their economic, financial and regulatory practices in business and register such persons as a tax group i.e. identify whether concerned persons are related persons or not. This sub Article gives the powers to the Authority to register a person under Tax Group if the Authority feels the need and justification for doing so.

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- The Tax Group members may request the Authority to add or replace any member to or from the Tax Group in accordance with the rules and regulations of the Executive Regulations of this VAT Law.
- Here, it is necessary to examine the words “may” and “shall” used in the law. The language in the Sub Article 4 of this Article indicates that if persons who are related do not apply for Tax registration as a Tax group, then the Authority shall assess such related person and grant them registration as a tax group. This is incongruous to the language used in Sub Article (1) of this Article which uses the word “may” which indicates the choice of the persons to apply for registration as a Tax Group.
- Also, a person shall be granted only one tax registration. No person can apply for multiple tax registrations, unless otherwise prescribed in the Executive regulations of the VAT Law. e.g. a company has presence in the Dubai and branch office at Abu Dhabi and is engaged in different line of business with different risks and rewards but under the same license and trade name. The company does not have option to apply for separate registrations for both places.

Article 15: Registration exceptions

Statutory provisions

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| <ol style="list-style-type: none">1. The Authority may except a Taxable Person from mandatory Tax Registration upon his request if his supplies are only subject to the zero rate.2. Anyone excepted from Tax Registration according to Clause (1) of this Article shall inform the Authority of any changes to his Business that would make him subject to Tax under this Decree-Law pursuant to the time limits and procedures determined in the Executive Regulation of this Decree-Law.3. The Authority shall have the right to collect any Due Tax and Administrative Penalties for the period of exception where that Taxable Person was not entitled to the exception. |
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Analysis

- As per the Mandatory Registration requirement under Article 13, *inter alia*, a person making taxable supplies shall be required to be registered under VAT. As per the definition of the taxable supplies, such supplies include all supplies excluding exempt supplies i.e. zero rated supplies are included within definition of taxable supplies.
- As an exception to Article 13, a person making only zero rated supplies can apply for an exception from mandatory tax registration requirement notwithstanding that the value of taxable supplies made by him exceed the limit of AED 375,000/-. Persons exclusively making zero rated supplies do not have any obligation to charge tax and as such they

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have been excepted from compulsory registration. However, if such person wishes to claim refund of recoverable input tax, he may choose to apply for registration.

- If such person makes any changes in business, which would mandate him to take registration under Article 13, he has the obligation to inform the Authority within such time period as will be specified in the Executive Regulations of the law. This could arise when such person makes supply of any goods or services which are subject to tax.
- If the person is taking benefit of this Article without being entitled to do so, he shall be liable to pay due tax and administrative penalties.

Article 16: Tax Registration of Governmental Bodies

Statutory Provisions

Government Entities which shall be determined in a Cabinet Decision issued under Clause (2) of Article of this Decree-Law, shall apply for Tax Registration and may not be Deregistered unless by a Cabinet Decision at the suggestion of the Minister.

Analysis

- Cabinet decision to be issued under Article 10(2) for registration of Government entities and the same cannot be cancelled without a corresponding Cabinet decision.
- The Cabinet Decision shall be issued which shall specify the government entities whose activities are not in the sovereign capacity and are covered under clause (1) of Article 10. The entities so listed shall apply for tax registration under this Article.

Article 17: Voluntary Registration

Statutory provisions

Any Person who is not obligated to apply for Tax Registration according to this Chapter **may** apply for Tax Registration in the following cases:

1. If he proves, at the end of any given month, that the total value of supplies referred to in Article 19 of this Decree-Law or the expenses which are subject to Tax and were incurred during the previous 12month period, has exceeded the Voluntary Registration Threshold.
2. At any time that he anticipates that the total value of supplies stipulated in Article 19 of this Decree-Law or the expenses which are subject to Tax that will be incurred, will exceed the Voluntary Registration Threshold during the coming 30-day period.

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Analysis

- There could be situations where a person, though not mandatorily required to register, may be willing to register. The purpose of voluntary registration could be to recover input tax credits so that cascading effect of taxes does not take place. This becomes relevant where a person is engaged in business activity below mandatory registration threshold limit (but eligible under this Article), and his vendors as well as customers are registered. To ensure that the credit chain does not break, such person may also voluntarily opt for registration.
- Voluntary registration may be sought under any of the following cases:
 - Where the person intending to opt for registration establishes that the **value of total supplies** made by him in the preceding 12 months have exceeded the voluntary registration threshold limit i.e. AED 187,500.
 - If the value of supplies has not exceeded but the **expenses incurred** by such person within this time has crossed voluntary threshold limit.
 - If he anticipates that the **value of supplies** which are subject to tax is expected to exceed the voluntary limit in the next 30 days.
 - If the value of supply is not expected to exceed the limit but **expenses** to be incurred during next 30 days are expected to exceed the voluntary registration limit.
- Once a person has applied for voluntary registration and a certificate of registration is granted as such, the person shall be treated as a taxable person and all the provisions of this VAT Law which are applicable to a taxable person shall be applicable to such a person.

Article 18: Tax Registration for a Non-Resident

Statutory provisions

A Non-resident Person may not take the value of Goods and Services imported into the State to determine whether he is entitled to apply for Tax Registration if the calculation of Tax for such Goods or Services is the responsibility of the Importer pursuant to Clause (1) of Article (48) of this Decree-Law.
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Analysis

- A non-resident person who is otherwise liable to get registered is required to obtain registration in accordance with Article 13 or 17.
- In determining the turnover, such non-resident person is not required to include the value of goods or services imported in the State where liability to pay tax is upon the

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importer who imports goods or services in the State. For example, a company based in UK provides design consultancy and construction supervision services to a developer based in UAE. In the course of provision of service, the UK company is required to depute its engineers also at site. The bill is raised from UK to UAE. When liability to pay VAT on such importation is on the importer under reverse charge mechanism under Article 48 (1), the non-resident person (represented through his engineer) is not required to include the value of such supply for the computation of the threshold limit.

Article 19: Calculating the Registration Threshold

Statutory provisions

To determine whether a Person has exceeded the Mandatory Registration Threshold and the Voluntary Registration Threshold, the following shall be calculated:

1. The value of Taxable Goods and Services.
2. The value of Concerned Goods and Concerned Services received by the Person unless covered by Clause (1) of this Article.
3. The value of the whole or relevant part of Taxable Supplies that belong to said Person if he has, wholly or partly, acquired a Business from another Person who made the supplies.
4. The value of Taxable Supplies made by Related Parties pursuant to the cases stated in the Executive Regulation of this Decree-Law.

Article (20): Capital Assets

The supply of Capital Assets belonging to the Person shall not be taken into account to determine whether a Person in Business exceeds the Mandatory Registration Threshold or Voluntary Registration Threshold.

Analysis

- This Article is required to determine whether a person has crossed the mandatory or voluntary threshold limit for the purpose of Article 13 and Article 17 respectively.
- For the computation of total value of supplies, only the value of taxable supplies is to be included. Such taxable supplies shall include zero rated supplies but exclude exempt supplies made by a person. For example, if a person is making only exempt supplies worth AED 700,000 and makes one taxable supply amounting to AED 100,000, the value of supplies for the purpose of calculation of threshold shall be AED 100,000 only. As this is lower than the mandatory or the voluntary threshold limit, there is no a

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requirement for the person to get registration under Article 13 or 17. However, if such person was making zero rated supplies instead of exempt supplies, the value of supplies shall be AED 800,000 and such person shall have to be registered under Article 13 of this VAT Law.

- Also, the value of concerned goods or concerned services shall be included in the value of taxable supplies unless covered by Sub-article (1) of this Article. Concerned goods or concerned services are those goods or services which are imported into the State and would otherwise be taxable if supply is received from within the State. Note that such concerned goods and concerned services are taxable under reverse charge mechanism under Article 48(1) if made by a taxable person.
- The value of supply as mentioned under Article 7(2) shall be taken in the hands of the acquirer for the purpose of determining the threshold limit.
- Also, any supplies between related parties shall be included in the value of taxable supplies based on the instances mentioned in the Executive Regulation of this VAT Law.
- Further, the value of supply of capital assets made by a taxable person shall not be included in the registration threshold limit, whether voluntary or mandatory.

Article 21: Tax De-Registration Cases

A Registrant shall apply to the Authority for Tax Deregistration in any of the following cases:

1. If he stops making Taxable Supplies.
2. If the value of the Taxable Supplies made over a period of 12 consecutive months is less than the Voluntary Registration Threshold and said Registrant does not meet the condition stipulated in Clause (2) of Article 17 of this Decree-Law.

Article 22: Application for Tax De-Registration

A Registrant may apply to the Authority for Tax Deregistration if the value of his Taxable Supplies during the past 12 months was less than the Mandatory Registration Threshold.

Article 23: Voluntary Tax De-registration

A Registrant under Article 17 may not apply for Tax Deregistration within 12 months of the date of Tax Registration.

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Analysis:

- There could be instances where a person who has got himself registered may need to get himself de-registered on discontinuance of business or due to value of supply falling below the threshold limit. The provisions are as below:
- A registrant has to **mandatorily** apply for tax de-registration if he stops making taxable supplies or the value of such supplies is less than the voluntary threshold limit in the preceding 12 months. However, if his anticipated supply or expenditure in the coming 30 days are expected to reach voluntary registration threshold, he may choose not to deregister himself.
- The registrant may also apply voluntarily if the value of supplies is between the voluntary threshold limit and mandatory threshold limit.
- A person who has obtained voluntary registration is not permitted to apply for deregistration within 12 months of the date of registration.

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Chapter – XIV

Tax Return Filing

Duration of Tax Period: Article (71)

This is a specific period of Time for which the taxable person shall calculate and pay tax. The Executive regulation will specify the Tax period. Executive regulation may also specify the exceptional circumstances in which the authority may amend the tax period.

It is expected that a taxable person will require to file a tax return on quarterly basis i.e. every 3 months. In the case of large entities / large business houses, they are expected to file a return on monthly basis after getting necessary permission from authorities.

More details are awaited from executive regulations.

Submission of Tax Returns (Article 72)

Who has to file a Tax Return?

Tax return needs to be filed / submitted by

1. A Taxable Person - Any person registered or obligated to register for tax purposes, who makes a supply of taxable Goods or Services or a deemed supply excluding Exempt supply.
2. A Taxable Trader – A taxable person in the implementing states, whose main activity is the distribution of water and all types of energy as specified in the executive regulation.
3. Importer of concerned Goods or an Importer of Taxable Services.
4. A Registrant who may wish to recover recoverable tax incurred before tax registration at the time of filing tax return for the first time in the following instances:
 - (a) Supply of goods and services made to him prior to the date of tax registration.
 - (b) Import of goods by him prior to the date of tax registration.
5. A registrant who acquires goods as stated in clause (3) of article (48) under Reverse Charge mechanism.

Salient features of the Tax Returns shall be as follows:

1. Filing of VAT return has to be done online through FTA portal or as directed by FTA.
2. As per current Understanding, return has to be filed every quarter within 28

days from the end of the quarter. (By the end of the month following end of tax return period).

Example: Return for the first quarter of 2018 needs to be filed before 28th of April 2018 and so on. If it is on monthly basis, then return for the month of January of 2018, needs to be filed before 28th February 2018 and so on.

2. If the last date for filing a return falls on a public holiday, the deadline shall be extended to the first business day thereafter.
3. A tax return must declare all supplies made and received during the tax period and it should contain necessary information such as Tax Registration No, Name of the supplier, Value of material etc. as prescribed by the executive regulation and shall be paid within the prescribed time limit.
4. Details of supplies made in each Emirates need to be conveyed.
5. Any incomplete return submitted to the Authority shall be treated as not having been accepted by it if it does not include the basic information determined by the Tax Authority.
6. Late filing of return may attract penalty.
7. A Government entity may be permitted to file a simplified tax return as per the cabinet decision that may be decided upon.
8. Correction of errors made in previous return period can be carried out. The taxable person must disclose this error to the FTA within 30 days of becoming aware of this error and include in the Tax Return to be submitted immediately after noticing and correcting the error.
9. Each taxable person shall be responsible for the accuracy of the information and data in the Tax Return and in all the correspondence with the Authority.

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Chapter - XV

Accounts and Records

Documentation, records and accounting their vital importance

- The fundamental challenge of any tax legislation is the maintenance of accounts and records.
- UAE VAT law also prescribes standard documentation required as per its VAT law. Executive regulations may provide more detailed noting of the records that are required to be maintained the form in which this to be done etc.
- While the type of documentation might vary depending on the nature of business, there are certain broad perspectives which are discussed herein.

Definitions in law

- Before delving into the accounts and records required for UAE VAT let's revisit some definitions of documents prescribed as per the law especially on records/documents defined by the law.
- Article – 1 definition provision has the following relevant definitions –

Tax Invoice – *A written or electronic document in which the occurrence of a taxable supply is recorded with details pertaining to it.*

Tax Credit Note – *A written or electronic document in which the occurrence of any amendment to a taxable supply that reduces or cancels the same is recorded and the details pertaining to it.*

Voucher – *Any instrument that gives the right to receive goods or services against the value stated thereon or the right to receive a discount on the price of the goods or services. Vouchers do not include postage stamps issued by the Emirates post group.*

- The law envisages one to issue an invoice within 14 days of the taxable event/date of supply (Article 67).
- This invoice record could be written (manual) or an electronic one.
- Article 65 prescribes the conditions and requirements for issuing a Tax Invoice which are as follows:-
 1. A Registrant making a Taxable Supply shall issue an original Tax Invoice and deliver it to the Recipient of Goods or Recipient of Services.
 2. A Registrant making a Deemed Supply shall issue an original Tax Invoice and deliver it to a Recipient of Goods or Recipient of Services if available or keep it in his records if there is no Recipient of Goods or Recipient of Services.

3. The Executive Regulation of this Decree-Law shall specify the following:
 - a. Data to be included in the Tax Invoice.
 - b. The conditions and procedures required to issue an electronic Tax Invoice.
 - c. Instances where the Registrant is not required to issue and deliver a Tax Invoice to the Recipient of Goods or the Recipient of Services.
 - d. Instances where other documents may be issued in place of the Tax Invoice as well as the conditions thereof and the data to be included therein.
 - e. Instances where another Person may issue a Tax Invoice on behalf of the registered supplier.

- Any Person who receives an amount as Tax pursuant to any document issued by him shall pay this amount to the Authority even if it is not due.
- Such invoice should mention the taxable event with the details as it will be specified.
- It is expected that the standard contents of the invoice will be there with the Tax registration number (Article 79) and the taxable value on the invoice, product/service wise and the tax incidence of the same by the issuing person.
- Since the tax rate is uniform @ 5%, the logic of capturing product/service wise may look irrelevant at the outset. Having said that there is a tax on imports as well as availability of input tax credit under the law thus there may be an invoice to invoice matching done across entities with their tax registration numbers. This in turn warrants even capturing the product/service category based on some generic classification which is naturally bound to be the Harmonized system of nomenclature (HSN) which is universal as the product description of the seller is equal to be the same as that of the buyer so is its value the tax and so on.
- Similarly, for any reduction in the tax due to discount or reduction in taxable value the law envisages a credit note to be issued on similar lines of an invoice.
- Natural corollary is also that these are controlled documents in a continuous serial number with periodical cut offs duly identified to prove to tax authorities that there are no missing numbers thus there is no tax avoided/evaded. The cut off will enable control return filing and omission of documents.
- Unlike invoice and credit note, voucher has been used in a loose form in the definition meaning it not only refers to a document but is also an acknowledgement for right to receive goods or services also enshrining possibly discount vouchers.
- It is this invoice, credit note and the vouchers which are likely to constitute records under the law apart from ancillary information as well.

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Record keeping as per law

- Article 78 under Chapter 10 speaks of record keeping.
- Further this record keeping provision shall be irrespective of record keeping prescribed under any other law.
- Legally this section mandates following records as minimum need.
 - A *Taxable person has to maintain the following records –*
 - a. *Records of all supplies and Imports of Goods and Services.*
 - b. *All Tax Invoices and alternative documents related to receiving Goods or Services.*
 - c. *All Tax Credit Notes and alternative documents received.*
 - d. *All Tax Invoices and alternative documents issued.*
 - e. *All Tax Credit Notes and alternative documents issued.*
 - f. *Records of Goods and Services that have been disposed of or used for matters not related to Business, showing Taxes paid for the same.*
 - g. *Records of Goods and Services purchased and for which the Input Tax was not deducted.*
 - h. *Records of exported Goods and Services.*
 - i. *Records of adjustments or corrections made to accounts or Tax Invoices.*
 - j. *Records of any Taxable Supplies made or received in accordance with Clause (3) of Article 48 of this Decree-Law, including any declarations provided or received in respect of those Taxable Supplies.*
 - k. *A Tax Record that includes the following information:*
 - 1) *Due Tax on Taxable Supplies.*
 - 2) *Due Tax on Taxable Supplies pursuant to the mechanism in Clause (1) of Article (48) of this Decree-Law.*
 - 3) *Due Tax after the error correction or adjustment.*
 - 4) *Recoverable Tax for supplies or Imports.*
 - 5) *Recoverable Tax after the error correction or adjustment.*

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- The law will also prescribe through Executive orders the periodicity of maintenance of such accounts and records and so also the confidentiality of such information.

What the above record keeping warrants

- The above provision of the law can be understood in a simpler/sequential manner.
- There are different types of taxes as envisaged by law for different types of transactions/events. For instance, there is tax on –
 - a) The seller/service provider
 - b) The buyer/service recipient – reverse charge
 - c) Tax on agents acting for principal
 - d) Tax on agents acting on their own
 - e) Zero tax or exempted transactions within designated areas such as Special Economic Zone/Free Trade Zone etc.
 - f) Tax on electronic communication transactions
 - g) Tax on transportation
 - h) Tax on capital goods
 - i) Tax based on profit margin – compounding scheme
 - j) Tax on deemed sales/services/supplies
- The above list though not exhaustive will be good enough to explain the requirements of record keeping/accounting needs of the law.
- A tax paying entity is likely to have following transactions broadly –
 - Output tax
 - Sales
 - Service rendering
 - Input tax
 - Purchase
 - Service procurement
- There may be multifarious products/service in the above category.
- Within the above buckets there might be taxable transactions where liability is on a normal levy or on reverse charge basis.

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- Similarly, there may be zero rated transactions, VAT exempted transactions and taxable (non-exempted) transactions under each of these buckets.
- There might be sales/services to designated zones.
- This has to be further broken down vendor wise/customer wise for purchase/sale transactions as there may be a tax registration code wise transaction matching/ arising from the availing of input tax credit and cross check/self-audit mechanism as required by law.
- To sum up, the documentation or the accounting needs will be –
 - Customer (or) Vendor wise
 - Product/Service
 - Quantity/Volume
 - Price
 - Nature of tax
 - Taxable value
 - Tax amount
 - Tax registration number
 - Type of exemption (if any)
 - Type of levy
 - HSN product/service code
 - Capital goods tax (if any)

Additional points on record maintenance

- Since the law envisages a staggered tax credit on capital goods with a record maintenance of fixed assets for at least 10 years, the requirements of this provisions will need to be borne in mind for record maintenance which normally should exist in the fixed asset register.
- Transitional provisions also call for record maintenance especially in cases where contracts might have been entered into before VAT law come into effect while actual sale of goods/rendering of service might follow a later date.
- Grandfathering provisions of continuing contracts before 31stDecember, 2017 may need to be noted especially with their sale/service continuing post implementation of VAT law as these will be at Zero VAT.

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- Similarly, maintenance of stock records and cut off of stocks batch wise before VAT law and post VAT law coming into place will pose some challenges as normally there is no input VAT available on pre-VAT stock as there was no tax paid on these.
- Writing off bad debts is also covered in the law under article 64, where a cut off of 6 months is given to write off non-recoverable bad debts with an added caveat that this has to be communicated to the recipient which becomes difficult in practice. This will also warrant immaculate record maintenance.
- Absence of record will mean the tax authority will deny the input tax credit or will levy an additional tax on the output transaction apart from other penal consequences depending on the gravity of the situation.

The above calls for cumbersome record maintenance. While it may appear difficult on the outset with the use of ERP's and Computer database software it is not an impossible task.

Entities may have to draw their road map to sound their customers and vendors accordingly of the above. Similarly, this may also warrant changes in the ERP and the accounting software.

Accounting requirement

- There is an output tax and an input tax. The tax arithmetic to calculate liability of tax payable is Output tax minus Input tax.
- To illustrate -

Suppose X & Co. have sold a product for 100,000 on which 5% VAT is applicable the tax on transaction is 5,000. This is output tax payable.

The same entity X & Co. also might have procured the product from someone else say @ 80,000 on which 5% tax would translate to 4,000. This is input tax credit.

So the net tax payable by X & Co. will be 5,000 minus 4,000 = 1,000.

Tax payable = Output tax minus Input tax

Accounting entries will be as under –

Books of X & Co.

Sale transaction –

Customer a/c	Dr.	105,000	
To Sales a/c			100,000
To VAT output tax a/c			5,000

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Purchase transaction –

Purchases a/c	Dr.	80,000	
VAT input tax a/c	Dr.	4,000	
To Vendor a/c			84,000

At the end of the cut off period the following entry is passed offsetting the input tax credit against the output tax payable.

VAT output tax a/c	Dr.	4,000	
To VAT input tax a/c			4,000

The VAT output tax a/c ledger will read only the payable balance of 1,000 which will be cleared with a payment done as prescribed by law.

Post issuance of Executive orders what prototype of accounting records will be required and in what columnar formats for return filing etc. can also be addressed in the coming days.

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Chapter – XVI

Audit and Assessment

The right of the Authority to perform a Tax Audit (Article 17 of Tax Procedure Law)

1. The Authority may perform a Tax Audit on any Person to ascertain the extent of that Person's compliance with the provisions of this Law and the Tax Law.
2. The Authority may perform the Tax Audit at its office or the place of business of the Person subject to the Tax Audit or any other place where such Person carries on Business, stores goods or keeps records.
3. If the Authority decides to perform a Tax Audit at the place of Business of the Person subject to the Tax Audit or any other place where such Person carries on his Business, stores goods or keeps records, the Authority must inform him at least five business days prior to the Tax Audit.
4. By way of exception to section (3) of this Article, the Tax Auditor has the right of entry to any place where the Person subject to the Tax Audit carries on his Business, stores goods, or keeps records, and as the case may be it will be temporarily closed in order to perform the Tax Audit for within a time limit not exceeding 72 hours without prior notice in any of the following cases:
 - (a) if the Authority has serious grounds to believe that the Person subject to the Tax Audit is participating or involved in Tax Evasion whether related to this Person or another Person;
 - (b) if the Authority has serious grounds to believe that not temporarily closing the place where the Tax Audit is conducted will hinder the conduct of the Tax Audit;
 - (c) if the Person who has been given advance notice of the Tax Audit under section (3) of this Article attempts to hinder the Tax Auditor's access to the place where the Tax Audit is to be performed.
5. In all cases stated in section (4) of this Article, the Tax Auditor must obtain the prior written consent of the Director General and if the place to be accessed is a place of residence then a permit from the Public Prosecutor must also be obtained.
6. Places closed under this Article must be reopened upon the expiration of 72 hours, unless the Authority obtains a permit from the Public Prosecutor to extend the closure time limit for a similar period prior to the expiry of the preceding 72 hours.
7. A criminal case can be initiated only upon an application from the Director General.
8. The Executive Regulations of this Law shall specify the necessary procedures related to the Tax Audit.

Analysis

- VAT Law works on self-assessment basis where information/details furnished by tax payers are considered to be correct unless otherwise established. One of the methods for authorities is to carry out the audit of records of taxpayers to ascertain the extent of compliance of law.
- Tax audit is conducted by the member of the Authority's staff appointed as a Tax Auditor. It involves scrutiny of commercial documents of the person conducting business. The Authority has the right to conduct Tax Audit whenever they deem fit to do so. It is performed to avoid the instances of tax evasion stated under Article 26 and non-compliance of the provisions of this law or the tax law.
- Tax audit shall be performed at a place where the books of account and related documents are stored; it may be the office of the person or his place of business or any other place where such documents are kept. The Authority must inform the concerned person (auditee) at least five days prior to the conduct of audit. The basic aim among others for informing the auditee may be to temporarily suspend his business activities on the prospected date, retrieval of documents related to business from different sources (if any) and their collection at a single place.
- However, the tax auditor is allowed to enter the premises and conduct the audit without prior notice, in any of the following instances:
 - The Authority has reason to believe that the auditee is involved in tax evasion.
 - The Authority has reasons to believe that temporary closing of the business shall not hinder the tax audit.
 - The person who has been informed about the audit attempts to hinder the conduct of tax audit in a proper manner.

Prior written consent of Director General need to be obtained by the tax auditor to conduct the audit as mentioned above.

In case the Auditor has to access the place of residence of the auditee, approval of public prosecutor is required.

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Article 18: The Right of the Authority to Access the Original Records or copies thereof during a Tax Audit

While conducting a Tax Audit, the Tax Auditor may obtain original records or copies thereof, or take samples of the stock, equipment or other assets from the place at which the Person subject to the Tax Audit carries on his business or which are in his possession, or may seize them in accordance with the rules that shall be specified in the Executive Regulations of this Law.

Article 19: Timing of the Tax Audit

A Tax Audit will be conducted during the official working hours of the Authority. In cases of necessity, a Tax Audit may be exceptionally conducted outside such hours by decision of the Director General.

Article 20: New Information Surfacing after a Tax Audit

The Authority may audit any issue previously audited if new information surfaces that might impact the outcome of the Tax Audit, provided that the Tax Audit procedures shall apply in accordance with the provisions of this Law and its Executive Regulations.

Article 21: Cooperation during the Tax Audit

Any Person subject to a Tax Audit, his Tax Agent or Legal Representative must facilitate and offer assistance to the Tax Auditor to enable him to perform his duties.

Article 23: Notification of the Tax Audit Results

1. The Authority must inform the Person subject to Tax Audit of the final results of the Tax Audit within the time limit and according to the procedures specified in the Executive Regulations of this Law.
2. The Person subject to the Tax Audit may view or obtain the documents and data on which the Authority based its assessment of Due Tax according to the provisions specified in the Executive Regulations of this Law.

- The Auditor may demand original copies of the business documents for verification purposes. Such original copies shall provide for the conclusive evidence as to whether the information represented by the photocopies, facsimiles or any such document is true or not.
- Audit shall be conducted during the official business hours of the Authority, but in some

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cases it may be carried on beyond the official hours by decision of Director General, if the conditions specified in Law or to be specified in the Executive Regulations of this law permits. The Auditee is required to cooperate with the auditor and other staff members for the successful completion of the audit.

- In case some new information is obtained on the documents previously audited which might impact the audit result, audit may be conducted again on these documents.

Article 24: Tax Assessments (Tax Procedure Law)

1. The Authority shall issue a Tax Assessment to determine Payable Tax and notify the Taxable Person within five business days of its issuance, in any of the following cases:
 - (a) The Taxable Person failing to apply for registration within the timeframe specified by the Tax Law.
 - (b) The Registrant failing to submit a Tax Return within the timeframe specified by the Tax Law.
 - (c) The Registrant failing to settle the Payable Tax stated as such on the Tax Return that was submitted within the time limit specified by the Tax Law.
 - (d) The Taxable Person submitting an incorrect Tax Return.
 - (e) The Registrant failing to account for Tax on behalf of another Person when he is obligated to do so under the Tax Law.
 - (f) There being a shortfall in Payable Tax as a result of a Person's Tax Evasion, or as a result of a Tax Evasion in which such Person was involved.
2. The Authority shall issue an estimated Tax Assessment if it has not been possible to determine the amount of Tax, deemed to be Payable Tax or the Refundable Tax that has not been due to be refunded, as the case may be.
3. The Authority may amend an estimated Tax Assessment based on new information that surface after the issue of the estimated Tax Assessment. It must notify the concerned Person of these amendments within 5 five business days from the date of amendment.
4. The Executive Regulations of this Law shall specify the information or data that must be included in the Tax Assessment.

- As discussed earlier, VAT is self-assessment basis where the registrant is required to furnish all requisite details in the periodical returns.
- However, there could be instances where Authorities may feel that the tax has escaped from payment. In such cases, the authorities shall issue a tax Assessment to determine tax payable and notify the taxable person within five business working days. The assessment would be done in the following cases:

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- The Taxable Person failing to apply for registration within the timeframe specified by the Tax Law.
- The Registrant failing to submit a Tax Return within the timeframe specified by the Tax Law.
- The Registrant failing to settle the Payable Tax stated as such on the Tax Return that was submitted within the time limit specified by the Tax Law.
- The Taxable Person submitting an incorrect Tax Return.
- The Registrant failing to account for Tax on behalf of another Person when he is obligated to do so under the Tax Law.
- There being a shortfall in Payable Tax as a result of a Person's Tax Evasion, or as a result of a Tax Evasion in which such Person was involved.
- There could be instances where the authorities are not in a position to raise the exact tax demand. In such cases, the demand may be raised for estimated tax liabilities. In future, whenever precise details are available, final tax demand may be raised within 5 days of additional information being available.
- Administrative assessment penalties shall be imposed for non-compliance of the provisions of Article 25. However, the registrant has the option to voluntarily disclose under Article 10 of any error committed and of which he is aware within the time limits specified under the Executive regulations of this Decree Law. But, if such registrant deliberately provides wrong information or data to the Authority or creates hindrance in the performance of their duties in any manner, he shall be liable to pay tax evasion penalties under Article 26 of this Decree Law.

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Chapter - XVII

Automation

- We discussed in the earlier chapter the rigmarole of document maintenance and accounting records. One way to leverage this is by use of ERP or accounting software especially in case of large volume transactions. As to how this automation can help us or be enabled to comply with the legal provisions is the essence of this write up.
- There are many ways to handle/setup automation in VAT or in indirect taxes. There is no one best fit all solution as this is amenable to the ERP or software requirements and varies from entity to entity and needs of the law across locations/countries. But by and large how this setup is warranted or is likely done in an accounting software is what is dealt with herein.
- Requisites of the setup. The following are some of the points to be borne in mind before doing any automation for VAT.
 - Configuration of the automation
 - Backup/archiving features of the automation
 - Facility to scale automation to any volume/needs
 - Flexibility to adapt to changing tax rates/schemes
 - Currency/exchange management convenience
 - Country specific/industry/business specific requirements
 - Cost and life cycle of support
 - Networking features transmission facilities of data volumes
 - Customization level feasibility
 - Migration of data needs from one form to another/Data conversion
 - Ease of understanding, maintenance, usage
 - Training facility
 - Technology requirements skill level requirements etc.
- Print requirements of the law have to be thought over as the law normally warrants disclosing product wise units, price, taxable value, tax rate, tax amount and the total tax alongside other standard details on an invoice. Possible consideration may need to be given for obtaining Emirate wise sales data as well if warranted by law.

First step in automation - Set up at Master record level

- All data of customer and vendor is maintained normally in a customer/vendor database or Master record table.
- It is crucial that there are no duplicate records in the customer/vendor database table. Weeding out the duplicates is the first and foremost need of any automation for VAT or for any MIS as this brings better quality in reporting/ handling.
- Product/service master also exists in any database which basically contains the inventory or the services that the entity renders, its nature etc. This table is coded or linked with the Harmonized System of Nomenclature (HSN) codes and the tax rates. The tax rates are also maintained in a Master table product commodity wise. To recap, HSN coding is a globally accepted product/commodity nomenclature prescribed by World Trade Organization (WTO) to bring in uniformity in customs classification regulations across the world
- Finer aspects of capital goods, services, export customers etc. may need to be flagged using additional fields on the database to one's needs.
- It is better if the software/automation supports flat file upload of the customer/vendor Master data uploads and the tax rates. This way standard country specific tax rates can be uploaded HSN code wise into the software with minimal manual intervention.
- Right of access to Master record maintenance and changes should be security coded so as to maintain integrity of the database. This is standard to any software/automation.
- Tax registration number is also normally entered at the entity Master level table as this is a one-time exercise and every time an invoice/credit note or any document is generated the tax registration number can get printed by default.
- The above points have been summed up in an example as under (*only relevant fields are shown of the master database to explain*) –

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Product master

Product/Service name	Category	Product ID	HSN Code	Unit of measure	Unit price in USD	Tax rate	Tax deferral flag	Deferral years
Rice	Stock	.....	1006.00.00	Kgs	3.00	0%		
Toilet soap	Stock	.....	3401.19.41	Units	1.50	5%		
Electronic toys	Stock	.....	9503.00.00	Units	10.00	10%		
Forklift	Capital goods	.....	8427.10.00	Units	10,000	15%	Yes	5
Maintenance	Services	.....		Lumpsum		5%		

Customer/Vendor master

Category	Customer/Vendor name	Code	Tax regn no.	Group	VAT status
Customer	ABC	1201	123456	External domestic	Taxable
Customer	XYZ	1202	98765	Related party	Taxable
Customer	PQR	1203	423456	External import	Taxable
Vendor	ZYX	9005	875686	Assets	Taxable
Composite	CBA	1205	999123	Branch office	Exempt

In the above example, the product master also has the tax rate column built into it, while it need not be so, especially if the products are multifarious and are of diverse nature. Tax table can remain outside of the product master.

With the two above tables, a mix/combination of the product and customer mapping can be done in the automation process.

Say for example –

Rice and toilet soap sold to ABC will trigger a tax-exempt flag or tax @ 0% for Rice and @ 5% for toilet soap on a single invoice/document.

If the same sale/stock transfer happens to branch CBA – then no matter what the tax rates are, it being a stock transfer the same will be tax-exempt based on the entity's VAT status in the customer master which is a filter field for VAT applicability.

— A combination of document types like invoice, stock transfer in, stock transfer out, credit

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note, credit invoice etc. can also be categorized in the software to capture the permutations and combinations. For instance, stock transfer documents will have zero tax, However, for a branch transfer to get taxed one must raise an invoice, as an exception, when such a scenario arises.

- In short, a filter mode across tables and their mapping is what will help one to generate the required end output for VAT compliance.
- At a general ledger level, the following are required –
 - Input tax credit inventory
 - Input tax credit capital goods
 - Input tax credit services
 - Output tax inventory
 - Output tax services
- Periodical transfer of input taxes to output taxes can also be automated so that the net tax payable can be arrived at using a simple algorithm to nullify the input tax account. Say, for instance, if the tax is payable before the 5th of the subsequent month, then on 3rd a cut-off be configured in the software to prevent further entry of invoices, /credit notes etc. and the transfer of input taxes to output tax account be made using a single journal entry. This way we do away with the need to do individual line by line transfer or manually offsetting the input tax credit to output tax account to compute net tax payable. The input tax credit at month end on the Balance sheet will also read zero if date field of the entry is customized to month end last date.
- A bare full data dump of the total sales made, services rendered and invoice wise and credit note wise, product wise, service wise all can be mapped using a flat file with filters on any automated software including Microsoft XL say for instance.
- This way automation can assist in complying with taxes. Archiving will enable retrieving of data at any point of time.
- Matching of input tax credit with the Government portal of the seller's invoice with one's input taxes can also be machine automated with tax registration number, invoice no. product HSN, Date of invoice or a combination of these.

While all the above looks conceptually simple and easy, the challenge is always in setting it up to the entity's custom requirement. This perhaps makes the process of VAT automation a full-time consultancy service, definitely paving way to better opportunities for Chartered Accountants in this domain.

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Chapter – XVIII

Penalties

Article 76: Administrative Penalties Assessment

Without prejudice to the provisions of Federal Law No 7 of 2017 on Tax Procedures, the Authority shall issue an Administrative Penalty Assessment to the Person and notify the Person of the same within five business days as of the date of issuance in any of the following cases:

1. Failure by the Taxable Person to display prices inclusive of Tax according to Article 38 of this Decree-Law.
2. Failure by the Taxable Person to notify the Authority of applying Tax based on the margin according to Article 43 of this Decree-Law.
3. Failure to comply with the conditions and procedures related to keeping the Goods in a Designated Zone or moving them to another Designated Zone.
4. Failure by the Taxable Person to issue the Tax invoice or an alternative document when making any Supply.
5. Failure by the Taxable Person to issue a Tax Credit Note or an alternative document.
6. Failure by the Taxable Person to comply with the conditions and procedures regarding the issuance of electronic Tax Invoices and electronic Tax Credit Notes.

Introduction

Any person coming within the purview of the law is required to fulfil his obligations as stipulated by the law. At times the person fails to do so either wilfully or due to not being aware of the provisions or due to not giving any importance. In order to make the person fulfil his /her legal obligations, the provision of penalty becomes essential. Further, for effective implementation of any tax-law and to do justice to tax compliant assessee, provisions stipulating strict action against offenders are required.

As per Article 1 of the Decree Law, Administrative Penalties are defined as amounts imposed upon a person by the Authority for breaching the provisions of this Decree Law or Federal Law No. 7 of 2017 on Tax Procedures. In general terms, penalty may be defined as imposing monetary or non-monetary (if any) obligations on the person in addition to his normal obligations. This forces the person to comply with the legal requirements to avoid the consequences of non-compliance. It works as a deterrent to non-compliance.

Article 76 of Decree Law covers penal provisions. Important aspects are as under:

- Provisions of Article 76 cannot prejudice the penal provisions of Federal law on Tax Procedures. While reading the provisions of Article 76, equal effect must be given to the

provisions of Tax Procedures law. The provision of one law cannot be read in such a way that derogates other law.

- The penalties can be imposed by way of assessment by authorities.
- The authority has to intimate the person on whom penalty is imposed the order for imposition of penalty within 5 business days.

The penalty may be imposed in the following cases:

1. Article 38 of the Decree Law requires that the advertised price of goods or services shall include the Tax applicable thereon except in such instances where Executive Regulations may provide that there is no need to abide by the same. A person who is required to declare the price in the stated manner (gross value inclusive of tax) but fails to do so, would be subject to administrative penalties. This is also considered as a good consumer protection measure as the consumer may not be aware of the taxes applicable. It is a good measure for transparency.
2. Article 43 provides for option to pay tax based on margin method instead of on value of taxable supplies. This would be the calculation of margin by deducting the cost of purchase from the sales price. On the net amount VAT would be calculated. Once a person adopts the method, it is obligatory for him to notify the authority for selection of his option. If he fails, administrative penalties are imposable.
3. Specific conditions and procedures would be laid down for movement of goods from one designated zone to another designated zone without any tax becoming due. Such areas are treated as outside the State for the purpose of VAT. Consequently there is no VAT charged on such supply. Failure to abide by the conditions and procedures as specified in Executive Regulations would be subjected to administrative penalties.
4. Tax document is vital document for recording transactions of taxable supplies between parties. Where a taxable person fails to issue the Tax invoice or an alternative document when making any Supply, penalty is imposable. The person may need to record and monitor the following transactions to avoid errors:
 - sale on approval (when returned, what quantity),
 - returnable goods (why sent out (may be job work or otherwise), when returned, what quantity),
 - non-returnable samples (liable to VAT),
 - supplies for projects to be invoiced at later points of time and
 - other supplies in the course of business

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Secondly where any reduction in the output tax is claimed but no corresponding credit note or alternate document is issued, that would also be subject to administrative penalties. In such cases the buyer/ receiver may be claiming the input tax thereby reducing his tax due.

5. Special conditions and procedures would be notified for issuance of tax invoice or tax credit note in electronic form. Failure to comply with such conditions is also subject to administrative penalties.

In addition to the VAT Decree Law, there are provisions for administrative penalties in Federal Law No. 7 on Tax Procedures which being relevant, are discussed below:

Article 25 of Tax Procedure Law: Administrative Penalties Assessment

The Authority shall issue an Administrative Penalties Assessment for a Person and notify him within (5) five business days for any of the following violations:

Instances where penalty is imposable:

- (a) Person carrying on a business failing to keep the required records and other information specified in this Law and the Tax Law.
- (b) Person carrying on business, failing to submit the data, records and documents related to Tax in Arabic to the Authority when requested.
- (c) Taxable Person failing to submit a registration application within the timeframe specified in the Tax Law.
- (d) Registrant failing to submit a deregistration application within the timeframe specified in the Tax Law.
- (e) Registrant failing to inform the Authority of any circumstance that requires the adjustment of the information pertaining to his tax record kept by the Authority.
- (f) Person appointed as a Legal Representative for the Taxable Person failing to inform the Authority of his appointment within the specified timeframe, in which case the penalties will be due from the Legal Representative.
- (g) Person appointed as a Legal Representative for the Taxable Person failing to file a Tax Return within the specified timeframe, in which case penalties will be due from the Legal Representative's own funds.
- (h) Registrant failing to submit the Tax Return within the timeframe specified in the Tax Law.
- (i) Taxable Person failing to settle the Payable Tax stated in the submitted Tax Return or Tax Assessment he was notified of, within the timeframe specified in the Tax Law.

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- (j) Registrant submitting an incorrect Tax Return.
- (k) Person voluntarily disclosing errors in the Tax Return, Tax Assessment or Refund Application pursuant to Article 10 (1) and (2) of this Law.
- (l) Taxable Person failing to voluntarily disclose errors in the Tax Return, Tax Assessment or Refund Application pursuant to Article 10 (1) and (2) of this Law before being notified that he will be subject to a Tax Audit.
- (m) Person carrying on a Business failing to offer the facilitation and assistance to the Tax Auditor in violation of the provisions of Article 21 of this Law.
- (n) Registrant failing to calculate Tax on behalf of another Person when the registered Taxable Person is obligated to do so under the Tax Law.
- (o) Any other violation for which a resolution is issued by the Cabinet.

The offences mentioned above are independent of each other. A person committing any of the above offences shall be liable to administrative penalties for the offences so caused. The Executive Regulations of Tax Procedure Law shall specify the information and data that must be included in the Administrative Penalties Assessment.

Quantum of Penalties

Any violation made under VAT Law and Tax Procedure Law, as discussed above is subject to penalties. The Cabinet shall issue a resolution that specifies the Administrative Penalties for each of the violations listed above. Such Administrative Penalties shall be not less than 500 Dirhams for any violation and shall not exceed three times the amount of Tax in respect of which the Administrative Penalty was levied. It needs to be noted that imposition of any Administrative Penalty pursuant to above provisions shall not exempt any Person of his liability to settle the Due Tax in accordance with the provisions of the Law. If the person fails to pay penalties within a given timeframe, he shall be dealt with in the manner prescribed under Article 36 of Tax Procedure Law.

Objections by the person

Article 27 of the Tax Procedure Law confers upon the Person, the right to object against the penalty imposed by authorities under administrative penalties or tax evasion penalties. The Person may submit a request to the Authority to reconsider any of its decisions issued in connection with him in whole or in part. However, application for reconsideration has to be submitted within 20 business days of his being notified of the decision.

The Authority shall review a request for reconsideration if the person has applied within the stipulated time frame of 20 business days and issue a decision setting out grounds for reconsideration. Such decision has to be with reasons and has to be passed within 20 days

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Background Material on UAE VAT

from the date of receipt of application from the person. Further, the Authority needs to inform the decision to the applicant within 5 business days of issuing the decision.

However, if the Person is not satisfied with the decision of the Authority, he has the right to apply for consideration to the “Tax Disputes Resolution Committee” subject to the fulfilment of conditions mentioned in Article 30 and Article 31 of the Tax Procedures Law. Further, if the Person is not satisfied with the Committee’s decision, he shall file the application with the Competent Court in the manner prescribed under Article 33 of the Tax Procedures Law.

Collection of Payable Tax and Administrative Penalties

Article 36 of the Tax Procedures Law provides that if a Taxable Person fails to settle any Payable Tax or Administrative Penalties within the specified timeframe under this Law and the Tax Law, the following measures shall be taken:

1. The Authority shall send the Taxable Person a notice to pay Payable Tax and Administrative Penalties within 20 business days of the date of Notification.
2. If the Taxable Person fails to make payment after being notified pursuant to section (1) of this Article, the Director General shall issue a decision obligating the Taxable Person to settle the Payable Tax and Administrative Penalties which shall be communicated to him within 5 business days from the issuance of the decision accompanied by the Tax Assessment and Administrative Penalties Assessments.
3. The decision of the Director General regarding the Tax Assessment and Administrative Penalty Assessments shall be treated as an executory instrument for the purposes of enforcement through the execution judge at the Competent Court.

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Chapter - XIX

Tax Evasion

Tax Evasion (Article 77)

If it is proven that a Person who is not a Registrant acquires Goods referred to in Clause (3) of Article 48 of this Decree-Law, claiming that he is a Registrant, he shall be considered as having committed Tax Evasion and shall be subject to the penalties provided for in Federal Law No. 7 of 2017 on Tax Procedures.

Federal Law No 7 of 2017 on Tax Procedures

Article 1- Definition

Tax Evasion: The use of illegal means resulting in lowering the amount of tax due, non-payment of the tax due or a refund of tax that he does not have the right to have refunded under any Tax Law.

Tax Evasion Penalties: Article 26

1. Without prejudice to any more severe penalty applicable under any other law, a prison sentence and monetary penalty not exceeding **five times** the amount of evaded Tax or either of the two, shall be imposed on:
 - (a) Taxable Person who deliberately fails to settle any Payable Tax or Administrative Penalties.
 - (b) Taxable Person who deliberately understates the actual value of his Business or fails to consolidate his related Businesses with the intent of remaining below the required registration threshold.
 - (c) Person who charges and collects amounts from his clients claiming them to be Tax Registrant without being registered.
 - (d) Person who deliberately provides false information and data and incorrect documents to the Authority.
 - (e) Person who deliberately conceals or destroys documents or other material that he is required to keep and provide to the Authority.
 - (f) Person who deliberately steals, misuses or causes the destruction of documents or other materials that are in the possession of the Authority.
 - (g) Person who prevents or hinders the Authority's employees from performing their duties.
 - (h) Person who deliberately decreases the Payable Tax through Tax Evasion or conspiring to evade Tax.

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2. The imposition of a penalty under the provisions of this Law or any other Law shall not exempt any Person from the liability to pay any Payable Tax or Administrative Penalties under the provisions of this Law or any Tax Law.
3. The competent court shall impose Tax Evasion penalties against any Person who is proven to have been directly involved or instrumental in Tax Evasion pursuant to Federal Law No. 3 of 1987 referred to.
4. Without prejudice to section (2) of this Article, any Person who is proven to have been directly involved or instrumental in Tax Evasion pursuant to section (3) of this Article shall be jointly and severally liable with the Person whom he has assisted, to pay the Payable Tax and Administrative Penalties pursuant to this Law or any other Tax Law.

General Meaning of Tax Evasion

Tax planning refers to availing advantages of legitimate concessions and benefits provided in the law to reduce the tax incidence. This could also cover methods to arrange business operations such that the tax liability is reduced i.e. when two methods are possible to achieve an objective, select one which results in lower tax liability.

Tax evasion, as per common parlance, means avoiding tax by illegal means e.g. by suppressing facts, by not maintaining correct records, by falsifying records, by giving false statements etc.

There is thin line of difference between tax planning and tax evasion. Tax planning within four corners of law is permitted but tax evasion is not acceptable and results in very heavy penalties. It is the obligation of every citizen to pay tax honestly without resorting to subterfuges.

Tax Evasion under UAE VAT Law

Article 77 of the Federal Decree-Law No 8 of 2017 on Value Added Tax provides that when a Person who is not a Registrant acquires Goods referred to in Clause (3) of Article 48 of this Decree-Law, claiming that he is a Registrant, he shall be considered as having committed Tax Evasion.

Section 48 (3) on reverse charge mechanism provides that if a registrant of specified goods (crude or refined oil, unprocessed or processed natural gas, or any hydrocarbons) makes supplies of specified goods to another Registrant intended for specified purpose, the first registrant (supplier) is not required to charge VAT on the supply of goods and the second registrant (recipient) is required to calculate the tax payable thereon and responsible for all tax obligations under reverse charge mechanism. The recipient registrant is required to confirm to

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the supplier registrant in writing that he is registrant for the purpose of applying clause 3 of Article 48.

Any wrong representation made by the recipient despite not being registered as such shall amount to tax evasion and the recipient shall be liable to penalties as provided for in Federal Law No. (7) of 2017 on Tax Procedures.

It is worth noting that the above provision for tax evasion deals with only one of the instances of tax evasion. In addition to this, there could be many other instances where a person may have committed tax evasion and is required to be subjected to legal proceedings. Detailed provisions for instances of tax evasion and penal consequences thereof have been provided in the Federal law on Tax procedures as discussed below.

Federal Law No. 7 on Tax Procedures has been enacted to provide for tax procedures related to the administration, collection and enforcement of Tax by the Authority. It discusses various aspects related to these in detail. The Tax Procedures are applicable not only to the VAT Law but to any Federal law pursuant to which a Federal Tax is imposed e.g. Excise Tax. Hence, the discussion made below shall be equally applicable to evasion made under any federal tax Laws.

Article 1 of Federal Law No. 7 of 2017 defines tax evasion as “use of illegal means with the objective of lowering the amount of tax due or non-payment of the tax due or refund of tax that he does have the right to have refunded under any tax law.” The activities covered within the ambit of tax evasion could be discussed little more elaborately as under:

Use of illegal means with the objective of:

- (i) Lowering the amount of tax due: This could be by way of any means which result in lowering the tax due amount. Some of instances could be claiming ineligible exemption, wrong classification of goods or services, reducing the value of supply, claiming higher input tax credit resulting in lowering tax due, non-reversal of input tax credits used in making exempted supplies or non-business activities etc.
- (ii) Non-payment of tax due: This covers instances where tax has been charged and collected but not paid or any other similar act resulting in non-payment of due taxes.
- (iii) Claiming refund of tax that one does not have a right to claim. This could arise where a person misclassifies the supply under zero rated supplies and claims refund of recoverable input tax credits.

The law seems to be very stringent in respect of the practice of tax evasion. It not only creates liability on the registrant but also includes in its ambit the person supporting such registrant for doing so i.e. tax agent, legal representative or any other person facilitating such task. Tax evasion involves deliberate attempt to avoid the tax obligations. The practice of tax evasion

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may not only result into disruption of the financial position of the business but also bloats the reputation of the practitioner.

Penalties for tax evasion

Penalties imposed on the person evading tax are specified in Chapter 3 of Federal Law No. 7 of 2017. As per the provision, penalty for tax evasion is imprisonment of the registrant and monetary penalty not exceeding five times the amount of evaded Tax or either of the two. Instances where such penalties will be imposed are provided for in Article 26 of Federal Law No. 7 of 2017 which reads as follows:

- A Taxable Person who deliberately fails to settle any Payable Tax or Administrative Penalties.
- A Taxable Person who deliberately understates the actual value of his Business or fails to consolidate his related Businesses with the intent of remaining below the required registration threshold.
- A person who charges and collects amounts from his clients claiming them to be Tax Registrant without being registered.
- A person who deliberately provides false information and data and incorrect documents to the Authority.
- A person who deliberately conceals or destroys documents or other material that he is required to keep and provide to the Authority.
- A person, who deliberately steals, misuses or causes the destruction of documents or other materials that are in the possession of the Authority.
- A person who prevents or hinders the Authority's employees from performing their duties.
- A person who deliberately decreases the Payable Tax through Tax Evasion or conspiring to evade Tax.

A careful perusal of the above instances indicate that penalty can be imposed only when there are conscious and deliberate attempts on the part of the person aimed at evasion of tax. Mere failure to pay tax without any mala fide intention and due to bona fide mistakes cannot be said to be deliberate attempt to evade the tax for invocation of consequent penalty. However, it has to be established that the default, if any, was not attributable to any deliberate attempt to evade tax.

The right of the persons to make objections, seek review of the decision by authority based on objections, approach the Tax Disputes Resolution Committee and Competent Court and collection of Administrative Penalties are discussed in details under the Chapter relating to Penalties.

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Chapter - XX

Refund

Refund provisions are dealt with in the Tax Procedure Law as well as in the UAE VAT Decree Law. The discussion i below focuses on the relevant provisions as provided in both the Laws.

Overview of key provisions pertaining to refund :VAT Decree Law	Tax Procedure Law
Article 44 - Zero rate	Article 1 – Definitions (Refundable Tax)
Article 45 - Supply of goods and services that is subject to zero rate	Article 34 – Application for tax refund
Article 74 - Excess recoverable tax	Article 35 – Tax refund procedure

Article 1 of the Tax Procedure Law

Refundable Tax: Amounts that have been paid and that the Authority can refund in whole or in part to the Taxpayer pursuant to the relevant Tax Law, require to use for the payment of amounts due or Administrative Penalties or require to carry forward to future Tax Periods depending on the nature of the refund, according to the Tax Law.

Analysis:

- The definition of refundable tax is given in the Tax Procedures Law which covers not only the VAT Law but also any other Federal Law where situation of refund arises.
- Taxpayers paying amount to the government which they are subsequently entitled to claim back from the government as per provisions provided in the relevant laws are said called refundable tax.
- Typically, under VAT law, refund scenario arises where VAT paid on inward supply exceeds the VAT payable on the outward supply. In such cases the excess credit, is either, allowed to be carried forward or refunded to the taxpayer (subject to fulfilment of prescribed conditions).
- The refund could more particularly arise on account of supply of zero rated goods or services.
- It can be observed that the definition of the term 'refundable tax' covers three different cases where amount has been paid and that the Authority:
 - Can refund in whole or in part to the Taxpayers as per the relevant tax law;
 - Require it to use for the payment of amounts due or Administrative penalties
 - Require it to be carried forward to future tax periods depending upon its nature

Concept of Zero Rated Supplies

Zero Rated Supplies generally mean such supplies wherein supply made by taxable person is not subject to tax but he is entitled to recover input tax paid. As there is no output tax payable by such suppliers or output tax payable is lesser than the recoverable input tax, the taxpayer is allowed to refund of excess recoverable input tax so that there is no increase in the cost or cascading effect of tax does not take place.

Zero rated supplies should be distinguished from exempted supplies where taxable person is not required to charge tax but at the same time he cannot recover the input tax paid. Person making exempted supplies cannot claim refund of tax.

The Zero rate shall apply in 14 scenarios (such as exports, international transport etc) as specified in Article 45 of the VAT Decree Law (refer Chapter relating to Export for details on Zero rated supplies).

Article 74: Excess Recoverable Tax (VAT Decree Law)

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| <ol style="list-style-type: none">1. With the exception of what will be stipulated in the Executive Regulation of this Decree-Law, the Taxable Person shall carry forward any excess of Recoverable Tax to the subsequent Tax Periods and offset such excess against Payable Tax or any Administrative Penalties imposed under this Decree-Law or Federal Law No. (7) of 2017 on Tax Procedures in subsequent Tax Periods until such excess is fully utilized, in the following cases:<ol style="list-style-type: none">(a) If the Taxable Person's Recoverable Input Tax set forth in this Decree-Law exceeds the Output Tax payable for the same Tax Period.(b) If the Tax paid to the Authority by the Taxable Person exceeds the Payable Tax according to the provisions of this Decree-Law, other than in the instance mentioned in paragraph (a) of Clause (1) of this Article.2. If there remains any excess for any Tax Period after being carried forward for a period of time, the Taxable Person may apply to the Authority to reclaim the remaining excess. The Executive Regulation of this Decree-Law shall specify the time limits, procedures and mechanisms of returning any remaining excess to the Taxable Person. |
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Analysis:

- VAT is meant to tax only the amount of value added to the product, so, the recipient of goods or services is entitled to receive the amount of tax paid on procurement of goods either for further processing or sale. The tax so entitled to be received is called input tax.

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- It can be observed that Article 74 of the VAT Decree Law is subject to restrictions to be placed in the Executive Regulations of this Decree Law. In other words, there could be cases covered in the Executive Regulations where taxable person may not be eligible to claim the refund of recoverable taxes even though the tax paid by him exceeds the output tax payable.
 - Excess input tax can be carried forward for setting it off against the output tax or any administrative penalties liabilities or by way of applying for refund of such tax paid as per Article 35 of Tax Procedures.
 - A person is required to carry forward the tax to the subsequent periods in following cases:
 - If the Taxable Person's Recoverable Input Tax set forth in this VAT Decree-Law exceeds the Output Tax payable for the same Tax Period. E.g. a person has recoverable input tax of AED 100,000/- whereas tax due is AED 70,000/-. The person may carry forward excess recoverable input tax of AED 30,000/- to the next tax period for utilization against tax payable for subsequent period.
 - If the Tax paid to the Authority by the Taxable Person exceeds the Payable Tax according to the provisions of this Decree-Law, e.g. if a person is liable to pay Tax Dues of AED 15,000/- in a tax period but by mistake AED 150,000/- is paid, the excess tax of AED 1,35,000/- paid may be carried forward to the next period.
- Carry forward to next period can be made till the time such excess is fully utilized.
- There could be instances where a taxable person carries forward the excess recoverable input tax for subsequent period but it cannot be adjusted against output tax of future for a period to be determined by Executive Regulations of this Decree Law. In that case, he may apply for reclaim (refund) of the same. For instance, a taxpayer engaged only in export of goods will not have any output VAT liability and thus he can claim VAT refund. The time limit, procedures and mechanism of reclaiming (refund) the excess tax paid shall be determined by the Executive Regulations of this Decree Law.

Article 34: Applications for Tax Refund (Tax Procedures Law)

A Taxpayer may apply for a refund of any tax he has paid if he is entitled to a refund under the Tax Law and it appears that the amount he has paid is in excess of the Payable Tax and Administrative Penalties, pursuant to the procedures specified in the Executive Regulations of this Law.

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Article 35: Tax Refund Procedures

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| <ol style="list-style-type: none">1. The Authority shall set-off the amount applied to be refunded against any other Payable Tax or Administrative Penalties due from the Taxpayer who has applied for the refund pursuant to the Tax Return or Tax Assessment issued by the Authority before refunding any amount relating to a particular tax.2. The Authority may decline to refund the amounts mentioned in section (1) of this Article if it finds that there are other disputed Tax amounts that are due in relation to that Person or according to a decision of the Competent Court.3. The Authority shall issue a Tax refund under this Article pursuant to the procedures and provisions specified in the Executive Regulations of this Law. |
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Analysis:

- Tax refund is a right which has to be exercised by making application before the appropriate authorities in accordance with the regulations made in this behalf. Article 34 and 35 of the Tax Procedures Law cover the mechanism for applying for refund and procedure thereof.
- Article 34 provides that taxpayer may apply for a refund of any VAT paid provided he is entitled to claim the refund of the same as per VAT Decree Law and if it appears that the amount he has paid is in excess of the Payable Tax and Administrative Penalties. The detailed procedures for claiming refund shall be specified in the Executive Regulations of this Law.
- The Appropriate Authority before whom application is made for refund:
 - Shall appropriate the amount of refund claimed against any other amount due by such tax payer as Payable Tax or Administrative Penalties.
 - May decline the refund of tax if there are **disputed** tax amounts due by such person. Here it could be possible that tax amount due has not been conclusively determined by the Assessment Order but the Authority is of the view that there could be other disputed tax due from claimant of refund.
 - May decline the refund according to the decision of Competent Court issued in this regard.
- Where the Authority, after satisfying itself as to the applicability of provisions, believes that the refund is to be granted, it shall issue tax refund in accordance with the procedures and provisions specified in the Regulations issued under the Law.
- If a Taxpayer becomes aware that a Tax refund application that he has submitted to the

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Authority is incorrect, resulting in a calculation of a refund to which he is entitled according to the Tax Law “**being more**” than it should have been, he must apply to rectify the Tax refund application by submitting a Voluntary Disclosure within the time limit specified in the Executive Regulations of this Law (Article 10 of Tax Procedure).

- If a Taxpayer becomes aware that a Tax refund application that he has submitted to the Authority is incorrect, resulting in the calculation of a refund amount to which he is entitled according to the Tax Law “**being less**” than what it should have been, he may apply to rectify the Tax refund application by submitting a Voluntary Disclosure (Article 10 of Tax Procedure).
- If a Taxable Person pays more than the Payable Tax amount, the Authority shall have the right to allocate the difference to a later Tax Period, unless such Taxable Person submits a refund application in accordance with the provisions of the Tax Procedures Law.
- A person voluntarily disclosing errors in the Refund Application is liable to Administrative Penalties pursuant to provisions of the Tax Procedures Law (Article 25 of Tax Procedure)

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Chapter - XXI

Miscellaneous Procedures

1. VAT Compliance Rating of Tax Persons

Provides that there will be compliance rating of each tax payer based on his compliance with provisions of the Act. This rating will be updated periodically and published in public domain. Compliance Rating may prove to be an effective tool, for undertaking regular and routine business transactions with various vendors/suppliers.

2. Information about VAT returns

Periodicity, and manner of filing the returns.

3. Power to collect statistics and its disclosure

For proper administration of taxation laws, hands on information of related statistics should be available with tax-administration. For this purpose, tax-administration may collect statistics from various agencies, organizations, persons, etc.

4. Burden of Proof

It is a general rule in Indirect tax statutes that, for levy of tax on any transaction, the onus of proof is on the tax-authority; whereas, to claim any exemption from tax or to claim deduction from taxable turnover, the onus of proof, is always on the claimant tax-payer.

5. VAT Authorities to be Public Servants

Every officer whose duty is to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government or to execute any revenue process, or to investigate, or to report, on any matter affecting the pecuniary interests of the Government, or to make authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government, shall be a public servant;

6. Disclosure of information by public servants

Every tax-payer is required to furnish return under the Act. Some Government or quasi Government Authorities, agencies, banks etc. are also required to furnish information return under the Act. Moreover, the tax authority is empowered to collect statistics under the Act. This information of various persons from various agencies is available with VAT authorities and this information is supplied in accordance with or under any proceedings of the Act. As this information is of personal nature and its disclosure can hamper the business interest, it should be treated as confidential under the provisions of VAT Law. This provision also bars courts to ask for production or give evidence with respect to this information. But disclosure of above information is required in some situations which are carved out to be exception for such disclosure. For example,

- (i) Disclosure to court where hearing of dispute arising out of any proceeding under the Act is going on,
- (ii) Disclosure to enquiry officer conducting enquiry of VAT Officer,

7. Publication of certain information

Provides for judicial discretion to the competent authority for disclosure of information of persons. This technique is widely used by banks to recover its dues from defaulters. Name of directors / partners of the firms are published in newspaper by bank. Apparently, same concept is adopted in VAT Law. Thus, names and information of frequent defaulters, tax evaders, persons involved in issuing of fake invoices, etc. can be placed in public domain. This facilitates recovery of arrears from defaulters and also discourages other persons to get involved in such activities as well as be cautious while dealing with such persons.

8. Assessment proceedings not to be invalid on certain grounds

Provides immunity to the authority so that mere technical or inadvertent mistakes do not result the proceeding to be bad in law. Similar provisions are available in almost all VAT Laws. For example, if a tax-payer has responded to a notice served in any earlier case, now he cannot question the service of notice in similar manner. Further, mentioning of wrong section in the notice or order does not vitiate the action unless substantial right of the assessee is affected.

9. Rectification of mistakes and errors

Provides that simple calculation mistakes, errors or mistakes apparent from record may be rectified within 6 months. These corrective measures are available for taxpayer as well as tax-authorities. But the principle of natural justice is to be followed by tax-authorities if such rectification is adversely affecting any person. Any decision, order, summons, notice, certificate or any other document issued by a authority can be rectified by the same authority. But due to change in the application of mind, conscious decisions taken earlier cannot be affected or changed subsequently under rectification.

10. Levy of Fees

Provides for levy of fees for copy of any order or document. The exact fees will be provided in the rules.

11. Power to make rules and regulations

VAT Law empowers the Government to make rules on the recommendation of the VAT Committee / Minister. Government can give retrospective effect to these rules and also the power to issue notifications. Penalty is applicable for breach of any rule, if it is not provided elsewhere. The VAT law not only provides for general power to make rules with respect to any matter, but also provides specific subjects with respect to which rules can be made. Those include registration, return, deemed registration, assessment and collection of tax, manner of

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recovery of dues, charging and payment of interest, refund, inspection and audit etc. Board or Committee constituted by the VAT Authority is empowered to make regulations under VAT Law.

12. Instructions to VAT Officers

VAT Law empowers the Board or Committee (competent authority) to issue orders, instructions or directions to VAT officers for the purpose of uniformity in implementation of the Act. Such orders, instructions or directions are generally issued through circulars. It is an established fact that these circulars are binding on lower authorities in the procedural part as far as implementation of the Act is concerned. Thus instructions, orders or directions by higher authorities are not binding while taking decisions in assessment or appeals. For proceedings such as assessment or appeal, the authorities have independent quasi-judicial powers.

13. Service of Notice

Provides for manner for service of any decision, order, summons, notice etc. The provision of VAT Law encompasses all types of conventional and modern methods of communications, so that any method of service should not be declared as invalid or illegal.

14. Rounding off tax

VAT Law provides that any amount of tax, interest, penalties, fines or any amount payable as well as any amount refundable should be rounded off to the nearest Dirhams.

15. Effect of Amendments of Rules, Notification, Orders, etc.

VAT Law is made generally to protect the position of law earlier to amendment unless the amendment is expressly retrospective.

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Chapter – 6

Professional Services – VAT Impact Study

Understanding business impact through initial impact study

UAE VAT would be implemented from January 2018. The first challenge for the businesses would be as to how this new law would affect the many facets of their organisation and its working.

Introduction of VAT would not only bring change in the tax structure of the GCC countries, but it could change the way business is done. It would be a significant move with far reaching implications. VAT could impact almost every aspect and function of the business. Therefore, it is time for the business entities to assess the impact of VAT on their business. Following are few of the important aspects to be considered in the initial impact study which could be undertaken by professionals having good knowledge of business and VAT concepts:

- Understanding impact of VAT on key business functions.
- Requirement of realignment of key business processes i.e. supply chain, finance, cash flow, procurement, standard operating procedures in line with VAT.
- Identification of stress on cash flow due to change in mechanism of taxation.
- Understanding the need for adaptation / changes in Information Technology system.
- Impact of change in credit mechanism and understanding credit restrictions.
- Vendor management including educating the vendors.
- Understanding the requirement of contracts / agreement modification in line with VAT.
- Understanding the transitional challenges.
- Understanding the impact on registration and the responsibilities.

The business strategy, organisational structure, IT infrastructure, transaction or process flow would need revisiting and may need to be changed. There would be key decisions to be taken by the entities during transitional phase i.e. before VAT is implemented. All these would need good amount of time to be spent by the entities core group along with professionals to advice suitably. Therefore, it is time to act as soon as possible to get advantage in the market and retain the business post implementation of VAT.

Initial impact study could be value additive

The Initial impact study could add considerable value to business entities. In addition to understanding the impact of VAT on the business, the entities could get the following advantages through VAT impact study.

- (a) Identification of export benefits now and later.

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- (b) Impact of tax payable in the initial 2-3 months and ensuring that deductions available are availed.
- (c) Measures to mitigate the impact by completing transactions already contracted before 1st January 2018.

Impact Study Program

A preliminary VAT impact study Program is given hereunder. This would be useful but may have to be modified as per needs of the client and also when the executive regulation is in public domain. Checklist on how to verify each aspect maybe prepared by the professional

Conclusion: Introduction of VAT from January 2018. Businesses and professional together need to gear up quickly. As the saying goes, 'A stich in time saves nine', it is the appropriate time for the SME entities to start preparing themselves for VAT.

VAT Preliminary Impact Study Program		
1	Name of the concern	
2	Address of the concern	
3	Contact persons	
4	Phone numbers	
5	E-mail Id	
6	Nature of business	
7	Review team	
8	Date of commencement of review	
9	Date of conclusion of review	

Sl. No.	Particulars	Y / N	Remarks
A.	UNDERSTANDING OF BUSINESS		
	Review of AOA/MOA to know the objectives of the business		
	Review and understanding of present and future business plans to ascertain VAT impact		
	Assessing the business first hand by visit to place of business including branches		

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Professional Services– Vat Impact Study

	Review of historical financial statements for last 2 years- (including upto TB level)		
	Review of forecast balance sheet, cash flow and income statements for 2 years		
	Review of product / service data sheets and literature		
	Review corporate structure of organisation		
	Identifying the places of business, if multi-location presence [Branches, depots or other places from which goods/services are provided]		
	Understanding the industry, major competitors and various business process as prevalent in the industry		
	Evaluating the perception of customer/vendors/other stakeholders on likely impact of VAT on business		
	Understanding various policies in the entity such as retention of money from customers and repayment policy, Guarantee / warranty / replacements		
B.	REVENUE / SALES / SERVICES		
	Review of Profit of Loss account to ascertain		
	a. Sale of goods Manufactured / Traded		
	b. Goods cleared in Designated Zones / Direct exports / GCC		
	c. Services provided in State/ GCC/ Exports		
	Review of treatment of sales return to study implication under VAT		
	Review of discount policy in organization and impact under VAT		
	Review the client base of the organisation to ascertain VAT implication including impact based on place of supply principle in VAT		
	Identify major customers/clients to trace the realizations to study the implications under VAT. Suggestion on		

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	changes/ modifications if any.		
	Review of various modes of supplies of goods and services such as		
	- Stock transfers to depots / warehouses / godowns / branches		
	- Samples		
	- Exhibitions		
	- High Sea sales		
	- Transit sales		
	- Leasing / rentals		
	- Sale from job worker's place		
	Supply of services to other branches		
	Ascertain impact on sales supply chain / distribution model under VAT law		
	Ascertain requirement / non-requirement of various sales / Service offices / branches		
C.	PROCUREMENT OF GOODS AND SERVICES		
	Review of procurement policy of the organization including imports		
	Review the nature of services and goods procured by segregating the expense under following categories:		
	• Expenditure presently taxed at full rate		
	• Expenditures presently not liable to tax		
	Review whether procurements are made through registered persons in State/ GCC /and impact under proposed VAT.		
	Analysing the possibility of suggesting vendors for better pricing and cost reduction in VAT.		
	Review of procurements made under intra GCC / import to study impact under VAT		

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	Review the purchase and expense invoices on sampling basis to study the impact under VAT with respect to taxations and deductions for smooth transition		
	Review of treatment of purchase returns to study the possible impact under VAT		
	Review the foreign currency payments to ascertain impact under VAT- Reverse Charge		
	Ascertain the possibility of better purchase planning during transition		
D.	OPERATIONAL / ADMINISTRATIVE		
	Review the credit policy of the organisation. This could have significant impact on cash flow especially if the policy with vendor and customer is not synchronised		
	Review the system of recognising sales / services and system of invoicing customers		
	Review present valuation mechanism adopted and impact under VAT on valuation		
	Review the services provided free of cost or free issue of materials		
	Review of job work register to identify the process outsourced		
	Review of accounting and billing system (Centralised or De-centralised) followed and impact under VAT		
E.	FINANCIAL STATEMENTS REVIEW		
	Review the shareholding pattern of investment by group companies / associated enterprises		
	Studying the nature of accounts maintained by the organization		
	Review of taxes under refund		
	Review of stocks in trade at all business places including job worker's place and impact on release		

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F.	INFORMATION TECHNOLOGY		
	Review and identifying software presently being used at various divisions of organisation		
	Review system of integration of different software with each other		
	Review system of integration of data from various business locations across GCC/ World		
	Review the agreement entered with the software vendor to check policy of regular updates, modification of parameters		
	Review the existing controls established to prevent alteration of information in the records and importance of the same under VAT regime		
	Review of following systems and suggesting changes which may be required under VAT		
	- Customer master process		
	- Vendor master process		
	- Tax master process		
	- Purchase master process		
	Advising on importance of strong IT system under VAT regime and arrangement with IT vendor with respect to modification of tax structures, requirement of various reports		
G.	REVIEW OF VARIOUS REPORTS		
	Review of following to ascertain the issues pertaining to indirect taxes and level of compliance: - Internal audit reports - Information system audit report - Others		
	Review of MIS reports, if any		

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H.	REVIEW OF AGREEMENTS / CONTRACTS		
	Review of agreements to identify important clauses with customers or vendors which could have major impact under VAT		
	Advise on major implications and precautions to be taken considering the transition provisions under VAT		
I.	ASSESSMENT OF TRAINING REQUIREMENT		
	Understand the level of knowledge among various departmental's heads		
	Review of the training modules of the organization and suggestion considering VAT law		
	Understanding requirement of training for vendors / contractors		
J.	SUPPLY AND DISTRIBUTION CHANNEL		
	Study the distribution channel presently employed to determine underlying factors for choosing particular model		
	If the distribution channel is guided by tax inefficiency under present tax regime, the extent to which anomaly is being rectified in proposed VAT. Whether the change necessitate the need to alter/modify/change the supply chain or distribution model presently being followed		
K.	TRANSITION PROVISIONS		
	Review of registrations obtained for various places of business and status to ascertain impact under VAT		
	Review of systems followed with respect to goods sent for job work and impact under VAT		
	Review of systems followed with respect to finished goods received back from customers and impact under		

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Background Material on UAE VAT

	VAT		
VAT Review Team		Review partner	
Signature with Date		Signature with Date	
<p>This Program is only an indicative one, which would need to be specifically added to, once the regulations are in place. Some aspects in the present law also may not have been covered.</p>			

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Chapter – 7

UAE Excise Tax at a Glance

Introduction

UAE has proposed to implement the Duty of Excise from 1 October, 2017 on a few products. The pervasive implementation of VAT effective 1 January, 2018 would be a massive change for businesses. This is the first time in GCC Countries that indirect tax is sought to be collected.

A manufacturer, service provider, trader or a professional who is new to the concept of Excise is often confronted with the question about the excisability of the goods dealt in. He is faced with questions such as who is liable, how does the liability accrue, what would be the quantum of liability, when is it payable, what would be the basis for arriving at the value. Are there any exemptions and deductions for taxes paid on inputs and so on. Another operational question would be where to start and when to start, apart from how to ensure compliance with the new Excise law. Before one answers these questions, the most important aspect is to understand the nature of the law in order to appreciate the manner in which the liability will accrue, quantification and discharge of this liability and the procedures to be followed and records to be maintained to ensure compliance.

As far as UAE Excise Tax Law is concerned, Excise is a tax on certain goods “produced, imported, removed from designated zone and stockpiled”. It is proposed to impose Excise tax on Tobacco, Energy drinks and Fizzy Drinks. The **Federal Tax Authority** would be the ultimate supervisory authority for the Excise tax. We refer to them as Authority in the rest of this Chapter. The various aspects of the law including the relevant procedures and the manner in which liability is to be determined are provided step wise below:

Step 1: Whether All Goods are covered? Excise in general is a tax on production of excisable goods. Normally “goods” means every kind of movable property. Commonly it could be understood as including “all materials, commodities and articles”.

In UAE, Excise Tax is limited to the Excisable goods which would be resolved by the Cabinet on the recommendation of the Finance Minister. As per the information available in public domain, the Excise tax is proposed at:

1. 100% on Tobacco products and Energy drinks
2. 50% on Fizzy drinks

It is expected that over a period of time more articles may be added to this list as done in most countries.

Step 2: What are the activities which attract Excise tax?

Article 2 specifies the activities which would be subjected to Excise tax as under:

Background Material on UAE VAT

- (i) **Production:** One of the taxable events for levy of Excise tax is production of goods in UAE. This is important as the duty liability does not arise just because the item is excisable goods. *i.e.* identified by authority.

There is no definition of production in the law, the initial test for determining production based on different principles adopted in different parts of the world, could be to compare the incoming material and the final outgoing material with respect to their *name, character or use*. Production can be said to have taken place when after the said process, a new and different article emerges having a distinctive name, character or use. The input must undergo change to the extent to become output which is no longer 'functionally interchangeable' with each other; this is the degree of change that must be experienced.

In addition to the general meaning of production, Article 1 may specifically define within the scope of the term production, the process incidental or ancillary to the completion of the production of goods.

It is also interesting to note that cases where the processes are amounting to production liable for Excise tax, would also be subjected to VAT levy thereafter. Ex. Value after Production (Value)- AED 100 + Excise Tax (ET.) 50 = AED 150. On AED 150, VAT@ 5% *i.e.* AED 7.5 = Final Selling Price = AED 157.50.

- (ii) **Import of Excisable Goods:** Import as defined in Article 1 is the arrival of goods from abroad into the territory of the State (UAE). Therefore, even goods arriving from the other GCC countries would be considered to be imported.

The reasons for imposing Excise tax is that, when similar goods are taxed within the Country then goods from outside the country should also suffer the same costs as suffered locally. Normally goods exported from any country are without any tax being borne to make them competitive.

- (iii) **Release of Excisable Goods from Designated Zone:** Designated Zone is defined in Article 1 as any fenced area intended to be a free zone (no tax for imported and exported goods). The entry and exit is only through a designated route. It also includes any area designated by the Authority as being subject to supervision of a warehouse keeper in accordance with the Regulation.

Warehouse keeper has been defined to be any person approved and registered by the Authority in accordance with the Executive Regulation.

The purpose of these zones is to allow and encourage global trade as well as exports of value added products with least amount of procedures and importantly no tax. China

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and India have adopted the Special Economic Zones similarly. India has also 100% EOU (export oriented undertakings) similar to the facility of warehouse keeper.

- (iv) **Stockpiling of excisable goods:** Stockpiler has been defined in Article 1 as a person who holds excisable goods and cannot demonstrate that goods have been subjected to Excise tax as per the conditions in the executive regulation.

The idea again is that the excisable goods within the country are all tax paid or liable to tax on release (distribution / removal). This would ensure uniformity of tax.

Step 3: Whether it should be in the course of business or economic activity?

Business has been defined in Article 1 to mean any activity conducted regularly, on an on-going basis and independently by any person, in any location, which involves trade in excisable goods.

The GCC framework specifies that in an economic activity there should be an intention to earn an income. Therefore, non-economic activity like Sovereign functions, Governmental activity, Charitable or Religious activities may not be said to be economic activities.

The activity of production and stockpiling referred to earlier must be in the course of doing business. However, the activity of import or release of excisable goods from a designated area (DZ) will attract Excise tax even if it is not in the course of business. Therefore, the liability of Excise tax in these two cases would be even on individuals unless specifically exempted.

Step 4: What are the exclusions / Exemptions?

Once there is an excisable product produced or dealt with in UAE, the next examination is whether any exemption is available and if yes, is it feasible to avail the exemptions.

Article 4 specifies that the person (individual not for business) who imports Excise goods below some specified value (to be specified by Executive Regulation) would be excluded when goods are accompanied in the course of international voyage. Further to a stockpile in case conditions specified in regulation are met (to be specified by Executive Regulation).

In UAE it may be noted that there is no threshold limit for Excise goods unlike AED 375,000 in VAT (Minimum Registration Threshold or MRT). It is expected that when many more products are included, the number of exemptions could increase.

Export Exemption: Article 12 provides for exemption of tax for goods exported. Export is defined as goods departing from the territory of the State. This would include the departure of goods to the GCC countries. The procedures for export would be as per the Regulations.

Step 5: How is the decision to obtain registration to be taken?

Any person who wishes to conduct the activities under Article 2 is required to take registration and only then deal in the excisable goods. A period of 30 days has been provided for

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Background Material on UAE VAT

registration, from the date of conduct of the taxable activity or intention to conduct the taxable activity or from 30 days of implementation of Excise tax law – 30 October, 2017

The exception from registration is available to any person who either imports or releases from Designated Zone if the person is able to demonstrate that he will not regularly conduct such activity as prescribed in the Regulation. However, such person shall intimate the Authority in case of any change in the circumstances such as intention to trade etc. as per the regulation. In such an event such person would have to pay the due tax and administrative penalties.

Registration as Warehouse keeper: Any person who intends to operate or operates (as on 1 October, 2017) a Designated Zone shall apply as specified in the Regulation. One cannot operate as Warehouse Keeper without registration.

The registered person may apply for deregistration if he is no longer liable for Excise tax.

Step 6: Other Compliances

The advertised prices of Excise goods should be “inclusive of tax” so as to ensure that advertised prices are not lacking in transparency. The Regulations would specify for which products this rule is not applicable. This is a measure of transparency to protect the consumer.

The point of tax computation as per Article- 10 is the date of importation or date of acquiring of goods by stockpile or October, 2017. In other cases, it is the date on which goods were released for consumption as set out in the regulations.

The Regulation would specify the conditions when the business so conducted within the Designated Zone shall be treated as being conducted in the State. Consequently, it would be liable to tax (Article 13).

The taxable person or person authorised by him should mention registration number in all the correspondence and dealings with the Authority, tax returns and in any document related to the tax. These could be Delivery challan, Transfer note, Invoice, Export documents etc. (Article 25).

Step 7: Due Tax

The tax due has to be paid by the person liable (Article 2) This would be so whether he is registered or not. The tax due for the entire period as prescribed would be payable less deductibles tax. (Article 15)

Deductible tax refers to tax paid on Excise goods exported or Excise goods which have become a component of another Excise goods which will become taxable. Till date since limited goods have been specified as excisable goods this clause is not applicable. A good measure is that deductible tax includes any tax paid in error (excess tax due to rate, value, quality difference, error)

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Step 8: Designated Zone Activities (Article-14)

The method for storing, preserving, processing of goods in the DZ would be as specified in the Regulation.

The transfer of goods from one DZ to another can be done without any tax payment subject to the procedures specified in the Regulation.

Step 9: Record Keeping (Article-24)

A business may be maintaining various accounts and records for its own purpose or for complying with other laws. The records compulsorily expected to be maintained under this law are as under:

- (i) Records of excisable goods produced, imported or stockpiled.
This could include the product record on daily basis, stock records of inputs, finished goods received, released, closing balance etc.
- (ii) Records of exported goods and evidence of export such as bill of lading, airway bill, invoice, transportation out of country etc.
- (iii) Stock records including the account of goods destroyed and lost. This may need a regular reconciliation of the stocks after stock taking. The inputs used up in the production may also be indicated with comment of normal conversion loss.
- (iv) A statement of tax due duly bifurcated into due tax on imported Excise goods, produced goods and stockpiled. The statement of deductible tax needs to be maintained similarly for the period.

Note: The Executive Regulation may specify the indication of tax being paid to be marked on the goods and the method of doing so.

Step 10: Tax Return (Article 18)

The taxable person shall file the tax returns for the tax period within the time prescribed as per the Regulations.

Step 11: Payment of Tax (Article19)

The due tax to be deposited on or before due date as specified in the Executive Regulation. Those who import goods and are exempt from registration can pay the tax when importing the goods, presumably before they are released.

In the event that the tax paid is more than the due tax or the deductible tax is more than the tax payable then the excess tax can be carried forward. This can be adjusted against the future tax or administrative penalties if any.

If excess tax exists for a period to be specified in the Regulation, then it can be refunded as prescribed.

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Step 12: Special Refunds (Article 21)

Tax would be refunded on application being made to the following:

- (i) Foreign Government, international organisations and diplomatic bodies on condition of reciprocity (that government should also provide similar facility to UAE) for tax paid in the course of their official activities subject to conditions as per regulations.
- (ii) The person who is registered in any participating GCC country which has implemented Excise Tax and if he has paid tax due in UAE and then exported to another implementing State in GCC. (Example, from Saudi Arabia to Oman)
- (iii) Any person or category as determined by Cabinet Decision at the suggestion of the Minister.

Step 13: What are stated as Violations and their Penalties?

The violations which attract penal action are:

- (i) Failure to display the prices inclusive of tax.
- (ii) Failure to follow conditions for preserving, receiving, storing, processing and transferring of excisable goods in a Designated Zone.

Step 14: When can one be said to evade tax?

Article 23 lists out the instances when a person is said to have committed tax evasion as under:

- (i) Attempting or bringing excisable goods in or taking out of the State without payment of Excise tax.
- (ii) Producing, transferring, acquiring, storing, transporting or receiving excisable goods on which tax has not been paid with the intention of avoiding the payment of due tax.

This clause may apply to any of the service providers who are involved such as the transporter, customs agent, importer or warehouse keeper or the taxable persons. The person abetting the tax evasion may also be liable under this article.

- (iii) Placing false marks on the excisable goods with the intent of evading the payment of tax or receiving unlawful refunds.

It may include misdeclaration of products or incorrect details on the labels / containers. Further the receiving of refunds could be even without an intent as per the Article 23. Normally bona fide errors would not be considered as tax evasion.

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- (iv) Submitting false, unreal, counterfeit documents, returns or records with the intent to evade the payment of due tax or receiving unlawful refund.

This Article enjoins on the assessee that he is tax compliant and even procedural infractions (mistakes, omissions, errors) should be corrected voluntarily to avoid the allegation of tax evasion which is very serious.

Step 15: Some additional Suggestions:

This being a new law following procedures are suggested:

- (i) **Intimate the Authority the nature of activities:** The need for full disclosure and transparency has increased today. Businesses would like to avoid any infraction. Therefore, the rate of tax, the method of valuation, the tax deduction method, maintenance of the specific records, exemption claimed if any, method of determining tax when working with implementing states etc. to be filed as an initial disclosure letter. This would help both the revenue authority as well as the assessee to resolve the issues at the initial stage without addressing the same when the issue is blown up to a stage where it is difficult to handle.
- (ii) **Job work Movements:** The inputs or semi-finished goods could be sent for job work to others and as of now no procedures have been set out. The Regulation maybe referred for specifics.
- (iii) **Invoice/Declaration:** The invoice has now become essentially a more vital document of control and therefore whenever invoices are brought into use the same must be pre-numbered. The invoice has to be signed by a responsible person with authority of the organisation.

In case of computer generated-invoice, the serial number may be allowed to be generated and printed by the computer only if the software is such that same number cannot be generated more than once.
- (iv) **Valuation Methods/Options:** The valuation of goods under Excise Tax Law has not been made clear and could be the transaction value as agreed between parties with the price being the only consideration.
- (v) **Internal Control/Audit:** The assessee may at the time of an internal audit (internally within the organization or by independent professionals) or while preparing the reconciliation statement, observe that short payment/non-payment has taken place. In such cases it is advisable that the tax so short paid be paid immediately.
- (vi) **Demand of Duty, Adjudication/Appeal, Advance Ruling:** These aspects are to be examined once the Regulations are hosted on the public domain.

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Conclusion

Excise tax Law deals with goods and monitoring the movement of goods would be important. The “producer, importer, stockpiler or person in Designated zone” opting for registration has to ensure that the accurate description and quantities are maintained. The contents of this Chapter should be read in conjunction with the detailed procedures when the Regulations are made public.

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Chapter – 8

Unified Customs Legislation

Scope and Levy

Section II – Application of Principles of the Customs Tariff

Applicability

Article 9 of The Common Customs Law for the Arab States of the Gulf (GCC States) very elegantly declares that “goods imported into the country are subject to the customs taxes excluding those exempted”.

Not only does this Article require an enquiry into what goods are, the clause requires examination of what is “goods” that can be the subject matter of levy under this law. Any goods that crossed the customs line are subject to this law. Import is therefore the conscious act of causing the cross over of the customs line which is the political boundary of the country. Naturally occurring events causing goods to cross over the political boundaries are left out of the operation of this law.

Import

Import does not operate only in respect of business transactions due to the wide language used in Article 4. Import will include personal transactions which cause goods cross the customs line also to be subjected to this law. The operation of the law is one aspect and the excluding from the levy of this tax is another aspect. Once the operation of this law is attracted, as per Article 8, all goods make themselves subject to the inspection and procedures by the designated customs officers appointed under Article 7.

Free zones

The provisions of this law do not apply within Free Zones which are totally or partially excluded from the operation of customs provisions due to the special privileges extended under laws governing free zones and recognized in article 3.

Customs duty

Customs duty rates are prescribed in the Customs Tariff and the rates mentioned in this Tariff may either be ad valorem “as a percentage of value” or specific “a fixed amount per unit of the goods” or a combination of both.

Customs duty applicable on goods imported into the country gets suspended when they are stored in a duty-free warehouse or taken into a free zone. Liability to payment of the duty is applicable at the end of the warehousing period or when taken out of the free zone into the mainland.

Section III – Prohibition and Restriction

Any goods entering or leaving the country being subject to inspection by the customs authorities, require the person responsible for such import or export to make a customs declaration containing all information starting from the identity of goods, classification in the tariff, rate of duty applicable, exemptions if any, underlying transaction, location in such import or export and other related information that are relevant for the customs officer to make a determination of the customs duty applicable on these goods. The requirement of Article 19 in this regard is not negotiable and deviations from applying this requirement would be regarded as smuggling activities as set out in Article 16.

Coastal activities resembling import or export of goods are also restricted and come under the supervision of monitoring by customs authorities. Articles 20 and 21 provide the nature of restriction and the distance from the land into the sea that comes within these restrictions are discussed and provided in the law. Innocent passage, *bona fide* coastal transactions and other specified excluded transactions enjoy relaxations in these restrictions but not without intimation to the customs authorities.

Conveyance used for import and export of goods also come within the supervision of customs authorities with regard to the activities involving import and export of goods under Articles 22 and 23. Conveyance include all forms of aircraft, ships and vehicles used for transportation of goods. Customs authorities enjoy absolute authority to restrict all entry or exit of any conveyance or any specific goods in accordance with the policy of the competent authority of each country.

Section IV – Distinguishing Elements of Goods

Customs duty rates are affected by bilateral and multilateral arrangements entered into by the respective country with its ally nations. Accordingly, application of the rate of customs duty depends on examination of the country of origin of the goods that seek such preferential rates of duty which has been enabled by Article 25.

Quantification of the customs duty payable in addition to relying on the rate of duty requires determination of the value of the goods imported or exported. Valuation principles in the form of rules of implementation as per Article 26 contain the methodology for determination of valuation along with the information and documentation required as specified in Article 27.

Valuation of imported goods is determined at the port of unloading. Valuation of export goods is determined based on customs declaration plus all costs up to arrival in Customs Office according to Article 28. Article 29 admits that the customs tariff relies upon the harmonized System of Nomenclature for classification of goods.

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Sections V and VI – Importation and Exportation & Stages of Customs Clearance

Detailed procedures for import and export activities are contained in Articles 30 to 66. The broad schematics are summarised in the following tables:

Procedure for import

There are four different persons who are involved in completing the import clearance of goods:

Steps	Importer or Customs Broker	Person-in-charge of Conveyance	Customs	Port Authority
1			Customs obtains permission to occupy and manage the export-import activities through that port.	Government notifies a port for export-import. Without being notified, export-import cannot be done through all ports
2		Carrier applies for permission to enter port with cargo	Customs issues 'entry' permission to the ship/aircraft	
3		Conveyance (aircraft / vessel) and files Import General Manifest – which contains full list of all types of cargo to be unloaded or retained to be taken to next port	Takes stock of all cargo, gives permission to store cargo (unloaded) in carrier's warehouse. Goods in this warehouse cannot be taken out without customs permission	
4	Importer or through Broker files import clearance documents with customs		Customs inspects the shipment and assesses the bill of entry. Customs issue demand note for duty amount	
5	Importer pays the duty and returns		Customs issues order to	

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Background Material on UAE VAT

	with proof of payment		warehouse-keeper where goods are kept	
6	Importer takes order and collects goods from warehouse	Carrier's warehouse will release goods only against order issued by customs	Customs issues 'out of customs charge' order. With this, responsibility of cargo is no longer with customs	
7	Delay in customs clearing attracts demurrage charges		Customs collects demurrage charges for delay by importer in completing procedures	
8		Carrier applies for 'exit' permission to leave the port (this step can take place after step 3 also)	Customs gives this permission after all the cargo are verified and the conveyance is allowed to leave	

Note 1 – Documents for import clearance to be filed by importer are:

- Commercial import invoice and import contract – to review the nature of the contract and terms
- Product brochure – to know the correct classification of the product (HS Code) and the rate of import duty
- Packing list – to inspect the shipment and verify contents
- Certificate of origin – to know in which country the goods were actually manufactured and to see if any special import duty rates apply
- Import license, if any – to give the exemption/concession to be given as per import license issued to importer. Or if the goods are restricted – to permit import of such goods after verifying if the special permission to import such type of goods is issued to the importer
- Bill of lading / airway bill – to know the landed value of the goods because invoice may be FOB or CIF. Duty is to be calculated on landed price as per valuation prescribed

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- Rate of duty – is known from the date of bill of entry. In case the bill of entry is filed in advance (before the ship arrives), the date for the rate of duty is the date of entry inward given to vessel as per step 2 in the table above

The procedure for clearing export consignments are tabulated sequentially below:

Steps	Exporter or Customs Broker	Person-in-charge of Conveyance	Customs	Port Authority
1			Customs applies for permission to occupy and manage the export-import activities through that port.	Government notifies this as a port for export-import. Without being notified, export-import cannot be done through all ports
2		Carrier applies for permission to enter port with cargo	Customs issues 'entry inward' permission to the ship/aircraft	
3	Exporter or through Broker files export documents with customs		Customs inspects the shipment and assesses the export	
4	Exporter pays the duty, if applicable, and returns with proof of payment		Customs issues assessed document	
5		Carrier collects cargo and prepares for departure		
7		Carrier prepares Manifest – which contains full list of all types of cargo to be loaded or already retained to	Customs issues order. With this, responsibility of cargo is no longer with customs	

Note:

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		be taken to next port		
8	Delay in customs clearing attracts demurrage charges		Customs collects demurrage charges for delay by exporter in completing procedures	
9		Carrier applies for 'exit' permission to leave the port	Customs gives this permission after the cargo is verified and ship is allowed to leave	

Note 1 – Documentation for export procedures

- Customs formalities:
 - Submit commercial invoice (foreign currency) and packing list
 - Export license, if any
 - Export contract
 - Technical brochure about goods for description
 - Letter of credit
 - Copy of bill of lading/airway bill

Section VII – Cases where Customs Taxes are suspended and drawback

Goods are admitted and transported within the country after being imported, without payment of duty against bail or bank guarantee in accordance with general provisions contained in Chapter 1 of this section. Movement of goods between GCC countries and allied nations in accordance with bilateral and multilateral agreements are also permitted.

Duty-free warehouse may be set up within the customs area or outside in the mainland after obtaining permission from the Director-General. Goods deposited in a duty-free warehouse are exempt from customs duty and will attract customs duty only at the time of their transportation out of such warehouse. Chapter 3 of this section contains the conditions and facilities available in respect of warehouse operations.

As mentioned earlier free zones are established by a legal instrument by each country in order to promote economic activity without adversely impacting activities in the mainland. Chapter 4

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of this section contains the liberties allowed to free zones and duty-free shops. Freely traded articles that do not pose any threat of harm are permitted to be stored in such free zone or duty-free shops to promote economic activity involving them without imposing customs duties. Free zones and duty-free shops have come to contribute significantly in boosting economic activity due to the flexibility and concessions allowed.

Grant of permission for temporary admission without payment of customs duties is enabled by Chapter 5 of the section in respect of heavy equipment or temporary activities of exhibition so as to promote economic activities involving articles of specialised nature that are otherwise not available in the country.

Articles imported with an expectation that after a limited duration of involvement in economic activity in the country these are permitted to be exported out of the country or to the free zone is covered in Chapter 6 of the section. These provisions are also utilised for undertaking Transshipment activity which has placed the region in a significant position in facilitating international trade in this part of the world.

Refund of customs duties paid on re-exportation of imported goods is also enabled by Chapter 7 of the section the procedure is the conditions applicable are set forth in the rules of interpretation.

Section VIII – Exemptions

Goods in respect of which customs duties are applicable mainly are granted exemptions in accordance with the import and export promotion policies of each country. Exemptions are allowed in respect of diplomatic missions, military as authorised by each country, personal effects imported by returning nationals, imports by philanthropic organisations and return of exported goods under specified circumstances.

Exemptions granted are absolute and not optional and must be diligently applied subject to the terms and conditions of such exemptions. Exemptions may involve prequalification conditions or post compliances which come within monitoring and supervision by customs authorities. The Director General is authorised to settle any disputes regarding the claim on utilisation of exemptions.

Section IX – Service Charges

Service charges are imposed on goods under the supervision and control of customs officers in order to defray the cost of storage, handling and insurance in respect of such goods. This is to ensure that activities in a customs area are carried and completed by importers and exporters in a timely and prompt manner. Reasonable service charges are imposed subject to an upper limit of 50% of the value of the goods concerned.

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Annexure A

Federal Decree – Law on VAT

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

We, Khalifa bin Zayed Al Nahyan, President of the United Arab Emirates, Having reviewed the Constitution,

- Federal Law No. (1) of 1972 on the Competencies of the Ministries and Powers of the Ministers and its amendments;
- Federal Law No. (11) of 1981 on the Imposition of a Federal Customs Tax on Imports of Tobacco and its derivatives, and its amendments;
- Federal Law No. (26) of 1981 regarding the Commercial Maritime Law, and its amendments;
- Federal Law No. (5) of 1985 promulgating the Civil Transactions Law, and its amendments;
- Federal Law No. (3) of 1987 promulgating the Penal Law, and its amendments;
- Federal Law No. (10) of 1992 promulgating the Law of Evidence in Civil and Commercial Transactions, and its amendments;
- Federal Law No. (11) of 1992 promulgating the Law on Civil Procedures, and its amendments;
- Federal Law No. (18) of 1993 promulgating the Commercial Transactions Law, and its amendments;
- Federal Law No. (8) of 2004 on Financial Free Zones;
- Federal Law No. (1) of 2006 on Electronic Commerce and Transactions;
- Federal Law No. (2) of 2008 in respect of The National Societies and Associations of Public Welfare;
- Federal Law No. (1) of 2011 on the State's Public Revenues;
- Federal Law No. (8) of 2011 on the Reorganisation of the State Audit Institution;
- Federal Decree-Law No. (8) of 2011 on the Rules of the Preparation of the General Budget and Final Accounts;
- Federal Law No. (4) of 2012 on the Regulation of Competition;
- Federal Law No. (12) of 2014 on the Organisation of the Auditing Profession;
- Federal Law No. (2) of 2015 on Commercial Companies;
- Federal Decree-Law No. (13) of 2016 on the Establishment of the Federal Tax Authority;

Background Material on UAE VAT

- Federal Law No. (7) of 2017 on Tax Procedures; and
- Pursuant to what was presented by the Minister of Finance and approved by the Cabinet,

Have issued the following Decree-Law:

Title One **Definitions**

Article (1) : Definitions

In the application of the provisions of this Decree-Law, the following words and expressions shall have the meanings assigned against each, unless the context otherwise requires:

State: United Arab Emirates

Minister: Minister of Finance

Authority: Federal Tax Authority

Value Added Tax: A tax imposed on the import and supply of Goods and Services at each stage of production and distribution, including the Deemed Supply.

Tax: Value Added Tax (VAT).

GCC States: all countries that are full members of The Cooperation Council for the Arab States of the Gulf pursuant to its Charter.

Implementing States: The GCC States that are implementing a Tax law pursuant to an issued legislation.

Goods: Physical property that can be supplied including real estate, water, and all forms of energy as specified in the Executive Regulation of this Decree-Law.

Services: Anything that can be supplied other than Goods.

Import: The arrival of Goods from abroad into the State or receipt of Services from outside the State.

Concerned Goods: Goods that have been imported, and would not be exempt if supplied in the State.

Concerned Services: Services that have been imported, where the place of supply is in the State, and would not be exempt if supplied in the State.

Person: A natural or legal person.

Taxable Person: Any Person registered or obligated to register for Tax purposes under this Decree-Law.

Taxpayer: Any person obligated to pay Tax in the State under this Decree-Law, whether a Taxable Person or end consumer.

Tax Registration: A procedure according to which the Taxable Person or his Legal Representative registers for Tax purposes at the Authority.

Tax Registration Number (TRN): A unique number issued by the Authority for each Person registered for Tax purposes.

Registrant: The Taxable Person who has been issued with a TRN.

Recipient of Goods: Person to whom Goods are supplied or imported.

Recipient of Services: Person to whom Services are supplied or imported.

Importer: With respect to importing Goods, it is the Person whose name is listed as the importer of the Goods on the date of Import for customs clearance purposes. With respect to Services, it is the Recipient of these Services.

Taxable Trader: A Taxable Person in the Implementing States, whose main activity is the distribution of water and all types of energy as specified in the Executive Regulation of this Decree-Law.

Tax Return: Information and data specified for Tax purposes and submitted by a Taxable Person in accordance with a form prepared by the Authority.

Consideration: All that is received or expected to be received for the supply of Goods or Services, whether in money or other acceptable forms of payment.

Business: Any activity conducted regularly, on an ongoing basis and independently by any Person, in any location, such as industrial, commercial, agricultural, professional, service or excavation activities or anything related to the use of tangible or intangible properties.

Exempt Supply: A supply of Goods or Services for Consideration while conducting Business in the State, where no Tax is due and no Input Tax may be recovered, except according to the provisions of this Decree-Law.

Taxable Supply: A supply of Goods or Services for a Consideration by a Person conducting Business in the State, and does not include Exempt Supply.

Deemed Supply: Anything considered as a supply and treated as a Taxable Supply according to the instances stipulated in this Decree-Law.

Input Tax: Tax paid by a Person or due from him when Goods or Services are supplied to him, or when conducting an Import.

Output Tax: Tax charged on a Taxable Supply and any supply considered as a Taxable Supply.

Recoverable Tax: Amounts that were paid and may be returned by the Authority to the Taxpayer pursuant to the provisions of this Decree-Law.

Due Tax: Tax that is calculated and charged pursuant to this Decree-Law.

Payable Tax: Tax that is due for payment to the Authority.

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Tax Period: A specific period of time for which the Payable Tax shall be calculated and paid.

Tax Invoice: A written or electronic document in which the occurrence of a Taxable Supply is recorded with details pertaining to it.

Tax Credit Note: A written or electronic document in which the occurrence of any amendment to a Taxable Supply that reduces or cancels the same is recorded and the details pertaining to it.

Government Entities: Federal and local ministries, government departments, government agencies, authorities and public institutions in the State.

Charities: Societies and associations of public welfare not aiming to make a profit that are listed within a Cabinet Decision issued at the suggestion of the Minister.

Mandatory Registration Threshold: An amount specified in the Executive Regulation of this Decree-Law; if exceeded by the value of Taxable Supplies or is anticipated to be exceeded, the supplier shall apply for Tax Registration.

Voluntary Registration Threshold: An amount specified in the Executive Regulation of this Decree-Law; if exceeded by the value of Taxable Supplies or taxable expenses or is anticipated to be exceeded, the supplier may apply for Tax Registration.

Transport-related Services: Shipment, packaging and securing cargo, preparation of Customs documents, container management, loading, unloading, storing and moving of Goods, or any another closely related services or services that are necessary to conduct the transportation services.

Place of Establishment: The place where a Business is legally established in a country pursuant to the decision of its establishment, or in which significant management decisions are taken and central management functions are conducted.

Fixed Establishment: Any fixed place of business, other than the Place of Establishment, in which the Person conducts his business regularly or permanently and where sufficient human and technology resources exist to enable the Person to supply or acquire Goods or Services, including the Person's branches.

Place of Residence: The place where a Person has a Place of Establishment or Fixed Establishment, in accordance with the provisions of this Decree-Law.

Non-Resident: Any person who does not own a Place of Establishment or Fixed Establishment in the State and usually does not reside in the State.

Related Parties: Two or more Persons who not separated on the economic, financial or regulatory level, where one can control the others either by Law, or through the acquisition of shares or voting rights.

Customs Legislation: Federal and local legislation that regulate customs in the State.

Designated Zone: Any area specified by a Cabinet Decision issued at the suggestion of the Minister, as a Designated Zone for the purpose of this Decree-Law.

Export: Goods departing the State or the provision of Services to a Person whose Place of Establishment or Fixed Establishment is outside the State.

Voucher: Any instrument that gives the right to receive Goods or Services against the value stated thereon or the right to receive a discount on the price of the Goods or Services. Vouchers do not include postage stamps issued by the Emirates Post Group.

Activities conducted with Sovereign Capacity: Activities conducted by Government Entities in their sole competent capacity, with or without Consideration.

Capital Assets: Business assets designated for long-term use.

Capital Assets Scheme: A scheme whereby the initially recovered Input Tax is adjusted based on the actual use during a specific period.

Administrative Penalties: Amounts imposed upon a Person by the Authority for breaching the provisions of this Decree-Law or Federal Law No. (7) of 2017 on Tax Procedures.

Administrative Penalties Assessment: A decision issued by the Authority concerning to Administrative Penalties due.

Excise Tax: A tax imposed on specific Goods.

Tax Group: Two or more Persons registered with the Authority for Tax purposes as a single taxable person in accordance with the provisions of this Decree-Law.

Title Two

Tax Scope and Rate

Article (2) : Scope of Tax

Tax shall be imposed on:

1. Every Taxable Supply and Deemed Supply made by the Taxable Person.
2. Import of Concerned Goods except as specified in the Executive Regulation of this Decree-Law.

Article (3) : Tax Rate

Without prejudice to the provisions of Title Six of this Decree-Law, a standard rate of 5% shall be imposed on any supply or Import pursuant to Article (2) of this Decree-Law on the value of the supply or Import specified in the provisions of this Decree-Law.

Article (4) : Responsibility for Tax

The Tax imposed shall be the responsibility of the following:

1. A Taxable Person who makes any supply stipulated in Clause (1) of Article (2) of this Decree-Law.
2. The Importer of Concerned Goods.
3. The Registrant who acquires Goods as stated in Clause (3) of Article (48) of this Decree-Law.

Title Three

Supply

Chapter One

Supply of Goods and Services

Article (5) : Supply of Goods

The following shall be considered a supply of Goods:

1. Transfer of ownership of the Goods or the right to use them to another Person according to what is specified in the Executive Regulation of this Decree-Law.
2. Entry into a contract between two parties entailing the transfer of Goods at a later time, pursuant to the conditions specified in the Executive Regulation of this Decree-Law.

Article (6) : Supply of Services

A supply of Services shall be every supply that is not considered a supply of Goods, including any provision of Services specified in the Executive Regulation of this Decree-Law.

Article (7) : Supply in Special Cases

As an exception to what is stated in Articles (5) and (6) of this Decree-Law, the following shall not be considered a supply:

1. The sale or issuance of any Voucher unless the received Consideration exceeds its advertised monetary value, as specified in the Executive Regulation of this Decree-Law.
2. The transfer of whole or an independent part of a Business from a Person to a Taxable Person for the purposes of continuing the Business that was transferred.

Article (8) : Supply of more than one component

The Executive Regulation of this Decree-Law shall specify the conditions for treating a supply made of more than one component for one price, whether such components are Goods or Services or both.

Article (9) : Supply via Agent

1. The Supply of Goods and Services through an agent acting in the name of and on behalf of a principal is considered to be a supply by the principal and for his benefit.
2. The Supply of Goods and Services through an agent acting in his name is considered to be a direct supply by the agent and for his benefit.

Article (10) : Supply by Government Entities

1. A Government Entity is regarded as making a supply in the course of business in the following cases:
 - a. If its activities are conducted in a non-sovereign Capacity.
 - b. If its activities are in competition with the private sector.

2. A Cabinet Decision shall be issued at the suggestion of the Minister determining the Government Entities and their activities that are considered as conducted in a Sovereign Capacity and instances where its activities are considered not in competition with the private sector.

Chapter Two

Deemed Supply

Article (11) : The Cases of Deemed Supply

The following cases shall be considered as Deemed Supply:

1. A supply of Goods or Services, which constituted the whole assets of a Taxable Person or a part thereof, but are no longer considered to be as such, provided that the supply was made without Consideration.
2. The transfer by a Taxable Person of Goods that constituted a part of his business assets from the State to another Implementing State, or from the Taxable Person's business in an Implementing State to his Business in the State, except in the case where such transfer:
 - a. Is considered as temporary under the Customs Legislation.
 - b. Is made as part of another Taxable Supply of these Goods.
3. A supply of Goods or Services for which Input Tax may be recovered but the Goods or Services were used, in part or whole, for purposes other than Business, and such supply shall be considered as deemed only to the extent of the use for non-business purposes.
4. Goods and Services that a Taxable Person owns at the date of Tax Deregistration.

Article (12) : Exceptions for Deemed Supply

A supply is not considered as deemed in the following cases:

1. If no Input Tax was recovered for the related Goods and Services.
2. If the supply is an Exempt Supply.
3. If the recovered Input Tax has been adjusted for the Goods and Services pursuant to the Capital Assets Scheme.
4. If the value of the supply of the Goods, for each Recipient of Goods within a 12-month period, does not exceed the amount specified in the Executive Regulation of this Decree-Law, and the Goods were supplied as samples or commercial gifts.
5. If the total Output Tax due for all the Deemed Supplies per Person for a 12-month period is less than the amount specified in the Executive Regulation of this Decree-Law.

**Title Four
Tax Registration and Deregistration**

Article (13) : Mandatory Tax Registration

1. Every Person, who has a Place of Residence in the State or an Implementing State and is not already registered for Tax, shall register in the following situations:
 - a. Where the total value of all supplies referred to in Article (19) exceeded the Mandatory Registration Threshold over the previous 12-month period.
 - b. Where it is anticipated that the total value of all supplies referred to in Article (19) will exceed the Mandatory Registration Threshold in the next thirty (30) days.
2. Every Person, who does not have a Place of Residence in the State or an Implementing State and is not already registered for Tax, shall register for Tax if he makes supplies of Goods or Services, and where no other Person is obligated to pay the Due Tax on these supplies in the State.
3. The Executive Regulation of this Decree-Law shall specify the time limits that a Person has to inform the Authority about his liability to register for Tax and the effective date of Tax Registration.

Article (14) : Tax Group

1. Two or more persons conducting Businesses may apply for Tax Registration as a Tax Group if all of the following conditions are met:
 - (a) Each shall have a Place of Establishment or Fixed Establishment in the State.
 - (b) The relevant persons shall be Related Parties.
 - (c) One or more persons conducting business in a partnership shall control the others.
2. The Executive Regulation of this Decree-Law will determine the instances where the Authority may reject the application to register a Tax Group.
3. Any Person conducting Business is not allowed to have more than one Tax Registration Number, unless otherwise prescribed in the Executive Regulation.
4. If Related Parties do not apply for Tax Registration as a Tax Group under Clause (1) of this Article, the Authority may assess their relation based on their economic, financial and regulatory practices in business and register them as a Tax Group if their relation was proved thereto according to the controls and Conditions specified by the Executive Regulation of this Decree-Law.
5. The Authority may deregister the Tax Group registration in accordance with this Article as per the conditions specified in the Executive Regulation of this Decree-Law.
6. The Authority may make changes to the Persons registered as a Tax Group by adding or removing Persons as requested by the Taxable Person or in accordance with the instances mentioned in the Executive Regulation.

Article (15) : Registration Exceptions

1. The Authority may except a Taxable Person from mandatory Tax Registration upon his request if his supplies are only subject to the zero rate.
2. Anyone excepted from Tax Registration according to Clause (1) of this Article shall inform the Authority of any changes to his Business that would make him subject to Tax under this Decree-Law pursuant to the time limits and procedures determined in the Executive Regulation of this Decree-Law.
3. The Authority shall have the right to collect any Due Tax and Administrative Penalties for the period of exception where that Taxable Person was not entitled to the exception.

Article (16) : Tax Registration of Governmental Bodies

Government Entities which shall be determined in a Cabinet Decision issued under Clause (2) of Article (10) of this Decree-Law, shall apply for Tax Registration and may not be Deregistered unless by a Cabinet Decision at the suggestion of the Minister.

Article (17) : Voluntary Registration

Any Person who is not obligated to apply for Tax Registration according to this Chapter may apply for

Tax Registration in the following cases:

1. If he proves, at the end of any given month, that the total value of supplies referred to in Article (19) of this Decree-Law or the expenses which are subject to Tax and were incurred during the previous 12-month period, has exceeded the Voluntary Registration Threshold.
2. At any time that he anticipates that the total value of supplies stipulated in Article (19) of this Decree-Law or the expenses which are subject to Tax that will be incurred, will exceed the Voluntary Registration Threshold during the coming 30-day period.

Article (18) : Tax Registration for a Non-Resident

A Non-resident Person may not take the value of Goods and Services imported into the State to determine whether he is entitled to apply for Tax Registration if the calculation of Tax for such Goods or Services is the responsibility of the Importer pursuant to Clause (1) of Article (48) of this Decree-Law.

Article (19) : Calculating the Tax Registration Threshold

To determine whether a Person has exceeded the Mandatory Registration Threshold and the Voluntary Registration Threshold, the following shall be calculated:

1. The value of Taxable Goods and Services.
2. The value of Concerned Goods and Concerned Services received by the Person unless covered by Clause (1) of this Article.
3. The value of the whole or relevant part of Taxable Supplies that belong to said Person if

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he has, wholly or partly, acquired a Business from another Person who made the supplies.

4. The value of Taxable Supplies made by Related Parties pursuant to the cases stated in the Executive Regulation of this Decree-Law.

Article (20) : Capital Assets

The supply of Capital Assets belonging to the Person shall not be taken into account to determine whether a Person in Business exceeds the Mandatory Registration Threshold or Voluntary Registration Threshold.

Article (21) : Tax De-Registration Cases

A Registrant shall apply to the Authority for Tax Deregistration in any of the following cases:

1. If he stops making Taxable Supplies.
2. If the value of the Taxable Supplies made over a period of (12) consecutive months is less than the Voluntary Registration Threshold and said Registrant does not meet the condition stipulated in Clause (2) of Article (17) of this Decree-Law.

Article (22) : Application for Tax De-Registration

A Registrant may apply to the Authority for Tax Deregistration if the value of his Taxable Supplies during the past (12) months was less than the Mandatory Registration Threshold.

Article (23) : Voluntary Tax De-registration

A Registrant under Article (17) may not apply for Tax Deregistration within (12) months of the date of Tax Registration.

Article (24) : Procedures, Controls and Conditions of Tax Registration and De-registration

The Executive Regulation of this Decree-Law shall determine the procedures, controls and conditions for Tax Registration, Tax deregistration and rejection of applications for Tax Registration and Deregistration as stipulated in this Title.

Title Five Rules Pertaining to Supplies

Chapter One Date of Supply

Article (25) : Date of Supply

Tax shall be calculated on the date of supply of Goods or Services, which shall be earlier of any of the following dates:

1. The date on which Goods were transferred, if such transfer was under the supervision of the supplier.

2. The date on which the Recipient of Goods took possession of the Goods, if the transfer was not supervised by the supplier.
3. Where goods are supplied with assembly and installation, the date on which the assembly or installation of the Goods was completed.
4. The date on which the Goods are Imported under the Customs Legislation.
5. The date on which the Recipient of Goods accepted the supply, or a date no later than (12) months after the date on which the Goods were transferred or placed under the Recipient of Goods disposal, if the supply was made on a returnable basis.
6. The date on which the Services were completed.
7. The date of receipt of payment or the date on which the Tax Invoice was issued.

Article (26) : Date of Supply in Special Cases

1. The date of supply of Goods or Services for any contract that includes periodic payments or consecutive invoices is the earliest of any of the following dates, provided that it does not exceed one year from the date of the provision of such Goods and Services:
 - (a) The date of issuance of any Tax Invoice.
 - (b) The date payment is due as shown on the Tax Invoice.
 - (c) The date of receipt of payment.
2. The date of supply, in cases where payment is made through vending machines, shall be the date on which funds are collected from the machine.
3. The date of Deemed Supply of Goods or Services is the date of their supply, disposal, change of usage or the date of Deregistration, as the case may be.
4. The date of a supply of a voucher is the date of issuance or supply thereafter.

**Chapter Two
Place of Supply**

Article (27) : Place of Supply of Goods

1. The place of supply of Goods shall be in the State if the supply was made in the State, and does not include Export from or Import into the State.
2. The place of supply of installed or assembled Goods if exported from or imported into the State shall be:
 - (a) In the State if assembly or installation of the Goods was done in the State.
 - (b) Outside the State if assembly or installation of the Goods was done outside the State.
3. The place of supply of Goods that includes Export or Import shall be as follows:

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- (a) Inside the State in the following instances:
 - 1. If the supply includes exporting to a place outside the Implementing States.
 - 2. If the Recipient of Goods in an Implementing State is not registered for Tax in the state of destination, and the total exports from the same supplier to this state does not exceed the mandatory registration threshold for said state.
 - 3. The Recipient of Goods does not have a Tax Registration Number in the State, and the total exports from the same supplier in an Implementing State to the State exceeds the Mandatory Registration Threshold.
- (b) Outside the State in the following instances:
 - 1. The supply includes an Export to a customer registered for Tax purposes in one of the Implementing States.
 - 2. The Recipient of Goods is not registered for Tax in the Implementing State to which export is made, and the total exports from the same supplier to this Implementing State exceeds the mandatory registration threshold for said state.
 - 3. The Recipient of Goods does not have a Tax Registration Number and the Goods are Imported from a supplier registered for Tax in any of the Implementing States from which import is made, and the total imports from the same supplier to the State do not exceed the Mandatory Registration Threshold.
- 4. Goods shall not be treated as exported outside the State and then reimported if such Goods are supplied in the State and this supply required that the Goods exit and then re-enter the State according to the instances specified in the Executive Regulation of this Decree-Law.

Article (28) : Place of Supply of Water and Energy

- 1. The supply of water and all forms of energy specified in the Executive Regulation of this Decree-Law through a distribution system, shall be considered as done in the Place of Residence of the Taxable Trader in case the distribution was conducted by a Taxable Person having a Place of Residence in the State to a Taxable Trader having a Place of Residence in an Implementing State.
- 2. The supply of water and all forms of energy specified in the Executive Regulation of this Decree-Law through a distribution system, shall be considered to have occurred at the place of actual consumption, if distribution was conducted by a Taxable Person to a Non-Taxable Person.

Article (29) : Place of Supply of Services

The place of supply of Services shall be the Place of Residence of the Supplier.

Article (30) : Place of Supply in Special Cases

As an exception to what is stipulated in Article (29) of this Decree-Law, the place of supply in special cases shall be as follows:

1. Where the Recipient of Services has a Place of Residence in another Implementing State and is registered for Tax therein, the place of supply shall be the Place of Residence of the Recipient of Services.
2. Where the Recipient of Services is in Business and has a Place of Residence in the State, and the Supplier does not have a Place of Residence in the State, the place of supply shall be in the State.
3. For the Supply of Services related to Goods, such as installation of Goods supplied by others, the place shall be where said Services were performed.
4. For the Supply of means of transport to a lessee who is not a Taxable Person in the State and does not have a TRN in an Implementing State, the place shall be where such means of transport were placed at the disposal of the lessee.
5. For the Supply of restaurant, hotel, and food and drink catering Services, the place shall be where such Services are actually performed.
6. For the Supply of any cultural, artistic, sporting, educational or any similar services, the place shall be where such Services were performed.
7. For the Supply of Services related to real estate as specified in the Executive Regulation of this Decree-Law, the place of supply shall be where the real estate is located.
8. For the Supply of transportation Services, the place of supply shall be where transportation starts. The Executive Regulation of this Decree-Law shall specify the place of supply for transportation Services if the trip includes more than one stop.

Article (31) : Place of Supply of Telecommunication and Electronic Services

1. 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.
2. The actual use and enjoyment of all telecommunications and electronic Services shall be where these Services were used regardless of the place of contract or payment.

Chapter Three
Place of Residence

Article (32) : Place of Establishment

The Place of Residence of the supplier or Recipient of Services shall be as follows:

1. The state in which the Person's Place of Establishment is located or where he has a Fixed Establishment, provided that he does not have a Place of Establishment or owns a Fixed Establishment in any other state.
2. The state in which the Person's Place of Establishment is located or where he has a Fixed Establishment that is the most closely related to the supply if he has a Place of Establishment in more than one state or has Fixed Establishments in more than one state.
3. The state in which the usual Place of Residence of the Person is located if he does not have a Place of Establishment or a Fixed Establishment in any state.

Article (33) : The Agent

The Place of Residence of an agent shall be regarded as the Place of Residence of the principal in the following two cases:

1. If the agent regularly exercises the right of negotiation and enters into agreements in favor of the principal.
2. If the agent maintains a stock of Goods to fulfil supply agreements for the principal regularly.

Chapter Four
Value of Supply

Article (34) : Value of Supply

The value of supply of Goods or Services for Consideration shall be as follows:

1. If the entire Consideration is monetary, the value of the supply shall be the Consideration less the Tax.
2. If all or part of the Consideration is not monetary, the value of the supply is calculated as the overall monetary part plus the market value of the non-monetary part of the Consideration, and shall not include the Tax.
3. For Services received by the Taxable Person who is obligated to calculate the Tax in accordance with Clause (1) of Article (48) of this Decree-Law, the value of the supply shall be equal to the market value of the consideration without addition of the Tax on that supply.
4. If the Consideration is related to matters other than the supply of Goods or Services, the value of the supply shall be equal to the part of the Consideration that is related to such supply as stated in the Executive Regulation of this Decree-Law.

The Executive Regulation of this Decree-Law shall specify the rules to determine the market value.

Article (35) : Value of Import

The Import value of Goods consists of:

1. The customs value pursuant to Customs Legislation, including the value of insurance, freight and any customs fees and Excise Tax paid on the Import of the Goods. Tax shall not be included in the Value of the Supply.
2. If it is not possible to determine the value pursuant to Clause (1) of this Article, the value shall be determined based on alternate valuation rules stated in the applicable Customs Legislation.

Article (36) : Value of Supply for Related Parties

As an exception to Articles (34) and (35) of this Decree-Law, the value of the supply or Import of Goods or Services between Related Parties shall be considered equal to the market value if the following conditions are met:

1. The value of the supply is less than the market value.
2. If the supply is a Taxable Supply and the Recipient of Goods or Recipient of Services does not have the right to recover the full Tax that would have been charged to such supply as Input Tax.

Article (37) : Value of Deemed Supply

As an exception to Articles (34) and (35) of this Decree-Law, the value of the supply in the case of a Deemed Supply when the Taxable Person purchases Goods or Services to make Taxable Supplies but does not use those Goods or Services for that purpose, will be equal to the total cost incurred by the Taxable Person to make this Deemed Supply of Goods or Services.

Article (38) : Tax-Inclusive Prices

For Taxable Supplies, the advertised price shall include the Tax. Instances where prices do not include the Tax shall be determined by the Executive Regulation of this Decree-Law.

Article (39) : Value of Supply in case of Discount or Subsidies

When discounts are made before or after the Date of Supply or subsidies provided by the State to the supplier for that supply, the value of the supply shall be reduced in proportion to such discounts or subsidies.

The Executive Regulation of this Decree-Law shall specify the conditions and restrictions for calculating the Tax when the discount is made.

Article (40) : Value of Supply of Vouchers

The value of supply of a Voucher is the difference between the consideration received by the supplier of the Voucher and the advertised monetary value of the Voucher.

Article (41) : Value of Supply of Postage Stamps

The value of supply for postage stamps that allow the user to use postal services in the State shall be the amount shown on the stamp.

Article (42) : Temporary Transfer of Goods

If Goods are transferred temporarily from the domestic market into a Designated Zone or outside the State for completing the manufacturing or repair in order to re-import them into the State, the value of the supply when re-Imported shall be the value of the Services rendered.

Chapter Five

Profit Margin

Article (43) : Charging Tax based on Profit Margin

1. The Registrant may, in any Tax Period, calculate and charge Tax based on the profit margin earned on the Taxable Supplies as specified in the Executive Regulation of this Decree-Law and not based on the value of these supplies, and shall notify the Authority of the same.
2. The Executive Regulation of this Decree-Law shall specify the conditions to be met for the application of the provisions of this Article.

Title Six

Zero Rates and Exemptions

Chapter One

Zero Rate

Article (44) : Supply and Import Taxable at Zero Rate

The supply and Import of Goods and Services specified in this Chapter made by a Taxable Person shall be a Taxable Supply subject to the zero rate.

Article (45) : Supply of Goods and Services that is Subject to Zero Rate

The Zero rate shall apply to the following Goods and Services:

1. A direct or indirect Export to outside the Implementing States as specified in the Executive Regulation of this Decree-Law.
2. International transport of passengers and Goods which starts or ends in the State or passes through its territory, including also services related to such transport.
3. Air passenger transport in the State if it is considered an "international carriage" pursuant to Article (1) of the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air 1929.
4. Supply of air, sea and land means of transport for the transportation of passengers and Goods as specified in the Executive Regulations of this Decree-Law.

5. Supply of Goods and Services related to the supply of the means of transport mentioned in Clause (4) of this Article and which are designed for the operation, repair, maintenance or conversion of these means of transport.
6. Supply of aircrafts or vessels designated for rescue and assistance by air or sea.
7. Supply of Goods and Services related to the transfer of Goods or passengers aboard land, air or sea means of transport pursuant to Clauses (2) and (3) of this Article, designated for consumption on board; or anything consumed by any means of transport, any installations or addition thereto or any other use during transportation.
8. The supply or Import of investment precious metals. The Executive Regulation of this Decree-Law shall specify the precious metals and the standards based on which they are classified as being for investment purposes.
9. The first supply of residential buildings within (3) years of its completion, either through sale or lease in whole or in part, according to the controls specified in the Executive Regulation of this Decree-Law.
10. The first supply of buildings specifically designed to be used by Charities through sale or lease according to the controls specified in the Executive Regulation of this Decree-Law.
11. The first supply of buildings converted from non-residential to residential through sale or lease according to the conditions specified in the Executive Regulation of this Decree-Law.
12. The supply of crude oil and natural gas.
13. The supply of educational services and related Goods and Services for nurseries, preschool, elementary education, and higher educational institutions owned or funded by Federal or local Government, as specified in the Executive Regulation of this Decree-Law.
14. The supply of preventive and basic healthcare Services and related Goods and Services according to what is specified in the Executive Regulation of this Decree-Law.

Chapter Two

Exemptions

Article (46) : Supply Exempt from Tax

The following supplies shall be exempt from Tax:

1. Financial services that are specified in the Executive Regulation of this Decree-Law.
2. Supply of residential buildings through sale or lease, other than that which is zero-rated according to Clauses (9) and (11) of Article (45) of this Decree-Law.
3. Supply of bare land.
4. Supply of local passenger transport.

The Executive Regulation of this Decree-Law shall specify the conditions and controls for exempting the supplies mentioned in the preceding clauses of this Article.

**Chapter Three
Single and Mixed Supplies**

Article (47) : Supply of More Than One Component

The Executive Regulation of this Decree-Law will specify the controls to determine the tax treatment of any supply composed of more than one component for a single price, where each component is subject to a different tax treatment.

**Chapter Four
Specific Obligations to Account for Tax**

Article (48) : Reverse Charge

1. If the Taxable Person imports Concerned Goods or Concerned Services for the purposes of his Business, then he shall be treated as making a Taxable Supply to himself, and shall be responsible for all applicable Tax obligations and accounting for Due Tax in respect of these supplies.
2. As an exception to Clause (1) of this Article, in case the final destination of the Goods when entering the State is another Implementing State, the Taxable Person shall pay the Due Tax on Import of Concerned Goods pursuant to the mechanism specified by the Executive Regulation of this Decree-Law.
3. If a Registrant makes a Taxable Supply in the State to another Registrant of any crude or refined oil, unprocessed or processed natural gas, or any hydrocarbons, and the Recipient of these Goods intends to either resell the purchased Goods as crude or refined oil, unprocessed or processed natural gas, or any hydrocarbons, or use these Goods to produce or distribute any form of energy, the following rules shall apply:
 - (a) the Registrant making the Supply shall not charge Tax on the value of the supply of the Registrant making the Supply shall not charge Tax on the value of the supply of the Goods referred to in this paragraph.
 - (b) The Recipient of the Goods shall calculate the Tax on the value of the Goods supplied thereto and shall be responsible for all applicable Tax obligations and for calculating the Due Tax in respect of such supplies.
4. The provisions of Clause (3) of this Article shall not apply in any of the following situations:
 - (a) Where, before the Date of Supply, the Recipient of Goods has not provided a written confirmation to the supplier that his acquisition of the Goods is for the purpose of resale.
 - (b) Where, before the Date of Supply, the Recipient of Goods has not provided a written confirmation to the supplier that he is a Registrant and the supplier has

not verified the Tax Registration of the Recipient of Goods by means approved by the Authority.

- (c) Where the Taxable Supply would be subject to Tax at the rate of 0% in accordance with Clause (1) of Article (45) of this Decree-Law.
 - (d) Where the Taxable Supply includes a supply of Goods or Services other than the Goods referred to in Clause (3) of this Article.
5. Where a Recipient of Goods of any crude or refined oil, unprocessed or processed natural gas, or any hydrocarbons confirms in writing to the supplier that he is a Registrant for the purposes of applying Clause (3) of this Article, the following shall apply:
- (a) The supplier shall not be liable for calculating the Tax in relation to the supply unless he was aware or supposed to be aware, that the Recipient was not a Registrant at the Date of Supply.
 - (b) The Recipient shall be liable for the calculation of any Due Tax in respect of the supply.
6. If the supplier mentioned in paragraph (a) of Clause (5) of this Article is supposed to be aware that the Recipient of Goods was not registered at the Date of Supply, the supplier and the Recipient of Goods shall be jointly and severally liable for any Due Tax and relevant penalties in respect of the supply.
7. The Executive Regulation of this Decree-Law shall specify:
- a. Conditions and instances where the mechanism in Clause (1) of this Article applies.
 - b. Additional obligations related to record keeping for Tax calculated according to the mechanism in Clause (1) of this Article.

Article (49) : Import of Concerned Goods

A person not registered for Tax shall pay Due Tax on Import of Concerned Goods from outside the Implementing States on the date of Import pursuant to the payment mechanism specified by the Executive Regulation of this Decree-Law.

**Chapter Five
Designated Zones**

Article (50) : Designated Zone

A “Designated Zone” that meets the conditions specified in the Executive Regulation of this Decree-Law shall be treated as being outside the State.

Article (51) : Transfer of Goods in Designated Zones

- 1. Goods may be transferred from one Designated Zone to another Designated Zone without any Tax becoming due.

2. The Executive Regulation of this Decree-Law shall specify the procedures and conditions for the transfer of Goods from and to a Designated Zone as well as the method of keeping, storing and processing such Goods therein.

Article (52) : Exceptions for Designated Zone

As an exception to Article (50) of this Decree-Law, the Executive Regulation of this Decree-Law shall specify the conditions under which the Business conducted within the Designated Zones will be regarded as being conducted in the State.

Title Seven

Calculation of Due Tax

Chapter One

Due Tax for a Tax Period

Article (53)

The Payable Tax for any Tax Period shall be calculated as being equal to the total Output Tax payable pursuant to this Decree-Law and which has been done in the Tax Period less the total Recoverable Tax by said Taxable Person over the same Tax Period.

Article (54) : Recoverable Input Tax

1. The Input Tax that is recoverable by a Taxable Person for any Tax Period is the total of Input Tax paid for Goods and Services which are used or intended to be used for making any of the following:
 - (a) Taxable Supplies.
 - (b) Supplies that are made outside the State which would have been Taxable Supplies had they been made in the State.
 - (c) Supplies specified in the Executive Regulation of this Decree-Law that are made outside the State, which would have been treated as exempt had they been made inside the State.
2. Where Goods are imported by a Taxable Person through another Implementing State and the intended final destination of those Goods was the State at the time of Import, then the Taxable Person shall be entitled to treat the Tax paid in respect of Import of Goods into the Implementing State as Recoverable Tax subject to conditions specified in the Executive Regulation of this Decree-Law.
3. Where Goods were acquired by a Taxable Person in another Implementing State and then moved into the State, the Taxable Person shall be entitled to treat the Tax paid in respect of the Goods in the Implementing State as Recoverable Tax subject to the conditions specified in the Executive Regulation of this Decree-Law.
4. A Taxable Person shall not be entitled to recover any Input Tax in respect of Tax paid in accordance with Clause (2) of Article (48) of this Decree-Law.

5. The Executive Regulation of this Decree-Law shall specify the instances where Input Tax is excepted from being recovered.

Article (55) : Recovery of Recoverable Input Tax in the Tax Period

1. Taking into consideration the provisions of Article (56) of this Decree-Law, the Recoverable Input Tax may be deducted through the Tax Return relating to the first Tax Period in which the following conditions have been satisfied:
 - (a) The Taxable Person receives and keeps the Tax Invoice as per the provisions of this Decree-Law, provided that the Tax Invoice includes the details of the supply related to such Input Tax, or keeps any other document pursuant to Clause (3) of Article (65) of this Decree-Law in relation to the Supply or Import on which Input Tax was paid.
 - (b) The Taxable Person pays the Consideration for the Supply or any part thereof, as specified in the Executive Regulation of this Decree-Law.
2. If the Taxable Person entitled to recover the Input Tax fails to do so during the Tax Period in which the conditions stated in Clause (1) of this Article have been satisfied, he may include the Recoverable Tax in the Tax Return for the subsequent Tax Period.

Article (56) : Input Tax Paid before Tax Registration

1. A Registrant may recover Recoverable Tax incurred before Tax Registration on the Tax Return submitted for the first Tax Period following Tax Registration, which has been paid for any of the following:
 - (a) Supply of Goods and Services made to him prior to the date of Tax Registration.
 - (b) Import of Goods by him prior to the date of Tax Registration.Provided that these Goods and Services were used to make supplies that give the right to Input Tax recovery upon Tax Registration.
2. As an exception to the provisions of Clause (1) of this Article, Input Tax may not be recovered in any of the following instances:
 - (a) The receipt of Goods and Services for purposes other than making Taxable Supplies.
 - (b) Input Tax related to the part of the Capital Assets that depreciated before the date of Tax Registration.
 - (c) If the Services were received more than five years prior to the date of Tax Registration.
 - (d) Where a Person has moved the Goods to another Implementing State prior to the Tax Registration in the State.

Article (57) : Recovery of Tax by Government Entities and Charities

A Cabinet Decision shall be issued at the suggestion of the Minister determining the Government Entities and Charities entitled to recover the full amount of Input Tax paid by them, except for:

1. Tax excluded from recovery as specified in the Executive Regulation of this Decree-Law.
2. Tax paid for Goods and Services used to perform exempt supplies.

Chapter Two

Apportionment and Adjustment of Input Tax

Article (58) : Calculating the Input Tax that may be Recovered

The Executive Regulation of this Decree-Law shall specify the method in which the Input Tax that may be recovered is calculated, if Input Tax is paid for Goods or Services during a specific Tax Period to make supplies that allow recovery under Article (54) and others that do not allow recovery, or for activities conducted that are not in the course of doing the Business.

Article (59) : Conditions and Mechanism of Input Tax Adjustment

The Executive Regulation of this Decree-Law shall specify the conditions and mechanism for adjusting

Input Tax in the following cases:

1. If the Taxable Person attributes the Input Tax, either fully or partially, to make Taxable Supplies, but changed the use, or the intended use, of those Goods or Services prior to making the Taxable Supplies.
2. If the Taxable Person attributes the Input Tax, either fully or partially, to make Exempt Supplies, or for activities that do not fall within the conduct of Business, but changed the use or the intended use of those Goods or Services related to the Input Tax prior to making Exempt Supplies.

Chapter Three

Capital Assets Scheme

Article (60) : Capital Assets Scheme

1. If a Capital Asset is supplied or imported by a Taxable Person, the latter shall assess the period of use of such asset and make the necessary adjustments to the Input Tax paid pursuant to the Capital Assets Scheme.
2. A Taxable Person shall keep the records related to Capital Assets for at least ten years.
3. The Executive Regulation of this Decree-Law shall specify the following:
 - (a) Capital Assets subject to the provisions of this Decree-Law and their estimated useful life.

- (b) The method of adjusting Capital Assets and the periods for which adjustments should be made.
- (c) Instances where the period for keeping records of Capital Asset records is extended.

Chapter Four **Adjustment of Tax after the Supply Date**

Article (61) : Instances and Conditions for Output Tax Adjustments

1. A Registrant shall adjust Output Tax after the date of supply in any of the following instances:
 - a. If the supply was cancelled.
 - b. If the Tax treatment of the supply has changed due to a change in the nature of the supply.
 - c. If the previously agreed Consideration for the supply was altered for any reason.
 - d. If the Recipient of Goods or Recipient of Services returned them to the Registrant in full or in part and the Consideration was returned in full or in part.
 - e. If the Tax was charged in error.
2. Paragraph (e) of Clause (1) of this Article shall not apply where the place of supply was treated by the supplier at the Date of Supply as being subject to Clause (1) of Article (27), but, as a result of a movement of the Goods, it turned out that it should have been treated as a supply under paragraph (b)(1) of Clause (3) of the same.
3. In order to adjust the Output Tax any of the following conditions shall be met:
 - a. If the Output Tax amount charged on the supply stated in the Tax Invoice does not match the Tax that should actually be charged on the supply as a result of any of the events mentioned in Clause (1) of this Article.
 - b. If the Registrant submits a Tax Return for the Tax Period during which the supply occurred and an amount was incorrectly calculated as being the amount of Output Tax due for this supply as the result of any of the events mentioned in Clause (1) of this Article.

Article (62) : Mechanism for Output Tax Adjustment

The Output Tax shall be adjusted according to the following:

1. If the Output Tax due for the supply exceeds the Output Tax calculated by the Registrant, the Registrant shall issue a new Tax Invoice for the additional amount of Tax and calculate the additional Tax due for the Tax Period during which such an increase was identified.

2. If the Output Tax calculated by the Registrant exceeds the Output Tax which should have been charged on the supply, the Registrant shall issue a Tax Credit Note according to the provisions of this Decree-Law.

Article (63) : Adjustment due to the Issuance of Tax Credit Notes

Without prejudice to Clause (2) of Article (62) of this Decree-Law, if the Registrant issues a Tax Credit Note to correct Output Tax charged to the Recipient of Goods or Recipient of Services, the Tax stated in the Tax Credit Note shall be considered as:

1. A reduction of the Output Tax for the Registrant of this Tax Credit Note.
2. A reduction of the Input Tax by the Recipient of Goods or Recipient of Services for the Tax Period during which the Tax Credit Note was received.

Article (64) : Adjustment for Bad Debts

1. A Registrant supplier may reduce the Output Tax in a current Tax Period to adjust the Output Tax paid for any previous Tax Period if all of the following conditions are met:
 - (a) Goods and Services have been supplied and the Due Tax has been charged and paid.
 - (b) Consideration for the supply has been written off in full or part as a bad debt in the accounts of the supplier.
 - (c) More than six (6) months has passed from the date of the supply.
 - (d) The Registrant supplier has notified the Recipient of Goods and the Recipient of Services of the amount of Consideration for the supply that has been written off.
2. The registered Recipient of Goods or Recipient of Services shall reduce the Recoverable Input Tax for the current Tax Period related to a supply received during any previous Tax Period where the Consideration has not been paid and all of the following conditions are met:
 - (a) The registered supplier reduced the Output Tax as stated in Clause (1) of this Article and the Recipient of Goods and the Recipient of Services has received a notification from the supplier of the Consideration being written off.
 - (b) The Recipient of Goods and Recipient of Services received the Goods and Services and the relevant Input Tax was deducted.
 - (c) The Consideration was not paid in full or in part for the supply for over (6) six months.
3. The reduction stated in Clause (1) and (2) shall be equal to the Tax related to the Consideration which has been written off according to paragraph (b) of Clause (1) of this Article.

**Chapter Five
Tax Invoices**

Article (65) : Conditions and Requirements for Issuing Tax Invoices

1. A Registrant making a Taxable Supply shall issue an original Tax Invoice and deliver it to the Recipient of Goods or Recipient of Services.
2. A Registrant making a Deemed Supply shall issue an original Tax Invoice and deliver it to a Recipient of Goods or Recipient of Services if available or keep it in his records if there is no Recipient of Goods or Recipient of Services.
3. The Executive Regulation of this Decree-Law shall specify the following:
 - (a) Data to be included in the Tax Invoice.
 - (b) The conditions and procedures required to issue an electronic Tax Invoice.
 - (c) Instances where the Registrant is not required to issue and deliver a Tax Invoice to the Recipient of Goods or the Recipient of Services.
 - (d) Instances where other documents may be issued in place of the Tax Invoice as well as the conditions thereof and the data to be included therein.
 - (e) Instances where another Person may issue a Tax Invoice on behalf of the registered supplier.
4. Any Person who receives an amount as Tax pursuant to any document issued by him shall pay this amount to the Authority even if it is not due.

Article (66) : Document of Supplies to an Implementing States

Without prejudice to Article (65) of this Decree-Law, each Registrant who supplies Goods or Services considered as supplied in any of the Implementing States, shall provide the Recipient of Goods and Recipient of Services with a document that includes all the information that must be included in the Tax Invoice and any other information as specified in the Executive Regulation of this Decree-Law, provided that this document is not labelled "Tax Invoice" and does not include any Tax charged.

Article (67) : Date of Issuance of Tax Invoice

The Registrant shall issue a Tax Invoice within 14 days as of the date of supply as stated in Article (25) of this Decree-Law.

Article (68) : Rounding on Tax Invoices

For the purpose of stating the Tax due on a Tax Invoice, the Executive Regulation of this Decree-Law shall specify the method of calculation and stating the total amount to be paid if the Tax is less than one fils of a UAE Dirham.

Article (69) : Currency Used on Tax Invoices

If the supply is in a currency other than the UAE Dirham, then for the purposes of the Tax

Invoice, the amount stated in the Tax Invoice shall be converted into the UAE Dirham according to the exchange rate approved by the Central Bank at the date of supply.

**Chapter Six
Tax Credit Notes**

Article (70) : Conditions and Requirements for Issuing Tax Credit Note

1. The Registrant shall issue an original Tax Credit Note when a reduction of Output Tax occurs in relation to any supply made by him according to Clause (2) of Article (62) of this Decree-Law and deliver the same to the Recipient of Goods or Recipient of Services.
2. When making a Deemed Supply, the Registrant shall issue an original Tax Credit Note when a reduction occurs to the Output Tax in relation to such supply according to Article (61) of this Decree-Law and shall keep the same in his records.
3. The Executive Regulation of this Decree-Law shall specify the following:
 - (a) Basic data that should be included in the Tax Credit Note in instances where the Taxable Person is required to issue this Note.
 - (b) The conditions and procedures required for the issuance of an electronic Tax Credit Note.
 - (c) Instances where the Registrant is not required to issue and deliver a Tax Credit Note to the Recipient of Goods or the Recipient of Services.
 - (d) Instances where other documents may be issued in place of the Tax Credit Note as well as conditions for the issuance of such document and the data to be included therein.
 - (e) Instances where another Person may issue a Tax Credit Note on behalf of the registered supplier.

Title Eight

Tax Period, Tax Returns, Payment and Reclaiming of Tax

Chapter One

Tax Period

Article (71) : Duration of Tax Period

The Executive Regulation of this Decree-Law shall specify the Tax Period for which the Taxable Person shall calculate and pay Tax as well as the exceptional circumstances in which the Authority may amend the Tax Period.

Chapter Two
Tax Returns and Tax Payment

Article (72) : Submission of Tax Returns

1. The Taxable Person shall submit the Tax Return to the Authority at the end of each Tax Period within the time limits and according to the procedures specified in the Executive Regulation of this Decree-Law declaring all supplies made and received during that Tax Period.
2. A Cabinet Decision shall be issued upon the recommendation of the Minister, determining the Government Entities that may submit simplified Tax Returns to the Authority.

Article (73) : Payment of Tax

The Executive Regulation of this Decree-Law shall specify the time limits and procedures for payment of Tax stated as payable in the Tax Return according to the provisions of this Decree-Law.

Chapter Three
Carrying forward the Excess of Recoverable Tax and Tax Recovery

Article (74) : Excess Recoverable Tax

1. With the exception of what will be stipulated in the Executive Regulation of this Decree-Law, the Taxable Person shall carry forward any excess of Recoverable Tax to the subsequent Tax Periods and offset such excess against Payable Tax or any Administrative Penalties imposed under this Decree-Law or Federal Law No. (7) of 2017 on Tax Procedures in subsequent Tax Periods until such excess is fully utilised, in the following cases:
 - (a) If the Taxable Person's Recoverable Input Tax set forth in this Decree-Law exceeds the Output Tax payable for the same Tax Period.
 - (b) If the Tax paid to the Authority by the Taxable Person exceeds the Payable Tax according to the provisions of this Decree-Law, other than in the instance mentioned in paragraph (a) of Clause (1) of this Article.
2. If there remains any excess for any Tax Period after being carried forward for a period of time, the Taxable Person may apply to the Authority to reclaim the remaining excess. The Executive Regulation of this Decree-Law shall specify the time limits, procedures and mechanisms of returning any remaining excess to the Taxable Person.

Chapter Four
Other Provisions on Recovery of Tax

Article (75) : Tax Recovery in Special Cases

The Authority may according to the conditions, restrictions and procedures specified in the Executive Regulations of this Decree-Law, return Tax paid for any supply received by or

Import carried out by anyone of the following:

1. A citizen of the State in respect of the Goods and Services related to the construction of a new residence that is not part of the Person's Business.
2. A Non-Resident, who is not a Resident of an Implementing State and conducts a Business and is not a Taxable Person.
3. A Non-Resident, for Goods supplied to him in the State and that will be exported.
4. Foreign governments, international organisations, diplomatic bodies and missions according to treaties that the State is a party to.
5. Any Persons or classes listed in a Cabinet Decision issued at the suggestion of the Minister.

Title Nine Violations and Penalties

Article (76) : Administrative Penalties Assessment

Without prejudice to the provisions of Federal Law No. (7) of 2017 on Tax Procedures, the Authority shall issue an Administrative Penalty Assessment to the Person and notify the Person of the same within five (5) business days as of the date of issuance in any of the following cases:

1. Failure by the Taxable Person to display prices inclusive of Tax according to Article (38) of this Decree-Law.
2. Failure by the Taxable Person to notify the Authority of applying Tax based on the margin according to Article (43) of this Decree-Law.
3. Failure to comply with the conditions and procedures related to keeping the Goods in a Designated Zone or moving them to another Designated Zone.
4. Failure by the Taxable Person to issue the Tax invoice or an alternative document when making any Supply.
5. Failure by the Taxable Person to issue a Tax Credit Note or an alternative document.
6. Failure by the Taxable Person to comply with the conditions and procedures regarding the issuance of electronic Tax Invoices and electronic Tax Credit Notes.

Article (77) : Tax Evasion

If it is proven that a Person who is not a Registrant acquires Goods referred to in Clause (3) of Article 48 of this Decree-Law, claiming that he is a Registrant, he shall be considered as having committed Tax Evasion and shall be subject to the penalties provided for in Federal Law No. (7) of 2017 on Tax Procedures.

Title Ten
General Provisions

Article (78) : Record-keeping

1. Without prejudice to the provisions related to record-keeping stated in any other law, the Taxable Person shall keep the following records:
 - (a) Records of all supplies and Imports of Goods and Services.
 - (b) All Tax Invoices and alternative documents related to receiving Goods or Services.
 - (c) All Tax Credit Notes and alternative documents received.
 - (d) All Tax Invoices and alternative documents issued.
 - (e) All Tax Credit Notes and alternative documents issued.
 - (f) Records of Goods and Services that have been disposed of or used for matters not related to Business, showing Taxes paid for the same.
 - (g) Records of Goods and Services purchased and for which the Input Tax was not deducted.
 - (h) Records of exported Goods and Services.
 - (i) Records of adjustments or corrections made to accounts or Tax Invoices.
 - (j) Records of any Taxable Supplies made or received in accordance with Clause (3) of Article 48 of this Decree-Law, including any declarations provided or received in respect of those Taxable Supplies.
 - (k) A Tax Record that includes the following information:
 1. Due Tax on Taxable Supplies.
 2. Due Tax on Taxable Supplies pursuant to the mechanism in Clause (1) of Article (48) of this Decree-Law.
 3. Due Tax after the error correction or adjustment.
 4. Recoverable Tax for supplies or Imports.
 5. Recoverable Tax after the error correction or adjustment.
2. The Executive Regulation of this Decree-Law shall specify the following:
 - (a) Time limits, restrictions and conditions for keeping the records listed in Clause (1) of this Article.
 - (b) Restrictions and procedures regarding the maintenance of the confidentiality of the records that may be accessed by the Authority in the case of Government Entities mentioned under Clause (2) of Article (72) of this Decree-Law.

Articles (79) : Stating the Tax Registration Number

The Taxable Person or any other Person authorised in writing by him shall state the Tax Registration Number on each Tax Return, notification, Tax Invoice, Tax Credit Note, and any other document related to Tax or correspondence as required under this Decree-Law or said Federal Law No. (7) of 2017 on Tax Procedures.

**Title Eleven
Closing Provisions**

Article (80) : Transitional Rules

1. If the supplier receives Consideration or part thereof or issues an invoice for Goods or Services before the Decree-Law comes into effect, the date of supply shall be the same as the effective date of the Decree-Law in the following instances if they occur after the effective date of the Decree-Law:
 - (a) Transfer of Goods under the supervision of the supplier.
 - (b) Placing the Goods at the recipient's disposal.
 - (c) The completion of assembly or installation of the Goods.
 - (d) The issuance of the customs declaration.
 - (e) The acceptance by the Recipient of Goods of the supply.
2. If a contract has been concluded prior to the enforcement of this Decree-Law, regarding a supply to be wholly or partly made after the effective date of this Decree-Law, but such contract does not contain clauses related to Tax on the supply, it shall be treated as per the following:
 - (a) The Consideration shall be considered inclusive of Tax if chargeable according to this Decree-Law.
 - (b) Tax shall be calculated on the supply regardless of whether it has been taken into account when determining the Consideration for the supply.
3. The Executive Regulation of this Decree-Law shall set forth special provisions related to the implementation of this Decree-Law where a contract has been concluded before the effective date of the Decree-Law but the supply under the contract is wholly or partly made after the effective date of this Decree-Law.

Article (81) : Revenue Sharing

Tax revenues and Administrative Penalties set forth in the provisions of this Decree-Law shall be subject to sharing between the Federal Government and the Emirates Governments based on the provisions of Federal Decree-Law No. (13) of 2016 On the Establishment of the Federal Tax Authority.

Article (82) : Executive Regulation

The Cabinet shall issue the Executive Regulation of this Decree-Law at the suggestion of the Minister.

Article (83)

In case of absence of a special provision in this Decree-Law, the provisions of Federal Law No. (7) of 2017 on Tax Procedures shall be applied.

Article (84) : Cancellation of Conflicting Provisions

Any text or provisions contrary to or inconsistent with the provisions of this Decree-Law shall be abrogated.

Article (85) : Effective Date of this Decree-Law and its Application

This Decree-Law shall be published in the Official Gazette and shall come into effect as of January 1, 2018.

Khalifa bin Zayed Al Nahyan

President of the United Arab Emirates

Issued by us at the Presidential Palace in Abu Dhabi

On: 1 /12/1438 H.

Corresponding to: 23/ 8 /2017

Note: *The above translated version law has been taken from the website of Ministry of Finance, United Arab Emirates, which states that it is unofficial translation.*

Annexure B

Law on Excise Tax

Federal Decree-Law No. (7) of 2017 on Excise Tax

We, Khalifa bin Zayed Al Nahyan, President of the United Arab Emirates, Having reviewed the Constitution;

Federal Law No. (1) of 1972 on the Competencies of the Ministries and Powers of the Ministers and its amendments;

Federal Law No. (11) of 1981 on the Imposition of a Federal Customs Tax on Imports of Tobacco and its derivatives and its amendments;

Federal Law No. (26) of 1981 on the Commercial Maritime Law and its amendments;

Federal Law No. (5) of 1985 promulgating the Civil Transactions Law and its amendments;

Federal Law No. (3) of 1987 promulgating the Penal Law and its amendments;

Federal Law No. (10) of 1992 promulgating the Law of Evidence in Civil and Commercial Transactions and its amendments;

Federal Law No. (11) of 1992 promulgating the Law on Civil Procedures and its amendments;

Federal Law No. (18) of 1993 promulgating the Commercial Transactions Law and its amendments;

Federal Law No. (8) of 2004 on the Financial Free Zones;

Federal Law No. (1) of 2006 on Electronic Commerce and Transactions;

Federal Law No. (2) of 2008 on the National Societies and Associations of Public Welfare;

Federal Law No. (15) of 2009 on Combating Tobacco; Federal Law No. (1) of 2011 on the State's Public Revenues;

Federal Law No. (8) of 2011 on the Reorganisation of the State Audit Institution;

Federal Decree-Law No. (8) of 2011 on the Rules of the Preparation of the General Budget and Final Accounts;

Federal Law No. (4) of 2012 on the Regulation of Competition;

Federal Law No. (12) of 2014 on the Organisation of the Auditing Profession; Federal Law No. (2) of 2015 on Commercial Companies;

Federal Decree-Law No. (13) of 2016 on the Establishment of the Federal Tax Authority;

Federal Law No. (7) of 2017 on Tax Procedures; and

Pursuant to what was presented by the Minister of Finance and approved by Cabinet,

Have issued the following Decree-Law:

Chapter One

Definitions

Article (1)

In the application of the provisions of this Decree-Law, the following words and expressions shall have the meanings assigned against each, unless the context otherwise requires:

State: United Arab Emirates.

Minister: Minister of Finance.

Authority: Federal Tax Authority.

Tax: Excise Tax.

Excise Goods: Goods that will be determined as being subject to Tax by a Cabinet Decision upon the recommendation of the Minister.

Import: The arrival of Goods from abroad into territory of the State.

Export: The departure of Goods from the territory of the State.

Person: A natural or legal person.

Taxable Person: Any Person registered or obligated to register for Tax purposes under the provisions of this Decree-Law

Designated Zone: Any fenced area intended to be a free zone that cannot be entered or exited except through a designated road, and any area designated by the Authority as being subject to the supervision of a Warehouse Keeper, in accordance with the Executive Regulation of this Decree-Law.

Warehouse Keeper: Any Person approved and registered at the Authority to supervise a Designated Zone in accordance with the Executive Regulation of this Decree-Law.

Tax Registration: A procedure whereby the Taxable Person or his Legal Representative registers at the Authority for Tax purposes.

Tax Registration Number (TRN): A unique number issued by the Authority for each Person registered for Tax purposes.

Registrant: The Taxable Person who has been issued with a TRN.

Importer: The Person whose name appears for customs clearance purposes as the importer of the Excise Goods on the date of Import.

Tax Return: Information and data specified for Tax purposes and submitted by the Taxable Person in accordance with the form prepared by the Authority.

Business: Any activity conducted regularly, on an ongoing basis and independently by any Person, in any location, which involves or may involve trading in Excise Goods.

Refundable Tax: Amounts that have been paid and that the Authority may return to the Person pursuant to the provisions of this Decree-Law.

Due Tax: Tax that is calculated and imposed pursuant to the provisions of this Decree-Law.

Payable Tax: The Due Tax that is due for payment to the Authority.

Deductible Tax: The Tax that has been paid, or considered as have been paid, by a Taxable Person.

Tax Period: A specific period of time for which the Payable Tax shall be calculated and paid.

Administrative Penalties: Amounts imposed upon a Person by the Authority for violating the provisions of this Decree-Law or Federal Law No. (7) of 2017 on Tax Procedures.

Administrative Penalties Assessment: A decision issued by the Authority in relation to the Administrative Penalties due.

Stockpiler: The Person who owns Excise Goods and cannot demonstrate that such goods had been previously subject to Tax pursuant to the conditions stated in the Executive Regulation of this Decree-Law.

Customs Legislation: Federal and local legislation that regulates customs in the State.

The Implementing States: The States of the Gulf Cooperation Council that apply the Tax Law pursuant to an issued legislation.

Tax Evasion: The Person's use of illegal means, resulting in the reduction of the amount of the Due Tax, non-payment thereof, or a refund of a tax that the Person did not have the right to have refunded under the provisions of this Decree-Law.

Chapter Two

Implementation, Scope and Calculation of Tax

Article (2) - Implementation and Scope of Tax

1. The provisions of this Decree-Law shall apply to the Excise Goods specified by a Cabinet Decision at the suggestion of the Minister.
2. Tax shall be imposed on the following activities related to Excise Goods:
 - a. Production of Excise Goods in the State, where such production was in the course of doing business.
 - b. Import of Excise Goods.
 - c. Release of Excise Goods from a Designated Zone.
 - d. Stockpiling of Excise Goods in the State, where such Stockpiling was in the course of doing business.

Article (3) – Tax Calculation

A Cabinet Decision shall be issued at the suggestion of the Minister to determine the tax rates that shall be imposed on Excise Goods and the method of calculating the Excise Price, provided that the tax rate shall not exceed (200%) of the Excise Price of the Good.

Article (4) - Tax Obligations

1. The Due Tax shall be the responsibility of:
 - a. The Person who conducts any of the activities mentioned in clause (2) of Article (2) of this Decree-Law;
 - b. The Person involved in any of the activities mentioned in clause (2) of Article (2) of this Decree-Law, in the event the Person who conducted the activity has failed to meet his obligation to pay the Tax, pursuant to what is specified in the Executive Regulation of this Decree-Law;
 - c. The Warehouse Keeper, in the case of the release of Excise Goods from a Designated Zone, and where the Payable Tax has not been previously paid, pursuant to what is specified in the Executive Regulation of this Decree-Law.
2. The following are excluded from the provisions of clause (1) of this Article:
 - a. The Person who imports Excise Goods of value less than that specified in the Customs Legislation, if such Excise Goods are accompanied by the Person within the frame of an international voyage and are used for non-commercial purposes.
 - b. A Stockpiler in case the conditions specified in the Executive Regulation of this Decree Law are met.

Chapter Three Tax Registration and Deregistration

Article (5) - Tax Registration

1. A Person shall be prohibited from conducting any activities that fall within clause (2) of Article (2) of this Decree-Law before registration thereof for Tax purposes in accordance with the provisions of this Article.
2. Without prejudice to the provisions of clause (1) of this Article, the Person liable for the Due Tax according to Article (4) of this Decree-Law shall apply to the Authority for Tax Registration as set forth in Federal Law No. (7) of 2017 on Tax Procedures, within 30 days as of the end of any month during which the Person carries out or intends to carry out activities mentioned in Article (2) of this Decree-Law, or from the effective date of this Decree-Law, whichever is later.
3. The Executive Regulation of this Decree-Law shall determine the effective date of the Tax Registration referred to in this Article.

Article (6) – Exceptions from Registration

1. The Authority may except a Person from Tax Registration, if the Tax is due under paragraphs (b) and (c) of clause (2) of Article (2) of this Decree-Law, and he can demonstrate to the Authority that he will not regularly Import Excise Goods, pursuant to what is specified in the Executive Regulation of this Decree-Law.
2. Anyone excepted from Tax Registration according to clause (1) of this Article shall inform the Authority of any changes to his circumstances that would make him subject to Tax under the provisions of this Decree-Law, within the timeframe and in accordance with the procedures stated in the Executive Regulation of this Decree-Law.
3. The Authority shall collect any Due Tax and Administrative Penalties from the Person excepted from registration under clause (1) of this Article.

Article (7) - Tax Deregistration

A Registrant shall apply to the Authority for Tax Deregistration if he is no longer liable for the Tax under Article (4) of this Decree-Law within the timeframe specified in the Executive Regulation of this Decree-Law.

Article (8) – Registration as a Warehouse Keeper

1. Any Person operating or intending to operate a Designated Zone shall apply for registration as a Warehouse Keeper pursuant to what is specified in the Executive Regulation of this Decree-Law.
2. The Executive Regulation of this Decree-Law shall specify the effective date of registration referred to in this Article.
3. A Person shall not act as a Warehouse Keeper before his registration in accordance with this Article.

Article (9) - The Procedures, Controls and Conditions of Tax Registration and Tax Deregistration

The Executive Regulation of this Decree-Law shall determine the procedures, controls and conditions of Tax Registration, Tax deregistration, and rejection of application for Tax Registration and Tax Deregistration.

Chapter Four

Rules Pertaining to Tax Payment and Tax Exemption

Article (10) – Tax Calculation Date

Tax shall be calculated as per the following dates:

1. The date of Import of Excise Goods.
2. The date on which the Excise Goods were acquired by the Stockpiler, and if such

acquisition has happened before the effective date of this Decree-Law, the date of calculating tax shall be the effective date of this Decree-Law.

3. With the exception of the two cases mentioned in clauses (1) and (2) of this Article, Tax shall be calculated based on the date on which Excise Goods were released for consumption pursuant to what is specified in the Executive Regulation of this Decree-Law.

Article (11) – Inclusion of the Tax in the Advertised Price

The advertised prices of Excise Goods shall be inclusive of the Tax. Instances where prices do not include the Tax will be determined by the Executive Regulation of this Decree-Law.

Article (12) – Tax Exemption

1. Excise Goods that are exported shall be exempt from tax.
2. The Executive Regulation of this Decree-Law shall specify the controls and conditions for exemption mentioned in clause (1) of this Article.

Chapter Five Designated Zones

Article (13) - Designated Zone

1. A “Designated Zone” which fulfils the conditions specified in the Executive Regulation of this Decree-Law shall be treated as being outside the State for Tax purposes.
2. By way of exception to the provisions of clause (1) of this Article, the Executive Regulation of this Decree-Law shall specify the conditions under which the Business conducted within the Designated Zones shall be treated as being conducted in the State.

Article (14) – Transfer of Excise Goods in Designated Zones

1. Excise Goods may be transferred from one Designated Zone to another without being subject to Tax.
2. The Executive Regulation of this Decree-Law shall specify the controls and conditions of the transfer of goods from and to a Designated Zone as well as the mechanism of preserving, storing and processing such Excise Goods therein.

Chapter Six Calculation of Due Tax

Article (15) - Tax Calculation

The Payable Tax owed by a Taxable Person shall be calculated for any Tax Period as the Due Tax from the Taxable Person for such Tax Period less the total Deductible Tax as calculated under provisions of Article (16) of this Decree-Law.

Article (16) – Deductible Tax

1. The Deductible Tax consists of the following:
 - a. The Tax paid on Excise Goods which have been exported;
 - b. The Tax paid on Excise Goods which have become a component of another Excise Good which is, or will become, subject to tax;
 - c. Amounts paid to the Authority in error.
2. The Executive Regulation of this Decree-Law shall specify the conditions and controls for deducting the Tax mentioned in clause (1) of this Article.

Chapter Seven

Tax Period, Tax Return and Tax Payment

Article (17) –Tax Period

The Executive Regulation of this Decree-Law shall specify the Tax Period and the exceptional circumstances under which the Authority may amend the Tax Period.

Article (18) – Tax Return

The Taxable Person shall submit a Tax Return to the Authority at the end of each Tax Period within the timeframes and in accordance with the procedures specified in the Executive Regulation of this Decree-Law.

Article (19) – Payment of Tax

1. The Taxable Person shall settle the Payable Tax appearing in the Tax Return on the same date of submitting the Tax Return under Article (18) of this Decree-Law in accordance with the procedures specified by the Authority.
2. Any Person excepted from registration under clause (1) of Article (6) of this Decree-Law shall pay the Due Tax when importing Excise Goods.

Chapter Eight

Carrying Forward Excess Refundable Tax

Article (20) – Excess Refundable Tax

1. The Taxable Person shall carry forward any excess Refundable Tax to the subsequent Tax Periods and offset such excess against the Payable Tax or any Administrative Penalties imposed under this Decree Law or Federal Law No. (7) of 2017 on Tax Procedures in subsequent Tax Periods until full depletion of such excess, in the following cases:
 - a. If the Taxable Person's Deductible Tax set forth in Article (16) of this Decree-Law exceeds the Due Tax for the same Tax Period;

- b. If the Tax paid to the Authority by the Taxable Person exceeds the Payable Tax according to the provisions of this Decree-Law.
2. If any excess remains for any Tax Period after being carried forward for a period of time, the Taxable Person may submit an application to the Authority for a refund of the remaining excess, in accordance with the timeframes and procedures specified by the Executive Regulation of this Decree-Law.

Article (21) – Tax Refunds in Special Cases

The Authority may refund the Tax based on a refund application submitted thereto to the following:

1. Foreign governments, international organisations and diplomatic bodies and missions, on condition of reciprocity, for Tax paid in the course of their official activities and in accordance with the conditions, controls and procedures specified in the Executive Regulation of this Decree-Law.
2. The Person who is registered in any Implementing State should he pay the Due Tax in the State and then export the Excise Goods to an Implementing State in accordance with the conditions, controls and procedures specified in the Executive Regulation of this Decree-Law.
3. Any other Persons or categories determined by a Cabinet Decision at the suggestion of the Minister.

Chapter Nine Violations and Penalties

Article (22) – Administrative Penalties Assessment

Notwithstanding the provisions of Federal Law No. (7) of 2017 on Tax Procedures, the Authority shall issue an Administrative Penalty Assessment to the Taxable Person, and notify the latter of the same within five business days from the date of issuance, if the Taxable Person committed any of the following violations:

1. Failure by the Taxable Person to display prices inclusive of Tax according to provisions of Article (11) of this Decree-Law.
2. Failure to comply with the conditions and procedures related to the transfer of Excise Goods from a Designated Zone to another and the mechanism of preserving, storing and processing such Excise Goods.
3. Failure by the Taxable Person to provide the Authority with the price lists of Excise Goods produced, imported or sold thereby, as specified in the Executive Regulation to this Decree-Law.

Article (23) – Instances of Tax Evasion

Notwithstanding the instances of Tax Evasion referred to in Federal Law No. (7) of 2017 on

Tax Procedures and the Penalties mentioned therein, a Person shall be deemed to have committed Tax Evasion if he conducts any of the following acts:

1. Bringing or attempting to bring Excise Goods into or out of the State without payment of the relevant Due Tax in part or in full.
2. Producing, transferring, acquiring, storing, transporting or receiving Excise Goods the Due Tax of which was unpaid with the intention of avoiding the payment of Due Tax.
3. Placing false distinguishing marks on Excise Goods, contrary to the provisions of clause (2) of Article (25) of this Decree-Law, with the intent of evading the payment of Due Tax or receiving unlawful refunds.
4. Submitting any false, counterfeit or unreal documents, returns or records, with the intent of evading the payment of Due Tax or receiving unlawful refunds.

Chapter Ten General Provisions

Article (24) – Record-Keeping and Evidential Requirements

1. Without prejudice to the provisions related to record-keeping stipulated in any other law, the Taxable Person shall keep the following records:
 - (a) Records of all produced, imported or stockpiled Excise Goods;
 - (b) Records of exported Excise Goods and evidence of such Export;
 - (c) Records of stock levels, including details of lost or destroyed items;
 - (d) A Tax Record that includes the following information:
 1. Due Tax on imported Excise Goods.
 2. Due Tax on produced Excise Goods
 3. Due Tax on Excise Goods that have been stockpiled
 4. Deductible Tax according to the provisions of Article (16) of this Decree-Law.
2. The Council of Ministers shall specify, at the suggestion of the Minister, the Excise Goods that should be marked to indicate that Tax has been paid on them as well as the requirements conditions and procedures related to the marking of such goods.
3. The Executive Regulation of this Decree-Law shall specify the timeframes, conditions, and provisions for retention of records listed in clause (1) of this Article.

Articles (25) – Stating the Tax Registration Number

The Taxable Person, or any other Person authorised in writing by the Taxable Person, shall state the Tax Registration Number on all correspondence and dealings with the Authority, Tax Returns and any document related to Tax.

**Chapter Eleven
Final Provisions**

Article (26) – Executive Regulation

The Council of Ministers shall issue the Executive Regulation of this Decree-Law at the suggestion of the Minister.

Article (27) – Revenue Sharing

Revenue from Tax and Administrative Penalties collected in accordance with the provisions of this Decree-Law shall be subject to sharing between the Federal Government and the Emirates' Governments based on the provisions of Federal Decree-Law No. (13) of 2016 on the Establishment of the Federal Tax Authority

Article (28)

In the absence of any special provision in this Decree-Law, the provisions of Federal Law No. (7) of 2017 on Tax Procedures shall apply.

Article (29) – Abrogation of Conflicting Provisions

Any provision contrary to or inconsistent with the provisions of this Decree-Law shall be abrogated.

Article (30) – Publication and Application of the Decree-Law

This Decree-Law shall be published in the Official Gazette and will come into effect on 1 October 2017.

Khalifa bin Zayed Al Nahyan

President of the United Arab Emirates

Issued by us in the Presidential Palace in Abu Dhabi

On: 25 Dhul Qi'da 1437 H.

Corresponding to: 17 August 2017

Note: The above translated version law has been taken from the website of Ministry of Finance, United Arab Emirates, which states that it is unofficial translation.

Annexure C

Federal Law on Tax Procedures

Federal Law No. (7) of 2017 on Tax Procedures

We, Khalifa bin Zayed Al Nahyan – President of the United Arab Emirates,

Having reviewed the Constitution,

- Federal Law No. (1) of 1972 on the Competencies of the Ministries and Powers of the Ministers and its amendments,
- Federal Law No. (5) of 1975 on Commercial Records,
- Federal Law No. (11) of 1981 on the Imposition of a Federal Customs Tax on Imports of Tobacco and its derivatives and its amendments,
- Federal Law No. (5) of 1985 promulgating the Civil Transactions Law and its amendments,
- Federal Law No. (3) of 1987 promulgating the Penal Law and its amendments,
- Federal Law No. (10) of 1992 promulgating the Law of Evidence in Civil and Commercial Transactions and its amendments,
- Federal Law No. (11) of 1992 promulgating the Law on Civil Procedures and its amendments,
- Federal Law No. (35) of 1992 promulgating the Penal Procedures Law and its amendments,
- Federal Law No. (18) of 1993 promulgating the Commercial Transactions Law,
- Federal Law No. (17) of 2004 on the combat of Commercial Concealment,
- Federal Law No. (1) of 2006 on Electronic Transactions and Trading,
- Federal Decree-Law No. (11) of 2008 on Human Resources in the Federal Government and its amendments,
- Federal Law No. (1) of 2011 on the State's Public Revenues,
- Federal Law No. (6) of 2012 on the Organization of the Profession,
- Federal Law No. (12) of 2014 on the Organisation of the Auditing Profession,
- Federal Law No. (2) of 2015 on Commercial Companies;
- Federal Decree-Law No. (9) of 2016 on Bankruptcy,
- Federal Decree-Law No. (13) of 2016 on the Establishment of the Federal Tax Authority,

- Pursuant to the presentation of the Minister of Finance and the approval of the Cabinet, Federal National Council and Federal Supreme Council,

We hereby issue the following Law:

Chapter One

Definitions and Scope of Application of the Law

Article (1): Definitions

In the application of the provisions of this law, the following words and phrases shall have the meanings set out against each of them, unless the context otherwise requires:

State: United Arab Emirates

Minister: Minister of Finance.

Authority: Federal Tax Authority.

Director General: Director General of the Authority.

Committee: Tax Disputes Resolution Committee.

Competent Court: the federal court within whose jurisdiction the Authority's Head Office or Branch is located.

Tax: any federal tax administered, collected and enforced by the Authority.

Tax Law: any federal law pursuant to which a Federal Tax is imposed.

Person: a natural or legal person.

Business: any activity conducted in an ongoing, regular and independent manner by any Person and in any location, such as industrial, commercial, agricultural, professional, vocational or service activity, drilling activities or anything related to the use of material or non-material property.

Taxable Person: a person who is subject to Tax under the provisions of the relevant Tax Law.

Taxpayer: any Person who is obligated to pay Tax in the State under the Tax Law whether a Taxable Person or an end consumer.

Tax Return: information and data specified for Tax purposes, submitted by a Taxable Person in accordance with the form prepared by the Authority.

Tax Period: a specified period of time in respect of which Payable Tax must be calculated and paid.

Tax Registration: a procedure by which a Taxable Person or his Legal Representative registers for Tax purposes with the Authority.

Tax Registration No. (TRN): a unique number issued by the Authority for each Person registered for Tax purposes.

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Registrant: a Taxable Person holding a TRN.

Legal Representative: the manager of a company or a guardian or custodian of a minor or incapacitated person, or the bankruptcy trustee appointed by court for a company that is in bankruptcy, or any other Person appointed legally to represent another Person.

Due Tax: Tax that is calculated and charged under the provisions of any Tax Law.

Payable Tax: Tax that has become due for payment to the Authority.

Administrative Penalties: monetary amounts imposed on a Person by the Authority for a breaching provision of this Law or the Tax Law.

Refundable Tax: amounts that have been paid and that the Authority can refund in whole or in part to the Taxpayer pursuant to the relevant Tax Law, require to use for the payment of amounts due or Administrative Penalties or require to carry forward to future Tax Periods depending on the nature of the refund, according to the Tax Law.

Tax Assessment: a decision issued by the Authority relating to Payable Tax or Refundable Tax.

Administrative Penalties Assessment: a decision issued by the Authority concerning Administrative Penalties due.

Notification: notification to the concerned Person or his Tax Agent or Legal Representative of decisions issued by the Authority through the means stated in this Law and its Executive Regulations.

Voluntary Disclosure: a form prepared by the Authority pursuant to which the Taxpayer notifies the Authority of an error or omission in the Tax Return, Tax Assessment or Tax refund application in accordance with the provisions of the Tax Law.

Register: The Register of Tax Agents.

Tax Agent: any Person registered with the Authority in the Register, who is appointed on behalf of another Person to represent him before the Authority and assist him in the fulfilment of his Tax obligations and the exercise of his associated tax rights.

Tax Audit: a procedure undertaken by the Authority to inspect the commercial records or any information or data related to a Person carrying on Business.

Tax Auditor: any member of the Authority's staff appointed as a Tax Auditor.

Tax Evasion: the use of illegal means resulting in lowering the amount of tax due, non-payment of the tax due or a refund of tax that he does not have the right to have refunded under any Tax Law.

Article (2) : Scope of Application of the Law

The provisions of this Law apply to tax procedures related to the administration, collection and enforcement of Tax by the Authority.

Article (3) : Objectives of the Law

This Law aims to achieve the following:

1. regulation of the rights and obligations between the Authority and the Taxpayer and any other Person dealing with the Authority;
2. regulation of the common procedures and rules applicable to all Tax Laws in the State.

**Chapter Two
Tax Obligations**

**Part One
Keeping of Accounting Records and Commercial Books**

Article (4) : Record Keeping

Any Person conducting any Business must keep Accounting Records and Commercial Books of his Business and any Tax related information as determined by Tax Law and maintain the same according to the controls that will be specified by the Executive Regulations of this Law.

Article (5) : Language

1. Each Person must submit the Tax Return, data, information, records and documents related to Tax that he is required to submit to the Authority in Arabic as determined by the provisions of the Tax Law.
2. The Authority may accept data, information, records, and documents related to Tax in any other language, provided that the Person provides the Authority with a translated copy of any of them into Arabic at his expense and responsibility if so requested, and in accordance with the Executive Regulations to this Law.

**Part Two
Tax Registration**

Article (6) : Tax Registration, Tax De-registration and Amendments of Data related to Tax Registration

1. A non-registered Taxable Person or any other Person who has the right to register must apply for registration under the relevant provisions of the Tax Law.
2. A Registrant must:
 - a. Include his TRN in all correspondence and transactions with the Authority or with others in accordance with the provisions of the Tax Law.
 - b. Inform the Authority, in the form prepared by it, of the occurrence of any circumstance that might require the amendment of information related to his Tax record kept by the Authority, within 20 business days from the occurrence of such circumstance.

- c. Apply for de-registration in accordance with the relevant provisions of the Tax Law.
3. The Executive Regulations of this Law will specify the procedures for Tax Registration, de-registration, and amending Tax registration data with the Authority.
4. Government bodies that licence businesses shall notify the Authority within a time limit of (20) business days from the date of issuing any licence of the fact and according to the provisions of the Executive Regulations of this Law.

Article (7) : The Legal Representative

Any Person appointed as a Legal Representative of a Taxable Person or his funds or his inheritance must inform the Authority within 20 business days from the date of the appointment, and according to the procedures that will be specified in the Executive Regulations of this Law.

Part Three Tax Obligations

Article (8) : Tax Return Preparation and Submission

1. Each Taxable Person shall:
 - a) Prepare the Tax Return for each Tax Period for each Tax within the time limit of registration in accordance with the Tax Law.
 - b) Submit the Tax Return to the Authority in accordance with the provisions of this Law and the Tax Law.
 - c) Settle any Payable Tax as specified in the Tax Return or any Tax Assessment within the time frame specified in this Law and the Tax Law.
2. Any incomplete Return submitted to the Authority shall be treated as not having been accepted by it if it does not include the basic information determined by the Tax Law.
3. Each Taxable Person is responsible for the accuracy of the information and data in the Tax Return and in all his correspondence with the Authority.
4. Each Taxpayer shall settle any Administrative Penalties prescribed within the period of time specified in this Law and the Tax Law.

Article (9) : Specifying Payable Tax when Settling

1. A Taxable Person must, when paying any amount to the Authority, specify the type of Tax and the relevant Tax Period to which the amount relates; the Authority shall allocate the payment accordingly.
2. If a Taxable Person makes any payment without specifying the type of Tax or the Tax Period, the Authority shall have the right to allocate the full amount or part thereof according to the mechanism that will be specified in the Executive Regulations of this Law.

3. If a Taxable Person pays more than the Payable Tax amount, the Authority shall have the right to allocate the difference to a later Tax Period, unless such Taxable Person submits a refund application in accordance with the provisions of this Law.
4. If a Taxable Person pays less than the Payable Tax amount, the provisions of Chapter Three, Part Four of this Law shall apply.

Part Four

Voluntary Disclosure

Article (10) : Voluntary Disclosure

1. If a Taxable Person becomes aware that a Tax Return submitted by him to the Authority or a Tax Assessment sent to him by the Authority is incorrect, resulting in a calculation of Payable Tax according to the Tax Law being less than it should have been, the Taxable Person must in that event apply to correct such Tax Return by submitting a Voluntary Disclosure within the time limit specified in the Executive Regulations of this Law.
2. If a Taxpayer becomes aware that a Tax refund application that he has submitted to the Authority is incorrect, resulting in a calculation of a refund to which he is entitled according to the Tax Law being more than it should have been, he must in that event apply to rectify the Tax refund application by submitting a Voluntary Disclosure within the time limit specified in the Executive Regulations of this Law.
3. If a Taxable Person becomes aware that a Tax Return submitted by him to the Authority or a Tax Assessment sent to him by the Authority are incorrect, resulting in the calculation of Payable Tax according to the Tax Law being more than it should have been, he may in that event apply to rectify such a Tax Return by submitting a Voluntary Disclosure.
4. If a Taxpayer becomes aware that a Tax refund application that he has submitted to the Authority is incorrect, resulting in the calculation of a refund amount to which he is entitled according to the Tax Law being less than the it should have been, he may in that event apply to rectify the Tax refund application by submitting a Voluntary Disclosure.

**Chapter Three
Tax Procedures**

**Part One
Notification**

Article (11) : Methods of Notification

1. The Authority shall notify a Person of any decisions or procedures through the address stated in the correspondence between the Authority and that Person.
2. The Authority shall notify a Taxable Person through the address stated in the Tax

Return, unless the Authority is informed of a change in address by the Taxable Person, his Legal Representative or his Agent.

3. In all cases, a Person shall be treated as having been notified of any decision and as having received any correspondence if it appears that the Authority has sent the notification and correspondence according to the provisions of sections (1) and (2) of this Article.
4. The Executive Regulations of this Law shall specify the means used for Notifications and correspondence.

Part Two **Tax Agent**

Article (12) : Register of Tax Agents

A Register of Tax Agents shall be established at the Authority. For each Tax Agent there will be a file in which all matters related to his professional conduct shall be lodged.

Article (13) : Tax Agents Registration

It is not permitted for any Person to practise the profession of a Tax Agent in the State unless he is listed in the Register and licensed for this purpose by the Ministry of Economy and the competent local authority.

Article (14) : Conditions of Registration in the Register

1. Anyone listed in the Register must satisfy the following conditions:
 - a. be of good conduct and behaviour and never have been convicted of a crime or misdemeanour prejudicial to honour or honesty, notwithstanding that he may have been rehabilitated.
 - b. hold an accredited qualification from a recognised university or institute showing his specialisation and practical experience as specified in the Executive Regulations of this Law.
 - c. be medically fit to perform the duties of the profession.
 - d. hold professional indemnity insurance.
2. A Tax Agent must notify the Authority of any period during which he ceases to practise his profession as a Tax Agent if he is hindered from practicing, and he can request to resume his practice when such hindrance ceases to exist.
3. The Executive Regulations of this Law shall specify the procedures for listing a Tax Agent in the Register and the rights and obligations of the Tax Agent before the Authority and the Person.

Article (15) : Appointment of a Tax Agent

1. A Person may appoint a Tax Agent to act in his name and on his behalf with regard to his tax affairs with the Authority without prejudice to that Person's responsibility to the Authority.
2. It is not permitted for the Authority to deal with any Tax Agent regarding any Person if such Person informs the Authority that his agency engagement has ended or that the Tax Agent has been dismissed.

Article (16) : Person's Records with the Tax Agent

1. The Tax Agent must, upon the Authority's request, provide it with all the information, documents, records and data required for any Person represented by the Tax Agent.
2. The Authority may review the records of any Person available with his Tax Agent and may rely on them for the purposes of a Tax Audit, even after the expiry of the agency engagement or the dismissal of the Tax Agent.

Part Three

Tax Audits

Article (17) : The right of the Authority to perform a Tax Audit

1. The Authority may perform a Tax Audit on any Person to ascertain the extent of that Person's compliance with the provisions of this Law and the Tax Law.
2. The Authority may perform the Tax Audit at its office or the place of business of the Person subject to the Tax Audit or any other place where such Person carries on Business, stores goods or keeps records.
3. If the Authority decides to perform a Tax Audit at the place of Business of the Person subject to the Tax Audit or any other place where such Person carries on his Business, stores goods or keeps records, the Authority must inform him at least five business days prior to the Tax Audit.
4. By way of exception to section (3) of this Article, the Tax Auditor has the right of entry to any place where the Person subject to the Tax Audit carries on his Business, stores goods, or keeps records, and as the case may be it will be temporarily closed in order to perform the Tax Audit for within a time limit not exceeding 72 hours without prior notice in any of the following cases:
 - a. if the Authority has serious grounds to believe that the Person subject to the Tax Audit is participating or involved in Tax Evasion whether related to this Person or another Person;
 - b. if the Authority has serious grounds to believe that not temporarily closing the place where the Tax Audit is conducted will hinder the conduct of the Tax Audit;

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- c. if the Person who has been given advance notice of the Tax Audit under section (3) of this Article attempts to hinder the Tax Auditor's access to the place where the Tax Audit is to be performed.
5. In all cases stated in section (4) of this Article, the Tax Auditor must obtain the prior written consent of the Director General; and if the place to be accessed is a place of residence then a permit from the Public Prosecutor must also be obtained.
6. Places closed under this Article must be reopened upon the expiration of 72 hours, unless the Authority obtains a permit from the Public Prosecutor to extend the closure time limit for a similar period prior to the expiry of the preceding 72 hours.
7. A criminal case can be initiated only upon an application from the Director General.
8. The Executive Regulations of this Law shall specify the necessary procedures related to the Tax Audit.

Article (18): The Right of the Authority to Access the Original Records or Copies Thereof During a Tax Audit

While conducting a Tax Audit, the Tax Auditor may obtain original records or copies thereof, or take samples of the stock, equipment or other assets from the place at which the Person subject to the Tax Audit carries on his business or which are in his possession, or may seize them in accordance with the rules that shall be specified in the Executive Regulations of this Law.

Article (19) : Timing of the Tax Audit

A Tax Audit will be conducted during the official working hours of the Authority. In cases of necessity, a Tax Audit may be exceptionally conducted outside such hours by decision of the Director General.

Article (20) : New Information Surfacing after a Tax Audit

The Authority may audit any issue previously audited if new information surfaces that might impact the outcome of the Tax Audit, provided that the Tax Audit procedures shall apply in accordance with the provisions of this Law and its Executive Regulations.

Article (21) : Cooperation during the Tax Audit

Any Person subject to a Tax Audit, his Tax Agent or Legal Representative must facilitate and offer assistance to the Tax Auditor to enable him to perform his duties.

Article (22) : The Audited Person's Rights

The audited Person has the right to:

1. request the Tax Auditors to show their job identification cards.
2. obtain a copy of the Tax Audit Notification.

3. attend the Tax Audit which take place outside the Authority.
4. Obtain copies of any original paper or digital documents seized or obtained by the Authority during the Tax Audit, according to what is specified in the Executive Regulations of this Law.

Article (23) : Notification of the Tax Audit Results

1. The Authority must inform the Person subject to Tax Audit of the final results of the Tax Audit within the time limit and according to the procedures specified in the Executive Regulations of this Law.
2. The Person subject to the Tax Audit may view or obtain the documents and data on which the Authority based its assessment of Due Tax according to the provisions specified in the Executive Regulations of this Law.

Part Four

Tax Assessments and Administrative Penalties Assessment

Article (24) : Tax Assessments

1. The Authority shall issue a Tax Assessment to determine Payable Tax and notify the Taxable Person within five business days of its issuance, in any of the following cases:
 - a. the Taxable Person failing to apply for registration within the timeframe specified by the Tax Law.
 - b. the Registrant failing to submit a Tax Return within the timeframe specified by the Tax Law.
 - c. the Registrant failing to settle the Payable Tax stated as such on the Tax Return that was submitted within the time limit specified by the Tax Law.
 - d. the Taxable Person submitting an incorrect Tax Return.
 - e. the Registrant failing to account for Tax on behalf of another Person when he is obligated to do so under the Tax Law.
 - f. there being a shortfall in Payable Tax as a result of a Person's Tax Evasion, or as a result of a Tax Evasion in which such Person was involved.
2. The Authority shall issue an estimated Tax Assessment if it has not been possible to determine the amount of Tax deemed to be Payable Tax or the Refundable Tax that has not been due to be refunded, as the case may be.
3. The Authority may amend an estimated Tax Assessment based on new information that surface after the issue of the estimated Tax Assessment. It must notify the concerned Person of these amendments within (5) five business days from the date of amendment.
4. The Executive Regulations of this Law shall specify the information or data that must be included in the Tax Assessment.

Article (25) : Administrative Penalties Assessment

1. The Authority shall issue an Administrative Penalties Assessment for a Person and notify him within (5) five business days for any of the following violations:
 - a. the Person carrying on a Business failing to keep the required records and other information specified in this Law and the Tax Law.
 - b. the Person carrying on Business failing to submit the data, records and documents related to Tax in Arabic to the Authority when requested.
 - c. the Taxable Person failing to submit a registration application within the timeframe specified in the Tax Law.
 - d. the Registrant failing to submit a deregistration application within the timeframe specified in the Tax Law.
 - e. the Registrant failing to inform the Authority of any circumstance that requires the adjustment of the information pertaining to his tax record kept by the Authority.
 - f. the Person appointed as a Legal Representative for the Taxable Person failing to inform the Authority of his appointment within the specified timeframe, in which case the penalties will be due from the Legal Representative's own funds.
 - g. the Person appointed as a Legal Representative for the Taxable Person failing to file a Tax Return within the specified timeframe, in which case the penalties will be due from the Legal Representative's own funds.
 - h. the Registrant failing to submit the Tax Return within the timeframe specified in the Tax Law.
 - i. the Taxable Person failing to settle the Payable Tax stated in the submitted Tax Return or Tax Assessment he was notified of, within the timeframe specified in the Tax Law.
 - j. the Registrant submitting an incorrect Tax Return.
 - k. the Person voluntarily disclosing errors in the Tax Return, Tax Assessment or Refund Application pursuant to Article 10 (1) and (2) of this Law.
 - l. the Taxable Person failing to voluntarily disclose errors in the Tax Return, Tax Assessment or Refund Application pursuant to Article 10 (1) and (2) of this Law before being notified that he will be subject to a Tax Audit.
 - m. the Person carrying on a Business failing to offer the facilitation and assistance to the Tax Auditor in violation of the provisions of Article (21) of this Law.
 - n. the Registrant failing to calculate Tax on behalf of another Person when the registered Taxable Person is obligated to do so under the Tax Law.

- o. any other violation for which a resolution is issued by the Cabinet.
- 2. The Executive Regulations of this Law shall specify the information and data that must be included in the Administrative Penalties Assessment.
- 3. The Cabinet shall issue a resolution that specifies the Administrative Penalties for each of the violations listed in section (1) of this Article. Such Administrative Penalties shall be no less than 500 Dirhams for any violation and shall not exceed three times the amount of Tax in respect of which the Administrative Penalty was levied.
- 4. The imposition of any Administrative Penalty pursuant to the provisions of this Law or any other law shall not exempt any Person of his liability to settle the Due Tax in accordance with the provisions of this Law or the Tax Law.

Part Five

Penalties

Article (26) : Tax Evasion Penalties

- 1. Without prejudice to any more severe penalty applicable under any other law, a prison sentence and monetary penalty not exceeding five times the amount of evaded Tax or either of the two, shall be imposed on:
 - a. a Taxable Person who deliberately fails to settle any Payable Tax or Administrative Penalties.
 - b. a Taxable Person who deliberately understates the actual value of his Business or fails to consolidate his related Businesses with the intent of remaining below the required registration threshold.
 - c. a Person who charges and collects amounts from his clients claiming them to be Tax without being registered.
 - d. a Person who deliberately provides false information and data and incorrect documents to the Authority.
 - e. a Person who deliberately conceals or destroys documents or other material that he is required to keep and provide to the Authority.
 - f. a Person who deliberately steals, mis-uses or causes the destruction of documents or other materials that are in the possession of the Authority.
 - g. a Person who prevents or hinders the Authority's employees from performing their duties.
 - h. a Person who deliberately decreases the Payable Tax through Tax Evasion or conspiring to evade Tax.

2. The imposition of a penalty under the provisions of this Law or any other Law shall not exempt any Person from the liability to pay any Payable Tax or Administrative Penalties under the provisions of this Law or any Tax Law.
3. The competent court shall impose Tax Evasion penalties against any Person who is proven to have been directly involved or instrumental in Tax Evasion pursuant to Federal Law No. (3) of 1987 referred to.
4. Without prejudice to section (2) of this Article, any Person who is proven to have been directly involved or instrumental in Tax Evasion pursuant to section (3) of this Article shall be jointly and severally liable with the Person whom he has assisted, to pay the Payable Tax and Administrative Penalties pursuant to this Law or any other Tax Law.

**Chapter Four
Objections**

Part One

Application for Reconsideration

Article (27) : Procedures for Application for Reconsideration

1. Any Person may submit a request to the Authority to reconsider any of its decisions issued in connection with him in whole or in part provided that reasons are included, within 20 business days from him being notified of the decision.
2. The Authority shall review a request for reconsideration if it has fulfilled the requirements and issue its decision with reasons within 20 business days from receipt of such application. The Authority must inform the applicant of its decision within five business days of issuing the decision.

Part Two

Objections to the Committee

Article (28) : Tax Disputes Resolution Committee

1. One or more permanent committee shall be formed known as the “Tax Disputes Resolution Committee”, chaired by a member of the judicial authority and two expert members being persons registered on the register of Tax experts to be appointed by a decision by the Minister of Justice in coordination with the Minister.
2. A decision shall be issued by the Cabinet regarding the Committee’s code of practice rules, the remuneration of its members, and the procedures it shall follow.

Article (29) : Jurisdictions of the Committee

The Committee shall have jurisdiction to:

1. decide in respect of objections submitted regarding the Authority’s decisions on reconsiderations requests.

2. decide in respect of reconsideration requests submitted to the Authority where the Authority has not made a decision according to the provisions of this Law.
3. any other jurisdictions entrusted to the Committee by the Cabinet.

Article (30) : Procedures for Submitting Objections

1. An objection regarding the Authority's decisions on are consideration request shall be submitted within 20 business days from the date of Notification.
2. An objection submitted to the Committee shall not be accepted in the following instances:
 - a. if a reconsideration request has not been previously submitted to the Authority.
 - b. if the Tax and Penalties subject of the objection have not been settled.

Article (31) : Procedures of the Committee

1. The Committee shall review the objection submitted and make a decision within 20 business days from receipt of the objection.
2. The Committee may extend the time for making its decision for no more than additional 20 business days after the end of the time limit specified in section (1) of this Article if it sees that there are reasonable grounds for that extension in order to make a decision regarding the objection.
3. The Authority shall inform the Person submitting the objection of its decision within five business days of its issuance.
4. The Committee's decision on the objection shall be treated as final if the total amount of the Tax and Administrative Penalties due is not more than 100,000 Dirhams.
5. In no case may Tax disputes may be brought before the Competent Court if an objection has not been first submitted to the Committee.

Article (32) : Enforcement the Committee's Decision

Final decisions issued by the Committee regarding disputes which do not exceed 100,000 Dirhams shall be treated as executory instruments pursuant to this Law, while final decisions of disputes exceeding 100,000 Dirhams shall be treated as executory instruments if they are not challenged before the Competent Court within 20 business days from the date of rejection of the objection and shall be enforced through the execution judge at the Competent Court pursuant to the Civil Procedures Law in the State.

**Part Three
Challenges before Courts**

Article (33) : Challenge Procedures before Courts

1. Without prejudice to the provisions of Article (32) of this Law, the Authority and a Person may challenge any of the Committee's decisions before the Competent Court within 20 business days from the objector being notified of the Committee's decision.
2. Challenges may be made to the Competent Court in the following instances:
 - a. There being an objection to the whole or part of the decision of the Committee.
 - b. A decision not having been issued by the Committee regarding an objection submitted to it in accordance with the provisions of this Law.

**Chapter Five
Refund and Collection of Tax**

**Part One
Refund of Tax**

Article (34) : Application for Tax Refunds

A Taxpayer may apply for a refund of any Tax he has paid if he is entitled to a refund under the Tax Law and it appears that the amount he has paid is in excess of the Payable Tax and Administrative Penalties, pursuant to the procedures specified in the Executive Regulations of this Law.

Article (35) : Tax Refund Procedures

1. The Authority shall set-off the amount applied to be refunded against any other Payable Tax or Administrative Penalties due from the Taxpayer who has applied for the refund pursuant to the Tax Return or Tax Assessment issued by the Authority before refunding any amount relating to a particular tax.
2. The Authority may decline to refund the amounts mentioned in section (1) of this Article if it finds that there are other disputed Tax amounts that are due in relation to that Person or according to a decision of the Competent Court.
3. The Authority shall issue a Tax refund under this Article pursuant to the procedures and provisions specified in the Executive Regulations of this Law.

Part Two
Tax Collection

Article (36) : Collection of Payable Tax and Administrative Penalties

If a Taxable Person fails to settle any Payable Tax or Administrative Penalties within the specified timeframe under this Law and the Tax Law, the following measures shall be taken:

1. the Authority shall send the Taxable Person a notice to pay Payable Tax and Administrative Penalties within 20 business days of the date of Notification.
2. If the Taxable Person fails to make payment after the being notified pursuant to section (1) of this Article, the Director General shall issue a decision obligating the Taxable Person to settle the Payable Tax and Administrative Penalties which shall be communicated to him within five business days from the issuance of the decision accompanied by the Tax Assessment and Administrative Penalties Assessments.
3. The decision of the Director General regarding the Tax Assessment and Administrative Penalties Assessments shall be treated as an executory instrument for the purposes of enforcement through the execution judge at the Competent Court.

Part Three
Settlement and Collection of Tax and Administrative Penalties in Special Cases

Article (37) : Obligations of the Legal Representative

The Legal Representative must continue to submit the required Tax Returns to the Authority on behalf of the Taxable Person.

Article (38) : Responsibility of Settlement in the Case of a Partnership

If multiple Persons participate in a Business that does not have independent legal personality, each of them shall be jointly and severally liable towards the Authority for any Payable Tax and Administrative Penalties related to such Business.

Article (39) : Tax and Administrative Penalties Settlement in Special Cases

1. In cases of death, Payable Tax shall be paid as follows:
 - a. for Payable Tax due from a natural Person prior to the date of death, payment shall be made from the value of the elements of the inheritance or income arising thereof prior to distribution among the heirs or legatees.
 - b. if it transpires after the distribution of the inheritance that there is Payable Tax still outstanding, recourse shall be had against the heirs and legatees for payment of such outstanding tax, unless a Clearance Certificate has been obtained from the Authority for the inheritance representative or any of the heirs.

2. Payable Tax and Administrative Penalties due from a Taxable Person of missing capacity, or who is absent or missing, or a person without a known place of residence, or the like, shall be paid by their Legal Representative from the funds and assets of the Taxable Person.
3. Payable Tax and Administrative Penalties due from a Taxable Person who is an incapacitated person shall be paid by their Legal Representative from the funds and assets of the Taxable Person.

Article 40 : Settlement of Tax in Bankruptcy Case

1. The appointed Trustee shall communicate with the Authority to notify him of the Due Tax or of its intention to perform a Tax Audit for the specified Tax Period or Tax Periods.
2. The Authority shall notify the Trustee of the amount of Due Tax or of the Tax Audit within 20 business days after being notified by the Trustee.
3. The Trustee may object or appeal the estimate of the Authority or settle the Due Tax.
4. The Executive Regulations shall specify the procedures of communicating with the Authority, objection, appeal and settlement of Due Tax.

Chapter Six General Provisions

Part One Confidentiality

Article (41) : Professional Confidentiality

1. Employees of the Authority must not disclose information that they have obtained or to which they have had access to in their capacity as employees or by reason of such capacity while during their employment, save as specified or defined in accordance with the Executive Regulations of this Law.
2. In all cases provided for in section (1) of this Article, disclosure may be made only with the approval of officers authorised by the Authority's board of directors, in accordance with the Executive Regulations of this Law.
3. Employees of the Authority shall, after cessation of their employment, continue to maintain professional confidentiality, and shall not disclose information that they have obtained or to which they have had access to in their capacity as employees or by reason of such capacity, unless otherwise requested by the judicial authorities and in accordance with the Executive Regulations of this Law.
4. Any person who has obtained information pursuant to the provisions of this Law shall not disclose or use the information for any purposes other than those for which the information was obtained, without prejudice to the obligation arising from judiciary.

5. The Authority's board of directors shall issue the regulations and instructions regulating internal procedures to protect confidentiality of information within the Authority, and the obligations of the Tax Agent in this regard.

Part Two
Timeframes and Lapse of Time

Article (42) : Statute of Limitation

1. Except in cases of proven Tax Evasion or non-registration for Tax purposes, the Authority may not conduct a Tax Assessment after the expiration of five years from the end of the relevant Tax Period.
2. In case Tax Evasion is proven, the Authority may conduct a Tax Assessment within 15 years from the end of the Tax Period in which the Tax Evasion occurred.
3. In cases of non-registration for Tax purposes, the Authority may conduct a Tax Assessment within 15 years from the date on which the Taxable Person should have registered.

Article (43) : The Authority's Right to Claim

Payable Tax and Administrative Penalties of which the Taxable Person has been notified do not lapse with time and the Authority may claim them at any time.

Article (44) : Time Limit for Tax Obligations

In case a period of time is not specified for the performance of any obligations or other procedure in this Law or the Tax Law, the Authority shall grant the Taxable Person a period appropriate to the nature of the obligation or procedure of not less than five business days and not exceeding 40 business days from the date of the event resulting in the arising obligation or the conduct of the procedure.

Article (45) : Calculation of Timeframes

In all events, the following rules shall be observed when calculating time limit:

1. The day of notification or the day of occurrence of the event by reason of which the time limit began shall not form part of it.
2. If the last day of the time limit coincides with a public holiday, the time limit shall be extended to the first business day thereafter.

Article (46) : Reduction of or Exemption from Administrative Penalties

If the Authority imposes an Administrative Penalty on any Person for a violation of the provisions of this Law or the Tax Law, the Authority may reduce or exempt the Person from such Administrative Penalty if the Person produces evidence justifying the reason for his

failure to comply, pursuant to the provisions specified in the Executive Regulations of this Law.

Article (47) : Calendar

Time limits and due dates provided for in this Law and the Tax Law shall be calculated according to the Gregorian calendar.

**Part Three
Closing Provisions**

Article (48) : Proof of Accuracy of Data

The burden of proving the accuracy of the Tax Return falls upon the Taxable Person, and the burden of proving cases of Tax Evasion falls upon the Authority.

Article (49) : Conflict of Interest

All Authority staff members are prohibited from performing or participating in any tax procedures related to any Person in the following cases:

1. The member of staff and that Person being related up to the fourth degree.
2. There being a common interest between the member of staff and Person or between any of their relatives up to the third degree.
3. The Director General deciding that the member of staff should not perform any tax procedures related to that Person owing to a case of conflict of interest.

Article (50) : Judicial Officers

The Director General and Tax Auditors appointed by a decision from the Minister of Justice in agreement with the Minister shall have the capacity of Judicial Officers in recording violations of the provisions of this Law, the Tax Law or decisions issued in implementation thereof.

Article (51) : Authority Fees

The Cabinet shall, according to a suggestion by the Minister, issue a decision specifying the fees due in implementation of the provisions of this Law and its Executive Regulations.

Article (52) : Repeal of Conflicting Provisions

All provisions contrary to or in conflict with the provisions of this Law are repealed.

Article (53) : Executive Regulations

The Cabinet shall, according to a suggestion by the Minister, issue the Executive Regulations of this Law within 6 months of the issuance of this Law.

Article (54) : Publication and Coming into Force of this Law

This Law shall be published in the Official Gazette and shall come into force 30 days from the date of publication.

Khalifa bin Zayed Al Nahyan

President of the United Arab Emirates

Issued by us at the Presidential Palace in Abu Dhabi on: 16 Ramadan 1438H

Corresponding to: 11 June 2017

Note: *The above translated version law has been taken from the website of Ministry of Finance, United Arab Emirates, which states that it is unofficial translation.*

Annexure C

FAQ by Ministry of Finance, UAE

These responses to FAQs are intentionally simplified. If you are seeking more detailed information we recommend that you wait for further policy announcements by the Ministry of Finance (MoF) or take professional advice in the meantime. We have put next to information that is not in the public domain

- General Questions
- VAT for Businesses
- VAT for Tourists and Visitors
- UAE VAT Frequently Asked Questions (FAQs)
- Other Questions

1 General Questions

1.1 What is Tax?

Tax is the means by which governments raise revenue to pay for public services. Government revenues from taxation are generally used to pay for things such public hospitals, schools and universities, defence and other important aspects of daily life.

There are many different types of taxes:

- A direct tax is collected by government from the person on whom it is imposed (e.g., income tax, corporate tax).
- An indirect tax is collected for government by an intermediary (e.g. a retail store) from the person that ultimately pays the tax (e.g., VAT, Sales Tax).

1.2 What is VAT?

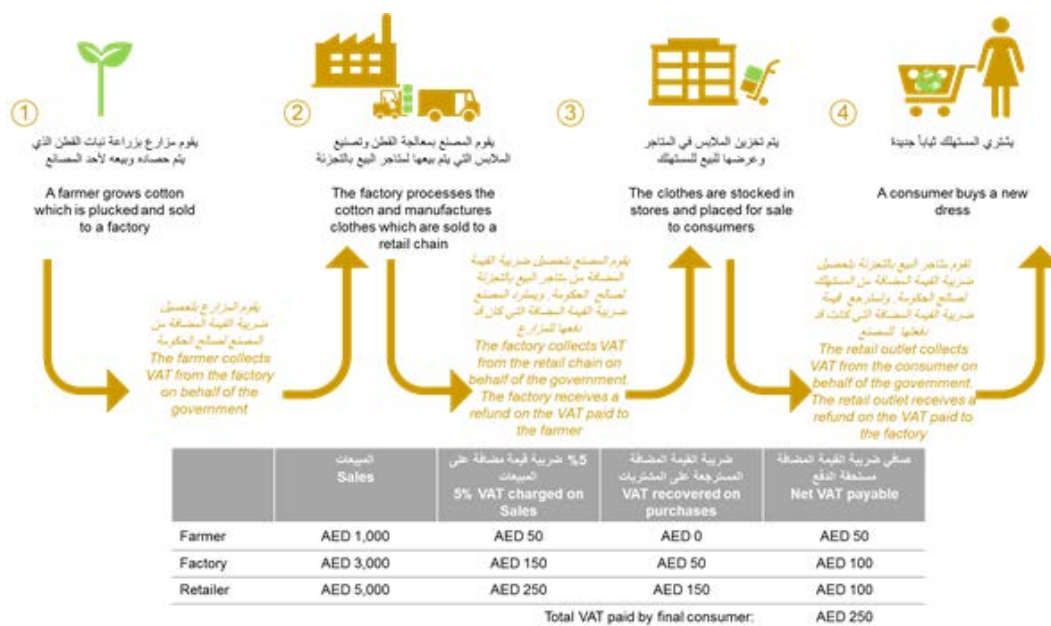
Value Added Tax (or VAT) is an indirect tax. Occasionally you might also see it referred to as a type of general consumption tax. In a country which has a VAT, it is imposed on most supplies of goods and services that are bought and sold.

VAT is one of the most common types of consumption tax found around the world. Over 150 countries have implemented VAT (or its equivalent, Goods and Services Tax), including all 29 European Union (EU) members, Canada, New Zealand, Australia, Singapore and Malaysia.

VAT is charged at each step of the 'supply chain'. Ultimate consumers generally bear the VAT cost while Businesses collect and account for the tax, in a way acting as a tax collector on behalf of the government.

A business pays the government the tax that it collects from the customers while it may also

receive a refund from the government on tax that it has paid to its suppliers. The net result is that tax receipts to government reflect the 'value add' throughout the supply chain. To explain how VAT works we have provided a simple, illustrative example below (based on a VAT rate of 5%):



النتج الصافي = يتم تحصيل ضريبة القيمة المضافة من خلال سلسلة التوريد ويتحمل المستهلك النهائي التكلفة
 Net result = VAT is collected through the chain and the end-consumer bears the cost

1.3 What is the difference between VAT and Sales Tax?

A sales tax is also a consumption tax, just like VAT. For the general public there may be no observable difference between how the two types of taxes work, but there are some key differences. In many countries, sales taxes are only imposed on transactions involving goods. In addition, sales tax is only imposed on the final sale to the consumer. This contrasts with VAT which is imposed on goods and services and is charged throughout the supply chain, including on the final sale. VAT is also imposed on imports of goods and services so as to ensure that a level playing field is maintained for domestic providers of those same goods and services.

Many countries prefer a VAT over sales taxes for a range of reasons. Importantly, VAT is considered a more sophisticated approach to taxation as it makes businesses serve as tax collectors on behalf of the government and cuts down on misreporting and tax evasion.

1.4 Why is the UAE implementing VAT?

The UAE Federal and Emirate governments provide citizens and residents with many different public services – including hospitals, roads, public schools, parks, waste control, and police services. These services are paid for from the government budgets. VAT will provide our

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country with a new source of income which will contribute to the continued provision of high quality public services into the future. It will also help government move towards its vision of reducing dependence on oil and other hydrocarbons as a source of revenue.

1.5 Why does the UAE need to coordinate VAT implementation with other GCC countries?

The UAE is part of a group of countries which are closely connected through “The Economic Agreement Between the GCC States” and “The GCC Customs Union”. The GCC group of nations have historically worked together in designing and implementing new public policies as we recognize that such a collaborative approach is best for the region.

1.6 When will the VAT go into effect and what will be the rates?

VAT will be introduced across the UAE on 1 January 2018 at a standard rate of 5%.

1.7 How will the government collect VAT?

Businesses will be responsible for carefully documenting their business income and costs and associated VAT charges. Registered businesses and traders will charge VAT to all of their customers at the prevailing rate and incur VAT on goods / services that they buy from suppliers. The difference between these sums is reclaimed or paid to the government.

1.8 Will VAT cover all products and services?

VAT, as a general consumption tax, will apply to the majority of transactions of goods and services unless specifically exempted or excepted by law.

1.9 Will the cost of living increase?

The cost of living is likely to increase slightly, but this will vary depending on the individual's lifestyle and spending behaviour. If your spending is mainly on those things which are relieved from VAT, you are unlikely to see any significant increase.

1.10 What measures will the government take to ensure that businesses don't use the VAT implementation as an excuse to increase prices?

VAT is intended to help improve the economic base of the country. Therefore, we will include rules that require businesses to be clear about how much VAT you are paying for each transaction. You will have the required information to decide whether to buy something or not.

1.11 How can one object to the decisions of the Authority?

Any person will be able to object a decision of the Federal Tax Authority.

As a first step, the person shall request the FTA to reconsider its decision. Such request of reconsideration has to be made within 20 business days from the date the person was notified of the original decision of the FTA, and the FTA will have 20 business days from receipt of such application to provide its revised decision.

If the person is not satisfied with the revised decision of the FTA, it will be able to object to the Tax Disputes Resolution Committee which will be set up for these purposes. Objections to the

Committee will need to be submitted within 20 business days from the date the person was notified of the FTA's revised decision, and the person must pay all taxes and penalties subject of objection before objecting to the Committee. The Committee will typically be required to give its decision regarding the objection within 20 business days from its receipt.

As a final step, if the person is not satisfied with the decision of the Committee, the person may challenge its decision before the competent court. The appeal must be made within 20 business days from the date of the appellant being notified of the Committee's decision

2. VAT for Businesses

2.1 Who can or will be able to register for VAT?

A business must register for VAT if their taxable supplies and imports exceed the mandatory registration threshold of AED 375,000.

Furthermore, a business may choose to register for VAT voluntarily if their supplies and imports are less than the mandatory registration threshold, but exceed the voluntary registration threshold of AED 187,500.

Similarly, a business may register voluntarily if their expenses exceed the voluntary registration threshold. This latter opportunity to register voluntarily is designed to enable start-up businesses with no turnover to register for VAT.

2.2 What are the VAT-related responsibilities of businesses?

All businesses in the UAE will need to record their financial transactions and ensure that their financial records are accurate and up to date. Businesses that meet the minimum annual turnover requirement (as evidenced by their financial records) will be required to register for VAT. Businesses that do not think that they should be VAT registered should maintain their financial records in any event, in case we need to establish whether they should be registered.

VAT-registered businesses generally:

- must charge VAT on taxable goods or services they supply;
- may reclaim any VAT they've paid on business-related goods or services;
- keep a range of business records which will allow the government to check that they have got things right

If you're a VAT-registered business you must report the amount of VAT you've charged and the amount of VAT you've paid to the government on a regular basis. It will be a formal submission and it is likely that the reporting will be made online.

If you've charged more VAT than you've paid, you have to pay the difference to the government. If you've paid more VAT than you've charged, you can reclaim the difference.

2.3 What does a business need to do to prepare for VAT?

Concerned businesses will have time to prepare before VAT will come into effect in January

2018. During that time, businesses will need to meet requirements to fulfil their tax obligations. Businesses could start now so that they will be ready later. To fully comply with VAT, We believe that businesses may need to make some changes to their core operations, their financial management and book-keeping, their technology, and perhaps even their human resource mix (e.g., accountants and tax advisors). It is essential that businesses try to understand the implications of VAT now and once the legislation is issued make every effort to align their business model to government reporting and compliance requirements. We will provide businesses with guidance on how to fully comply with VAT once the legislation is issued. The final responsibility and accountability to comply with law is on the business.

2.4 When are businesses supposed to start registering for VAT?

VAT will come into force on 1 January 2018. Any business that is required to be registered for VAT and charge VAT from 1 January 2018 must be registered prior to that date.

To enable businesses to prepare for introduction of VAT and comply with this registration obligation in time, the electronic registrations will be open for VAT from the third quarter of 2017 on a voluntary basis and a compulsory basis from the final quarter of 2017 for those that choose not to register earlier. This will ensure that there is no last minute rush from businesses to register for VAT before the deadline.

2.5 When are registered businesses required to file VAT returns?

Taxpayers must file VAT returns with the FTA on a regular basis (quarterly or for a shorter period, should the FTA decide so) within 28 days from the end of the tax period in accordance with the procedures specified in the VAT legislation. The Tax returns shall be filed online using eServices.

2.6 What kind of records are businesses required to maintain, and for how long?

Businesses will be required to keep records which will enable the Federal Tax Authority to identify the details of the business activities and review transactions. The specifics regarding the documents which will be required and the time period for keeping them will be stated in the relevant legislation.

2.7 How long must a taxable person retain VAT invoices for?

Any taxable person must retain VAT invoices issued and received for a minimum of 5 years.

2.8 How should a business determine the place of supply?

The place of supply will determine whether a supply is made within the UAE (in which case the UAE VAT law will apply), or outside the UAE for VAT purposes.

For a supply of goods, the place of supply should be the location of goods when the supply takes place with special rules for certain categories of supplies (e.g. water and energy, cross border supplies).

For the supply of services, the place of supply should be where the supplier is established with special rules for certain categories of supplies (e.g. cross border supplies between businesses).

2.9 Can businesses offset customs duty against VAT payments?

VAT shall be payable in addition to the custom duties paid by the importer of the goods and cannot be deducted. VAT shall be computed on the value that includes the customs duties.

2.10 How will real estate be treated?

The VAT treatment of real estate will depend on whether it is a commercial or residential property.

Supplies (including sales or leases) of commercial properties will be taxable at the standard VAT rate (i.e 5%).

On the other hand, supplies of residential properties will generally be exempt from VAT. This will ensure that VAT would not constitute an irrecoverable cost to persons who buy their own properties. In order to ensure that real estate developers can recover VAT on construction of residential properties, the first supply of residential properties within 3 years from their completion will be zero-rated.

2.11 What sectors will be zero rated?

VAT will be charged at 0% in respect of the following main categories of supplies:

- Exports of goods and services to outside the GCC;
- International transportation, and related supplies;
- Supplies of certain sea, air and land means of transportation (such as aircrafts and ships);
- Certain investment grade precious metals (e.g. gold, silver, of 99% purity);
- Newly constructed residential properties, that are supplied for the first time within 3 years of their construction;
- Supply of certain education services, and supply of relevant goods and services;
- Supply of certain Healthcare services, and supply of relevant goods and services.

2.12 What sectors will be exempt?

The following categories of supplies will be exempt from VAT:

- The supply of some financial services (clarified in VAT legislation);
- Residential properties;
- Bare land; and
- Local passenger transport

2.13 Will there be VAT grouping?

Businesses that satisfy certain requirements covered under the Legislation (such as being

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resident in the UAE and being related/associated parties) will be able to register as a VAT group. For some businesses, VAT grouping will be a useful tool that would simplify accounting for VAT.

2.14 Will there be bad debt relief?

VAT registered businesses will be able to reduce their output tax liability by the amount of VAT that relates to bad debt which has been written off by the VAT registered business. The legislation will include the conditions and limitations concerning the use of this relief.

2.15 Will there be a margin scheme?

To avoid double taxation where second hand goods are acquired by a registered person from an unregistered person for the purpose of resale, the VAT-registered person will be able to account for VAT on sales of second hand goods with reference to the difference between the purchase price of the goods and the selling price of the goods (that is, the profit margin). The VAT which must be accounted for by the registered person will be included in the profit margin. The legislation will include the details of the conditions to be met in order to apply this mechanism.

2.16 How will partial exemption work?

Where a VAT registered person incurs input tax on its business expenses, this input tax can be recovered in full if it relates to a taxable supply made, or intended to be made, by the registered person. In contrast, where the expense relates to a non-taxable supply (e.g. exempt supplies), the registered person may not recover the input tax paid.

In certain situations, an expense may relate to both taxable and non-taxable supplies made by the registered person (such as activities of the banking sector). In these circumstances, the registered person would need to apportion input tax between the taxable and non-taxable (exempt) supplies.

Businesses will be expected to use input tax (ratio of recoverable to total) as a basis for apportionment in the first instance although there will be the facility to use other methods where they are fair and agreed with the Federal Tax Authority.

2.17 What are the cases that would lead to the imposition of penalties?

Penalties will be imposed for non-compliance.

Examples of actions and omissions that may give rise to penalties include:

- A person failing to register when required to do so;
- A person failing to submit a tax return or make a payment within the required period;
- A person failing to keep the records required under the issued tax legislation;
- Tax evasion offences where a person performs a deliberate act or omission with the intention of violating the provisions of the issued tax legislation.

2.18 Will there be any special schemes for SMEs?

No special rules are planned for small or medium sized enterprises. However, the FTA will provide materials and resources available for these entities to assist them in their enquiries.

2.19 Will there be transitional rules?

Special rules will be provided to deal with various situations that may arise in respect of supplies that span the introduction of VAT. For example:

- Where a payment is received in respect of a supply of goods before the introduction of VAT but the goods are actually delivered after the introduction of VAT, this means that VAT will have to be charged on such supplies. Likewise, special rules will apply with regards to supplies of services spanning the introduction of VAT.
- Where a contract is concluded prior to the introduction of VAT in respect of a supply which is wholly or partly made after the introduction of VAT, and the contract does not contain clauses relating to the VAT treatment of the supply, then consideration for the supply will be treated as inclusive of VAT. There will, however, be special provisions to allow suppliers to charge VAT in situations where their recipient is able to recover their VAT but where there is no VAT clause.

2.20 How will insurance be treated?

Generally, insurance (vehicle, medical, etc) will be taxable. Life insurance, however, will be treated as an exempt financial service.

2.21 How will financial services be treated?

It is expected that fee based financial services will be taxed but margin based products are likely to be exempt.

2.22 How will Islamic finance be treated?

Islamic finance products are consistent with the principles of sharia and therefore often operate differently from financial products that are common internationally.

To ensure that there are no inconsistencies between the VAT treatment of standard financial services and Islamic finance products, the treatment of Islamic finance products will be aligned with the treatment of similar standard financial services.

2.23 Can UAE nationals claim VAT?

A scheme will be introduced to allow a UAE national who is not registered for VAT to reclaim VAT paid on goods and services relating to constructing a new residence which will be privately used by the person and his family. This will allow the recovery of VAT on such expenses as contractor's services and building materials.

2.24 How quickly will refunds be released?

Refunds will be made after the receipt of the application and subject to verification checks, with a particular focus on avoiding fraud.

2.25 Will FTA issue rulings or provide tax advice?

In the course of its interaction with taxpayers, the FTA may provide its views on various matters in the law. Taxpayers may choose to challenge these views. It should be noted that penalties may be imposed on taxpayers who are found to violate any tax laws and regulations.

2.26 Will it be possible to issue cash receipts instead of VAT invoices?

A supplier registered or required to be registered for VAT must issue a valid VAT invoice for the supply. To be considered as a valid VAT invoice, the document must follow a specific format as mentioned in the legislation. In certain situations the supplier may be able to issue a simplified VAT invoice. The conditions for the VAT invoice and the simplified VAT invoice are mentioned in the legislation.

2.27 Will there be any VAT that businesses are not allowed to claim?

VAT will not be deductible in respect of expenses incurred for making non-taxable supplies. Furthermore, input tax cannot be deducted if it is incurred in respect of specific expenses such as entertainment expenses e.g. employee entertainment.

2.28 Under which conditions will businesses be allowed to claim VAT incurred on expenses?

VAT on expenses that were incurred by a business can be deducted in the following circumstances:

- The business must be a taxable person (the end consumer cannot claim any input tax refund).
- VAT should have been charged correctly (i.e. unduly charged VAT is not recoverable).
- The business must hold documentation showing the VAT paid (e.g. valid tax invoice).
- The goods or services acquired are used or intended to be used for making taxable supplies.
- VAT input tax refund can be claimed only on the amount paid or intended to be paid before the expiration of 6 months after the agreed date for the payment of the supply.

2.29 Will non-residents be required to register for VAT?

Non-residents that make taxable supplies in the UAE will be required to register for VAT unless there is any other UAE resident person who is responsible for accounting for VAT on these supplies. This exclusion may apply, for example, where a UAE business is required to account for VAT under a reverse charge mechanism in respect of a purchase from a non-resident.

2.30 Will VAT be paid on imports?

VAT is due on the goods and services purchased from abroad.

In case the recipient in the State is a registered person with the Federal Tax Authority for VAT purposes, VAT would be due on that import using a reverse charge mechanism.

In case the recipient in the State is a non-registered person for VAT purposes, VAT would be paid on import of goods from a place outside the GCC. Such VAT will typically be required to be paid before the goods are released to the person.

2.31 How will Government Entities be treated for VAT purposes?

Supplies made by government entities will typically be subject to VAT. This will ensure that government entities are not unfairly advantaged as compared to private businesses.

Certain supplies made by government entities will, however, be excluded from the scope of VAT if they are not in competition with the private sector or where the entity is the sole provider of such supplies. It is likely certain government entities will be entitled to VAT refunds – this is designed to avoid budgeting issues and provide a level playing field between outsourced and insourced activities.

For the supplies provided for government entities, the treatment of such supplies shall depend on the same supply and not on the recipient of the supply. Therefore, if the supply is subject to the standard tax rate, the treatment would remain the same even if it is provided to a government entity.

2.32 Will Businesses have to report on their business in each of the Emirates?

It is expected that businesses will need to complete additional information on their VAT returns to report revenues earned in each Emirate. Guidance will be provided to businesses with regards to this.

It is expected that the rules will be relatively straightforward for most businesses and will be based, for example, for B2C transactions, on the location of the transaction (e.g. in a retail environment, the location of the shop).

2.33 Will the goods exempt from customs duties also be exempt from VAT?

Not necessarily. Some goods that are imported may be exempt from customs duties but subject to VAT.

3. VAT for Tourists and Visitors

3.1 Will tourists also pay VAT?

Yes, tourists are a significant source of revenue for the UAE and will pay VAT at the point of sale. Nevertheless, we have set the VAT rate deliberately low so that VAT is a limited burden on all consumers.

3.2 Will visiting businesses be able to reclaim VAT?

It is intended that we will allow foreign businesses to recover the VAT they incur when visiting

the UAE. This is important as it encourages them to do business and also, because a lot of other countries have VAT systems, it protects the ability of UAE businesses to recover VAT when visiting other countries (where the rates are a lot higher).

4. UAE VAT Frequently Asked Questions (FAQs)

4.1 How can someone access UAE Tax Law?

Tax Laws and the related Executive Regulations will be published as soon as issued,

5. Other Questions

5.1 What other taxes is the UAE considering?

As per global best practice, the UAE is exploring other tax options as well. However, these are still being analysed and it is unlikely that they will be introduced in the near future. The UAE is not currently considering personal income taxes, however.

5.2 Will this impact economic growth of the UAE?

Our analysis suggests that it will help the country strengthen its economy by diversifying revenues away from oil and will allow us to fund many public services. This is a sign of a maturing economy.

5.3 Where can I learn more about the UAE's plan to implement VAT?

The government has launched an awareness and education campaigns to educate UAE residents, businesses, and other impacted groups. Our aim is to help everyone understand what VAT is, how it works, and what businesses will need to do to comply with the law.

As part of its awareness campaign, the Ministry of Finance has launched the first phase of the awareness sessions during the period from March till May 2017. These sessions were held in the different Emirates.

We will also set up a website where you can find information to understand the new tax in detail.

A telephone hotline has been set up so that you can call and speak to one of our employees directly on 600599994.

5.4 Changing my business systems for VAT reporting will cost money. Can the government help?

When VAT is introduced, the government will provide information and education to businesses to help them make the transition. The government will not pay for businesses to buy new technologies or hire tax specialists and accountants. That is the responsibility of each business. We will, however, provide guidance and information to assist you and we are giving businesses time to prepare.

5.5 What are the penalties for not complying with a business's VAT responsibilities?

Everyone is urged to fully comply with their VAT responsibilities. The government is currently in the process of defining the exact fees and penalties for non-compliance.

Administrative penalties for violations will be decided by Cabinet and announced after issuance. There will be further penalties decided by Courts in the case of tax evasion.

For any further enquiries, please send us an email on info@tax.gov.ae

Note: *The above translated version has been taken from the website of Ministry of Finance, United Arab Emirates, which states that it is unofficial translation.*