

TAX NEWSLETTER

Monthly Updates on Tax

IN THIS EDITION

UAE Federal Tax Authority ("FTA") Revises the Vat rules regarding "Designated zones"

FTA issued Cabinet decision No. 88 of 2021 amending the executive regulations of the UAE VAT law effective from 30th Oct 2021. In order to avoid double taxation on goods supplied from a designated zone ("DZ"), and to provide registration relief to non-resident suppliers who also ship or deliver these goods, Article 51 of the VAT executive regulations has been amended. Further, FTA also issued a public clarification (VAT P027) to provide guidance on goods supplied in a Designated zone and connected shipping or delivery services.

- UAE - FTA revises the VAT rules regarding "Designated zones"
- UAE VAT update - FTA has updated their list of Designated zones.
- UAE - Upcoming ESR timelines.
- Bahrain VAT update - Obsolete Stock Procedures.
- KSA VAT Update - Date of supply.
- KSA - VAT Guideline for Electronic Commerce (E-Commerce).

Below are the key highlights of VAT P027 Clarification:

Qualifying goods:

The supply of goods in the designated zone as outside the scope of UAE VAT if the goods are consumed outside the designated zone, provided evidence is obtained and retained that the goods were delivered to a place outside the UAE; or VAT was paid on the importation of those goods into the UAE.

As a general rule goods supplied in Designated Zone (as per FTA approved list of designated zones) will be considered as supply outside scope of UAE vat, however if these goods are intended consumed in UAE, then it will be considered as supplied in UAE and normal vat rule will apply.

The resale of purchased goods is not treated as consumption of the goods, if purchaser intends to sell them

Place of supply of goods will be considered as being outside the UAE if it satisfies any of the following conditions :

A. If goods are used in production (incorporated/attached to/become part of/ are) of another good within designated zone, for this exclusion :

- There has to be direct connection between purchased goods and final product after production.
- And that final product should not be supplied to be consumed.

B. If goods are delivered to a place outside UAE and company keeps custom evidence along with the official and commercial evidence. For this exclusion:

- Goods have to move from DZ to Outside UAE
- Custom Documents showing movement of goods should be obtained and kept in record
- The supplier should retain commercial or official evidence that the goods were delivered to a place outside the UAE.

C. Goods are moved from DZ to UAE mainland - in this case where goods will be moved from DZ to be delivered in UAE, consumption would generally be regarded as taking place in UAE and further VAT would be levied on import of goods, resulting in potential double taxation. Hence, executive regulations have amended for place of supply for this transaction to be considered as outside the UAE if certain requirements are met. For this exclusion:

- Goods has to move from DZ to be delivered in the UAE; and
- The supplier should retain official evidence (stamped import declarations issued by customs) that the goods were imported; and
- Evidence that VAT has been paid on that import.

Shipping and delivery services

As a general rule place of supply any service will be UAE even supply is made in Designated zone, however as per amendment in Executive regulation shipping or delivery services supplied directly related to "Qualifying Goods" will be outside the scope of UAE VAT if the following conditions are fulfilled:

A. Shipping or delivery services are supplied by the same supplier of the Goods.

B. The supplier of the Goods is a Non-Resident, and not registered for VAT in UAE;

C. These Goods are sold via an Electronic Sales Platform.

D. The supplier of the goods is not the person owning the electronic sales platform.

Due to this amendment, Non-Resident suppliers who are not registered for VAT will not be required to register if they only sell the goods to which the abovementioned exceptions apply, on an electronic sales platform, and they ship or deliver these goods to customers.



In above cases it is the responsibility of the supplier to ensure that it treats a supply correctly in their VAT return and obtains and keeps all the necessary documents in record.

If any of the above conditions are not met and proof are not kept in record in such case transaction will be treated as within the scope of UAE VAT and subject to 5% VAT (unless qualifies for zero-rating).

UAE VAT update - FTA has updated their list of Designated zones

Federal Tax Authority of UAE has updated the Designated Zones list. There is a new freezone added to the list and some freezones have been removed.

Freezone, which has been added to the list, is:

- Dubai Commerce City (w.e.f 1st Jan 2021)

Freezones, which have been removed from the list, are:

- Dubai Textile City (w.e.f 5th Apr 2021)
- Free Zone Area in Al Quoz.(w.e.f 2nd July 2021)
- RAK Airport freezone (w.e.f 5th July 2021)



UAE Economic substance regulations – Compliance Timelines

Economic substance regulations (ESR) compliance is to be done for every financial year.

All UAE companies are required to do assessment of their activities and transactions for each financial year and determine if they conduct any of the nine ESR relevant activities during that year. And, accordingly action needs to be taken for the filing requirements on the portal of UAE Ministry of finance (MOF).



Financial Year-End	ESR Notification Deadline	ESR Report Deadline
31st Dec 2020	30th June 2021 <small>(Already Passed)</small>	31st Dec 2021
31st Mar 2021	30th sept 2021 <small>(Already Passed)</small>	31st Mar 2022
30th June 2021	31st Dec 2021	30th Jun 2022
30th Sept 2021	31st Mar 2022	30th Sep 2022
31st Dec 2021	30th Jun 2022	31st Dec 2022

ESR notification is required to be submitted within 6 months of the financial year-end.

ESR report is required to be submitted within 12 months of the financial year-end.

Below are the details of the upcoming timelines:

Companies should carefully determine their ESR filing obligations and do the submissions within the required timelines. Otherwise there are penalties (AED 20,000 for failure to submit notification and AED 50,000 for failure to submit report) involved for compliance failure.

Bahrain VAT update - Obsolete Stock Procedures

The National Bureau for Revenue (NBR) in Bahrain has revised their obsolete stock procedures for VAT purposes. The revised procedure is effective from 3rd October 2021.

Below are the key highlights:

- Where a taxpayer disposes of obsolete stock for no consideration, he will not be regarded as having made a supply of goods for VAT purposes and will not be required to account for output tax on the stock. Further, no adjustment will be required on any input tax claimed on such stock.
- Previously, taxpayers were required to give at least 30 days advance notice to the NBR of their intention to dispose of obsolete stock in order for this treatment to apply. However, as per the revised procedure, taxpayers will no longer be required to submit an advance notice to the NBR prior to disposing of obsolete stock for their input tax deduction eligibility.

- Taxpayers are also required to maintain all relevant records and documents to evidence the proper disposal of obsolete stock as per Bahraini law. Further, the details of the obsolete stock such as description, purchase price, input claimed, reason for considering the stock as obsolete, method of disposal, write-off in company accounts, should also be kept in the records.



Kingdom of Saudi Arabia VAT Update

Zakat, Tax and Customs Authority (ZATCA) has recently approved the amendment to the provisions of Article No. 20 (“Date of supply in specific circumstance”) of the Value-Added Tax (VAT) Executive Regulations regarding determining the date of supply and tax due in case of services that are carried out by establishments contracting with government agencies in accordance with the new government tenders and procurement law. This amendment will be effective from November 1, 2021



As per existing provision the establishments contracting with government agencies were reporting the tax due on the claims submitted to government agencies earlier of:

- i. The date the supply was actually made; or
- ii. Date of issuing an invoice or a claim to the government agency; or
- iii. Date on which the consideration for the supply was received in whole or in part

According to the amendment date of supply will be considered as earliest of:

- i. Date of issuing the payment order related to taxable supplies according to the government competition and procurement procedures; or
- ii. The date of receiving the consideration for the supply or part of it

Main aim for this amendment is to facilitate taxpayer’s compliance and also improve their cash flows. ZATCA has also issued a guide to clarify the amendments under Article 20.



VAT Guideline for Electronic Commerce (E-Commerce) in Kingdom of Saudi Arabia (KSA)

Recently the Zakat, Tax and Customs Authority ("ZATCA") published a guide on E-Commerce, which explains the VAT implications for businesses operating within the e-commerce sector.

The guide includes determining the VAT implications, place of supply and responsibility to account for VAT on e-commerce sales made to customers in KSA.

There are detailed explanations in the guide for:

- VAT implications in case of online portal acting in Principal's name "disclosed agent"
- VAT implications in case of online portal acting in its own name "Undisclosed agent"
- VAT implications in case of online portal acting on behalf of a non-resident supplier.
- Invoicing requirements in case of disclosed agent vs undisclosed agent.
- Place of supply rules for orders fulfilled from KSA and outside KSA.
- VAT treatment for various scenarios related to supplies of electronic services.

Further, the guide covers interesting points on Special cases – Sharing economy. Some of the business models discussed are as below:

1. Land Transportation services and ride sourcing applications:

In this case platform arrange driver based on the customer's pick-up and Drop up location. Here pricing of the transportation is decided by platform and during the peak time they can increase the price and notify the customer before acceptance. In this case, platform works act as Principal and take a service from driver registered on platform for a request made by end customer on the platform and payments collected by platform. Accordingly Platform is required to charge a VAT on full amount received from end customer.

2. Food Delivery Applications: They provide two different kind of services and their treatment depend upon services:

- Connection services with restaurants - Application will not be considered as principal in this case as the name of the restaurant is visible to the end consumer. Restaurant is free to change menus and prices, accordingly. Hence in this case restaurant's are required to charge VAT on food supplied, and application is required to charge on VAT to its delivery fee or commission etc charged.
- Connection services with drivers - the application will be considered as a Principal in this transaction, and must disclose the whole delivery value as a revenue in its VAT return, in case principal's indicators applied.

3. Telecommunication Providers: direct carrier billing: In this case Third party allows users to make purchases of digital products by charging payments to their mobile phone bill, here telecommunication Provider will collect the payment from end customer and send it over to third party for digital product generally after deduction their commission for payment processing services or payment collection services. Accordingly, third party is liable to charge a VAT on whole amount and Telecommunication provider is liable to charge VAT on their services only.

If the telecommunications provider acts in its own name as principal and purchase digital content from third party and sell it to end customer, the it is considered the supplier for VAT purposes and responsible for reporting VAT on the sale of the app to the customer in its VAT return.

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