

Executive Regulations of Federal Decree-Law No 8 of 2017 on Value Added Tax

November 2017

In brief

Following the publication of the Value Added Tax Law ("VAT Law") by Federal Decree-Law No. (8) of 2017, the UAE Ministry of Finance ("MoF") has released the VAT Executive Regulations, approved by Cabinet Decision No (52) of 2017 ("VAT Regulations").

The main features and principles of the VAT system are provided in the VAT Law while the specific details of application are provided in the VAT Regulations. With the VAT implementation date confirmed to be 1 January 2018, the release of the VAT Regulations is welcome and constitutes an essential step for the readiness of the UAE businesses.

In detail

The Federal Tax Authority ("FTA") have opened its online portal since the beginning of October to enable taxpayers to register for VAT purposes. The VAT Regulations will help them to proceed with their implementation to be ready to comply with the VAT requirements by 1 January 2018.

This alert seeks to give an overview of these long awaited details. For access to the VAT Law and Regulations, please visit the Ministry of Finance website link below:

<https://www.mof.gov.ae/En/lawsAndPolitics/CabinetResolutions/Pages/CabinetDecisionNo52OF2017.aspx>.

Snapshot of what businesses need to know about VAT compliance

Go-live date: 1st January

2018 - at the time of the opening of the business but no later than 7am

Registration – Deadlines

Before 1 January 2018:

The FTA already communicated that businesses qualifying for mandatory VAT registration and required to be registered for VAT by 1st January 2018 will have to apply before that day, as per the following:

31 October 2017:

Businesses with an annual turnover exceeding AED 150m

30 November 2017:

Businesses with an annual turnover between AED 10m and AED 150m

4 December 2017: All other businesses qualifying for mandatory VAT registration

After 1 January 2018:

30 Days: Businesses qualifying for mandatory VAT registration and

required to register for VAT at a later date after 1st January 2018 will have to apply for registration within 30 days of becoming required to register. FTA may issue an automatic VAT registration and penalties if it believes that a person is required to register but has not applied within the set deadline.

20 Days: The FTA is required to notify their decision with regards to a VAT group registration application within 20 business days. If no decision is issued within this deadline, applicants will be able to consider the application as accepted.

It is also the time limit to apply for de-registration when a Taxable Person ceases to meet the requirements to be registered for VAT (20 business days). FTA may issue a de-registration notice when it believes that the Taxable Person is required to de-register but

has not done so within the set deadline.

20 business days is also the time limit for the representative member of a VAT group to notify FTA that a member of the VAT group is no longer eligible to be part of it.

10 Days: Businesses making supplies which are subject to VAT at 0% (zero-rated) and have previously been approved by the FTA to be exempted from VAT registration, are required to apply for VAT registration if they subsequently make any taxable supply or import subject to VAT at 5%. They must register within 10 business days of the date of the taxable supply or import.

It is also the time required for the FTA to notify its decision to de-register or amend a VAT group (10 business days).

VAT returns – Tax Periods and submission deadline

Details to be reported in the VAT return are listed under Article 64.5 of the VAT Regulations. Furthermore, the applicable tax period for each taxpayer will be stipulated in the VAT registration certificate issued by the FTA.

Quarterly: The standard filing or “Tax period” for a VAT return, unless otherwise stipulated by the FTA – 4 VAT returns per Tax year

Monthly: The FTA may assign a monthly Tax period, most likely for “large taxpayers” – 12 VAT returns per Tax year

Annually: The FTA may assign a yearly Tax Period, most likely to be used for “small payers” – 1 VAT return per Tax year

Tax year: The period covering 4 consecutive quarterly VAT returns / 12 consecutive monthly VAT returns / 1 yearly VAT return, as the case may be – relevant for the final annual adjustment of the input VAT recovered during the Tax year.

Annual Adjustment: At the end of a Tax year, the Taxable Person is required to compute the final amount of recoverable input VAT based on its overall final input VAT recovery position for that Tax year. Where an adjustment is required (additional amount of input VAT to recover or amount of input VAT to be paid back to FTA), this must be reported in the first VAT return due in the subsequent Tax year.

Filing deadline: 28th of the month following the end of the Tax period (VAT return must be submitted and related payment must reach FTA)

Recovery of Excess Tax: the VAT Law foresees that a Taxable Person shall carry forward any Excess of Recoverable Tax to the subsequent Tax Periods and offset such excess against Payable tax or Administrative Penalties. If there remains any excess after being carried forward for a period of time, the Taxable Person may apply to the FTA to reclaim the remaining excess. The VAT Regulations refer to the Federal Law No. (7) of 2017 on Tax Procedures (“Federal Tax Procedures Law (7)”)

with regards to the mechanism applicable in order for a Taxable Person to claim its excess recoverable VAT to FTA.

Tax Invoices and Tax Credit Notes – when and what?

Tax Invoice: It is mandatory for taxable supplies made by a Taxable Person – details to be included are covered under articles 59.1 and 59.12 of the VAT Regulations – No mandatory mentions in Arabic.

Simplified Tax Invoice: This is allowed in the following instances: Where the value of the taxable supply does not exceed AED 10,000, or where the taxable supply is made to a non-registered recipient. Details required are listed under article 59.2 of the VAT Regulations – No mandatory mentions in Arabic.

Summary Tax Invoice: It is a Tax Invoice covering all the supplies made within a calendar month – must be issued within the same calendar month as the date of the supplies it covers.

Relief to issue a Tax invoice: This applies where the supply is fully zero-rated and sufficient records to evidence the nature of the supply are kept.

Electronic Invoicing and Self-Billing: It is allowed under certain conditions listed under articles 59.8 and 59.9 of the VAT Regulations.

Tax Credit Notes: Required where a Tax Invoice has been initially issued. Details required are

listed under article 60 of the VAT Regulations.

Other VAT compliance requirements (non-exhaustive list)

15 years: Record-keeping period of any records related to real estate assets.

Goods and Services supplied: In addition to the record keeping obligations listed by the Federal Tax Procedures Law (7), Taxable Persons will also have to keep records of all the goods and services supplied, in sufficient details.

There are no further guidance provided by the VAT Regulations in relation to this specific VAT record keeping requirement. However, the FTA shared during its Awareness Sessions a list of best practice records to be kept, including records of all supplies and imports of goods and services, exported goods and services, goods and services that have been disposed of or used for matters not related to business, goods and services purchased for which the input tax was not deducted.

Emirate by Emirate record: Obligation to keep a record of the Emirate in which each taxable supply took place – details given by article 72 of the VAT Regulations.

Display of prices from 1st January 2018: VAT inclusive, with some exceptions listed in article 27 of the VAT Regulations.

Transitional measures

Payment received and/or invoices issued in 2017 for taxable supplies to be

performed on or after 1st January 2018 will be subject to UAE VAT on the effective date of the VAT Law (i.e. 1st January 2018).

Date of supply (i.e. tax point) for a supply straddling 1st January 2018 will be considered as taking place after 1st January 2018 if the supply actually takes place after that date.

Any advance payment done prior 1st January 2018 will not count as tax point if it appears that this advance payment has been made with an intent to not incur VAT on a supply.

For contracts agreed prior to 1st January 2018 and fully or partially executed after 1st January 2018, the consideration can be considered as being VAT exclusive where the recipient is VAT registered and can recover (in full or partially) VAT on its expenses. The supplier must request a written confirmation of this information and the recipient has 20 days to answer. If no answer, the consideration can be considered as being VAT exclusive.

Other important points – not to be missed

Designated Zones

Designated Zones are defined in article 51 of the VAT Regulations and cover what is usually referred to as specified “Fenced Free Zones” placed under Customs control.

The persons established in a Designated Zone are deemed to be established in the UAE for VAT purposes. They are therefore subject to

the requirements stipulated under the VAT Law and Regulations, notably the obligation to apply to register for VAT if they qualify to do so.

Cases where Designated Zones are considered as being outside the UAE territory:

Goods imported in a Designated Zone from outside the UAE are not to be treated as imported within the UAE for VAT purposes.

Transfer of goods between Designated Zones will not be subject to VAT provided (i) the goods are not released, used or altered during the transfer and (ii) the transfer is done in accordance with the rules applicable for customs suspension. Note that the owner of the goods transferred may be required to provide financial guarantee to FTA for the transfer to not be subject to VAT.

Cases where the Designated Zones are considered to be within the UAE territory:

Movement of goods within or supply of goods to a Designated Zone from UAE Mainland are not considered as 0% rated exports. Where goods are supplied within a Designated Zone to be used in the Zone: they will be treated as imported into the UAE for VAT purposes, unless they are to be incorporated or used to form part of another good which is not to be consumed in the Designated Zone (in this case no import is recognised).

Goods will also be considered as imported within the UAE when the goods are unaccounted for.

Services made/received in the Designated Zone and supply of water and any form of energy in the Designated Zone are treated as being supplied within the UAE territory.

VAT Group

Details on the eligibility tests are covered by articles 9 and 10 of the VAT Regulations.

Government entities and Charities are not allowed to be part of a VAT group.

Government entities are defined as Federal and Local Ministries, Government departments, Government agencies, authorities and public institutions in the UAE.

Charities are defined as societies and associations of public welfare not aiming to make a profit that are listed within a decision from the Cabinet upon recommendation of the Minister.

The “Related Parties” test for VAT group and more generally for any Related Parties provisions of the VAT Law is detailed further under article 9 of the VAT Regulations.

Blocked input VAT and VAT on entertainment expenses

Recovery of VAT on purchase, lease and rent of motor vehicles used in the business and made available for personal use as well as VAT on entertainment expenses for persons other than employees is blocked.

Recovery of VAT on entertainment expenses for employees and on goods and services used for free by employees for their personal benefit is also blocked.

Entertainment expenses cover notably accommodation, food, drinks or any other kind of hospitality, when not provided in the normal course of a meeting.

VAT on expenses of the business which have a personal benefit element attached to them is not blocked if it is part of the business's legal obligation to provide for these expenses or where they are incurred in the normal practice of the business and are necessary for the employees to be in a position to perform their work.

Input VAT recovery

In case of partial input tax recovery due to the performance of exempt supplies, an apportionment calculation to determine the recoverable input tax is required at the end of every Tax period. A final annual adjustment is also required at the end of the Tax year.

The standard apportionment method, which does not require approval from the FTA, is an input based method (i.e. based on the level of input VAT fully recoverable vs input VAT fully irrecoverable).

FTA may accept an alternative calculation for the input tax apportionment apart from the standard method. FTA will publish a list of accepted alternative apportionment methods.

Unless specifically required, an alternative method that has been accepted by the FTA cannot be amended for at least the first 2 years of its acceptance.

No precisions have been given on how in practice the entitlement to fully recover VAT for Government entities and Charities will work.

Zero-rated and exempt activities

The specific scope and conditions of the VAT exemption and zero-rate are detailed in the VAT Regulations.

The application of 0% VAT rate as well as VAT exemptions is subject to specific conditions to be met and the transactions falling within their scope are generally strictly defined. It is therefore crucial for businesses to refer to the Regulations in order to confirm that these conditions are met.

In practice, both zero-rated transactions and VAT exempt transactions will not be subject to VAT but the impact for businesses carrying out these types of transactions will vary as per the following: -

Businesses carrying out zero-rated transactions will be in a position to recover VAT incurred on their business expenses (i.e. no increase of their cost base other than potential cash flow issue). Businesses carrying out exempt transactions will not be entitled to recover VAT incurred on expenses incurred for the performance of their exempt supplies. This have a direct

impact on their cost-base and managing the additional cost triggered by the implementation of VAT will be crucial to these businesses.

Zero-Rated scope

The zero rate will largely benefit goods and services that are exported to outside the GCC as their place of consumption will generally be outside the GCC and businesses have to stay competitive on international markets. Such transactions will be subject to specific and strict conditions as well as anti-avoidance rules.

The zero rate will also benefit to some industry sectors which are usually considered as being of “public interest” and for which the application of VAT would increase the cost of living. Those sectors are mainly real estate for new and newly converted residential buildings, healthcare and education sectors, and international transportation sector.

A specific zero rated application has also been granted for precious metals (gold, silver and platinum) subject to meeting some specific requirements of purity and form.

Exemption Scope

VAT exemption will apply to some specific industry sectors:

Financial services (i.e. services connected to dealings in money or its equivalent as well as the

provision of credit): where such services are not remunerated by way of an explicit fee, commission, rebate or discount.

Life insurance contracts.

Real estate: transactions on bare land as well as sale and lease of residential buildings not qualifying as “new residential building”.

Transportation: local passenger transport by land, water or air, with some specific exclusion.

Other practical and useful information

Place of supply rules – Definitions

Definitions relevant for the application of place of supply rules and shared by the FTA during its awareness sessions are now confirmed and covered in the VAT Regulations, such as:

Services related to real-estate - article 21 of the VAT Regulations.

Telecommunication and electronic services – article 23 of the VAT Regulations.

Samples and Commercial gifts / Output VAT on Deemed supplies

Samples and Commercial gifts do not qualify as “Deemed supplies” and do not trigger the obligation for the supplier to account for VAT where their total value over a 12-month period does not exceed AED 500 per recipient.

There is no obligation to account for VAT on deemed supplies where the total output VAT due on these supplies over a 12-month period is less than AED 2,000.

Capital Asset Scheme

The VAT Regulations provide further guidance on the Capital Assets Scheme eligibility and requirement.

The scheme covers capital asset amounting AED 5,000,000 (per single item) and having a useful life of 10 years or more in case of building and 5 years in case of other assets.

Under specific circumstances, smaller assets which collectively amount to AED 5,000,000 shall also be considered as a single item.

Payment of VAT on imported goods by Taxable Persons

VAT on imported goods will be payable by way of “reverse-charge mechanism” in the return of the Taxable Person for the relevant Tax period provided (i) the Taxable Person can demonstrate it is registered for VAT, (ii) it has provided the FTA with its own Customs registration number and (iii) it has sufficient details, available upon request, on the transaction to verify the import and the related VAT due. It will also have to cooperate and comply with the the rules imposed by the FTA.

Payment of VAT on imported goods with a final destination in another GCC Implementing States

Taxable Persons may be able to defer the payment of VAT due at the time of or before the import.

This is subject to approval from the FTA.

Vouchers and Discounts

Further details have been provided on discounts and vouchers and their impact on the value of a supply

under article 28 of the VAT Regulations.

VAT refund Schemes

There will be a VAT Refund Scheme for Foreign Business Visitors (online procedure) which do not have a place of establishment or a fixed establishment within the country, provided certain criteria as mentioned in the VAT Regulations are attained.

The VAT Regulations also indicate that there may be a Foreign Tourist VAT Refund Scheme put in place at a future date upon decision

by the Cabinet. However no timeline or refund mechanism have been mentioned as of now.

Foreign governments, international organisations and diplomatic bodies or missions will be allowed to claim a refund of UAE VAT incurred on expenses for official use as per the conditions provided by the VAT Regulations.

UAE Nationals will be entitled to claim the VAT incurred on some expenses incurred for the construction of their own residence.

The takeaway

Businesses have now to familiarise with the VAT Regulations and identify the key action points for their next steps toward VAT readiness.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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