In brief

The recently released Financial Services VAT Guide - VATGFS1 ("Guide") sets out to provide taxable persons insights into how the Federal Tax Authority interprets the current VAT legislation with regards to the VAT treatment of financial services. This VAT Alert highlights some of the most relevant insights their businesses should consider in light of their business activities.

In detail

Late payment fees

The Guide mentions various instances where late payment fees may be charged and suggests treating these fees as standard-rated supplies. Although the suggested treatment in the Guide is consistent across the various imposed late payment fees, the Public Clarification VATP001 that discusses a scenario where compensation is received for late performance and argues that the purpose of such a payment is not to provide consideration for a provision of any goods or services. As such, these payments would be outside the scope of VAT.

Therefore, taxable persons should take into consideration the factual circumstances when considering the guidance provided and derive the VAT treatment based on the contractual arrangement for each specific agreement. This is also highlighted by the FTA in Appendix A of the Guide which states that "the VAT liabilities stated below are general and that there may be transactions which fall outside of these general treatments which should be analyzed on a case-by-case basis".

Interest income generated from bank deposits

The Guide discusses earnings from returns on investments such as interest on deposits, specifically stating that where there is no service nor transaction provided in return for such a payment then the said returns will be outside the scope of VAT. The Public Clarification "Bank Interest and Dividends" ("VATP010") echoes this position by stating that passively earned interest income generated from bank deposits does not amount to consideration for a supply and their position outside the scope of VAT.

We highlight the use of the phrase "passively earned" and recommend careful consideration is given to the transaction giving rise to the interest on any deposit account before applying a blanket treatment to all taxpayers.

In the event that a taxable person is in the financial services business, any interest earned would need to be assessed to determine if it could be construed as consideration received for the making of a financial services supply and thereby changing the VAT treatment to that of an exempt supply.
**FX Realized profit and loss**

The guide provides the VAT treatment for FX realized profit and loss for spot / translation (spread income), trading gains, and trading income earned on underlying securities as exempt in nature, it does not provide any further clarification on the reportable value for these types of transactions and further invites additional questions, such as:

- Why does the guide only refer to a FX realized loss and not a trading loss as well?
- Should a taxable person include a realized loss in box 5 “Exempt supplies” of its VAT return? And if so, the revenue of exempt supply would decrease.
- Would this not then benefit a taxable person applying an output based method of apportionment by virtue of the fact that it decreases total exempt supplies?

We recommend taxpayers to consider the aforementioned in the context of their business activities and contact PwC if any assistance is required.

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