



UAE VAT Newsletter

Updates from July until September 2018



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Introduction

After implementation of VAT since 1 January 2018, the VAT landscape has developed significantly in the UAE.

During the summer period the Federal Tax Authority (“FTA”) has published a number of updates in the form of a Cabinet Decision, FTA Decision, New Guides and Public Clarifications to provide clarities and develop the VAT system in the UAE further.

Hereby we present you the latest VAT updates published from July until September 2018. In this newsletter we discuss the following topics.

Contents

1. Cabinet Decision	3
1.1. Cabinet Decision on the Tax Refunds for Tourist Scheme	3
2. Federal Tax Authority Decision	4
2.1. FTA Decision on the Requirements for Retailers to Participate in the Value Added Tax Refunds for Tourist Scheme	4
3. Guides & Forms	4
3.1. Tax payers required to submit bank account details for VAT refund	4
3.2. Updated Guide for Taxable Persons	4
3.3. Designated Zones and VAT Implications	5
3.4. Import Declarations for registered and non-registered Importers for VAT	6
4. Public Clarifications	6
4.1. Profit Margin Scheme for goods purchased before 2018	6
4.2. Compensation-type payment out of scope for VAT	7
4.3. When input VAT recovery on entertainment services is blocked	7
4.4. How to use UAE Central Bank exchange rates	9
4.5. Deciding the VAT treatment for supply of labour camp	10
4.6. Treatment of line items on Tax Invoice	11

1. Cabinet Decision

1.1. Cabinet Decision on the Tax Refunds for Tourist Scheme

Cabinet Decision No. (41) of 2018 on Introducing the Tax Refunds for Tourist Scheme provides details on the mechanism of the Tourist Refund Scheme (“TRS”) and its implementation.

This decision concerns mainly retailers in the UAE and the tourism industry. The possibility for the tourists to recover the input VAT on their (high value) purchases is expected to maintain or even increase their purchases. Some of the most important elements of the TRS are:

- The TRS will come into effect at any time between November 2018 and not later than 1 January 2019. This period shall coincide with the high season period for tourism in the UAE;
- Some important conditions to receive a tax refund based on the TRS:
 - a. Only an Overseas Tourist is eligible for the tax refund (not resident of GCC Implementing State and not a crew member of a flight or aircraft leaving an Implementing State).
 - b. The Goods must be purchased from a TRS participating Retailer. Thus, UAE business is expected not to be automatically enrolled in the TRS scheme.
 - c. The Goods are not excluded from the TRS by the FTA.

- Any Retailer qualified to meet the requirements by the FTA can participate in TRS.
- The Retailer shall provide the tourist with the necessary documentation for refund claim such as compliant tax invoice and other documents;
- The tourist shall request the refund directly from the Operator (<https://www.planetpayment.ae/>) who will provide the refund only upon the receipt of required documents;
- The Operator may charge administration fees that may not exceed the approved limit by the FTA.
- The tourist may be required to present goods for validation and inspection by the UAE Customs in order to validate the claim.
- If the Operator has correctly issued a tax refund to a tourist, it can obtain reimbursement of the tax amount refunded directly from the Retailer who sold the goods to the tourist.
- If the Retailer correctly reimburses the tax amount to the Operator, the Retailer can treat the tax amount as a reduction of output tax in the period which the refund was paid to the tourist.

We recommend Retailers that want to participate in this scheme to identify the business and VAT implications prior to its registration. The full text of the Cabinet Decision may be obtained from the following link:

[https://www.tax.gov.ae/pdf/Cabinet-Decision-No-\(41\)-of-2018-on-Tax-Refunds-for-Tourist-Scheme.pdf](https://www.tax.gov.ae/pdf/Cabinet-Decision-No-(41)-of-2018-on-Tax-Refunds-for-Tourist-Scheme.pdf)

2. Federal Tax Authority Decision

2.1. FTA Decision on the Requirements for Retailers to Participate in the Value Added Tax Refunds for Tourist Scheme

FTA has published Decision no. (1) of 2018 on the Requirements for Retailers to Participate in the Value Added Tax Refunds for Tourist Scheme. This Decision is essential for Retailers that want to participate in the TRS.

Retailers can register to be included in the scheme as of September 2018. To be eligible for this scheme, Retailers must have a TRN, sell eligible goods (some goods are excluded from the scheme), apply to the FTA and submit VAT returns on regular basis.

The registration form for Retailers can be found here. For the registration the following documents are required:

- TRN certificate;
- Trade License certificate;
- Power of attorney (if applicable, when the signatory is not named on the trade license);
- Specimen of the signature of the signatory;
- Signed credit check consent form;
- Signed contract.

Non-compliance to the existing tax regulations and/or the contract between the Retailers-Operator may result in the cancellation of Retailer's participation in the scheme.

3. Guides & Forms

3.1. Tax payers required to submit bank account details for VAT refund

The FTA has published a new version of the VAT Refund User Guide. This Guide is intended to help Taxable Persons preparing their VAT Refunds Request form and submitting it to the FTA.

FTA has added the requirement that taxable persons must submit a bank account validation letter/certificate when submitting a VAT refund request form.

Our recommendations are:

- To ensure the bank account holder name is the same as the taxable person's name as registered with the FTA. This may be crucial element if a tax payer has changed its legal name from the time of the time registration for VAT and the submission of the refund request.
- To request the bank to issue an account validation letter/certificate stating details of the account holder's name, bank's name, bank's address, SWIFT/BIC, and IBAN. This document must be issued on the bank's letterhead and stamped by the respective bank.

The full text of the updated VAT Refund User Guide may be found in link:

https://www.tax.gov.ae/pdf/VAT-Refund-User-Guide_English_V0.4.0.pdf

3.2. Updated Guide for Taxable Persons

In June 2018 the FTA has published Issue 2 of the Taxable Person Guide for VAT. This document discusses a wide range of topics for taxable persons and is currently the main guide on the UAE VAT system.



One of the major changes comparing to the 1st Issue relates to invoices issued by agents on behalf of their principal (p. 46). The guide states that where the invoice is issued by the agent, the supply is still treated as being made by the principal supplier to the recipient of the supply. As a consequence, the supplier has to account for the relevant VAT and must comply with all the record-keeping requirements in respect of the supply. The invoice shall contain the details of the principal supplier.

It is our view that the Guide has been prepared more for businesses rather than tax practitioner. Thus, companies are recommended to read the Guide in more detailed manner to understand whether they are in fully compliance with the VAT laws and regulations.

The full text of the Guide may be found in the following link:

<https://www.tax.gov.ae/pdf/Taxable-Person-Guide-June-2018.pdf>

3.3. Designated Zones and VAT Implications

The FTA has published an extensive guide on the VAT implications of transactions within a Designated Zone.

This extensive guide covers a wide range of topics with regard to Designated Zones, such as:

- VAT treatment of Free Zones;
- Identification of Designated Zones;
- Entities within a Designated Zone;
- VAT Treatment of Supply of Services;
- VAT Treatment of Supply of Goods within a Designated Zone;
- Transfer of Goods within a Designated Zone;
- Import of Goods from Designated Zones;

- Subsequent consumption or loss of Goods - VAT Treatment of Supplies of Water & Energy;
- VAT Treatment of Supplies of Real Estate;
- Tax Groups;
- Branches;
- VAT Recovery.

From our point of view, this Guide has given other perspective in the Specific Cases chapter (Supplies of Water and Energy, Real estate, Tax Groups, Branches and VAT recovery). For example:

- Supplies of real estate (sale and/or lease) within a Designated Zone is out of scope for VAT, as the place of supply is considered to be outside the UAE. However, a personal right to use real estate in a Designated Zone is a supply of service. In such case the place of supply is considered to be in the UAE and is therefore taxable with 5% VAT;
- A company established in a Designated zone is able to form a tax group with an onshore company (or other company in a Designated Zone). Supplies between members of a tax group are generally disregarded for VAT. However, when a tax group member in a Designated Zone supplies goods to another tax group member in the UAE mainland, this will trigger an import of goods into the UAE. In such case import VAT needs to be paid by the importer of the goods according to standard import provisions.

Apart from the specific cases, we recommend companies that are established in a Designated Zone, or dealing with parties in Designated Zones, to pay attention to the clarifications in this Guide.

The full text of the Guide may be found in the following link:

<https://www.tax.gov.ae/pdf/Designated-Zones-VAT-Guide.pdf>

4. Public Clarifications

4.1. Profit Margin Scheme for goods purchased before 2018

The FTA has issued a Clarification on the use of the Profit Margin Scheme for goods purchased before 1 January 2018. This Clarification is particularly important for companies selling or purchasing second-hand goods, antiques, collectors' items.

FTA clarifies that only those goods which have previously been subject to VAT before the supply in question may be subject to the profit margin scheme.

Used goods which were acquired prior to 1 January 2018, or which have not previously been subject to VAT for other reasons, are not eligible to be sold under the profit margin scheme. Therefore, VAT is due on the full selling price of such goods.

A company intending to apply the Profit Margin Scheme must identify the following points:

- If eligible good was purchased in 2017 or earlier, the good is not eligible to be sold under the profit margin scheme and VAT should be applied to the full selling price.
- If eligible good was purchased in 2018 or later from a supplier who did not charge VAT on the supply, and the good may have been purchased in a period prior to the effective date of VAT, the good is not eligible to be sold under the profit margin scheme and VAT should be applied to the full selling price.

- If eligible good was purchased in 2018 or later from a supplier and it is known that the good would have been purchased by the supplier in a period after the effective date of VAT, the good is eligible to be sold under the profit margin scheme where you have evidence to show that the good has been subject to VAT on an earlier supply.

The full text of the Public Clarification can be found in the following link:

<https://www.tax.gov.ae/pdf/profit-margin-scheme.pdf>

4.2. Compensation-type payment out of scope for VAT

The FTA has issued a clarification on the so-called compensation-type payments, which are out of scope for VAT. This Clarification is relevant for all companies that receive payments that are compensatory in nature.

VAT is imposed, among other things, on taxable supplies of goods and services. "Taxable supply" is defined as a "supply of goods or services for a consideration by a person conducting business in the UAE and does not include exempt supply". Therefore, in order for an obligation to charge VAT to arise, there must be a supply of taxable goods or services. If any payment does not relate to a supply of taxable goods or services, then the payment is not subject to VAT. FTA mentions the following examples as compensation-type payments:

- A contractual payment to compensate for loss;
- A payment to settle a dispute;
- A fine or penalty payment for damaged goods.



Besides these examples, other sorts of compensatory payments may also be out of scope. Companies should analyse the nature of the transaction and the contract terms for this determination.

One-size-fits-all approach may expose the Companies to the VAT non-compliance situation which then may lead to heavy penalties from the FTA.

If companies have previously charged 5% VAT on compensation-type payments, which would have been out-of-scope of VAT in nature, to customers, correcting issued tax invoices and the VAT return is recommended.

The full text of the Public Clarification can be found in the following link:

<https://www.tax.gov.ae/pdf/compensation-type-payments.pdf>

4.3. When input VAT recovery on entertainment services is blocked

There have been discussions among businesses in the UAE as to which input VAT that can be recovered from the so called “entertainment services”, as defined in the article 53.2.a. of the Executive Regulations to the UAE VAT Law. This Clarification gives further guidance on how to interpret this definition and as to the blocked input tax expenditures for companies. FTA distinguishes the following categories.

1. Input VAT on Entertainment and hospitality provided to non-employees

- By a Designated Government Entity: input VAT on such expenses shall be recoverable;
- By a VAT registrant who is not a Designated Government Entity: input VAT on such expenses shall be blocked from recovery in full (even in the case where the business makes fully taxable supplies and would otherwise have the right to full input tax recovery).

2. Input VAT on entertainment and hospitality provided to employees

- By a Designated Government Entity: input VAT on such expenses shall be non-recoverable.
- By a VAT registrant who is not a Designated Government Entity: input VAT on such expenses shall be non-recoverable. Note: Input VAT is recoverable if such services to employees is a legal obligation or a contractual obligation to help employees perform their role and it can be proven to be normal business practice in the course of employing those people.



3. Input VAT on Entertainment and hospitality expenses considered as normal business activities

The following criteria are which can be considered as normal business activities:

- Hospitality expenses which is provided at the same venue as the meeting
- The meeting is interrupted, only by a short break for the provision of the hospitality and then resumes as normal e.g. a lunch break
- The cost per head of providing the hospitality does not exceed any internal policy the business normally has in place around employee subsistence claims, where available
- The food and beverage provided is not accompanied by any form of entertainment e.g. a motivational speaker, a live band etc;
- The VAT charged on expenses incurred by an employee for business purposes in the course of performing his role is recoverable subject to a valid tax invoice being provided.
- Certain normal incidental office expenses for general use by both employees and visitor such as tea, coffee, snacks consumed in the office premises.

We recommend companies to review their input VAT position in their already submitted VAT returns for expenses blocked from VAT recovery. The input VAT maybe recovered in the current tax period or subsequent tax period.

If the company should make a correction in submitted VAT returns:

- The company must submit a voluntary disclosure if the error resulting in payable tax is above AED 10.000

(recovered more input tax than it should have been);

- If the error is below 10.000 AED payable tax, this may be corrected by submitting a voluntary disclosure or in the current filing VAT return.

- We refer to the FTA portal to submit a voluntary disclosure and to the following guide:

<https://www.tax.gov.ae/pdf/Voluntary-Disclosure-user-guide-English.pdf>

The full text of the Public Clarification can be found in the following link:

<https://www.tax.gov.ae/pdf/VAT-Entertainment-Services.pdf>

4.4. How to use UAE Central Bank exchange rates

If invoices are stated in another currency than AED, the FTA requires that companies convert invoices using UAE Central Bank Exchange rates at the date of supply. The Exchange Rate is available since 17 May 2018.

The Public Clarification gives clarity in the use of exchange rates for the period from 1 January 2018 until 16 May 2018.

1. Tax invoices issued and for the supplies made prior to 17 May 2018

Where a tax invoice was issued in a foreign currency (i.e. other than UAE Dirham) prior to 17 May 2018 for a supply made before that date, the tax invoice should have been converted to UAE Dirham using an exchange rate from a reliable source. Examples of reliable exchange rate sources include (but are not limited to):



- Thomson Reuters;
- Oanda;
- the exchange rate published by a UAE bank.

The rates should have been applied consistently for all tax invoices issued in foreign currencies during the period from 1 January to 16 May 2018.

Note: If supply was made prior to 17 May 2018 but invoice was issued after 17 May 2018, historical exchange rates published by the Central Bank must be used.

2. Use of exchange rates from 17 May 2018 onwards

Where a tax invoice is issued from 17 May 2018 onwards, businesses must use the exchange rate as published by the UAE Central Bank of the date of supply.

3. Time of publication of the exchange rates

The UAE Central Bank updates the daily exchange rates on its website each day on or after 6pm. Where a tax invoice is issued prior to 6pm on any given day, it will be acceptable to use the exchange rate published on the UAE Central Bank website at the time the tax invoice is raised, i.e. the rate for the previous day.

4. Use of exchange rates for imports of services

Where businesses import services from foreign suppliers which are subject to VAT under the reverse charge mechanism, the invoice received for the supply is likely to be in a foreign currency. For the purposes of applying the reverse charge mechanism to such imports, businesses should use the UAE Central Bank exchange rate applicable on the date of supply in order to calculate the VAT liability to be reported in the VAT return. Note: It is acceptable to use the date of the invoice as the date of supply of the imported service and use the exchange rate applying as per that date.

5. Use of exchange rates for imports of goods

Business shall follow the exchange rate used by the Customs for the value automatically populated in Box 6 of the VAT return even if the rate differs from the UAE Central Bank exchange rate. No adjustment is required to convert the value of the import based on the UAE Central Bank rate in Box 7 of the VAT return.

We recommend companies to review the use of their exchange rates in their accounting system. It should be verified whether a reliable exchange rate was used for supplies before from 1 January 2018 up to 17 May 2018. For supplies after that date, the exchange rate should follow the UAE Central Bank updated daily rates. Any correction should be made if required.

4.5. Deciding the VAT treatment for supply of labour camp

This Public Clarification helps in identifying if a labour accommodation is a residential building, and therefore exempt from VAT (or zero-rated if it is the first supply); or serviced accommodation, and therefore standard 5% rated.

FTA also clarifies the VAT implications for mixed supplies and composite supplies in general. Hence this clarification is important for all companies providing supplies with multiple components (not only for supply of labour camps).

1. Labour accommodation is exempt from VAT (or zero rated if first supply)
 - The building or lodging is occupied by the employees as their principal place of residence;
 - Fixed to the ground and which cannot be moved without being damaged;
 - In which services only ancillary or incidental to the supply of accommodation are provided;



- Such incidental services may include, but are not limited to, the following:
 - o cleaning of communal areas;
 - o maintenance services required for the general;
 - o upkeep of the property;
 - o pest control;
 - o garbage collection;
 - o security;
 - o utilities.
 - It is not a building which is similar to a hotel, motel, bed & breakfast establishment, or serviced apartment for which services in addition to the supply of accommodation are provided.
2. Labour accommodation is subject to standard rate
- Additional services other than those incidental to the supply of accommodation are provided. These services include but are not limited to:
 - o Telephone & Internet;
 - o Cleaning of the rooms;
 - o Laundry service;
 - o catering and maintenance services other than those required for the general upkeep of the property.

3. Composite supplies

FTA also mentions some points of consideration for determining composite (ancillary components follow VAT treatment of principal component) versus mixed supplies (each component must be valued separately for VAT). For example, with a composite supply the different components must be provided by one supplier and for one price.

We recommend suppliers of labour accommodation to identify whether they have applied the correct VAT treatment as of 1 January 2018. If they have not applied the correct VAT treatment, a correction is required (retrospectively).

Companies providing supplies with different elements, in which each element may have a different VAT treatment, should review how to treat their contracts from a VAT perspective. The Clarification may help them to identify the correct VAT treatment.

The full text of the Public Clarification can be found in the following link:

<https://www.tax.gov.ae/pdf/Labour-Accommodation-residential-versus-serviced-property.pdf>



4.6. Treatment of line items on Tax Invoice

Many tax payers have sought clarity from FTA on the requirements for tax invoices, specifically with regard to the line items.

In this Public Clarification the specific invoicing requirements for Tax Invoices and Simplified Tax Invoices are further explained.

It is firstly by FTA that Tax Invoices (including Simplified Tax Invoices) need to be issued, and also delivered to the customer in order to be valid.

1. Tax Invoice

Full Tax Invoices the following information must be shown per line item:

- The unit price;
- The quantity or volume supplied;
- The rate of tax; and
- The amount payable expressed in AED;
- Each line item shall have the net amount payable and the due tax. Showing the gross amount per line item is not required.

2. Simplified Tax Invoice

For a Simplified Tax Invoice it is not necessary to show the net value per line item. The total gross value of the supply is shown at the bottom of the simplified tax invoice.

3. Rounding invoices

Rounding on tax invoices should be performed on a line item basis to the nearest Fills.

4. Tax Invoices issued in foreign currencies

Where a Tax Invoice is issued in another currency than AED, the following must be shown on the invoice:

- Tax Amount shown in AED;
- The Exchange rate as per UAE Central Bank daily rates.

We recommend companies to review whether their Tax Invoices and Simplified Tax Invoices follow this Public Clarification and the other requirements of Article 59 of the Executive Regulations. If this is not the case, an adjustment in the accounting system is required to change lay-out of the Tax Invoices. The risk for non-compliant Tax Invoices is exposure to a penalty of AED 5,000 per Tax Invoice imposed by the FTA.

The full text of the Public Clarification can be found in the following link:

<https://www.tax.gov.ae/pdf/VATP006-Tax-Invoices.pdf>



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on the topics stated
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