

VAT Alert 5



GCC VAT Update

United Arab Emirates (UAE)

UAE Value Added Tax (VAT) Law

On August 23rd, 2017, the long-awaited UAE VAT Law was issued (the "Law"). The Law consists of 11 titles which are further divided into 85 articles and provides further clarification to the GCC VAT Framework Agreement (the "FA") in relation to the specific UAE VAT treatment. It is also reconfirmed in the Law that the VAT implementation in the UAE will be as of 1 January 2018. The Executive Regulations are expected to be issued before the end of 2018 and they shall provide interpretation for some of the Law's provisions.

The following points are the highlights of the Law and are meant to be read together with our previous VAT alerts and summary on GCC VAT Framework Agreement:

Supply of goods and services

The definition of supply of goods and services are the same as the FA but the Law adds that entering into a contract between two parties entailing the transfer of Goods later is considered as Supply of Goods. In addition, the Law has stated that:

- The sale or issuance of any voucher, unless the received consideration exceeds its advertised monetary value
And
- The transfer of whole or an independent part of a business with the purpose of continuing the business that was transferred

Are not considered as a supply.

In addition, the Law also add explanation in regard to the composite supply, supply via an agent, and supply by government entities.

VAT Registration

In terms annual taxable turnover threshold calculation for the mandatory VAT registration, the Law further specify that is shall be the value over the previous 12 months-period and the expected value in the next thirty (30) days. This is applicable for companies or persons who have place of residence in the UAE. For those who are not the resident of the UAE and obliged to pay VAT, they need to register for VAT regardless of the number of taxable turnover in the UAE.

The Law gives further conditions of the VAT group registration however giving the UAE Federal Tax Authority (the "FTA") the sole discretion to:

- Register the related entities in to a VAT group
- Reject a VAT group registration
- Change the member of a VAT group

As stated in the FA, a taxable person may be granted an exception to the mandatory VAT registration, if the supplies are only subject to the Zero Rate. The Law adds that FTA reserves the right to collect any due VAT and administrative penalties for the period of exception where the taxable person was not entitled to the exception.

If a taxable person stops making taxable supply or if the value of taxable supply falls below the voluntary registration threshold, an application for de-registration for VAT shall be put forward.

Once registered a Tax Registration Number (the "TRN") shall be issued by the FTA to the taxable person. The TRN shall be stated on:

- Each VAT return
- Notification

- VAT invoice
- VAT credit note
- Any other documents related to the VAT or correspondence as required under the Law and the Federal Law No. (7) of 2017 on Tax Procedures.

VAT Due Date or Date of Supply

In the Law, the explanation of the VAT due date or the date of supply has been made more comprehensive than the one in the FA. The date of supply or the VAT due date shall be earlier in the following dates:

- The date on which goods were transferred, if such transfer was under the supervision of the supplier.
- The date on which the recipient of goods took possession of the goods, if the transfer was not supervised by the supplier.
- Where goods are supplied with assembly and installation, the date on which the assembly or installation of the goods was completed.
- The date on which the goods are Imported under the customs legislation.
- 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.
- The date on which the Services were completed.
- The date of receipt of payment or the date on which the VAT Invoice was issued.

Zero Rates and Exemptions

Subsequent to the options and "zero-rate" provisions provided by the FA and the following items are either Zero Rate or Exempts in the UAE:

- Zero Rate:
- A direct or indirect export to outside the GCC countries that have implemented the VAT (the "Implementing States")
- International transport of passengers and goods which starts or ends in the UAE or passes through its territory, including also services related to such transport. This includes the supply of goods and services related to the transfer of goods or passengers aboard land, air or sea means of transport designated for consumption on board; or anything consumed by any means of transport, any installations or addition thereto or any other use during transportation.
- Air passenger transport in the UAE 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. It includes the supply of goods and services related to the transfer of goods or passengers aboard land, air or sea means of transport designated for consumption on board; or anything consumed by any means of transport, any installations or addition thereto or any other use during transportation
- Supply of air, sea and land means of transport for the transportation of passengers and Goods. Supply of Goods and Services related thereof and which are designed for the operation, repair, maintenance or conversion of these means of transport.

- Supply of aircrafts or vessels designated for rescue and assistance by air or sea.
- The supply or Import of investment precious metals.
- The first supply of residential buildings within (3) years of its completion, either through sale or lease in whole or in part.
- The first supply of buildings specifically designed to be used by Charities through sale or lease
- The first supply of buildings converted from non-residential to residential through sale or lease according
- The supply of crude oil and natural gas.
- 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.
- The supply of preventive and basic healthcare Services and related goods and services.
- Exempt Supply:
 - Financial services
 - Supply of residential buildings through sale or lease, other than that which is zero-rated
 - Supply of bare land.
 - Supply of local passenger transport.

Display of Price and Margin Scheme

- For taxable supplies, the advertised price shall include the VAT. The exceptions to this requirement shall be provided in the Executive Regulations. This requirement is usually applicable in cases where taxable person sells directly to final consumers.
- The Law has also provided the possibilities for taxable person to calculate and charge VAT based on the profit margin earned and not the sales price. In this case the taxable person shall notify the FTA accordingly. Such method is usually used for second-hand goods traders.

Designated Zone

One should not be mistaken with the definition of Designated Zone under the UAE Excise Tax Law and the Law. Under the UAE Excise Tax Law, a Designated Zone means:

“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.”

Whereas under the Law, a Designated Zone is:

“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.”

Thus, this term is not yet defined under the Law although there are provisions in the Law that state:

- A “Designated Zone” that meets the conditions specified in the Executive Regulation of this Decree-Law shall be treated as being outside the State.
- 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.

Record-Keeping

The taxable persons shall keep the following records:

- Records of all supplies and imports of goods and services.
- All VAT invoices and alternative documents related to receiving goods or services.
- All VAT credit notes and alternative documents received.
- All VAT invoices, VAT credit notes and alternative documents issued.
- Records of goods and services that have been disposed of or used for matters not related to business, showing taxes paid for the same.
- Records of goods and services purchased and for which the input VAT was not deducted.
- Records of exported goods and services.
- Records of adjustments or corrections made to accounts or VAT Invoices.
- Records of any Taxable Supplies made or received in accordance with clause (3) of article 48 of the Law, including any declarations provided or received in respect of those taxable supplies.
- A VAT Record that includes the following information:
 - Due VAT on taxable Supplies.
 - Due VAT on taxable supplies pursuant to the reverse charge mechanism.
 - Due VAT after the error correction or adjustment.
 - Recoverable VAT for supplies or Imports.
 - Recoverable VAT after the error correction or adjustment.

According to the FA, the record keeping period can be between 5 years up to 15 years.

Violation and Penalties

In addition to the Federal Law No. (7) of 2017 on Tax Procedures, the Law has listed more cases where administrative penalties shall be applicable. These cases are:

- Failure by the Taxable Person to display prices inclusive of VAT.
- Failure by the Taxable Person to notify the Authority of applying VAT based on the margin
- Failure to comply with the conditions and procedures related to keeping the Goods in a Designated Zone or moving them to another Designated Zone.
- Failure by the Taxable Person to issue the VAT invoice or an alternative document when making any Supply.
- Failure by the Taxable Person to issue a VAT Credit Note or an alternative document.
- Failure by the Taxable Person to comply with the conditions and procedures regarding the issuance of electronic VAT Invoices and electronic VAT Credit Notes.

Excise Tax Law

1. Introduction in Excise Taxes

On August 21st of 2017 Federal Decree-Law No. 7 of 2017 has been published by the President of the United Arab Emirates. This Decree-Law contains the articles for the Excise Tax that will come into effect per October 1st of 2017. Excise Taxes are an indirect type of taxation. This means

that the tax will be paid by consumers for the consumption of “Excise Goods” in the UAE, but will be collected from businesses. The tax is set to discourage the consumption of products that negatively impact the environment and people’s health.

2. Excise Goods and Tax rate

A list of Excise goods subject to Excise Tax remain to be published by the UAE Ministry of Finance (MoF) . The MoF has previously announced that excise will be applied on tobacco (100% tax rate), energy drinks (100% tax rate) and carbonated drinks (50% tax rate). The tax rates will not exceed 200% of the excise price.

The Excise taxes should be inclusive of the advertised prices of Excise goods. This may have consequences for the pricing of Excise goods.

3. Taxable Activities and Moment of Calculation

The following activities are subject to Excise Taxes:

- The production of Excise Goods in the UAE;
- The import of Excise Goods in the UAE;
- Release of Excise Goods from a Designated Zone;
- Stockpiling of Excise Goods in the UAE.

Please note that some exceptions may apply for the activities above. Excise taxes shall be calculated from the date of import, the date on which the goods are acquired by the Stockpiler (if after the Decree-Law came into effect) or the date on which the goods were released for consumption.

At this moment, it is unclear what the specific conditions will be for Designated Zones (UAE Free Zones). This will be later published in an Executive Regulation by the MoF.

4. Tax Reporting and Registration

Any business required to pay Excise Taxes is obliged to submit a tax return at the end of each tax period. Executive Regulations will determine the applicable tax period and the timeframes for filing and payment.

Taxable businesses should register for Excise Taxes as of October 1st, of 2017 on the website of UAE MoF. Businesses that fail to register and comply with the guidance to be issued by the UAE Federal Tax Authority (FTA) will be subject to penalties. Lastly, Taxpayers must comply with specific record keeping obligations as set forth in the Decree-Law.

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