

New FTA Public Clarifications: “VAT-free special offers” and “VAT registration of sole establishments”

15 October 2020

The Federal Tax Authority (“FTA”) of the United Arab Emirates (“UAE”) has recently released two Public Clarifications:

- VATP020 “VAT-free special offers”
- VATP021 “VAT registration of sole establishments”

VATP020 “VAT-free special offers”

The first Public Clarification clarifies the VAT treatment of promotions where the seller absorbs VAT on promotional goods.

For purposes of this clarification, the term “promotional goods” refers to goods which are sold as part of a special promotion.

Liability to impose VAT

VAT registered businesses are required to charge 5% VAT on the supply of all goods and services in the UAE, except where the VAT law explicitly provides for zero-rating or exemption.

The FTA is of the view that in any promotional campaign stating that the supply of promotional goods is “VAT-free” is misleading as the seller is obliged to impose VAT on these supplies.

The seller may, however, make a commercial decision to offer a discount equivalent to the amount of VAT.

Consequences of FTA’s view:

- VAT is always payable on taxable supplies.
- The seller is not entitled to choose whether or not VAT should be imposed on a supply.

“VAT-on-us”-promotions

In “VAT-on-us” instances the seller is regarded as granting a discount to its customer which is equal to the VAT amount imposed on the promotional goods or services.

The value of the discount is the amount by which the consideration is reduced.

For example:

- If a motor vehicle’s normal price is AED 105,000 and a special VAT-on-us promotional price is AED 100,000 the seller is regarded as providing an AED 5,000 discount to its customer.

VAT inclusive prices

The FTA reminds the seller that any price displayed for a taxable supply should be VAT inclusive.

It is important to note that, businesses should comply with the rules in respect of publishing prices.

This requirement does not apply for:

- Exported goods or services; or
- Supplies made to VAT registered customers.

Even though a business may expressly advertise prices as “VAT-free” in respect of retail sales as part of marketing, the price charged to the customer shall include VAT.

For example:

- If during the promotional period a motor vehicle is advertised for AED 100,000 “VAT-free”, the consideration for the supply is AED 100,000.
- The seller is therefore required to account for AED 4,761.90 VAT ($VAT=100,000 / 21=4,761.90$) in its tax return, regardless of the wording used in the promotional campaign.

Tax Invoices

FTA’s final reminder to the sellers is that all tax invoices issued in respect of taxable promotional goods or services shall meet all requirements as per the UAE VAT law.

Consequently, the seller is, besides of the other Tax Invoice Requirements, required to:

- Reflect the rate of tax.
- Tax amount.
- The gross amount payable in AED for each taxable good or service supplied on the tax invoice.

VATP021 “VAT registration of Sole Establishments”

The second Public Clarification clarifies the VAT registration obligations of natural persons operating a number of sole establishments.

A sole establishment (or “sole proprietorship”) is a legal form of business which is 100% owned by a natural person and are not legally distinct from their owners.

It should be noted that this Public Clarification does not apply to:

- One-Person Company LLC; or
- Other similar legal entities, which are seen as distinct and separate legal persons from their owners.

VAT registration obligations of Sole Establishments

The FTA is of the view that a natural person owning a number of sole establishments needs to obtain only one VAT registration for all its sole establishments and does not require separate VAT registrations for such establishments.

It should be noted that the turnover from a natural person, as well as his sole establishment, must be considered collectively in order to determine the breach of the VAT registration thresholds (Mandatory AED 375,000 and Voluntary AED 187,500) and therewith the VAT registration obligations.

Review of previous VAT registrations of Sole Establishments

The FTA will review, in certain cases, the VAT registrations by taxable persons in respect of sole establishments and will inform them of the corrective steps to be taken, if any.

It is important to note that for any VAT registrations received in the **past**, no action is required to amend the VAT registrations, until specifically directed by the FTA.

For all **future (from 12 October 2020)** VAT registration applications, the applicants must conform to the position stated in this Public Clarification.

If you have any questions on both recently released Public Clarifications, please feel free to contact us on tax.services@crowe.ae

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