

VAT In the UAE - What Your Business Needs to Do

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By: [Christopher R. Williams](#)

The UAE will introduce value added tax (“VAT”) at the rate of 5% from 1 January 2018. The basic principle underpinning the introduction of VAT is to further improve the economic base of the UAE. This is a significant development and will require the active participation of all businesses to which VAT is applicable. The following is aimed to be a general overview of the application of VAT in the UAE and its likely impact on businesses.

We would be delighted to discuss any element set out below and work with you and your accountants to best ensure that your business and in particular your contractual documentation is VAT ready.

1. What will VAT apply to?

VAT will apply to the majority of transactions of goods and services in the UAE unless specifically exempted or excepted by law. VAT registered businesses (in general): 1) must charge VAT on taxable goods or services which they supply; 2) may reclaim VAT that they have paid on business related goods or services; and 3) maintain records allowing the UAE tax authorities to ensure that points 1 and 2 have been properly accounted for.

VAT will be charged at 0% in respect of the following:

Exports of goods and services to outside of the Gulf Cooperation Community;

International transportation, and related supplies;

Supplies of certain sea, air and land means of transportation (such as aircraft and ships);

Certain investment grade precious metals (e.g. gold, silver, of 99% purity);

Newly constructed residential properties, that are supplied for the first time within three years of their construction;

Supply of certain education services, and supply of relevant goods and services; and

Supply of certain healthcare services, and supply of relevant goods and services.

The following categories of supplies will be exempt from VAT:

The supply of some financial services (clarified in VAT legislation), it is expected that fee based financial services will be taxed but margin based products are likely to be exempt;

Residential properties;

Bare land; and

Local passenger transport.

2. How will place of supply be determined?

The place of supply will determine whether a supply is made within the UAE (in which case VAT will apply- unless the goods or services are exempted or excepted by law) or outside the UAE for VAT purposes.

For a supply of goods (in general), the place of supply shall be considered the location of the goods when the supply takes place, albeit there will be specialised rules for water, energy and cross border supplies.

For the supply of services, the place of supply should be where the supplier is based.

3. Which businesses must register for VAT?

A business must register for VAT if its UAE taxable inputs and outputs exceed the mandatory registration threshold of AED 375,000 (as demonstrated by that business' financial records). A business may choose to register for VAT voluntarily if their inputs and outputs are less than the mandatory registration threshold, but exceed the voluntary registration threshold of AED 187,500. Equally, a business may also register voluntarily if their expenses exceed the voluntary registration threshold even if they are unlikely to create any output tax, this will enable start-ups with no turnover to register for VAT.

Importantly, non-residents of the UAE that make taxable supplies in the UAE will be required to register for VAT unless there is any other UAE resident person who is responsible for accounting for VAT on these supplies. This exclusion may apply, for example, where a UAE business is required to account for VAT under a reverse charge mechanism in respect of a purchase from a non-resident.

4. What is the requirement for VAT invoices and what records must a business registered for VAT maintain?

All VAT registered businesses will need to record their financial transactions and ensure that their financial records are accurate and up to date. VAT registered businesses must report the amount of VAT that they have charged and the amount of VAT paid to the government. It is likely that such reporting will be undertaken using an online system. VAT registered businesses must file VAT returns with the Federal Tax Authority ("FTA") on a quarterly basis (albeit the FTA may determine another time period) within 28 days from the end of the tax period in accordance with the procedures specified in the UAE's VAT legislation. If the amount of VAT charged is more than paid the difference will be due to the government and vice versa. All VAT related invoices should be kept for a period of at least five years.

A VAT registered business or business that should be registered for VAT must issue a valid VAT invoice for the supply of goods and services. To be considered as a valid VAT invoice, the

document must follow a specific format as set out in the UAE's VAT legislation. In certain situations the supplier may be able to issue a simplified VAT invoice.

5. What should businesses be doing to prepare for VAT implementation on 1 January 2018?

Crucially, preparations need to be well underway in order to meet the January 2018 deadline- this will include changes to financial management and book-keeping. VAT registered businesses need to fully understand their VAT obligations and ensure that their business model mirrors the same and allows for ready compliance with VAT reporting and compliance. Whilst the FTA will look to assist VAT registered businesses ultimate responsibility for compliance will vest with registered VAT businesses.

As a starting point, if your business is required to register for VAT, that registration should be made now. Electronic registration is now up and running and we would recommend that businesses do all things necessary to go through this process.

We understand that the FTA will introduce special rules to deal with various situations that may arise in respect of supplies that span the introduction of VAT, this would include examples such as:

Where a payment is received in respect of a supply of goods before the introduction of VAT but the goods are actually delivered after the introduction of VAT which would require VAT to be charged. Similar rules will also exist in respect of supply of services too.

Where a contract is concluded prior to the introduction of VAT in respect of a supply which is wholly or partly made after the introduction of VAT, and the contract does not contain clauses relating to the VAT treatment of the supply, then consideration for the supply will be treated as inclusive of VAT. There will, however, be special provisions to allow suppliers to charge VAT in situations where their recipient is able to recover their VAT but where there is no VAT clause.

We would highly recommend (amongst other things) that a thorough legal review of contracts relating to the supply of goods or services which will attract VAT are subject to review.

6. Penalties for non-compliance?

Penalties will be imposed for non-compliance. The Ministry of Finance has highlighted the following as being examples of where penalties could be imposed:

A person failing to register for VAT inside the time period allowed;

A person failing to submit a tax return or make a payment within the required period set under legislation or by the FTA;

A person failing to keep the records required under the provisions of the UAE tax legislation;
and

Tax evasion offences where a person performs a deliberate act or omission with the intention of violating the provisions of the UAE tax legislation.