

Executive Regulation on Value Added Tax in the UAE

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The United Arab Emirates (“**UAE**”) Federal Tax Authority has recently published the draft Executive Regulations of Federal Decree Law No. 8 of 2017 on Value Added Tax (the “**VAT Law**”) which introduces a 5% VAT on the import and supply of goods and services in the UAE from 1 January 2018 (the “**Regulations**”).

The Regulations outline key details in respect of the application of the VAT Law, including registration requirements, VAT invoice requirements, exempt goods and services (including goods or services that are treated as zero-rated), and how businesses in the UAE’s free zones will be treated from a VAT perspective.

Application of VAT

The Regulations clarify that the vast majority of goods and services supplied in the UAE will be subject to VAT. Specifically, the Regulations provide that:

1. the supply of water, gas and electricity (DEWA bills) will be subject to VAT as will the transfer or licensing of intangible rights (specifically intellectual property rights such as author or inventor rights and trademarks);
2. certain industries are zero rated for tax purposes, including education services (except higher education services which are foreign owned or do not receive at least 50% of their funding from, the UAE Federal or local government), healthcare services, goods exported to other VAT registered businesses outside of the UAE (subject to certain conditions) and goods or services supplied to a customer who has no UAE corporate presence; and
3. certain sectors are tax exempt including financial services connected to dealings in money (e.g. exchange of currency and loans), Islamic finance products, residential leases for periods longer than six months, and local passenger transport.

Registration Requirements

Businesses with taxable supplies of over AED 375,000 per annum will be subject to mandatory registration and must register within 30 days of being obliged to do so or be subject to penalties under the VAT Law.

Businesses with taxable supplies of over AED 187,500 per annum may apply for voluntary registration.

Businesses which provide exclusively zero rated supplies may apply for an exemption from VAT registration.

Deregistration is permitted if: (a) a company ceases to supply taxable goods or services and does not intend to make any such supplies over the next twelve months; or (b) the value of goods and services provided is below the threshold for voluntary registration.

It should be noted however that the cancellation of tax registration does not exempt businesses from liabilities and obligations which arose when the business was tax registered.

Payment of VAT, Place of Supply, and Invoicing

VAT is payable upon the earlier of: (a) the invoice date; (b) the delivery or performance of the services or; (c) the payment date.

In relation to invoices, prices must include VAT except where the supply of goods and services is in relation to exports, or the customer is a tax registrant (a taxable person with a tax registration number). VAT invoices must include: (a) name and address of supplier; (b) VAT Number; (c) unique VAT invoice number; (d) date of invoice and date of supply if different; (e) description of goods or services; (f) unit prices and quantities as applicable; (g) any discount offered; and (h) VAT calculation and gross amount due.

Businesses will be able to recover input VAT in respect of exempt goods and services, or VAT paid in another GCC Implementing State to avoid double taxation. However, certain supplies will be non-recoverable, including entertainment services for non employees, personal use vehicles and other goods for employees.

Tax Groups

Related Parties (e.g. parties with 50% or more voting rights in the other party, or parties with common shareholders, economic ownerships or economic interests) can form a tax group and appointment one member as the representative responsible for filing a consolidated tax return.

Tax Groups can be beneficial to companies operating in the UAE as tax breaks are applicable on supplies made by one group member to another. In addition, any input or output tax, supplies or imports relating to one member of a tax group shall be deemed to have been made by the representative member.

In relation to organising their groups, businesses should be aware that the UAE authorities will deem that a tax group exists where it is found that related parties have artificially segregated their business, or the authorities find that there is a loss of tax revenue due to the segregation of businesses.

Capital Assets

Companies wishing to set up in the UAE should note the VAT rules relating to capital assets. A capital asset is an item of expenditure for a business amounting to AED 5,000,000 or more on which tax is payable, with a useful lifespan of (i) 120 months in the case of building or a part thereof, or (ii) 60 months for all other assets. Under the capital asset scheme, the input tax related to such asset will be split over 10 or 5 years (depending on the asset's useful lifespan). Such scheme will end when the asset is sold / disposed of or destroyed.

UAE Free Zones

As drafted the Regulations do not provide a blanket exemption for free zone entities not to be liable to impose or pay VAT and that any zone which is to be exempted will require a cabinet resolution. The Regulations specifically require that for a free zone or a “Designated Zone” as per the Regulations to be treated as sitting outside of the VAT legislation that the designated area would have to be fenced in and have security and customs controls in place to monitor the entry and exit of goods to and from that area. It is arguable that Jebel Ali Free Zone and Dubai Airport Free Zone could satisfy this category but as structured presently, this would not include the Dubai International Financial Centre, or other significant free zones in Dubai.