الهيئة الاتحادية للضرائب
FEDERAL TAX AUTHORITY

United Arab Emirates

E-Commerce
VAT Guide | VATGEC1

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Content

1. Introduction

1.1. Overview

1.1.1. Short brief

VAT was introduced with effect from 1 January 2018 in the UAE. As a general consumption tax on the supply of goods and services, it applies to supplies which take place within the territorial area of the UAE.

1.1.2. Purpose of this document

This document contains guidance about the VAT treatment of supplies of goods and services through electronic means, such as over the internet or a similar electronic network.

The purpose of this document is to provide guidance on how VAT affects businesses which operate within the e-commerce sector.

1.1.3. Who should read this document?

This document should be read by businesses involved in the e-commerce sector.

It is intended to be read in conjunction with other relevant guidance published by the Federal Tax Authority ("FTA").

1.1.4. Status of the document

In this guide, Federal Decree-Law No. 8 of 2017 on Value Added Tax is referred to as "Decree-Law" and Cabinet Decision No. 52 of 2017 on the Executive Regulation of the Federal Decree-Law No. 8 of 2017 on Value Added Tax and its amendments is referred to as "Executive Regulation". This guidance is not legally binding on the FTA but is intended to provide assistance in understanding and applying the VAT legislation as it applies to e-commerce.

This guide is issued in accordance with Article 73 of the Executive Regulation and provides general guidance concerning the application of the Decree-Law and Executive Regulation in respect of e-commerce in the United Arab Emirates. This guide does not deal with all the legal details associated with VAT and is not intended for legal reference. For details in respect of the general operation of VAT, refer to the *Taxable Person Guide – Value Added Tax* which is available on the FTA website (www.tax.gov.ae).

2. Overview: e-Commerce and VAT

2.1. What is e-commerce?

In traditional commerce, goods and services are usually supplied from a physical location, such as a shop or office, with the supplier and the recipient usually present in the same location.

E-commerce (also known as “electronic commerce” or sometimes loosely referred to as the “digital economy”) generally refers to supplies of goods and services over the Internet or a similar electronic network, with goods and services being sourced or supplied by electronic means, such as through a computer, phone website or electronic applications.

This Guide discusses the following types of transactions:

- goods purchased through an electronic platform; and
- services supplied by electronic means.

It should be noted that many of the general VAT rules also apply to e-commerce transactions. There are, however, a number of additional VAT rules which are intended to apply specifically to e-commerce arrangements.

The remaining part of this Chapter provides an overview of general VAT rules which affect most types of supplies, including supplies of goods and services made in the context of e-commerce.

2.2. Legislative background

UAE VAT is governed by the Decree-Law and the Executive Regulation.

It should be noted that VAT legislation contemplates special rules for cross-border supplies of goods and services between the UAE and “Implementing States”, which are the GCC States that are implementing a VAT system. At the current time, none of the GCC states are considered to be Implementing States for the purposes of the UAE VAT. As a consequence, this version of the Guide does not cover special rules applicable to supplies with Implementing States.

2.3. What is VAT?

VAT is a transaction-based indirect tax, which is charged and collected at each stage of the supply chain by legal and natural persons (“persons”) which meet the requirements to be registered for VAT.

Thus, persons which are either registered or are required to register for VAT (known as “taxable persons”) charge VAT to their customers on taxable supplies of goods or services. A taxable supply is defined in the VAT legislation as a “supply of goods or services for a consideration by a person conducting business in the UAE, and does

not include an exempt supply".[1] As a consequence, for a supply to be a taxable supply, the following conditions must be met:

- there needs to be a supply of goods or services;
- the supply has to be for consideration;
- the supply has to be made by a person who is conducting business in the UAE; and
- the supply should not be an exempt supply.

Taxable supplies may either be subject to the standard rate of 5%[2] or zero rate[3] (i.e. 0%). A supply cannot be a taxable supply if it is an exempt supply. Where a supply is neither a taxable supply nor an exempt supply, it will be outside the scope of UAE VAT.

VAT which taxable persons charge to their customers is known as "output tax". On a periodic basis, taxable persons are required to account for output tax to the FTA. This is done by submitting a periodic tax return (also known as a "VAT return").

It should be noted that taxable persons will typically be charged VAT (known as "input tax") by their suppliers when they acquire goods and services. Taxable persons are generally able to recover input tax, subject to certain conditions. Where the conditions allowing recovery of input tax are met, taxable persons are able to deduct this input tax from the value of output tax declared in the same VAT return.

The difference between the output tax and input tax reported by a taxable person in their VAT returns is either the net VAT payable to the FTA (if the output tax exceeds the input tax) or net VAT recoverable from the FTA (if the input tax exceeds the output tax) for that specific tax return period.

2.4. VAT registration requirements

As mentioned above, a person is only required to account for VAT in the UAE, if it is a taxable person – that is, if the person is either registered for VAT or is obligated to register for VAT. It is, therefore, necessary to determine when a person is required to be registered for VAT.

VAT registration may be either mandatory or voluntary. It should be noted that different registration requirements and conditions may apply to both mandatory and voluntary registrations depending on whether a person has a place of residence in the UAE. As a consequence, it is important for a person to know whether or not it is resident in the UAE when considering which registration rules apply to it.

[1] Article 1 of the Decree-Law.
[2] Article 3 of the Decree-Law.
[3] Article 45 of the Decree-Law.

A person would have a place of residence in the UAE for the purposes of VAT registration if the person has a place of establishment or fixed establishment in the UAE. The terms are defined in the Decree-Law:[4]

- "Place of Establishment" is the place where a business is legally established in a country pursuant to the decision of its establishment, in which significant management decisions are taken or central management functions are conducted.
- "Fixed Establishment" is any fixed place of business, other than the Place of Establishment, in which the person conducts his business regularly or permanently and where sufficient human and technology resources exist to enable the person to supply or acquire goods or services, including the person's branches.

Further details regarding requirements for mandatory and voluntary registrations are provided below.

2.4.1. Mandatory registration

A person resident in the UAE is required to register for VAT if any of the following apply:[5]

- the total value of their taxable supplies made within the UAE and imports into the UAE exceeded AED 375,000 over the previous 12-month period; or
- the person anticipates that the total value of their taxable supplies made within the UAE and imports into the UAE will exceed AED 375,000 in the next 30 days.

The main categories of supplies and imports that need to be taken into account for the purposes of the mandatory registration threshold, and the voluntary registration threshold (discussed in Part 2.4.2 below), are:[6]

- Supplies of goods or services made in the UAE in the course of business.
- Any goods or services that the person has imported into the UAE that would have been subject to VAT had they been supplied in the UAE.

The person should not include in this calculation the value of any supplies which are either exempt from VAT or are outside the scope of UAE VAT.

In contrast, if the person is not resident in the UAE, the person is required to register for VAT if it makes any taxable supplies in the UAE, unless there is another person in the UAE who is responsible for accounting for VAT on such activities. As such, for non-resident suppliers, the registration threshold is, in effect, nil.

[4] Article 1 of the Decree-Law.
[5] Article 13 of the Decree-Law and Article 7 of the Executive Regulation.
[6] Article 19 of the Decree-Law.

2.4.2. Voluntary registration

Voluntary registration is an option available to businesses which do not have a turnover in excess of the mandatory registration threshold but would still like to be registered for VAT. A person can voluntarily register for VAT if:[7]

- at the end of any month, the total value of the person's taxable supplies and imports, or their expenses which were subject to VAT, in the previous 12 months exceeded AED 187,500; or
- the total value of the person's taxable supplies and imports, or their expenses which are subject to VAT, is expected to exceed AED 187,500 in the next 30 days.

It should be noted that a non-resident person is not allowed to voluntarily register on the basis of its "taxable expenses".

2.5. Place of supply

For a supply to be within the scope of the UAE VAT regime, the supply needs to take place in the UAE. If a supply takes place outside the UAE, the supply is treated as outside the scope of UAE VAT and therefore UAE VAT will not apply. Furthermore, such an out of scope supply would not count for the purposes of the registration thresholds discussed above.

In order to assist businesses in determining where a supply takes place, the VAT legislation provides a number of "place of supply" rules. These rules are different for goods and services, and may vary depending on a set of specific facts. The specific rules applicable to supplies of goods and services in e-commerce arrangements are discussed in the subsequent parts of this Guide.

2.6. Reverse charge mechanism

Under the default VAT rule for accounting for VAT, a supplier of goods or services is liable to account for VAT on any taxable supply, irrespective of whether the supplier is a UAE resident or not.

The "reverse charge mechanism" is a simplification measure which allows non-resident suppliers to avoid the need to register for VAT in the UAE when they make supplies of goods or services in the UAE to registered persons.

Where the reverse charge mechanism applies, the non-resident supplier will not charge VAT to the recipient. Instead, the VAT-registered recipient must self-account for the VAT in respect of the goods or services received. This means that the recipient must record the VAT on the acquisition as output tax at the applicable rate in their systems and declare it in their VAT return. This output tax may then be recovered by

[7] Article 17 of the Decree-Law and Article 8 of the Executive Regulation.

the recipient as input tax in accordance with the normal input tax recovery rules as applicable to that recipient.

The reverse charge mechanism applies in two scenarios. The first scenario applies to a taxable person where that taxable person imports non-exempt goods or services into the UAE[8] – in this context, "import" means the arrival of goods from abroad into the UAE or the receipt of services from outside the UAE[9]. The second scenario where the reverse charge mechanism applies is in situations where the place of supply of goods or services is in the UAE and the following conditions are met:[10]

- the supply is a taxable supply;
- the supplier's place of residence is outside the UAE;
- the supplier does not charge VAT on that supply (i.e. the supplier is not already registered for VAT in the UAE);
- the recipient's place of residence is in the UAE; and
- the recipient is registered or required to register for VAT in the UAE.

The purpose of the reverse charge mechanism is to reduce compliance and the administrative burden of collecting VAT from non-resident suppliers. It also puts the recipient in the same position as they would have been if they acquired the goods or services from a domestic supplier, thereby ensuring that domestic UAE suppliers are not disadvantaged by VAT not being collected from purchases from abroad.

2.7. Input tax recovery

If the recipient of the supply is a taxable person and is registered for VAT then they may be able to recover the amount of VAT incurred if the necessary conditions, discussed below, are met. Recipients who are not taxable persons are not typically able to recover any VAT on their acquisitions, unless one of the special refund schemes applies.

The ability to recover VAT by a taxable person is subject to certain conditions. The recovery of input tax will be permitted where acquired goods and services are used, or intended to be used, in making any of the following:[11]

- taxable supplies;
- supplies that are made outside the UAE which would have been considered taxable had they been made in the UAE; and
- supplies of financial services which would have been treated as exempt if made in the UAE, but which are provided to a person who is outside the UAE and are treated as taking place outside the UAE.

[8] Article 48(1) of the Decree-Law.
[9] Article 1 of the Decree-Law.
[10] Article 48(3) of the Executive Regulation.
[11] Article 54 of the Decree-Law.

Where any acquisition by a taxable person relates solely to the supplies indicated above, the person will, generally, be able to recover the input tax incurred in full. In contrast, where an acquisition is directly linked solely to non-business activities (for example, private use) or exempt supplies (for example, certain supplies of financial services) made by the taxable person, the taxable person will not be able to recover any of the input tax incurred. Finally, where goods or services are used partly in the course of making supplies that allow for the recovery of input tax and partly for making supplies for which VAT is not recoverable, then the taxable person must determine the portion of the input tax that can be recovered.

Any recoverable input tax can be recovered through a VAT return. A taxable person is able to recover input tax in the first tax period in which both of the following conditions are met:[12]

- the taxable person has received and retained a tax invoice or other documentation evidencing the supply or import; and
- the amount of VAT in question has been paid in whole or in part. It should be noted that the condition will also be met if the person intends to make the payment within six months of the due date of payment.

If the taxable person has not recovered input tax in the tax period in which the conditions have been met, the person will be able to recover this input tax in the following tax period.[13]

It should be noted that, where a taxable person accounts for VAT in respect of any acquired goods or services under the reverse charge mechanism in its VAT return, that VAT is still the person's input tax. As a consequence, the taxable person may consider whether it can recover this input tax under the normal input tax recovery rules discussed above, and can recover it in the appropriate VAT return, if appropriate.

[12] Article 55(1) of the Decree-Law.
[13] Article 55(2) of the Decree-Law.

3. E-commerce: Supplies of Goods

3.1. Introduction

For the purposes of this Guide, a supply of goods in the e-commerce context involves purchasing goods through an electronic platform, such as a website or a marketplace. Once the goods are purchased, they are then delivered to the recipient.

Depending on the location of the supplier, the recipient, and the goods, the supply may take any of the following basic forms:

- A supply by a resident supplier to a recipient in the UAE, with goods being delivered from either inside or outside the UAE;
- A supply by a resident supplier to a recipient outside the UAE, with goods being delivered from either inside or outside the UAE;
- A supply by a non-resident supplier to a recipient in the UAE, with goods being delivered from either inside or outside the UAE; and
- A supply by a non-resident supplier to a recipient outside the UAE, with goods being delivered from either inside or outside the UAE.

In each of the above scenarios, the supplier has to consider the impact of VAT on the sale of the goods. In addition, where the goods are physically imported into the UAE from outside the UAE, the importer has to consider the impact of the VAT charged on import of the goods.

Below we discuss the VAT treatment of sales of goods in more detail.

For the purpose of this guide, the UAE refers to the mainland UAE. This guide does not consider supplies of goods to, from or within Designated Zones. Such supplies are discussed separately in the Designated Zones VAT Guide | VATGDZ1.

3.2. Place of supply of goods

The basic place of supply rule for goods is that, if the goods are located in the UAE when supplied, then they are treated as supplied in the UAE. Similarly, if the goods are located outside the UAE when they are supplied, the place of supply is outside the UAE. Where the supply involves the export of goods from the UAE to a place outside the GCC Implementing States (which is currently, any other state outside the UAE), the place of supply is in the UAE.[14]

As such, a supplier has to consider where the goods are, and which of the place of supply rule applies to a specific transaction. Below we consider various scenarios in more detail.

[14] Article 27 of the Decree-Law.

3.3. Sales of goods from the UAE

This part discusses e-commerce arrangements where the sold goods are delivered from the UAE.

3.3.1. Imposition of VAT

As mentioned in Part 3.2, where the goods are supplied wholly within the UAE or are exported from the UAE to outside the Implementing States, the place of supply of these goods will be the UAE.

It should be noted that goods are considered to be supplied in the UAE where the customer receives the ownership or the right to dispose of the goods in the UAE. For example, where a supplier imports goods into the UAE prior to transferring them to the recipient in the UAE, the supply shall be treated as taking place in the UAE.

Where a taxable supply in the UAE is made by a supplier which is a taxable person (i.e. the supplier is registered or required to register for VAT), the supplier has to consider which VAT rate should be charged on the supply.

Goods supplied locally

The default VAT rate is 5%. This is the rate which applies to most goods which are sold within the UAE.

There are, however, a number of goods which may be subject to the 0% VAT rate when sold locally. In the e-commerce context, the most likely example of goods which may be zero-rated when sold locally are qualifying pharmaceutical products and medical equipment.[15]

Exported goods

Where goods are exported from the UAE, the supply may be eligible to be zero-rated as an export in accordance with Article 30 of the Executive Regulation. The conditions for zero-rating vary depending on which party is contractually responsible for arranging the dispatch of goods:

1. Where the supplier is responsible for arranging transport of sold goods from the UAE or appoints an agent to do so on its behalf (this is known as a “direct export”), the supply may be zero-rated if the following conditions are met:

    a. The goods are physically exported to a place outside the Implementing States (currently, it is any country outside the UAE) or are put into a customs suspension regime in accordance with GCC Common Customs Law within 90 days of the date of the supply.

[15] Article 41(4) of the Executive Regulation.

b. Official and commercial evidence of export or customs suspension is retained by the exporter.

2. Where the "overseas customer"[16] is responsible for arranging the collection of the goods from the supplier in the UAE and then exporting the goods or has appointed an agent to do so on his behalf (this is known as "indirect export"), the supply may be zero-rated if the following conditions are met:

   a. The goods are physically exported to a place outside the Implementing States (currently, it is any country outside the UAE) or are put into a customs suspension regime in accordance with GCC Common Customs Law within 90 days of the date of the supply under an arrangement agreed by the supplier and the overseas customer at or before the date of supply.

   b. The overseas customer obtains official and commercial evidence of export or customs suspension in accordance with GCC Common Customs Law, and provides the supplier with a copy of this.

   c. The goods are not used or altered in the time between supply and export or customs suspension, except to the extent necessary to prepare the goods for export or customs suspension.

   d. The goods do not leave the UAE in the possession of a passenger or crew member of an aircraft or ship.

It should be noted that one of the common conditions for zero-rating of exports is that the supplier (in the case of a direct export) or the recipient (in the case of an indirect export) must obtain official **and** commercial evidence of export.

"Official evidence" means export documents issued by the local Emirate Customs Department in respect of goods leaving the UAE – in most Emirates, this would require the exporter to retain a certificate issued by the relevant Customs Department confirming exit of goods from the UAE (for example, an exit certificate or a similar document evidencing the export).

On the other hand, "commercial evidence" refers to a document issued by commercial parties which provides evidence of the transportation of the goods to outside the UAE. Acceptable commercial evidence includes airway bills, bills of lading, consignment notes, and certificate of shipments.

The purpose of the requirements to obtain official and commercial evidence of export is to ensure that there is sufficient proof that the transaction has taken place and the

[16] "Overseas Customer" is defined in Article 1 of the Executive Regulation to mean a recipient of goods who does not have a place of establishment or fixed establishment in the UAE, does not reside in the UAE, and does not have a Tax Registration Number ("TRN").

goods have actually left the UAE. As such, the official and commercial evidence of export must identify the following:

- the supplier;
- the consignor;
- the goods;
- the value of the goods;
- the export destination; and
- the mode of transport and route of the export movement.

Where the above conditions for zero-rating are not met, or if the goods in question are not exported from the UAE or put into a customs suspension regime within the required period of 90 days, the supplier should account for VAT on the supply at the default rate of 5%.

If an exporter is of the view that it is impossible to obtain the evidence prescribed under Article 30 of the Executive Regulation, then they may apply for an exception from the FTA. Please refer to VAT Administrative Exceptions Guide | VATGEX1.

3.3.2. Accounting for VAT

Typically, the responsibility for accounting for VAT on any supply of goods in the UAE lies with the taxable supplier of goods.

As discussed in Part 2.6, there may be situations when the obligation to account for VAT passes to the recipient of the goods under the "reverse charge mechanism". With respect to a taxable supply of goods that are already in the UAE, the reverse charge mechanism applies where:[17]

- the supplier does not have a place of residence in the UAE;
- the supplier does not charge VAT on that supply, for example, where the supplier is not already registered for VAT in the UAE, and
- the recipient is a taxable person with a place of residence in the UAE.

Where the reverse charge mechanism applies, the recipient must account for VAT to the FTA at the VAT rate applicable to the acquired goods. This VAT should be charged on the top of the agreed price for the goods (i.e. the price is treated as VAT exclusive).[18]

It should be noted that the reverse charge mechanism is an exception to the default rule and therefore should only be used where the supplier can ascertain that all of the conditions for the application of the reverse charge mechanism are satisfied. In order to ensure that the reverse charge mechanism is not applied incorrectly, the non-resident supplier should seek to collect information from the recipient regarding the

[17] Article 48(3) of the Executive Regulation.
[18] Article 48(4)(a) of the Executive Regulation.

recipient's UAE residency and registration status. The supplier should also retain this information for its records and in order to be able to substantiate the application of the reverse charge mechanism in case of a tax audit. If the non-resident supplier cannot ascertain all of the details necessary for the application of the reverse charge mechanism to a supply, such as that the recipient is registered for VAT, then the supplier should register for VAT in the UAE and account for VAT to the FTA itself.

3.4. Sales of goods from outside the UAE

Where goods are supplied by the supplier outside of the UAE, the place of supply of the goods is also outside the UAE. Thus, if a supply of goods involves the goods being transferred to the recipient outside of the UAE, the place of supply of the goods is outside the UAE, even if the goods are subsequently imported into the UAE. This means that UAE VAT does not apply to the supply of these goods.

This should be contrasted with situations where the goods are first imported into the UAE and then supplied to the recipient – in such situations, the supply of the goods to the recipient is treated as a local supply in the UAE with the place of supply in the UAE.

It should be noted that the physical importation of goods into the UAE would typically also trigger the obligation on the importer (either the supplier or the recipient) to account for import VAT. This is discussed in more detail in the next part of this Guide.

3.5. VAT on import of goods into the UAE

3.5.1. Imposition and accounting for import VAT

Where goods are imported into the UAE from overseas, the goods will be subject to import VAT at 5%, unless the goods would be either zero-rated or exempt if supplied in the UAE.

Import VAT is imposed on the customs value as calculated pursuant to Customs legislation, including the value of insurance, freight and any customs fees and excise tax paid on the import of the goods. Where the determination of such customs value is not possible, then the value can be determined based on the alternate valuation rules stated in the applicable Customs legislation.[19]

The obligation to account for import VAT is on the "importer", being the person whose name is listed as the importer of the relevant goods for customs clearance purposes. The mechanism for accounting for VAT on imported goods depends on the VAT registration status of the importer at the time of importation.

[19] Article 35 of the Decree-Law.

Deferred payment to the time of filing VAT return

In certain situations, an importer may be able to account for VAT in the VAT return which relates to the tax period in which the goods are imported. In order for this to occur, the importer must meet the following conditions:[20]

- the importer is registered for VAT at the time of import;
- the importer has sufficient details for the FTA to verify the import and the VAT which is due on the import and is able to provide these as required;
- the importer has provided the FTA with its own Customs registration number issued by the competent Customs department for the import in question; and
- the importer has cooperated with, and complied with any rules imposed by the FTA in respect of the import.

In practice, these conditions require that a VAT-registered importer registers their Customs registration number with the FTA prior to importing goods into the UAE (this can be done at the time of registering for VAT or at a later time). When any goods are subsequently imported into the UAE by this importer using the Customs registration number which is registered with the FTA, no VAT will be charged at the time of import and the goods will be released to the importer as soon as other customs formalities are completed. The applicable import VAT would then be prepopulated as output tax in box 6 of the importer's next VAT return. It should be noted that the importer has an ongoing obligation to ensure that the VAT return reflects the correct VAT payable in respect of the import – as a consequence, the importer should review the correctness of the import VAT prepopulated in its VAT return and should make adjustments in box 7 of the VAT return, if necessary.

VAT incurred on imports is treated as input tax of the importer, and the importer may be able to recover it in box 10 of its VAT return, if eligible under the normal VAT recovery rules as discussed in Part 2.7 of this Guide. Where the importer is entitled to recover the input tax in full, it will not represent a cost to the business.

Payment at the time of import

In situations where the conditions for deferring the payment of import VAT are not met – for example, the importer is not registered for VAT at the time of import – the importer would need to pay VAT to the FTA before the goods can be released to it by the relevant Customs department. This process requires the importer to use the FTA's e-Services portal to complete the VAT301 – Import Declaration Form for VAT Payment and to make the payment of applicable VAT.

Please refer to the VAT Import Declaration User Guide for detailed guidance regarding accounting for import VAT by non-registered importers.

[20] Article 48(1) of the Executive Regulation.

3.5.2. Import with assistance of an import clearing agent

Often, the task of importing goods into the UAE and fulfilling all importation formalities are delegated to a clearing agent. For example, the task of clearing the goods through Customs may be undertaken by a specialised clearing agent, a freight forwarder responsible for delivering the goods to the purchaser, or a third party local company.

Where a clearing agent or equivalent business is importing goods on behalf of a VAT-registered importer, the clearing agent should declare the importer's TRN on the customs import declaration. This will allow the importer to account for the import VAT in its VAT return as described in Part 3.5.1.

On the other hand, where a clearing agent is importing goods on behalf of a non-registered importer, the agent should declare its own TRN or C/O TRN[21] on the customs import declaration and should be responsible for the payment of VAT in respect of the import in its VAT return.[22]

It should be noted that since the clearing agent or equivalent business is not the owner of the goods, but simply facilitates the import of those goods into the UAE, **it should not recover the import VAT as its own input tax in the VAT return, and doing so would expose the clearing agent** or equivalent business **to an assessment for over-recovered VAT and penalties**. Instead, if the VAT is paid by the clearing agent or equivalent business, it can be recovered by the agent directly from the importer. To do so, the clearing agent or equivalent business must issue a statement to the importer which contains, at the minimum, the following details:[23]

- the name, address, and TRN of the clearing agent or equivalent business;
- the date on which the statement is issued;
- the date of import of the relevant goods;
- a description of the imported goods which is sufficient to identify them; and
- the amount of VAT paid by the agent to the FTA in respect of the imported goods.

It should be noted that the statement issued by the clearing agent is treated as a *de facto* tax invoice for VAT purposes. As a consequence, the importer is able to rely on the statement to recover VAT if and when available (for example, if the non-registered importer registers for VAT at a later date and it was eligible to recover the input tax paid before registration).

The FTA requires all agents to retain copies of these statements, so that they are available for inspection when the FTA undertakes audits of these agents' VAT

[21] C/O TRN, or "TINCO", is a special reference number that is provided to freight forwarders who successfully register with the FTA as a freight forwarder or clearing agent and which allows them to facilitate the imports for non-registered persons or facilitate the imports of goods under suspension arrangements, where applicable.
[22] Article 50 of the Executive Regulation.
[23] Article 50(7) of the Executive Regulation

accounts.

3.5.3. Exceptions from import VAT

Certain categories of goods are relieved from import VAT. In some cases, these categories generally mirror reliefs which are available in respect of customs duties, therefore allowing certain goods not to be subject to both VAT and customs duties.

Import VAT suspension

Goods are not treated as imported into the UAE where they are under customs duty suspension arrangements in accordance with the GCC Common Customs Law under any of the following categories:[24]

1. temporary admission;
2. goods placed in a customs warehouse;
3. goods in transit; or
4. imported goods intended to be re-exported by the same person.

Where any of the above exceptions apply, the movement of goods into the UAE is not treated as an import, and therefore not subject to import VAT. If any conditions for the VAT suspension are subsequently broken, the goods may be treated as having been imported into the UAE and the VAT will become due on the import from the date the goods were originally imported.

In order to benefit from the above VAT exception, the importer is required to provide a financial guarantee to the FTA for the amount of VAT chargeable in respect of the goods. This guarantee will be refunded by the FTA once the goods leave the UAE in accordance with the relevant customs suspension conditions. It should be noted that where an import is facilitated by a clearing agent who has a TINCO registration, the TINCO agent can use its own guarantee with the FTA, and ask the importer for a guarantee or cash deposit which will be refunded once the goods leave the UAE.

Import VAT exemption

In certain situations, imports of goods into the UAE are fully exempt from VAT. The exemption applies to goods which are treated as exempt from Customs duty under any of the following categories:[25]

1. goods imported by the military forces, and internal security forces;
2. personal effects and gifts accompanied by travelers;
3. used personal effects and household items transported by UAE nationals living abroad on return or expats moving to live in the UAE for first time; or
4. returned goods.

[24] Article 47(1) of the Executive Regulation.
[25] Article 47(2) of the Executive Regulation.

The last of the above categories may apply in respect of goods which were sold and exported from the UAE, but then returned to the supplier in the UAE. It should be noted that this import exemption only covers import VAT and does not extend to VAT, if any, which may have been originally charged by the supplier on the sale of the goods.

3.6. Summary: VAT treatment of supplies of goods

The table below summarises the VAT treatment of various scenarios involving supplies of goods by a supplier who is resident in the UAE and a supplier who is not resident in the UAE.

For the purposes of this table, it has been assumed that the supply takes place before or at the time the goods are dispatched, that is, in the location from which the goods are delivered.

Supplier is a UAE resident and a taxable person*				
Goods delivered from	Goods delivered to	VAT on supply	VAT on supply accounted by	VAT on import**
UAE	UAE	5%	Supplier	No
UAE	Outside UAE	0% if export conditions are met; otherwise 5%	Supplier	No
Outside UAE	UAE	No	N/A	Yes
Outside UAE	Outside UAE	No	N/A	No

Notes:
* Where the supplier is not registered for VAT, no VAT applies on the supply (it could apply on the import), unless the supplier has an obligation to register for VAT in accordance with the registration rules.
** The obligation to account for import VAT is on the "importer", i.e. the person whose name is listed as the importer of the relevant goods for customs clearance purposes.

Supplier is not a UAE resident						
Residency status of recipient	Registration status of recipient	Goods delivered from	Goods delivered to	VAT on supply	VAT on supply accounted by	VAT on import***
UAE	Registered	UAE	UAE	5%	Recipient*	No
Any	Not registered	UAE	UAE	5%	Supplier**	No
Outside UAE	Any	UAE	UAE	5%	Supplier**	No
UAE	Registered	UAE	Outside UAE	0% if export conditions are met; otherwise 5%	Recipient*	No
Any	Not registered	UAE	Outside UAE	5% or 0% if export	Supplier**	No

				conditions are met		
Outside UAE	Any	UAE	Outside UAE	0% if export conditions are met; otherwise 5%	Supplier**	No
Any	Any	Outside UAE	UAE	No	N/A	Yes
Any	Any	Outside UAE	Outside UAE	No	N/A	No

Notes:
* Where a non-resident supplier is already registered for VAT in the UAE, it should account for VAT directly.
** Where the VAT on the supply is the obligation of the non-resident supplier who is not yet registered for VAT, the supplier must apply to register for VAT. The supplier may be subject to penalties for non-compliance.
*** The obligation to account for import VAT is on the “importer”, i.e. the person whose name is listed as the importer of the relevant goods for customs clearance purposes.

4. E-commerce: Supplies of Services

4.1. Introduction

For the purposes of VAT, “electronic services” mean services which are automatically delivered over the internet, an electronic network, or an electronic marketplace, including:[26]

- supply of domain names, web-hosting and remote maintenance of programs and equipment;
- supply and updating of software;
- supply of images, text, and information provided electronically, such as photos, screensavers, electronic books and other digitised documents and files;
- supply of music, films and games on demand;
- supply of online magazines;
- supply of advertising space on a website and any rights associated with such advertising;
- supply of political, cultural, artistic, sporting, scientific, educational or entertainment broadcasts, including broadcasts of events;
- live streaming via the internet;
- supply of distance learning; and
- services of an equivalent type which have a similar purpose and function.

For a supply to fall under the special VAT rules for electronic services, the supply must, therefore, meet two conditions:

- the service in question must be one of the services mentioned in the above list of services; and
- the service must be automatically delivered over the internet, an electronic network, or an electronic marketplace.

The first of these requirements means that a service will not be an electronic service where it is not one of the services listed above, even if the service is supplied using the internet or an electronic network. For example, a supply of legal or financial advice, transport services, or hotel accommodation will not constitute an electronic service simply because the parties use the internet to communicate with each other or to facilitate bookings.

The second requirement means that an electronic service should be automatically delivered over the internet, an electronic network, or an electronic marketplace with minimal or no human intervention. Thus, although a small degree of human intervention is acceptable to enable or complete a supply, this intervention should not change the nature of the delivery of a service as being essentially automated. For example, where a recipient receives a manually generated email with a download link

[26] Article 23(2) of the Executive Regulation.

for the software which he has picked from the supplier's website, the software can be still considered automatically delivered – the human intervention of sending an email with a download link is too insignificant to change the nature of the supply.

The above example can be contrasted with a situation where a recipient commissions customised software which has to be developed by the supplier before being put on the supplier's website to be available to the recipient. In this situation, the human involvement from the supplier in developing the software is critical to the supplier's ability to make the supply of services. As a consequence, the services cannot be treated as automatically delivered to the recipient.

It should be noted that a supply of electronic services may be made through an electronic marketplace rather than directly by the supplier to the recipient. "Electronic marketplace" means a distribution service which is operated by electronic means, including by a website, internet portal, gateway, store, or distribution platform, and meets both of the following conditions:[27]

- it allows suppliers to make supplies of electronic services to recipients; and
- the supplies made by the marketplace must be made by electronic means.

Where a supplier makes a supply of electronic services through an electronic marketplace, and the electronic marketplace is not acting in a capacity as an undisclosed agent, then the supply is treated as made by the principal supplier directly to the recipient of the supply. On the other hand, where the electronic marketplace acts as an undisclosed agent for the principal supplier, there will be two supplies for VAT purposes – a supply by the principal supplier to the marketplace and the supply by the marketplace to the principal recipient. The VAT consequences of making supplies through agents, such as electronic marketplaces, are discussed in detail in Chapter 5 of this Guide.

4.2. Place of supply of electronic services

Supplies of electronic services (as well as of telecommunications services) are subject to a special place of supply rule. Thus, the place of supply of electronic services is:[28]

- in the UAE, to the extent of the use and enjoyment of the supply in the UAE; and
- outside the UAE, to the extent of the use and enjoyment of the supply outside the UAE.

The reference to the "extent" in Article 31 indicates that a single supply may be apportioned for the purposes of a place of supply rules, so that it is treated as partly in the UAE and partly outside the UAE. This ability to apportion a supply is, however, limited to situations where a sufficient distinction exists between the different parts of

[27] Article 23(3) of the Executive Regulation.
[28] Article 31(1) of the Decree-Law.

the supply (i.e. services supplied) or consideration (amounts charged for such services) so as it is practical and reasonable to divide them.

The actual use and enjoyment of electronic services should be determined on the basis of where the electronic services are consumed by the recipient, regardless of the place of contract or payment.[29] Since the legislation does not provide any express rule regarding the indicators which should be used to determine the place of use and enjoyment, this determination must be made on a case-by-case basis, and all of the facts of the supply must be considered.

Nevertheless, the following principles may be used as high-level guidance in determining the place of use and enjoyment in various scenarios:

- In the case of an electronic service which is delivered to a physical place, the place of use and enjoyment of that service is that physical place. For example, where electronic services content can be only accessed from a particular physical location, that location will be the place of use and enjoyment.

- In the case of electronic services provided on a portable device, the use and enjoyment may be determined on the basis of the recipient's location at the time the services are supplied. For example, where music is electronically delivered to a recipient located in the UAE, the place of use and enjoyment will be the UAE.

  For the purpose of determining the location of the recipient, some of the factors which may be indicative of the recipient's location are:

  - the internet protocol ("IP") address of the device used by the recipient to receive the electronic service;
  - the country code stored on the SIM card used by the recipient to receive the electronic service;
  - the place of residence of the recipient;
  - the billing address of the recipient; and / or
  - the bank details used by the recipient for the payment.

  In determining the location of the recipient, the supplier should give priority to the factors which give the most precise information regarding the actual place where the electronic services will be used and enjoyed. For example, if a KSA resident orders an on-demand film to be watched on a computer with an IP address in the UAE, the use and enjoyment of the film will be in the UAE.

[29] Article 31(2) of the Decree-Law.

4.3. Imposition of VAT

The place of supply of electronic services determines whether or not the services are subject to VAT in the UAE. Where the place of supply is outside the UAE, no UAE VAT would apply. In contrast, where the place of supply is in the UAE, the supply will fall within the UAE VAT net.

The default VAT rate on a taxable supply of services in the UAE is 5%. The supply may, however, be zero-rated if it falls under any of the zero-rating scenarios in Article 45 of the Decree-Law. For example, a supply of an electronic service of distance learning which is automatically delivered over the internet may be zero-rated if it is covered by Article 45(13) of the Decree-Law, read with Article 40 of the Executive Regulation.

4.4. Accounting for VAT

Similar to supplies of goods discussed in Part 3.3.2 of this Guide, the responsibility for accounting for VAT on any taxable supply of electronic services in the UAE typically lies with the taxable supplier of those electronic services, unless the reverse charge mechanism applies.

In respect of cross-border supplies of electronic services into the UAE (i.e. import of services into the UAE from abroad), the reverse charge mechanism applies where the supplier does not have a place of residence in the UAE and the recipient is either registered or required to register for VAT in the UAE.[30]

Where the reverse charge mechanism applies to a supply, the recipient, rather than the non-resident supplier, must account for the VAT to the FTA at the applicable VAT rate. The VAT should be charged on top of the agreed price for the electronic services.[31]

Since the reverse charge mechanism is an exception to the default rule of accounting for VAT, it should only be used where the supplier can ascertain that all of the conditions for the application of the reverse charge are met. If the non-resident supplier cannot ascertain the necessary particulars for the application of the reverse charge mechanism to a particular supply, then the responsibility to account for VAT remains with the supplier.

Since the reverse charge mechanism is only applicable when specific conditions are met, taxable supplies from the same non-resident supplier of electronic services may be subject to different VAT accounting treatments – while a taxable supply made to a UAE taxable person would be subject to the reverse charge mechanism under Article 48(1) of the Decree-Law, the same supply made to a non-taxable person would not be subject to the reverse charge mechanism and would continue being the obligation

[30] Article 48(1) of the Decree-Law.
[31] Article 48(4)(a) of the Executive Regulation.

of the supplier. As such, the supplier may continue being responsible for accounting for VAT on supplies which are not subject to the reverse charge mechanism.

For example, if a non-resident supplier of cross-border electronic services makes supplies to both taxable and non-taxable persons, it will be liable to register for VAT and to account for UAE VAT on its supplies to non-taxable persons. However, tax on its supplies to taxable persons is the responsibility of its customers, who shall be responsible to account for VAT under Article 48(1) of the Decree-Law. Note that this treatment is only applicable to cross-border supplies of services, and the rules for goods are different, as explained in 3.3.2 of this Guide (which refers to the reverse charge mechanism under Article 48(3) of the Executive Regulation as applicable to supplies of goods with the place of supply in the UAE).

4.5. Summary: VAT treatment of electronic services

The table below summarises the high-level indicative VAT treatment of various scenarios related to supplies of electronic services.

Residency status of supplier	Place of use and enjoyment	Registration status of recipient	VAT on supply	VAT accounted by
UAE	UAE	Any	5% or 0% if specifically zero-rated	Supplier*
UAE	Outside UAE	Any	No	N/A
Outside UAE	UAE	Not registered	5% or 0% if specifically zero-rated	Supplier
Outside UAE	UAE	Registered	5% or 0% specifically zero-rated	Recipient
Outside UAE	Outside UAE	Any	No	N/A
Note: * The UAE-resident supplier will only be responsible for accounting for VAT on the supply where it is a taxable person in the UAE.				

5. Supplies made through agents

5.1. Introduction

In the context of e-commerce, supplies of goods and services are often made using electronic platforms, portals, gateway or marketplaces ("electronic marketplaces"). Such electronic marketplaces may sell goods or services themselves, as well as act as intermediaries between the supplier and the recipient of goods or services.

Where an electronic marketplace makes any supplies of goods or services in its capacity as a principal supplier (for example, it buys and then sells goods), then the electronic marketplace is treated as the supplier of those goods or services for VAT purposes. As a consequence, the electronic marketplace would be required to comply with the VAT rules and obligations which are typically applicable to suppliers of those goods or services.

Where an electronic marketplace is not acting as a principal supplier of goods or services, it may act as an intermediary which enables a sale of goods and services. For example, an electronic marketplace may be used to advertise products, make bookings, process payments, and arrange deliveries of goods and services.

The VAT treatment of supplies using intermediaries will depend on the arrangement between the supplier, the intermediary and the recipient of the supply:

- Where the intermediary is acting as a disclosed agent (as defined and explained in Part 5.2 below) between the supplier and the recipient of the supply, then the supply is treated as made directly by the supplier to the recipient.
- Where the intermediary is acting as an undisclosed agent (as defined and explained in Part 5.2) between the supplier and the recipient of the supply, then there are two supplies for VAT purposes – from the supplier to the intermediary, and from the intermediary to the recipient.

The rest of this Chapter discusses VAT rules applicable to supplies of goods or services made through intermediaries in their capacities as agents acting on behalf of a principal.

5.2. Types of agency arrangements

An agent is a person who acts on behalf of another person in respect of a specific task. In a commercial transaction, an agent can act on behalf of a supplier of goods or services, or on behalf of a recipient of goods or services, or both. In the context of e-commerce, an agent is typically an intermediary which is authorised by the principal supplier to act on its behalf in finding, and dealing with, customers.

From a VAT perspective, a different VAT treatment applies to supplies made through disclosed and undisclosed agents. As a consequence, it is important to be able to

determine whether or not an intermediary is acting as a disclosed or an undisclosed agent:

- A disclosed agent is an agent which acts on behalf and in the name of a principal. In disclosed agency situations, the recipient of the supply knows that it is dealing with an agent of a principal, even if the recipient may not have any direct communication with the principal.
- An undisclosed agent is an agent acting in its own name, where the customer has no knowledge, and cannot be reasonably expected to have knowledge, that the agent is acting on behalf of a principal. It should be noted that this situation is different from situations where no other principal is involved at all and the "intermediary" is a principal itself – in undisclosed agency situation, the agent is still acting on behalf of a principal.

In order to determine the existence and the disclosed / undisclosed nature of an agency relationship, the starting point is to analyse contractual arrangements between parties. The contractual arrangement should typically be taken as representative of the true relationship between parties unless it is clearly a sham or is fundamentally inconsistent with the reality of the actual transaction. In interpreting contractual arrangements, it is only necessary to consider information which has been made available to the parties at the time they entered the agreement. For example, the fact that there is an agency agreement between the principal supplier and the agent does not in itself imply that this fact should be known to an unsuspecting recipient of the supply.

It should be noted that in some situations, a person may be described as an "agent", but will in practice make supplies of goods or services on its own account. For VAT purposes, such labels should be ignored and the person should be treated as a principal in respect of the relevant supplies.

5.3. VAT treatment of supplies made through agents

The VAT treatment of supplies made through agents differs depending on whether it is a disclosed or undisclosed agency.

5.3.1. Disclosed agency

In accordance with Article 9(1) of the Decree-Law, a supply of goods and services through an agent acting in the name of and on behalf of a principal, i.e. through a disclosed agent, is considered to be a supply by the principal and for his benefit.

The above means that where an agent, such as an electronic marketplace, is acting as a disclosed agent of the principal supplier in respect of a supply of goods or services, then the supply of these goods or services is treated as made directly by the principal supplier to the recipient of the supply. As a result, the VAT obligations for the supply will remain with the principal supplier, and the principal supplier should account for this VAT in its tax return if required under the normal VAT rules.

VAT treatment of agency services

Where an agent is charging an agency fee or commission for its agency services, these agency services should be treated as a separate supply of services from the supply of the underlying goods or services.

Where the place of supply of such agency services is in the UAE, the services are considered a taxable supply. It should be noted that the place of supply for agency services provided by agents must be determined independently from the place of supply of the underlying goods and services, and therefore can differ from the place of supply of such goods or services. For example, where a UAE agent provides agency services to a UAE supplier of electronic services which have a place of supply in the USA under the use and enjoyment rules, the place of supply of the agency services would still be in the UAE.

The default VAT rate for a taxable supply of agency services in the UAE is 5%. However, in certain situations, the services may be zero-rated where they are supplied to a non-resident principal.[32] For zero-rating to apply, the following conditions must be met:

- the agency services are supplied to a recipient who does not have a place of residence in the UAE or any Implementing State and who is outside the UAE at the time the services are performed;
- the agency services are not supplied directly in connection with any real estate or goods situated in the UAE at the time the services are performed; and
- the performance of the agency services is not received by another person in the UAE who is unable to recover any input tax in full.[33]

The application of this zero-rating provision must be determined by reference to the specific services provided by the agent. For example, while agency services relating to the provision of an electronic platform to allow a principal to sell goods or services in the UAE may be eligible to be zero-rated, a service of physically handling and delivering goods would not be eligible for zero-rating since they would be directly in connection with the goods in the UAE.

It should be noted that where an agent does not charge a fee or commission for its services, VAT would not be applicable on the services.

5.3.2. Undisclosed agency

In accordance with Article 9(2) of the Decree-Law, a supply of goods and services through an agent acting in its name, i.e. through an undisclosed agent, is considered to be a direct supply by the agent and for his benefit.

Where an undisclosed agent is involved in a supply of any goods or services, there are two simultaneous supplies of these goods or services for VAT purposes – a supply

[32] Article 31(1)(a) of the Executive Regulation.
[33] Article 31(3) of the Executive Regulation.

from the principal supplier to the undisclosed agent, and a supply from the undisclosed agent to the recipient of the supply. In effect, the undisclosed agent is treated as both the buyer and the seller of the goods or services.

The simultaneous supplies means that both the principal supplier and the undisclosed agent must separately charge VAT applicable on the supply of the underlying goods or services, and must account for this VAT to the FTA in their own VAT returns. Where it is eligible under the general input tax recovery rules, the undisclosed agent may also recover the VAT which was charged to it by the principal supplier – this ensures that this VAT is not a cost to the agent.

VAT treatment of agency services

As discussed in Part 5.3.1, where an undisclosed agent and the principal agree that the agent can charge a separate agency fee or commission for the agency services to the principal, the agent must consider the VAT treatment of this services separately from the VAT treatment of the underlying supply of goods or services.

On the other hand, where the agent is able to embed the fee as a mark-up to the sale price of the goods or services, then the VAT treatment of the agency services should follow the VAT treatment of the underlying goods or services.

5.4. Tax invoice requirements

As a default rule, a VAT-registered supplier of a taxable supply of goods or services is required to issue an original tax invoice and deliver it to the recipient of the supply.[34] This condition applies irrespective of whether the goods are sold directly or through an electronic marketplace.

As an exception to the default rule, where a VAT-registered agent makes a supply of goods or services on behalf of a principal, the agent may issue a tax invoice in relation to that supply as if that agent had made the supply.[35] A tax invoice issued by the agent must contain all the usual particulars required under Article 59 of the Executive Regulation, but may include the agent's, rather than the supplier's, details – in which case, the invoice should, however, contain a reference to the principal supplier (including the supplier's name and TRN) somewhere on the invoice.

Only one tax invoice may be issued for any supply of goods or services. Therefore, this option is not available where the principal supplier has already issued a tax invoice. Similarly, where an agent has issued a tax invoice in respect of a supply made by the principal, the agent must ensure that the principal receives a copy of that tax invoice, and the principal should not issue its own tax invoice in respect of the same supply.

It is important to note 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

[34] Article 65(1) of the Decree-Law.
[35] Article 59(11) of the Executive Regulation.

consequence, the supplier has to account for the relevant VAT and must comply with all the record-keeping requirements in respect of the supply.

Finally, it should be noted that where an agent is an undisclosed agent which is treated as making the supply under Article 9(2) of the Decree-Law, the undisclosed agent has the responsibility to issue a tax invoice in its own name.