



19th Public Clarification – Services Export

VAT Public Clarification (VATP019) on Zero-rating of Export of Services

Introduction

In the UAE, export of services is treated as a zero-rated supply (0% VAT) subject to fulfilment of certain conditions. These conditions are prescribed under Article 31 of the UAE VAT Executive Regulations¹.

For general services (*refer Note 1*), the export of services will qualify for zero-rating (apart from other conditions) if it is supplied to a Recipient who:

1. Does not have place of residence in the UAE; and
2. Is outside the State at the time the services were performed.

The FTA has provided its interpretation on the above two conditions and how the businesses should identify the residency status and location of the Recipient before applying the zero-rate VAT.

We have summarized the public clarification along with our comments.

Note

1. *General Services to mean services other than those related to real estate, personal movable assets, performance-based services or facilitation of outbound tour packages.*

¹ Cabinet Decision No. (52) of 2017 on the Executive Regulations of the Federal Decree-Law No (8) of 2017 on Value Added Tax

Summary

| Condition 1: Place of Residence ('POR') | |
|---|--|
| Meaning | <p>Recipient may have a "place of residence" in the UAE if it either has</p> <ul style="list-style-type: none"> • A place of establishment ('POE') (refer Note 2); or • A fixed establishment ('FE') (refer Note 3) |
| Determining Factors | <p>In cases where the Recipient has multiple establishments including in the UAE, the Supplier need to identify establishment "most closely" related to the supply basis the following:</p> <ul style="list-style-type: none"> • Which establishment is the contractual recipient of the supply; • Which establishment is actually benefitting from the supply; • Which establishment will receive the invoice and make payment for the supply; • Which establishment provides instructions to the supplier; and • Whether the services are related to business being carried on by the recipient through an establishment in a particular country. |
| Example | <p>Services are supplied to a Recipient having its head office (i.e. POE) outside the UAE and a branch (i.e. FE) in the UAE. If services are solely related to the head office, then that would be considered as the establishment "most closely" related. The supply will consequently be treated as zero-rated.</p> <p>In contrast, if services are related to the branch, the Recipient would be in the UAE preventing the supply from being zero-rated.</p> |

Note:

2. POE to mean the place where the recipient is legally established pursuant to the decision of its establishment, in which significant management decisions are taken or central management functions are conducted.

3. FE to mean any fixed place of business in which the recipient conducts business regularly or permanently and where sufficient human and technology resources exist to enable the recipient to supply or acquire goods or services, including the recipient's branches.



| Condition 2: Location of the Recipient ('LOR') | |
|--|--|
| Meaning | <p>The location of the Recipient will be considered "Outside the State" when:</p> <ul style="list-style-type: none"> • They only have a short-term presence in the UAE of less than a month <u>and</u>² • The presence is not effectively connected with the supply. |
| Determining Factors | <p>It is necessary to consider the following:</p> <ul style="list-style-type: none"> • Whether the Recipient has any physical presence in the UAE "at the time the services are performed" • The LOR before or after the services are performed and consumed should not be considered • If the services are of a nature that they are performed and consumed at the time when they are completed, then the LOR at the time of completion of services to be considered • If the Recipient has multiple establishments, establishment "most closely" related to the supply at the time of performance to be considered • If the Recipient has a "temporary presence" in the UAE in relation to the service at the time the services are performed, it will prevent the supply from being treated as zero-rated |
| Example | <p>Examples of LOR in the UAE:</p> <ol style="list-style-type: none"> 1. Legal services provided to a non-resident company where the representative is in the UAE to be present during the hearing – the non-resident company has "temporary presence" in the UAE at the time the services were performed by Law firm and therefore, may not qualify for zero-rating. <p>Examples of LOR outside the UAE:</p> <ol style="list-style-type: none"> 2. Legal services provided to a non-resident company. The employees of the non-resident come to UAE for a conference not related to ongoing litigation 3. Fund management services provided to US based company. The US based company has branch in the UAE. The US company staff member comes to the UAE for 3 weeks to provide training to the employees of the UAE branch. 4. A Canadian resident natural person engaged UAE company for due diligence on a company he is interested in investing. During the process, the person comes to UAE on a week-long holiday and does not visit the UAE company or meet with its employees. |

² The word "and" was recently replaced by "or" in the Article 31(2) of the VAT Executive Regulations vide Cabinet Decision 46 of 2020

Concluding remarks by the FTA in the clarification:

*“Since zero-rating is an exception to the default VAT rate, a supply should only be zero-rated where the supplier can ascertain that all of the above conditions for the application of the 0% rate are satisfied. Therefore, in order to ensure that the zero-rated treatment is not applied incorrectly, the supplier should consider all available facts and seek, if necessary, additional information from the recipient in order to identify the recipient’s residency status and location at the time the services are performed. **If the supplier is not able to establish the necessary facts to ascertain if the zero-rating conditions are met, the supplier must standard-rate the supply.**”*

(Emphasis supplied)

Dhruva Comments / Observations

The FTA has issued a useful clarification for the businesses to identify the POR and LOR of the Recipient before taking the zero-rate benefit on export of services. The recent amendment in Article 31(2) of the VAT Executive Regulations and the above clarification puts onus on the Supplier to gather facts about the Recipient, and identify his residency and location including ‘temporary presence’ in the UAE before applying the zero-rate.

The clarification may potentially have an impact on many business scenarios. For example,

- Services provided to a foreign entity however, meetings conducted in the UAE
- Training services provided to employees in the UAE and invoice raised to a foreign entity
- Marketing recharges between foreign brand owner (having local branch) and UAE franchise. UAE Branch conducting trading activities in the UAE.

Maintaining adequate documentation, in terms of internal note on nature of service, identifying presence of Recipient in the UAE along with necessary declaration would become critical.

Consequences of ignoring these conditions, and merely going by the location of the Recipient as per the contract, could be significant including but not limited to 5% VAT on the entire service value, up to 300% late payment penalty exposure and a remote possibility of recovering tax cost from the Recipient later.

Advisable to examine each export transaction to ensure it fulfils all the necessary conditions prescribed under the UAE VAT Law.

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