17th Public Clarification – Time frame for recovering Input Tax

Introduction

The Federal Tax Authority ('the FTA') has recently issued a Public Clarification (VATP017) on time frame for recovering Input Tax.

In the clarification, amongst other areas, the FTA has explained in which tax period a taxable person is eligible to recover Input tax.

Detailed Analysis

As per Article 55(1) of the Decree Law, recoverable input tax may be deducted in the first tax period in which the following conditions are satisfied:

a. The taxable person receives and keeps the tax invoice; and
b. The taxable person pays the consideration for the supply or any part thereof.

Furthermore, as per Article 54(2) of the Executive Regulations, a Taxable Person shall be treated as having made a payment of consideration for a supply to the extent the taxable person intends to make the payment before the expiration of six months from the agreed date of payment for the supply.

Given the above, input tax can be recovered in the first tax period in which both the above conditions**,** i.e. receipt of the Tax Invoice and establishing the intention to make the payment of consideration, are fulfilled.

When is the intention to make payment ~~is~~ formed?

In general, once the order is placed, supply of goods / services is completed, tax invoice is issued by the supplier and has been received by the taxable person, the liability to make the payment is recognized and at this point, intention to make payment could be said to be established.

However, in practice the taxpayer may have longer internal invoice approval procedures involving approval from multiple teams within the organization and in certain cases approval from third party consultants as well, which is a time-consuming process. Many taxable persons in UAE were facing a challenge in getting the internal approval processes of their supplier invoices completed within the two-tax periods of receiving the tax invoice.

The FTA has now clarified the above matter**,** stating that when a taxable person receives the tax invoice from any supplier, the intention to make the payment against that tax invoice may not be considered to have been established, until the internal approval process for the invoice is completed. In such cases, taxable person may recover the input VAT in the tax period in which the internal approval process for the tax invoice is completed, which should substantiate the intention to make the payment.

This provides a good relief to industries such as construction, infrastructure, etc., where they have a lengthy internal approval procedure for supplier invoices, involving approvals from several departments within the organization and multiple third parties such as engineers, consultants and sub-contractors.

From this clarification issued by FTA, one can also infer that, if a tax invoice is received in one tax period and the intention to make the payment is established in a later tax period, then the input tax can only be recovered in such later tax period. If the input tax is not recovered in the tax period in which both the conditions are satisfied, the taxable person can recover the input tax in the immediate subsequent tax period. Furthermore, if the taxable person has not recovered the input tax in the aforementioned two tax periods, then in order to recover the input tax, they are required to submit a voluntary disclosure to amend the input tax reported in the VAT return of one of the two tax periods.

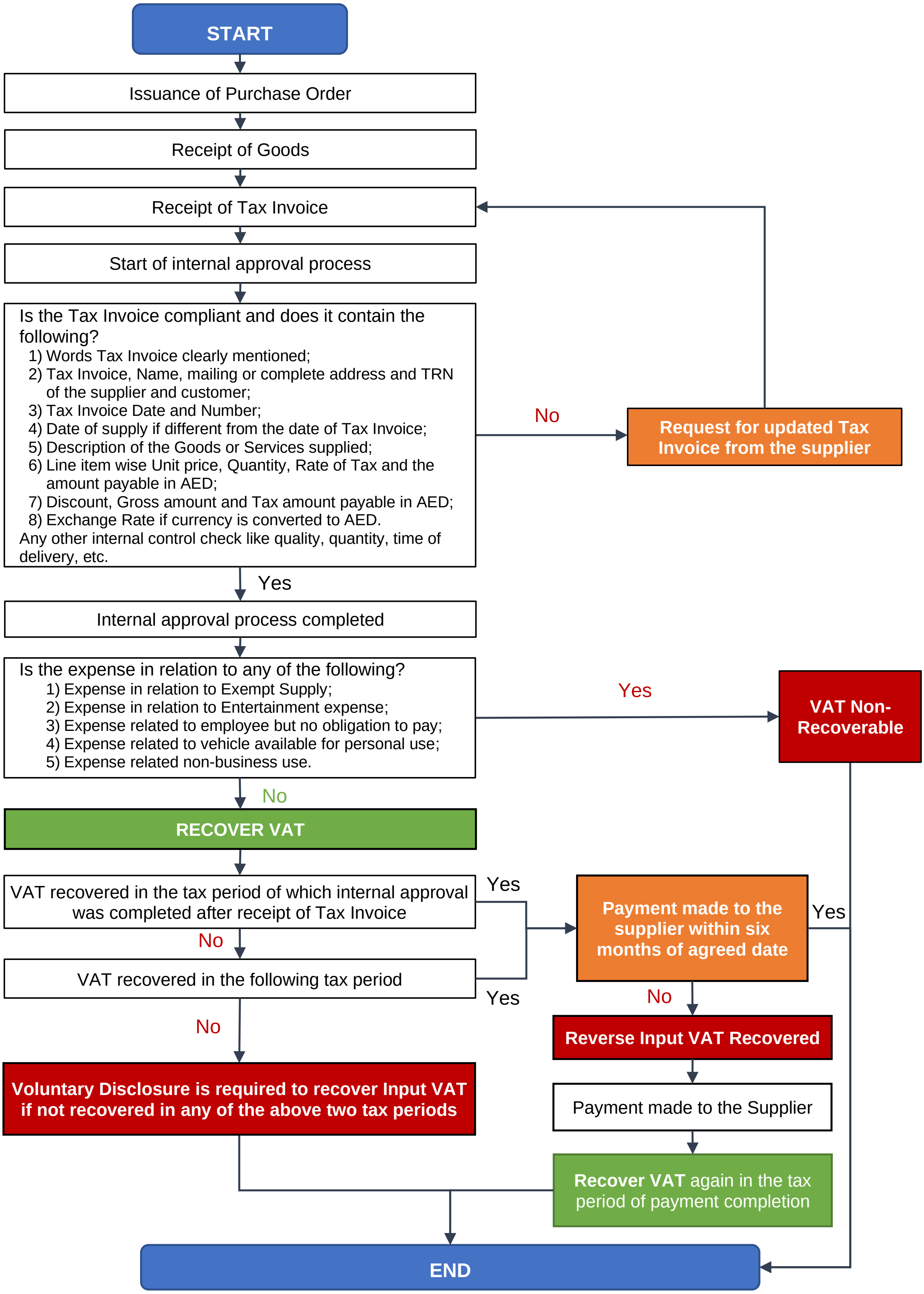
Non-payment of consideration within six months

As already mentioned above, the taxable person should have the intention to make the payment to the supplier within six months of the agreed date as per UAE VAT legislation. However, there was ambiguity around the procedural and legislative requirements in cases where the payment to the supplier in not made within six months of the agreed date of payment.

In view of this, the clarification issued by FTA provides the appropriate guidance stating that if the payment towards the invoice is not made within the time period, then the taxable person should reduce the input tax in the VAT Return of the tax period following the expiry of the six-month period, to the extent the payment is not made.

However, once the payment is made to the suppliers, the taxable person should be able to recover the input tax in the tax period in which such payment is made.

The below flowchart will further assist you in recovering the Input Tax within the time frame.



Our Comments

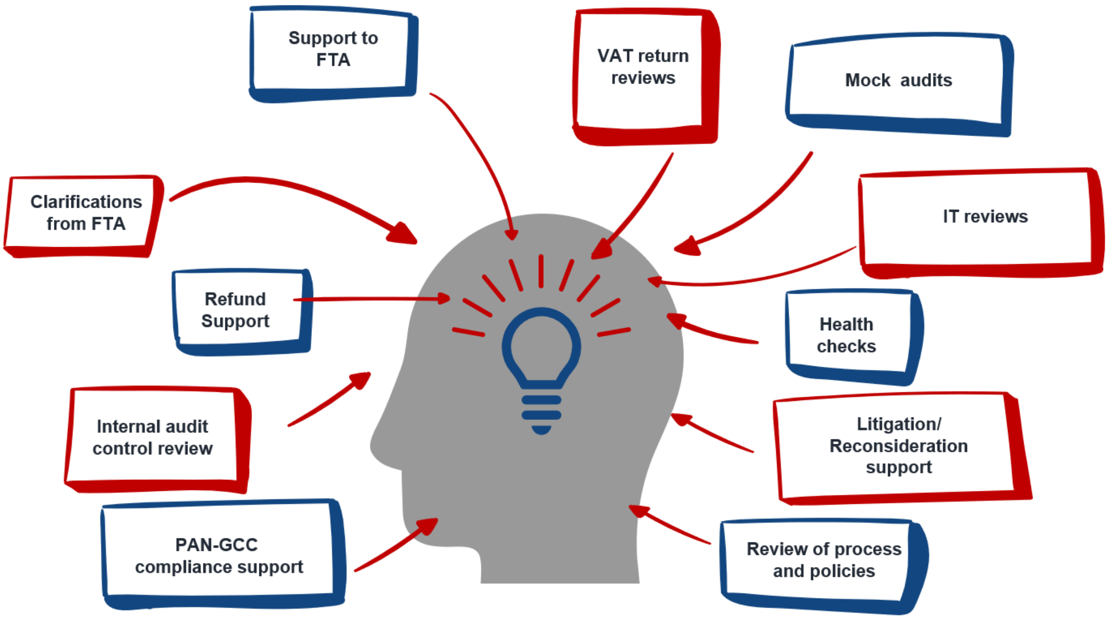
Key takeaways for a taxable person from this clarification are:

- Businesses which had expensed input VAT in the past only due to the supplier invoices not having been accounted for in the books of accounts within the first two tax periods from the date of receipt of tax invoice from the supplier due to non-completion of internal approval processes may re-visit their position. Such input tax, which was expensed off in the past, can be recovered now based on this new clarification issued by FTA by filing a voluntary disclosure.
- As a way forward, it is important to revisit existing processes, internal controls and prepare a SOP for input VAT recovery capturing the milestone of 'Intention to make payment', which can be used as an evidence to support the point of time at which 'intention to make payment' is established.
- Businesses are recommended not to recover Input VAT on supplier tax invoices until the internal invoice approval process is completed. It is essential to document the processes applied in the approval chain to establish the actual date of approval – either as a separate document or on the supplier invoice itself. Information like date of receipt, date on which sent to user department, comments from user department, date on which the invoice sent for approval of third party consultants (if necessary), date of receipt of consultants approval, date of final approval for payment etc. would establish/build document trail to establish the "date of intention to pay". The process is equally relevant for both goods and services.
- At the time of filing of VAT Return, supplier payment ageing report should be analysed to adhere to the six-month payment condition from the due date of payment and input VAT must be reversed accordingly.
- Track all the tax invoices for which Input VAT was reversed and reclaim the Input VAT, once the payment against those tax invoices has been made.

Concluding thoughts

Considering the fact that intention to make payment is a highly subjective milestone and the manner of substantiating the date when the intention to make the payment is established, is an open question which can be subject to different interpretations. Therefore, the recommended steps/documents could help in avoiding any hassles and unnecessary penalties for delayed recovery of input VAT via voluntary disclosures.

How can we help?



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