



VAT Guide – E-Commerce

E-Commerce VAT Guide- VATGEC1 ('Guide') on impact of VAT on businesses operating in e-commerce sector

Introduction

E-commerce, as a business model, has picked up pace in the recent past. The VAT treatment of e-commerce transactions, however, continues to be complex. In this Guide issued in August 2020, the Federal Tax Authority ('FTA') has clarified various issues around taxability of supply of goods or services using electronic medium.

The supply of goods and services in e-commerce sector is also subject to the UAE VAT implications like other supplies. However, there are more complexities due to variations in ownership of goods, cross border transactions, determination of point of taxation and VAT implications. The transactions could either be subject to the UAE supply VAT or import VAT or outside VAT scope. The Guide has been broadly divided into two parts i.e. supply of goods through e-commerce / online marketplaces and supply of services including the electronic services through / without the marketplace platforms. It has emphasised on the below key points to determine taxability:

1. **Place of supply-** If the place of supply of goods is outside the UAE, it is treated as out of scope for VAT purposes. Thus, it is relevant to determine the place of transfer of ownership of goods especially where the goods are listed on the platform operating in the UAE whereas actual supplier or customer could be outside the UAE. Further, the services provided through electronic means need to be evaluated on two fronts i.e. whether such services fall within the definition of 'electronic services' and where is the place of enjoyment / benefit of such services.

2. **Implications under reverse charge mechanism ('RCM')** – VAT liability is the primary responsibility of the supplier and only in specified cases the liability to discharge VAT is shifted to the recipient of goods or services. RCM is only applicable when ALL conditions required for RCM are satisfied¹. For a transaction where RCM applies, non-resident supplier should ensure that the recipient is registered, and necessary information is retained to substantiate to the FTA as required. Further, when the recipient of supply declares output VAT on reverse charge, input VAT is NOT automatically recoverable. The recipient should evaluate the recovery basis the normal input VAT recovery rules, amongst which one of the requirements is whether the recipient is the actual owner of the goods.

VAT implications on the supply of goods for the e-commerce sector can be summarized as under -

In case 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 conditions are met	Supplier	No

**Note that where the non-resident supplier is already registered for VAT in the UAE, it should account for VAT directly*

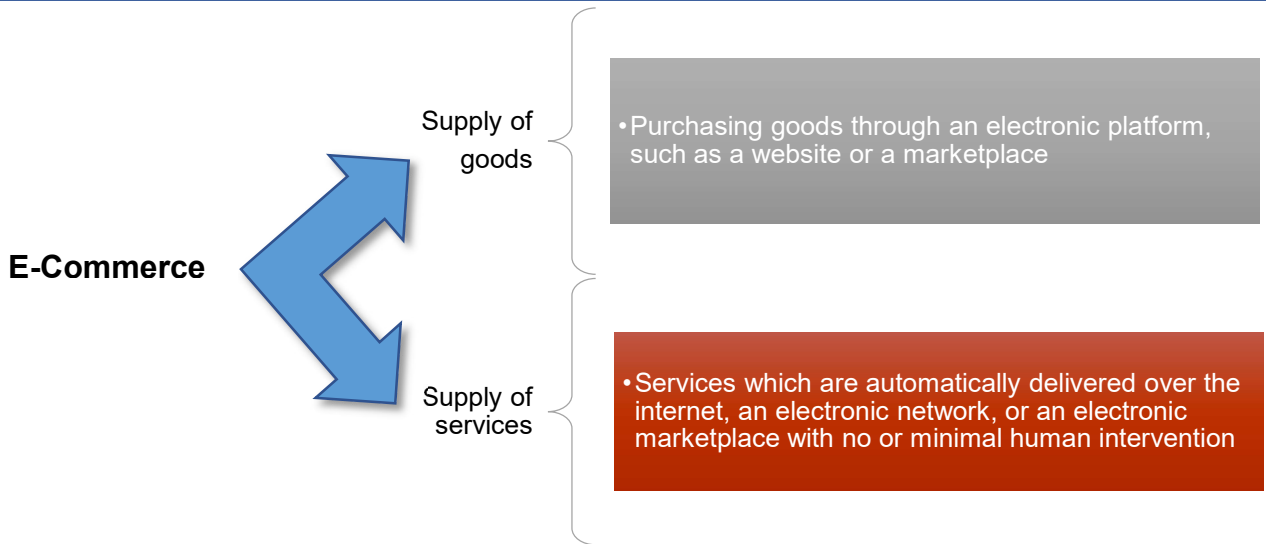
3. **Non-resident VAT registration** – The non-resident supplier is required to register for VAT if he makes any taxable supplies in the UAE, unless there is another person in the UAE who is responsible for accounting of VAT under RCM on such supplies. The registration threshold for non-resident suppliers is 'Nil'. Having said that, in case the non-resident supplier wishes to register voluntarily, the supplier would **not** be allowed to register merely on the basis of its

¹ Article 48 of Cabinet Decision No. (52) of 2017 on the Executive Regulations of the Federal Decree-Law No (8) of 2017 on Value Added Tax

taxable expenses exceeding AED 187,500 in the previous 12 months or in upcoming 30-day period. Thus, the benefit of registration and claiming input VAT shall not be available to the non-resident supplier if he does not have any taxable output supplies for previous 12 months or in upcoming 30-day period.

Detailed Analysis

Supplies through E-commerce



Supply of goods (e-commerce)

In case of supply of goods, the place of supply ('PoS') is determined basis location of goods when supplied. If goods are located outside the UAE when they are supplied, PoS is outside the UAE and if the goods are located in the UAE when they are supplied, POS is in the UAE. We have summarized below VAT implications on goods supplied through e-commerce -

Goods delivered from	Goods delivered to	VAT Implications
UAE	UAE	PoS is in the UAE - VAT applicable at standard rate of 5%
UAE	Outside UAE	<p>PoS is in the UAE – the transaction could be zero-rated export subject to fulfillment of conditions prescribed under the legislation which primarily include:</p> <p>Direct export – where goods are physically exported/ put into custom suspension by the supplier and official and commercial evidences are retained.</p> <p>Indirect export – where goods are physically exported/ put into custom suspension by the customer and official and commercial evidence is obtained by customer <u>and a copy is provided to the supplier</u>. Further, goods should not be altered (except to prepare for export or custom suspension) and should not leave UAE with aircraft or ship passenger/ crew member.</p>



Goods delivered from	Goods delivered to	VAT Implications
Outside UAE	UAE	Where goods are transferred outside the UAE, PoS is outside the UAE and thus, not subject to VAT. However, at the time of import of goods into the UAE, the recipient shall be liable to account for VAT under reverse charge mechanism.
Outside UAE	Outside UAE	PoS is outside the UAE and accordingly, the transaction shall be outside scope of the UAE VAT.

Official and commercial evidence for export

Significance is placed on official and commercial evidence for export to substantiate export. Official evidence means export document issued by local Customs Department e.g., exit certificate. Commercial evidence means document issued by contracting parties to support movement of goods e.g., airway bills, consignment notes.

Practical Challenge- Suppliers exporting goods often face challenge in obtaining exit certificate and have been relying on airway bills and other commercial evidence to substantiate export- especially in the case exports through courier mode. In such cases, the Guide re-emphasises the relief available to the exporters who can apply for administrative exception.

Import of goods through agents

In certain cases, the responsibility of import of goods into the UAE could be delegated by the supplier or recipient of goods to a clearing agent or a freight forwarder.

Where agent imports goods on behalf of VAT registered importer, agent should declare importer's TRN on custom declaration and importer should account for VAT. If the agent uses its TRN instead of the importer, the agent may either issue a written statement to transfer the input VAT to the importer / owner or make necessary adjustment in its VAT return in accordance with the public clarification no. VATP012 on importation of goods by agents. Where agent imports on behalf of non-registered importer, agent declares its own TRN and accordingly declares import VAT (output liability under reverse charge) in its own VAT return. In this case, agent should not recover the import VAT as its input tax as the agent is neither the owner of the goods nor importing the goods for its business purposes.

The Guide specifies that the freight forwarders or clearing agents can use the special reference number ('CO TRN or 'TINCO') allocated to them by FTA while importing for non-registered persons or under custom suspension in accordance with GCC Common Customs Law. Further, agents with CO-TRN or TINCO can use their own financial guarantee for custom suspension, instead of the importer.

FTA has been regularly conducting meetings with the registered freight forwarders in the region and has set out a simplified process for these companies to streamline the process for declaring import VAT for non-registered importers as well as import under custom suspension.



Import VAT exemption

Certain imports of goods are fully exempt from VAT, including goods imported by military, personal effects etc². Returned goods, i.e., goods which were sold and exported from UAE but subsequently returned to supplier in UAE are also fully exempt from import VAT.

Note that scenarios of returned goods were not previously covered in the VAT legislation. The GCC Common Customs Law included three scenarios for returned goods – goods of national origin previously exported, foreign goods imported and re-exported which are subsequently returned and goods temporarily exported for repairs. For customs exemption to apply to foreign goods, they had to be returned within one year from re-export. While the Guide has not specified any such condition for any type of goods returned, it would be crucial to understand whether the time frame of 'one-year' would continue to apply for foreign returned goods.

Supply of services (e-commerce)

For a supply of services to be considered as 'electronic services', it should satisfy both the conditions mentioned below:

1. The services should be covered under the definition of 'electronic services' as per the VAT legislation³ AND
2. The services should be automatically delivered over the internet, an electronic network, or an electronic marketplace.

Place of supply- to the extent of use and enjoyment

As per the special place of supply rules for telecommunication and electronic services, the PoS is:

- 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

It is clarified in the Guide that use 'to the extent' means that a supply can be treated as partly in the UAE and partly outside the UAE as long as it is practical and reasonable to divide different parts of the supply. Further, the use and enjoyment are not expressly defined in the UAE VAT legislation, however, the Guide has provided basis principles for the same as under:

- In the case of an electronic service which is delivered to a physical place, the place of use and enjoyment of that service should be that physical place. In other words, where the contents of the electronic services are accessed from a 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 should be determined basis 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. Location of the recipient can be determined by IP address of recipient's device, billing address and bank details of the recipient and other factors which may give the most precise information regarding the actual place where the electronic services are used and enjoyed.

² Article 47(2) of Cabinet Decision No. (52) of 2017 on the Executive Regulations of the Federal Decree-Law No (8) of 2017 on Value Added Tax
³ Article 23(2) of Cabinet Decision No. (52) of 2017 on the Executive Regulations of the Federal Decree-Law No (8) of 2017 on Value Added Tax

Once the PoS is determined basis use and enjoyment, the taxability would be as under -

Place of supply	Taxability
Outside the UAE	UAE VAT shall not be applicable.
In the UAE	UAE VAT at the applicable rate i.e. 5% or 0% if expressly provided in Article 45 of the UAE VAT Law.

Given the above, the summary of the VAT implications on electronic services is as under -

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 that the UAE-resident supplier will only be responsible for accounting for VAT on the supply where it is a taxable person in the UAE*

Supplies made through agents

The supply of goods and services through e-commerce platforms can be classified under two scenarios - one where the e-commerce platform supplies goods / services as principal supplier, and second where it acts as an intermediary. Further, the marketplace which acts as an intermediary, could act as disclosed or undisclosed agent for the purpose of supply of goods or services.



Tax invoice requirements of supplies through agents

Disclosed Agent	Undisclosed Agent
<ul style="list-style-type: none"> • Principal supplier liable to raise invoice • Agent may issue invoice and may include his own tax details- if he does, invoice should contain reference to principal supplier (name, TRN) • Copy of invoice to be provided to principal supplier and principal supplier should not raise another tax invoice • Conversely, if principal supplier issues invoice, agent should not raise tax invoice 	<ul style="list-style-type: none"> • Such supplies are considered as two distinct supplies i.e., from the Principal to the Undisclosed agent and from Undisclosed agent to the customer • Principal supplier should raise tax invoice on agent, agent should raise tax invoice on customer as back to back arrangement

VAT treatment of agency services

Agency fees or commission charged by e-commerce service providers is to be independently determined from the supply of underlying goods or services and would follow the general place of supply rules. Agency services would be typically subject to VAT at 5% except in cases where the services are provided to non-resident principal supplier in which case the agency services could be zero-rated subject to fulfilment of export of services conditions.

As per Article 31 of the Executive Regulation, in order to qualify as zero rated export of services, one of the conditions states that, '*Services are not supplied directly in connection with real estate situated in the State or any improvement to the real estate or directly in connection with moveable personal assets situated in the State at the time the Services are performed*'.

Pertinent to note that the term 'moveable personal assets' is replaced with 'goods' in the Guide which may impact on the e-commerce transactions especially when the principal supplier is located outside the UAE.

It is relevant to note that where an agent does not charge a fee or commission for its services, VAT would not be applicable on the services.

In case of undisclosed agency, 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.



Dhruva Comments / Observations

The Guide issued by the FTA has provided much needed clarity on a variety of transactions which were ambiguous or subject to different interpretation.

This Guide may potentially have an impact on many business transactions and the same may need to be revisited such as -

- Registration requirements for non-resident suppliers of goods and services.
- Determining place of residence or fixed establishment if the goods are located within the UAE at the time of supply where the supplier is located outside the UAE.
- The onus of declaring and paying VAT on the supplier - RCM to be used after thorough analysis of the transaction and the tax registration status of the parties to the supply. Input VAT recovery on reverse charge to be independently reviewed from output liability on RCM.
- Entities registered as freight forwarders to revisit their treatment on returned shipments including the procedural requirements.
- Crucial to analyse the place of supply for electronic services which may have impact on the tax positions taken so far in the e-commerce sector.
- What constitutes 'services automatically delivered over internet' is critical to determine whether service can be regarded as supply of electronic services. Role of human intervention in delivering services plays an important role in determining the same.
- Principal agency relationship – whether the transaction falls within the ambit of disclosed or undisclosed agency? Emphasis is placed on the contractual arrangements between the parties unless it is fundamentally inconsistent with the actual transaction.
- Relevant to analyse whether the tax impact of 'embedded fees' would equally apply in case where principal supplier is non-resident.

Advisable to re-examine the supplies through e-commerce / marketplace / online platforms to ensure the compliance with the UAE VAT Law.

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