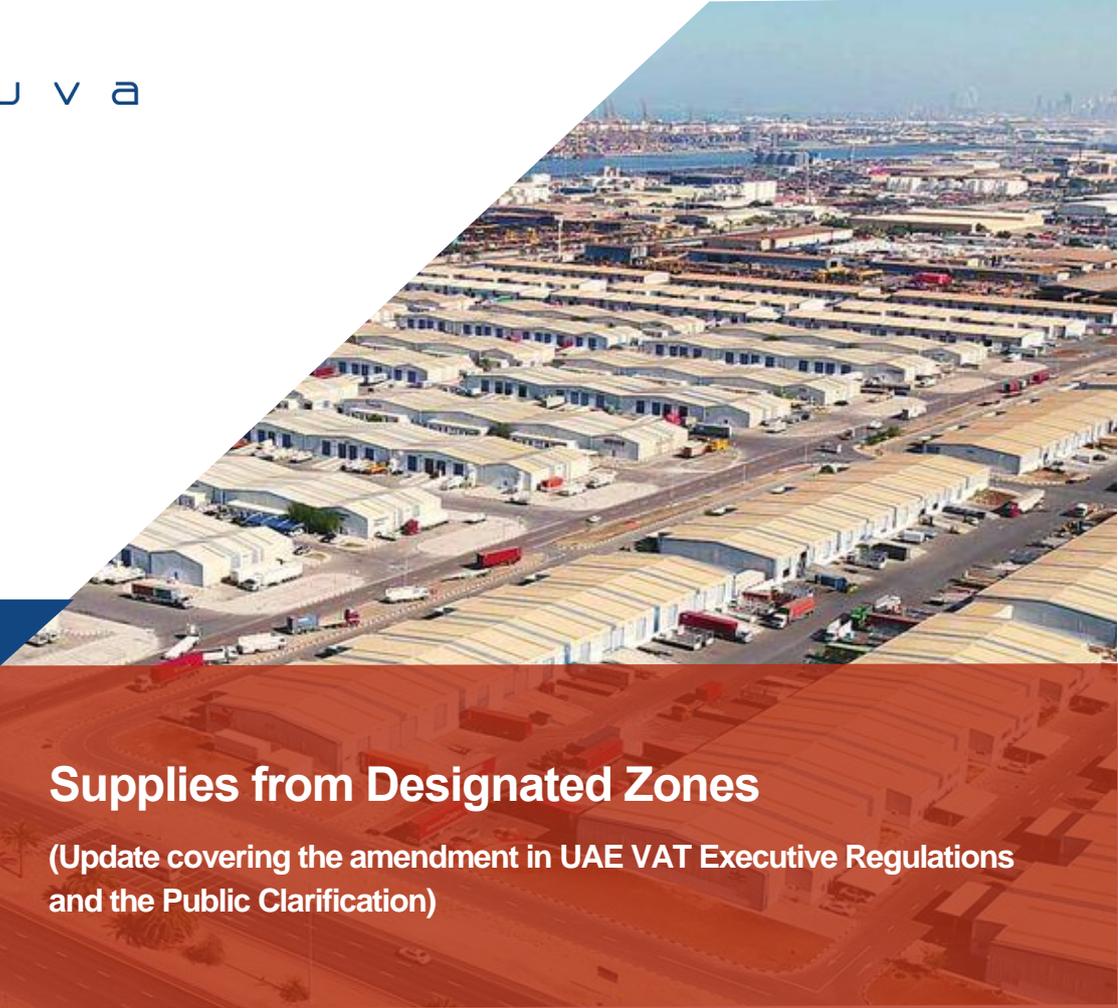


VAT Alert

November 2, 2021



Supplies from Designated Zones

(Update covering the amendment in UAE VAT Executive Regulations and the Public Clarification)

Introduction

The VAT treatment on supplies made from the Designated Zone (DZ) is governed by Article 51 of the UAE VAT Executive Regulations¹. Recently, the UAE Cabinet has amended² the said provisions with the effect from 30 October 2021. Further, to provide rationale and clarity on the said amendment, the FTA has issued Public Clarification VATP027 - Goods Supplied in a Designated Zone and Connected Shipping or Delivery Services.

In this alert, we have analysed the implications arising out of the amendment and summarized the key points arising from the Public Clarification.

Analysis

At the outset, businesses making supplies from the DZ should read the below FTA remarks and remain cautious in determining the VAT treatment of their supplies:

“The onus is on the supplier to ensure that it treats a supply correctly for VAT purposes. Therefore, as a general rule, suppliers should not treat supplies of goods as being outside the scope of UAE VAT, unless ... exclusions applies.”

¹ The Executive Regulation of the Federal Decree-Law No. 8 of 2017 on Value Added Tax

² Cabinet Decision No. 88 of 2021 which was issued on 28 September 2021



Supply of Goods

The first amendment is Article 51(5) of the Executive Regulation which deals with the supply of goods within the Designated Zone. In the amendment, the FTA has extended the scope of supplies made within the Designated Zone in order to determine whether the supply will fall within the UAE or outside the UAE for the purpose of determining the taxability of the transactions.

For better understanding, this amendment has been divided into three different parts as below.

A) Supply of Goods within Designated Zone

Pre-Amendment

“Where a supply of Goods is made within a Designated Zone to a Person to be used by him or a third person, then the place of supply shall be the State unless the Goods are to be incorporated into, attached to or otherwise form part of or are used in the production or sale of another Good located in the same Designated Zone which itself is not consumed.”

Post-Amendment

“Where a supply of Goods is made within a Designated Zone to a Person to be consumed by him or by another person, then the place of supply of these Goods shall be in the State except in any of the following cases:

a. The purpose was to incorporate the Goods into, attach the Goods to, or that the Goods become part of or are used in the production of another Good in the same Designated Zone and such Good is not consumed.

...”

If the supplier is making supplies within the Designated Zone, it will be treated as outside the UAE if it satisfies any of the conditions mentioned below:

- a) The goods are not consumed
- b) The goods are incorporated/attached to/become part of/are used in the production of other goods and
 - The goods supplied have a direct connection to the resulting goods.
 - The resulting goods are not supplied for the purpose of consumption.

The term “consumed” is interpreted broadly as including any utilisation, application, employment, deployment, or exploitation of the goods. The resale of purchased goods is not treated as consumption of the goods. Therefore, a supply of goods would be outside the scope of UAE VAT if the purchaser intends to resell them.

Dhruva Comments: If the supplies do not satisfy any of the conditions mentioned above, the supply will be treated as made in the UAE and shall be taxable at the standard rate of 5%. Since the onus is on the Supplier to determine propriety, it is advisable to obtain a declaration from the customers about the usage of goods procured (i.e., for resale or to be used in production of resulting goods and such goods are not consumed) when treating the supply as out of scope. The declaration may also cover indemnity from any administrative penalties in case incorrect information is provided.



B) Supplies where Goods are delivered from Designated Zone to Outside the UAE

Pre-Amendment

Silent

Post-Amendment

“Where a supply of Goods is made within a Designated Zone to a Person to be consumed by him or by another person, then the place of supply of these Goods shall be in the State except in any of the following cases:

...

b. The Goods were delivered to a place outside the State, and the Supplier retains supporting commercial or official evidence proving that, and customs evidence proving that the Goods were removed from the Designated Zone.

...”

For goods delivered outside the State, the above scenario treats the place of supply as outside of UAE if the following conditions are satisfied:

- a. The goods are delivered to a place outside the UAE
- b. The supplier has obtained and retained relevant Customs documents proving the movement of goods
- c. The supplier retains commercial **or** official evidence proving the delivery of goods outside the UAE

Dhruva Comments: For goods delivered outside the UAE, the Supplier will now be required to retain customs documents to substantiate movement of goods outside the UAE. In addition, the Supplier will be required to either retain (a) commercial evidence (in terms of airway bill or bill of lading or consignment note or certificate of shipment) or (b) official evidence (exit certificate).

C) Supplies where Goods are moved from Designated Zone to UAE Mainland

Pre-Amendment

Silent

Post-Amendment

“Where a supply of Goods is made within a Designated Zone to a Person to be consumed by him or by another person, then the place of supply of these Goods shall be in the State except in any of the following cases:

...

c. The Goods were moved from the Designated Zone to a place inside the State, and the Supplier retains official evidence establishing that VAT had been applied on that import.”



Prior to amendment, there was no clarity on the VAT treatment where goods are moved from the DZ to be delivered in the UAE. VAT on the supply of goods and subsequent importation was resulting in potential double taxation.

To remove double taxation and to treat supplies from DZ as outside the scope of VAT in the hands of the Supplier, the amended Executive Regulations has put in place below requirements on the Supplier:

- a. The goods are delivered from the Designated Zone to a place in the UAE by the supplier.
- b. Retain official evidence that the goods are imported in the UAE
- c. Retain evidence that VAT has and paid on imports

For the purpose of the above, “official evidence” has been clarified as an import declaration issued by the local Emirate Customs Department in respect of the goods entering the UAE, for example, stamped import declarations.

Dhruva Comments: For treating goods delivered in the UAE Mainland as out-of-VAT-scope, the Supplier will now be required to retain import declaration and obtain evidence that VAT under the reverse charge has been accounted on such imports.

It would practically be difficult for DZ Suppliers to obtain evidence of VAT paid on imports by the customer.

Supply of Shipping and Delivery Services

The amendment by way of a new clause – Clause (7) to Article 51 Executive Regulations, intends to cover non-residents who are not registered for VAT in the UAE and are providing shipping and delivery services as part of a supply of goods through e-commerce platform. The amendment creates an exception for such non-residents from VAT registration if they only sell the goods on an electronic sales platform, and ship or deliver these goods to customers.



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