

Indirect Tax Alert | Amendments to the UAE VAT Law

October 26, 2022



Introduction

The UAE Government recently made amendments¹ to certain provisions of the VAT Law². The amendments will be effective from 01 January 2023.

Note: 1. The Federal Decree Law No. (18) of 2022
2. The Federal Decree Law No. (8) of 2017 on value added tax



Key Amendments

Based on the unofficial translation available on the public domain, we are pleased to summarize key amendments in this alert:

1 Statute of Limitation ('SOL') [new Article (79) bis inserted]

- » New Article on SOL is inserted in the VAT Law
- » General rule – the FTA cannot conduct tax audit or issue tax assessment after 5 years from end of the relevant tax period
- » Exception to general rule:
 - › If audit notice is issued before expiry of 5 years, the FTA can complete the audit or issue a tax assessment within 4 years from the date of notice
 - › If audit relates to voluntary disclosure submitted in 5th year, the FTA can complete the audit or issue a tax assessment within 1 year from date of submission
 - › In cases involving tax evasion, the FTA can conduct audit or issue a tax assessment within 15 years from the end of relevant tax period
 - › If a taxable person failed to register for VAT, the FTA can conduct audit or issue a tax assessment within 15 years from the date the taxpayer should have registered
- » Voluntary disclosure cannot be filed after expiry of five years from the end of the relevant tax period
- » The Cabinet will have powers to amend periods specified in the exceptions to the statute of limitation. In all cases, limitation will be interrupted where reasons stipulated in the Civil Transactions Law occur.

Contd. Statute of Limitation ('SOL')

Dhruva Comments

A statute of limitation sets out a timeframe within which the tax authorities must complete tax audit or issue a tax assessment. If the specified timeframe is exceeded, FTA's right for undertaking a tax audit or raising a tax assessment in respect of the taxpayer becomes time-barred, i.e. inadmissible, in most cases.

Prior to the amendment, the FTA had 5-year deadline from the relevant tax period to complete (not just initiate) the audit or to issue tax assessment. With the new Article on SOL, the FTA will have additional time of 4 years to complete the tax audit provided notice is issued before 5-year expiry.

With this development, unaudited businesses should remain audit ready and expect to receive notice of a tax audit within first half of 2023 and those already under audit may have prolonged audit inquiries.

2

Tax Procedures Law [Article 83 amended]

- » In case of overriding provisions, the VAT Law will supersede Tax Procedures Law

Dhruva Comments

With new Article (79) bis, the SOL provisions in the VAT Law will supersede the SOL provisions in the Tax Procedures Law. The Tax Procedures Law will still apply where no similar provision in the VAT Law.

3

Pure Hydrocarbons [Article (48) amended]

- » For certain B2B supplies, hydrocarbons are subject to VAT under the domestic reverse charge mechanism
- » The term 'hydrocarbon' has been replaced with 'pure hydrocarbon' in Article 48
- » The new term is defined as any kind of different pure combinations of chemical equation made only of hydrogen and carbon

Dhruva Comments

In the past, there was some uncertainty as to whether the domestic reverse charge provisions may apply to products that partially contain hydrocarbons, such as lubricants.

To provide more clarity on application of reverse charge mechanism, the VAT Law now expressly limits the reverse charge to pure hydrocarbons only.

Timeline for raising tax invoices for continuous contracts and for raising tax credit notes [Article (67) and (62) amended]

- » Timelines for raising tax invoices and tax credit notes have been clarified
- » Invoice for continuous supplies should be raised within 14 days from the date of supply under Article 26 of the VAT Law
- » For adjusting output tax in specified instances, tax credit note should be issued within 14 days from the date of the adjustment event

Dhruva Comments

Previously, 14-days timeline for issuing tax invoices was only applicable for one-off supplies covered by Article 25 of the VAT Law. With the amendment, it is now also expressly applicable for continuous supplies.

Similarly, the 14-days timeline is now expressly applicable for issuing tax credit notes.

Input VAT recovery on import of goods & services [Article (55) amended]

- » Conditions for documentary evidence for input VAT recovery on import of goods and services have been added
- » Input VAT on imports can be recovered only on receipt of invoice (in case goods and services) and customs related documents (in case of goods)

Dhruva Comments

Most businesses report output VAT on import transactions in box 3 and box 6 of the VAT returns and recover input VAT in box 10 of the VAT return. Since tax is netted off, some businesses do not always verify that they hold sufficient evidence for input tax recovery.

This amendment imposes concrete conditions for documentary evidence, and it will be important for businesses to verify date of receipt of relevant documents before recovering input VAT on import transactions.

Example: Advance payment is made to an overseas service provider in November 2022 and invoice is received in January 2023, in such case, the UAE business would be required to report the output VAT under the reverse charge in the tax period related to November 2022 and recover input VAT only in the tax period related to January 2023, i.e. on receipt of supplier tax invoice.

A new place of supply provision for continuous / periodic supplies [Article (27)(3)(a)(4) added]

- » The new clause specifies that the place of supply of goods involving export or import will be in the UAE where the supply is a continuous supply that falls under the date of supply rules in Article 26(1) of the VAT Law and the ownership in the goods is transferred in the UAE.

Dhruva Comments

A supply that involves import or export of goods may include periodic payments or multiple invoices. Some of these payments may be made, or invoices may be issued, when goods are outside the UAE; while other such events may occur when goods are in the UAE.

This amendment clarifies that the place of supply for such supplies will be in the UAE if the ownership of the goods is transferred in the UAE. This means that where the ownership is transferred in the UAE, the UAE VAT would also apply to payments which were made when the goods were physically outside the UAE.

Place of supply of transport-related services [Article (30)(8) amended]

- » The clause was amended to add that the place of supply of transport-related services is where the transportation starts. Prior to the amendment, the same rule in Article 30(8) was limited to "transportation services" only.

Dhruva Comments

Prior to the amendment, the place of supply rule for the transport-related services was (and still technically is) in Article 22(2) of the VAT Executive Regulations. That place of supply rule in Article 22(2) specifies that the place of supply for transport-related services is the same as for the transportation services to which they relate.

Since the amended Article 30(8) of the VAT Law provides that the place of supply for both transportation services and for transport-related services is where the transportation starts, the amendment does not impact the actual finding of the place of the supply. As such, the purpose of the amendment is, arguably, to combine all main place of supply rules in one provision of the VAT Law.

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