

JIACC's Tax Newsletter



Special Tax Newsletter UAE VAT: What's new?

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The present Tax Newsletter addresses exclusively recent news concerning the UAE VAT issues dating April-May 2018. The Tax Commission is at your disposal for further insights and support at: info@jiac.it.

1. UAE Cabinet decision on VAT refund for Conferences and Exhibitions

On 6 Ramadan 1439H (corresponding to May 22, 2018) the Prime Minister Mohammad bin Rashid al Maktoum issued the Cabinet Decision No. 26 of 2018 *on the Refund of Value Added Tax Paid on Services Provided in Exhibitions and Conferences*.

Cabinet Decision No. 26 of 2018 clearly regulates one landmark aspect of Dubai Expo 2020, namely refunds that shall be granted to all providers of Conferences and Exhibitions Supplies (hereinafter, "Services") that will be involved in the Universal Fair.

Cabinet Decision explicitly addresses Exhibition and Conference Services that are defined as granting "the right to access, attend or participate" Exhibitions or Conferences, as well as granting the right to occupy space for the purposes of conducting an Exhibition or Conference.

Both Exhibitions and Conferences are defined.

The former (Exhibition) as any event lasting no longer than 7 days in order to "display, show or present" Goods or Services, in accordance with a relevant permit issued from the competent government entity.

Conferences are defined as any formal meeting held for no longer than 7 days, and attended by people with a shared interest, in accordance with a permit.

Refund of VAT is conditional upon the fulfilment of certain requirements.

To start with, the Supplier's refund request shall be related to the provision of Services and be filed in the Tax Return of the same Tax Period during which the date of supply of such services occurred. Additionally, the refund request shall meet or be less than the Tax charged on the supply of Services.

Secondly, in order to be eligible for the refund the Recipient of the Services shall: (i) *have not* a Place of Establishment or a Fixed Establishment in the UAE; (ii) *not be* a Registrant or required to register in the State; and (iii) *have not* paid the amount of Tax to the Supplier.

Moreover, the Supplier shall obtain a written declaration from the Recipient of the Services confirming that the Recipient does not have a Place of Establishment or a Fixed Establishment in the State, and is not a Registrant or required to register for Tax in the State.

The Ministry of Finance shall issue a Decision in order to implement the Cabinet Decision.

2. UAE FTA Guide on VAT refund for Conferences and Exhibitions

In furtherance of the issuance of the Cabinet Decision concerning VAT refund (*see above*), the Federal Tax Authority issued a Guide on VAT Refund for Exhibitions and Conferences.

The UAE FTA clarifies special cases concerning the permit to undertake Exhibitions and Conferences.

Namely, in cases where the supply is “granted the right to occupy space”, the Supplier shall register with and be licensed by the FTA, and such license will be issued for a period of one year.

In cases where the supply entails the granting of the right to “access, attend or participate”, the Supplier shall apply with the FTA for a licence to provide such rights for a specific event. In the relevant case, the UAE government entity permit shall be obtained before being able to apply for the FTA license (which, in any event, will be valid for that event only).

Also, the Guide tackles licensing requirements, addressing specific cases such as: (i) hotels and UAE companies hosting events in their venues; and (ii) locals and international event organisers engaged in the business of selling event tickets to non-UAE residents.

The FTA enumerates all relevant documents that shall be filed in conjunction with either one of the two licensing forms prepared to: (i) “Grant the Right to Occupy Space”; or (ii) “Grant Access to Events”.

The Guide devotes particular attention to VAT refunds in respect of services provided to International customers.

As set forth above, the Council Decision stresses that the supplier shall obtain a written declaration in order to apply the relevant discipline. The Guide highlights that the Supplier “should” (however, it shall read: “shall mandatorily”) collect from the International Customer a declaration which states that the International Customer (i) has not either a Place of Establishment or a Fixed Establishment in the UAE; (ii) is not registrant or required to register for VAT in the UAE.

Furthermore, for the sake of clarity, and to ensure that there is no uncertainty regarding the usage of any declaration, it is suggested that the declaration provides all details of the parties and Services to which it relates.

3. UAE Cabinet decision on VAT for Gold and Diamonds

On 6 Ramadan 1439H (corresponding to May 22, 2018) the Prime Minister Mohammad bin Rashid al Maktoum issued the Cabinet Decision No. 25 of 2018 *on the Mechanism of Applying Value Added Tax on Gold and Diamonds between Registrants in the State*.

The Cabinet Decision No. 25 of 2018 scope is limited to all such taxable persons (better, Registrants) “licensed to conduct any activity related to the Goods by the competent government entity” and applies to gold, diamonds and any products whose “principal component” is gold or diamonds.

The Cabinet Decision addresses one specific A -> B supply, namely the sale of golds and diamonds (by "A", the supplier) to "Registrant Recipient" ("B", the recipient) who wishes to either:

- a. resell such goods or
- b. use them to produce or manufacture any other goods.

In the relevant case, the following rules apply.

The supplier (A, in the example) *shall not* include VAT in his Tax Return, where the Registrant Recipient (B) declares *in writing* that: (i) the purpose of the purchase is – as set forth above – reselling or using the goods to "produce or manufacture" any other Goods; (ii) he is registered on the date of supply; and (iii) shall calculate VAT on the value of the Goods supplied to him.

Calculation of VAT and filing obligations rest with Recipient (B).

The *written declaration* is not enough, in itself, to waive any liability for the supplier.

Notably, the rules dealt with above shall not apply in any of the following situations:

- a. the Supplier (A) was "*aware or was supposed to be aware*" that the Recipient (B) *was not* a Registrant at the Date of Supply.
- b. the Supplier (A) *has not* verified that the Recipient is registered with the Federal Tax Authority, in accordance with the written declaration;
- c. the Taxable Supply is subject to Tax at the zero rate in accordance with Article 45(1) or (8) of the UAE VAT Law.

Where the Supplier (A) was aware or was supposed to be aware that the Recipient (B) *was not* registered for tax purposes at the date of supply, both parties (A and B) shall be *jointly and severely* liable for VAT, and subject to relevant penalties in respect of the supply.

The Ministry of Finance shall issue a Decision in order to implement the Cabinet Decision.

4. UAE FTA Guide on VAT Groups

A new Guide on VAT Groups was issued by the FTA.

The Guide encompasses several relevant aspects, some of which are pointed out below.

The first aspect to consider is the legal person requirement necessary to be involved in a VAT Group. Assuming that other entities (formed according to single Emirate's company law) could be joined in a VAT Group, the Guide clarifies that such entities can join the VAT Group.

Notably, access to the VAT Grouping is conditional upon fulfilment on some control criteria.

Since the access to the UAE market is conditional upon local sponsorship rules, the Guide clarifies that common sponsorship of two or more Legal Persons will, as a general rule, give rise to the possibility of VAT Grouping only insofar the "control" requirements are also met. The FTA also stresses that where the sponsorship agreement is overridden by another agreement according to which the control criteria cannot, in actuality, be satisfied, VAT Grouping will not be possible.

Other clarifications address amendments to the groups' perimeter (adding new members or removing old members), the representative entity and liability, and the dismantlement of the VAT Group.

Due to the important effects of the VAT Grouping (see JIACC Tax Insight n° 1, *An Introduction to GCC VAT*, available at <https://jiac.it/blog/2018/05/02/tax-commission-insight-gcc-vat/>) the FTA pays attention to situations that could be hamper the public revenues.

Namely, the FTA stresses that – according with the Law – the FTA may refuse any application to form, amend or disband a VAT Group where there is a “significant risk to the public revenue” and, along the same lines, it may also take direct action to form, amend the membership of or disband a tax group grounding upon the same reasoning.

This being said, the FTA warns that any application to form, amend or disband a tax group “will be considered carefully by the FTA” prior to allowing the application.

The message is clear: is time for VAT, not time for ... lifting VAT.

5. UAE FTA Decision on VAT Invoicing

On May 20, 2018 H.H. Khalid Ali Al Bustani, Director General of the UAE Federal tax Authority, issued Decision No (3) of 2018 on Tax Invoices (that applies as of January, 1, 2018).

The Invoicing and Credit Notes requirements are set forth in Articles 59 and 60 of the UAE VAT Executive Regulation.

Both Articles provide that where the FTA considers that there are (or will be) sufficient records available to establish the particulars of any supply or class of supplies, and that “it would be impractical” requiring that either an Invoice or a Tax Credit Note be issued by the Taxable Person, the FTA may require that any of the mandatory elements provided for issuance of Invoices or Credit notes.

The relevant Decision clarifies that where a Registrant makes a supply to another Person and such supply necessitated the issuance of a tax invoice (or credit note) such tax invoice (or credit note) *may not include* the physical address of the recipient of goods or recipient of services where the mailing address was included on the tax invoice.

Importantly, the Decision stresses that it affects the content of the tax invoice or credit note and shall not affect the *place of supply*.

6. UAE FTA Guide on VAT for Directors

A new Guide tackling the VAT treatment for Directors was issued in April 2018.

As the Director provides services (the “directorship services”) to the company he directs, such supplies are, in principles, within the scope of “supplies of services” for the purposes of UAE VAT.

The UAE FTA clarifies that such supplies are taxable supplies if:

- “the director undertakes services on a regular, ongoing and independent basis (such as an individual who acts as an executive or non-executive director on a board or a number of different boards)”;
- and the total value of taxable supplies made by the director, including supplies of director services, exceed the mandatory registration threshold.

Since supplies are chargeable for VAT purposes if supplied against a “consideration”, also bonuses, stock options, recharges for goods and services acquired by the director can be included “depending on the circumstances”.

The Guide also stresses some key aspects of cross-border supplies considering both the case the company is registered for VAT purposes in the UAE and where the company is not.