




VALUE ADDED TAX

A Synopsis of E-commerce VAT guide
published by the FTA



The Federal Tax Authority ('FTA') has published a guide on E-commerce (also known as electronic commerce or digital economy) clarifying the VAT treatment that should be adopted for the supply of goods and services electronically. The guide mainly discusses two types of transactions;

- A. Goods purchased through an electronic platform; and
- B. Services supplied by electronic means.

We have provided a synopsis of the key points discussed in the guide and also highlighted some areas which still are unclear in the ending paragraphs of the article

A. E- Commerce - Supply of goods

This section covers the supply of goods through an electronic platform such as website or a marketplace. The taxability of goods supplied via e-commerce platform would be assessed like any other supply made through traditional commerce. The place of supply of goods is determined by where the goods are located when it is supplied.

An important point was clarified that non-residents supplying goods in UAE would be required to register if the goods are supplied to a non-taxable person or if they are unable to confirm that the VAT on the transaction would be accounted by their recipient via the reverse charge mechanism. Once a non-resident supplier is VAT registered, VAT should be accounted on all taxable supplies regardless of registration status of recipient.



Where a non-resident (who is not VAT registered) supplies goods in UAE to a recipient who is able to account for VAT on reverse charge, the responsibility to account for VAT shifts to its recipient subject to certain conditions. However, once the supplier is registered for VAT, the supplier is liable to account for VAT on all supplies to registered or unregistered recipients.

Do note that the above points are independent of VAT due on the importation of goods into UAE.

The below table summarizes the key scenarios for treatment of goods under e-commerce.

Ship from	Ship to	VAT treatment	VAT on supply accounted by	VAT on import accounted by
UAE	UAE	5%	<ul style="list-style-type: none">- Supplier (if registered under UAE VAT)- Recipient- VAT under reverse charge if the supplier is not registered and recipient is registered.- Supplier- If the recipient is not registered, supplier is required to assess their liability to get registered	Not relevant as the movement is within UAE
UAE	Outside UAE	0%* or 5%	Same as above	Not relevant as the movement is from UAE to outside UAE
Outside UAE	UAE	0%** or 5%	Same as above	Yes- Importer of record
Outside UAE	Outside UAE	Outside the scope of UAE VAT	NA	Not relevant as the movement takes place outside UAE

**provided the conditions for zero-rating export of goods are met and official and commercial evidence is retained.*

*** Provided the goods qualify for zero-rating e.g. medical equipment*

B. Electronic services

The guide has explained the VAT treatment of electronic services that are provided automatically over the internet, an electronic network, or an electronic market. The matters to be considered while determining the treatment of such services are:

Automatically delivered over the internet

Delivery should be made from an automated system, with minimal or no human intervention.

It is clarified that although a small degree of human intervention is acceptable to enable or complete a supply, this intervention should not change the nature of the delivery of a service as being essentially automated.

For instance, commissioning of a customized software before it is put on supplier's website.

Including the supply connected towards it

Service will not automatically qualify as an electronic service just because it is bought online; it must also be received online.

For example, a supply of legal or financial advice, transport services, or hotel accommodation will not constitute an electronic service simply because the parties use the internet to communicate with each other or to facilitate bookings.

May be provided by undisclosed or disclosed agent

In case of a disclosed agent, the VAT obligations for the supply will remain with the principal supplier, and the principal supplier should account for this VAT in its tax return.

The supplies made by an undisclosed agent are considered to be a direct supply by the agent and the agent is responsible for VAT on such supplies.

Place of supply of electronic services

The electronic services are taxable in UAE to the extent they are used and enjoyed in UAE. The guide states that where it is reasonable and practical to divide and identify the services used in UAE and outside UAE based on the nature of supply (i.e. services supplied) or consideration (amounts charged for such services), the portion in UAE is only taxable.

Whilst the UAE VAT regulations state that the services are taxable if they are consumed by the recipient in UAE regardless of the place of contract or payment, it may be difficult for the supplier to determine such place of use and enjoyment. The guide has provided scenarios that can be considered to determine the place of use and enjoyment:

Electronic service which is delivered to a physical place and can be accessed from the physical location, the place of use and enjoyment of that service is that physical place.

Electronic service delivered to a physical place

Electronic services provided on a portable device

The use and enjoyment may be determined on the basis of the recipient's location** at the time the services are supplied.

B. Electronic services

****** The following indicative factors can be considered for determining the recipient's location:

- ✓ the internet protocol ("IP") address of the device used by the recipient to receive the electronic service;
- ✓ the country code stored on the SIM card used by the recipient to receive the electronic service;
- ✓ the place of residence of the recipient;
- ✓ the billing address of the recipient; and / or
- ✓ the bank details used by the recipient for the payment

The location of the recipient should be decided based on location most relevant to the services provided.

A summary of the treatment of electronic services is given below:

Residency status of supplier	Place of use and enjoyment	Registration status of recipient	VAT treatment	VAT responsibility of
UAE	UAE	Any	Taxable at 5% or 0%	Supplier
UAE	Outside UAE	Any	Outside the scope of UAE VAT	Supplier
Outside UAE	UAE	Not registered	Taxable at 5% or 0%	Supplier
Outside UAE	UAE	Registered	Taxable at 5% or 0%	Recipient (if the supplier is not registered in UAE)
Outside UAE	Outside UAE	Any	Outside the scope of UAE VAT	N/A

C. Matters pending clarification

The guide has clarified various aspects related to treatment of goods sold electronically and electronic services. However, there are few transactions common in the electronic industry which still lack clarity. We have summarized a couple of these below

1. Where a non-registered foreign supplier sells goods to a registered business in UAE, the registered Company can consider the supply of goods as Concerned goods and account of VAT under reverse charge provided necessary documentation is maintained. The Executive Regulations state that supplier invoice and the Customs documents showing the value of Concerned goods should be maintained in support of the VAT recorded under reverse charge.

However, from a business front, this may not be possible since the supplier may be not be willing to share Customs documents reflecting his margin or in the case of a job worker, where the Customs documents may be in the name of the job worker and supplier invoice is from the principal supplier.

2. Whilst the guide appears to have clarified the factors to be considered for determining actual use and consumption for supply of electronic services to end users, the treatment in case of supply of electronic services to businesses meant for resale (for instance- resale of software licenses) still remains unclear.

We believe that the position should be analyzed on a case to case basis to determine the treatment under UAE VAT.



HOW WE CAN HELP YOU?

With the nuances around the treatment of electronic supplies, it is important for taxpayers to feel confident that they have access to reliable tax advice, as well as the latest updates and guidance from the FTA.

We can assist you with advice on the treatment of your transactions and also assist you in obtaining clarification from the FTA if required.

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