INDIRECT TAX

BDO TAX UPDATE VOLUME II

KEY INSIGHTS

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Since our last update, the FTA has released several public clarifications on Value Added Tax (VAT), issued a Cabinet Decision on the expansion of Excise Tax and introduced both Economic Substance Regulations and Country by Country Reporting.

The most important of these updates are summarized below:

VAT PUBLIC CLARIFICATIONS

- Importation of goods by agents on behalf of VAT registered persons
- Disbursements and reimbursements
- Options
- Transfer of Going Concern (TOGC)

EXCISE TAX

- Expansion of scope to include electronic smoking devices, tools and liquids used in these devices; and sweetened drinks
- Implementation date of 1 December 2019

ECONOMIC SUBSTANCE REQUIREMENTS

- Applies to companies conducting 'Relevant Activities'
- These companies are expected to annually report certain information to their regulatory authority

COUNTRY BY COUNTRY REPORTING (CbCr)

- Applies to international groups with consolidated revenues exceeding AED 3.15 billion (USD 855 m) with UAE tax resident entities
- Effective for financial reporting years commencing from 1 January 2019
- Notification required to be made to the MOF by the last day of the financial reporting year
- The CbC report will need to be filed within 12 months from the end of the financial reporting year.

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Below, we have summarized the key clarifications issued by the FTA so far, in 2019.

1) Importation of goods by agents

It is not unusual in the UAE for a VAT-registered business to engage an agent to import goods on its behalf. However, this approach raises some questions about how the VAT paid at import should be dealt with. In principle, the owner should be able to reclaim the VAT if the goods are to be used for making taxable supplies. However, as the agent's VAT number is used at the time of importation, the import documents will be in the name of the agent and the VAT paid will be automatically posted to the agent's VAT return. This has caused some confusion, with taxpayers adopting a variety of approaches to deal with the VAT recovery.

The FTA has now provided guidance on the procedure that should be used where agents are involved in the importation of goods. It gives two options:

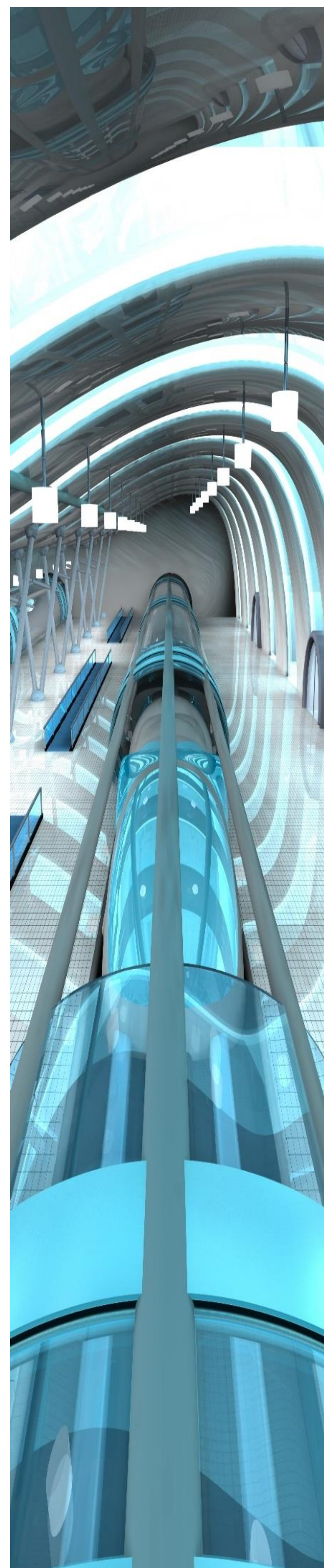
The agent and the owner of the goods both plan in box 7 ("adjustments to goods imported into the UAE") of their VAT returns. In the agent's case, the adjustment will off-set the amount automatically posted to its return. In the owner's case, the adjustment will serve as declaration of the import VAT. The overall result will be that the import VAT is moved from the agent's return to the owner's return. The owner of the goods will then be able to recover the import VAT through its VAT return in the normal way.
The importing agent can issue a statement, which is similar in form to a VAT invoice, to the owner of the goods. The owner can then use this as evidence to reclaim the import VAT through its VAT return.

Where option 1 is used, the agent and the owner must agree in writing to make the adjustments. This agreement should be retained, together with the normal customs documents, to support the claim.

This is very welcome guidance and will be of great assistance to businesses that import goods through agents.

2) Disbursements & Reimbursements

Deciding whether a recharge of expenses to a customer should be subject to VAT can be tricky. The VAT treatment of these recharges depends on whether they are considered to be 'disbursements' or 'reimbursements.
The clarification defines these terms. A 'disbursement' is defined as a recovery of payments which have been made on behalf of another and is not considered to be a supply. A 'reimbursement' is defined as the recovery of expenses that the business has incurred as a principal and will be a supply. Conditions and examples have been set out in the clarification. These are consistent with the principles applied in many other VAT jurisdictions. The clarification is essential reading for businesses that recharge expenses, such as professional service providers and holding companies.



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3) Options

FTA has confirmed that the supply of options in respect of debt and equity securities are, in principle, exempt from VAT in accordance with The VAT Implementing Regulations, Article 42(3). However, the exemption will only apply if the options are not supplied for an explicit premium. Where an option is supplied for an explicit premium, the fee will be taxable in accordance to Article 42(4).

4) Transfer of Going Concern (TOGC)

Article 7(2) of the Decree Law states that the transfer of a whole or part of a business for the purpose of continuing the business is not considered to be a supply for VAT purposes. The clarification discusses the conditions which are required to be met for a TOGC and provides a distinction between a share sale, a sale of assets and the sale of a business.

There are three conditions that need to be satisfied in a TOGC:

i. **Transfer of the whole or an independent part of the business** – the transfer must effectively give the recipient the whole business or a part of the business which is capable of separate operation. This includes all that is necessary for the continued operation of the business (e.g. goodwill, licenses, premises, fixed assets, employees, contracts, liabilities, etc.)

ii. **Made to a taxable person** – the recipient must be registered or must have applied for VAT registration (the application is required to have been accepted if the registration is voluntary)

iii. **The recipient intends to continue the business** –If the business is fundamentally changed after acquisition, this condition is not met. A short period of temporary closure is permissible.

It remains the supplier's responsibility to satisfy themselves of the recipient's intentions. If the supply has been treated incorrectly, VAT may be due retrospectively. Therefore, it is recommended that the supplier obtains proof of intention.

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EXCISE TAX

A new cabinet decision (Cabinet Decision No. 52 of 2019) was issued on 4 August 2019 which states that the scope of excise tax will be expanded to include Electronic smoking devices, tools and liquids used in these devices; and sweetened drinks. These are to be taxed at 100% and 50% respectively. Cabinet Decision No. 52 of 2019 replaces Cabinet Decision No. 38 of 2017.

The FTA has confirmed that the following goods will be outside the scope of excise tax:

i. Ready-to-drink beverages containing at least 75% milk.
ii. Ready-to-drink beverages containing at least 75% Milk Substitutes.
iii. Baby formula follow up formula or baby food.
iv. Beverages consumed for special dietary needs as determined under Standard 654 of the GCC Standardization Organization under the heading “General Requirements for Prepackaged Foods for Special Dietary Use”.
v. Beverages consumed for medical uses as determined under Standard 1366 of the GCC Standardization Organization under the heading “General Requirements for Handling of Foods for Special Medical Purposes”.
vi. Drinks containing alcohol

The FTA has also provided clarification on contradicting provisions (i.e.. where goods are classified under two different categories) In such cases, the goods will be taxed in the category with the highest excise rate.

The effective date is 1 December 2019.

Importers/Producers are advised to start adding products under the new categories to the Excise Tax list prior to the effective date. If there is a doubt on whether certain products qualify as sweetened drinks, taxpayers are required to submit a lab test from a lab approved by the Federal Tax Authority confirming whether there is added sugar to the product. These lab reports are required to be uploaded on the website when identifying a product as non-excisable.

The FTA has indicated that it will process the registrations according to the following priority:

Category	Period
i. Sweetened drinks	September 2019
ii. Electronic smoking devices and liquids to be used in these devices	October 2019
iii. Other goods	November 2019

REPORTING REQUIREMENTS

The taxpayer is required to report:

- The release of goods from Designated Zones
- Producer declarations
- Inventory for local purchases
- A lost and damaged declaration
- Transfers within Designated Zones

These declarations are required to be made monthly by the 15th day of the following month, with the Excise Tax Returns.

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ECONOMIC SUBSTANCE REQUIREMENTS

On 30 April 2019, the Cabinet of Ministers issued Resolution No. 31 of 2019, which introduces some important new requirements for international businesses. Under the Regulations, a UAE entity which is engaged in "Relevant Activities" is required to meet certain economic substance requirements. If the requirements are not met, the entity may be liable to fines, penalties ranging from AED 10,000 to AED 300,000 and the potential suspension, revocation or non-renewal of its license.

International groups will be affected by the requirements if they are involved in any of the following activities in the UAE:

- Banking
- Insurance
- Investment fund management
- Lease finance
- Headquarters
- Shipping
- Holding company
- Intellectual property
- Distribution and service centers

COUNTRY BY COUNTRY REPORTING ('CbCr')

CbCr was introduced pursuant to the Federal Decree No. 24 of 2019. It applies to international groups with consolidated revenues exceeding AED3.15 billion (USD 855 million) with entities that are tax residents in the UAE. The rules are effective for financial reporting years commencing from 1 January 2019.

A notification is required to be made by the UAE entity to the Ministry of Finance by the last day of the financial reporting year. The CbC report will need to be filed within 12 months from the end of the financial reporting year.

The standard OECD report will be used as the base report, however detailed guidance on filing is expected in due course.

UAE headquartered multinational entities ('MNEs') which previously had a filing obligation in another jurisdiction will need to assess whether the filing obligation should be met in the UAE. MNEs headquartered overseas will need to revisit their CbCr approach to include UAE reporting requirements

If you are affected by any of these issues and would like to receive further advice or information, please contact us.

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