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UAE VAT NEWSLETTER

A YEAR INTO VAT

2018 was a momentous year for the UAE, where the world witnessed the implementation of VAT in a country that was previously untouched by general taxes. VAT was rolled out on 1 January 2018 and since then the Federal Tax Authority (FTA) has moved forward strongly and positively. It is increasingly active in its management of VAT compliance and has released a broad catalogue of VAT guidance material.

In this issue, we provide a summary of the main developments over the past year and look forward to what might be ahead in the coming twelve months.

PENALTIES

The big news in the third quarter of the year was that penalties started to be imposed for VAT errors. The size of the penalties has surprised many taxpayers because often, the penalty is greater than the amount of VAT involved. The penalties are triggered when the FTA finds an error or when taxpayers make 'voluntary disclosures' of errors they have found themselves.

Under the voluntary disclosure rules, taxpayers are obliged to correct any errors they discover in their VAT returns. If the error is less than AED 10,000, they can correct the error by making an adjustment in their next VAT return. In such cases, there will be no penalty. If the error exceeds AED 10,000, the taxpayer is required to make a voluntary disclosure, which is similar to filing a revised return.

These disclosures will attract three different penalties:

- A fixed penalty of AED 3,000 for a first disclosure or AED 5,000 for subsequent disclosures.
- A percentage-based penalty that is normally 5% of the error but may be higher if the taxpayer is informed of or identifies the error at the time of a VAT audit by the FTA.
- A late payment penalty, which is 6% of the error for the first month and 1% daily thereafter.

By far, the most significant of these penalties is the late payment penalty. This is charged from the date the return was due to the date the tax is paid. At a rate of 1% per day, the penalty can quickly become larger than the tax involved. This penalty can rise to a maximum of 300% of the tax.

The penalties are applied in the same manner even if instead of taxpayer, FTA finds the error. However, depending on the circumstances the percentage-based penalty may be calculated using a higher percentage.

These penalties are a reminder to the taxpayer of the need for accuracy and care in their VAT accounting.

Importantly, the penalties also highlight the need to correct any errors, in accordance with the voluntary disclosure rules, as quickly as possible.

These rules are not optional and any delay will mean an increase in the late payment change. It could even mean an increase in the percentage-based penalty if the FTA starts an enquiry before the disclosure is made.

It should be noted that in addition to these penalties for errors, there are other penalties, including penalties for late registration, incorrect issue of invoices, and late submission of returns.

LOOKING AHEAD

We expect some of the biggest changes in 2019 will be the way in which the FTA manages taxpayer compliance. So far it has taken a very low-key approach and only few taxpayers have received any sort of enquiry or challenge from the FTA in connection with VAT returns, other than where the taxpayer has requested a VAT refund.

We expect this to change in 2019 and for the number of enquiries to increase rapidly. We are expecting a full program of VAT audits and inspections to get underway in 2019.

Taxpayers need to be ready for this change of pace and should make sure they are properly prepared for the VAT audit. When the audit takes place, the FTA wants to review all of the data and documents that support the VAT return. This will include sales and purchase invoices, accounting records, contracts and import and export evidence.

The taxpayer may only have five days' notice of the audit (the minimum notice period set out in the law) so they will have to make sure that everything is ready in advance. Therefore it's a good time now to review records and processes and to make sure everything meets the requirements of the VAT law.

Outside of VAT, there appears to be increasing activity across the region in connection with the OECD's framework for combatting Base Erosion and Profit Sharing (BEPS). The Kingdom of Saudi Arabia recently released draft legislation for Transfer Pricing, which follows the OECD model and it is likely that other Gulf countries, including the UAE, may follow suit. We will watch developments with interest and will bring you updates in due course.

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A ROUND UP OF DEVELOPMENTS IN 2018

VAT Refund for Exhibitions and Conferences.

UAE is a leading centre for exhibitions and conferences. To promote this industry, the FTA has announced a refund scheme for conference organisers and foreign attendees. It's a complex scheme but the overall purpose is to provide relief for foreign companies.

Tourist Refund Scheme

The first phase of the tax refund scheme for tourists went operational at around 16 ports and airports in the UAE in November 2018. Tourists will be able to obtain a VAT refund subject to a minimum expenditure of AED 250 on the purchase of qualifying goods. .

Refunds for foreign businesses

The FTA has released details of a scheme that will allow non-established foreign businesses to claim VAT incurred in the UAE. The claims will be made annually and the first claims can be submitted from April 2019. To qualify, claimants must be from a country that has a reciprocal scheme and there is a minimum claim size of AED 2,000.

Clarifications from the FTA

The FTA has released procedures for businesses to seek clarifications from the FTA on any matter relating to VAT.

Reconsideration applications and Tax Dispute Resolution

Businesses can now file for a reconsideration of any decision from the FTA.

In addition, the FTA has introduced a Tax Dispute Resolution Committee where taxpayers can request a further hearing of their case if the result of the reconsideration is not satisfactory.

Bi-Annual Tax Periods

The FTA has announced the introduction of biannual tax periods for certain taxpayers. This will be available for small businesses, commercial real estate owners and board members.

Gold and Diamonds Reverse Charge Mechanism

The reverse charge mechanism was introduced for business to business trade of gold and diamonds at the wholesale level.

The FTA clarified that the retailers will continue to levy VAT on jewelry sold in shops, as per the general rule.

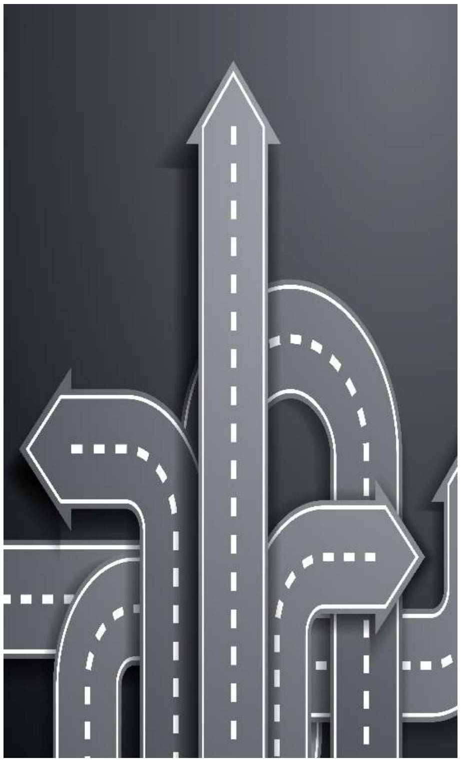
FTA portal updates

Newly introduced features on the FTA portal allow businesses to amend or update information on registration application and cancel refund online by simply signing into their accounts.

Other guides

In addition to the above, the FTA has released guides on registration, filing of returns, real estate, VAT payment for commercial property buyers, directors services charities, insurance, Designated Zones, entertainment and employee expenses.

There are also general guidance notes for taxable persons which explain the basics of VAT and how to use the FTA website. The guides provide very useful insight on how to deal with VAT on a day to day basis and on how the FTA expects VAT to be applied.



THE REST OF THE GCC – BAHRAIN, KUWAIT, OMAN, AND QATAR

To date, only the UAE, Saudi Arabia and Bahrain have Implemented VAT.

Bahrain has taken a staggered approach and only businesses with revenues over BD 5m were required to register with effect from 1 January 2019. Smaller businesses will register later in the year.

Kuwait announced it would probably push the implementation back to 2021, citing the unreadiness of processes and systems to support VAT implementation.

Oman is expected to implement VAT at some point during 2019. Qatar may also implement in the coming year but there have been no firm announcements.

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