

## UAE VAT Public Clarification VATP038

### Manpower vs Visa Facilitation Services



## Introduction

### **UAE VAT Update: Public Clarification VATP038 on Manpower Supply Services vs Visa Facilitation Services**

The Federal Tax Authority (FTA) has recently issued a welcome Public Clarification concerning the intricate VAT treatment concerning employment visas and their associated services. The clarification may have far-reaching implications for many businesses and corporate groups.

Generally, in the UAE, there may be certain scenarios/cases wherein the employment visa(s) are held by a company, but the associated employees actually perform their duties for and under the supervision and control of another company.

Given the aforementioned, the Public Clarification (VATP038) provides much-needed guidance on the taxability of such scenarios and provides a clear distinction between the supply of manpower services and the supply of visa facilitation services only.

#### **We have provided a detailed brief of Public Clarification (VATP038) below:**

A supply of manpower services is defined as instances where a company holds employment visas for individuals who operate under the purview of another entity. Under such circumstances, the supplying entity assumes full responsibility for all employment-related obligations, encompassing salary disbursements, benefits administration, and overseeing employee performance.

Additionally, the consideration for such services encapsulates not only the salaries and benefits but also any supplementary charges associated with providing manpower supply services to the customer.

**Illustrative Example - Manpower Services:** Consider Company A, which holds the employment visas for individuals engaged in Company B's operations wherein Company A is responsible for the obligations related to the employee, such as salaries, performance, and other benefits. In this scenario, Company A is deemed to be offering manpower services, and the consideration for this provision comprises all outlays incurred by Company B, encompassing salaries and benefits

On the other hand, public clarification defines visa facilitation services as services wherein the company merely arranges visas for employees for the other company (customer); the entire obligation for employee responsibility as well as supervision lies with the other company (customer).

Conversely to manpower supply services, a supply would be considered a supply of visa facilitation services instead of a supply of manpower in case all below-mentioned conditions are met.

**1. Both the employment visa holder (facilitator) and the customer must be a part of the same corporate group.** It is essential to understand that the term "corporate group" pertains to entities operating within the same corporate framework from a commercial/accounting perspective. Further, should the facilitator and the customer fail to align within this corporate ambit, the supply would be deemed as manpower services.

It is also imperative to note that a corporate group is not the same as a VAT or Corporate Tax group but instead pertains to entities operating within the same corporate structure, including common ownership of companies.

**2. The facilitator must not be engaged in a business of supplying manpower;** should the facilitator extend any form of manpower services to any other entity, it disqualifies the transaction from being categorized as visa facilitation services.

Therefore, it is imperative for facilitators to analyse and identify whether the transactions actually undertaken by them qualify as a supply of manpower or not. Additionally, one may note that a company may not have manpower services as activities in their trade license, commercial license, VAT registration, or internal documents but may be engaged in supplying manpower services regardless.

In such cases, a substance over form approach needs to be adopted, and the taxability of the transactions needs to be interpreted accordingly.

**3. The facilitator bears no responsibility for any employee-centric obligations.** In the context of visa facilitation, the onus of fulfilling employee obligations rests squarely on the customer, encompassing salary disbursements, benefits provisioning, insurance coverage, and accommodation arrangements, i.e., the facilitator has no obligations to fulfill employee obligations (benefits, salary, etc.) and is only responsible for obtaining the employment visa.

**4. The facilitator sponsors employees to exclusively work for the customer under their supervision and control.** Under the arrangement of visa facilitation, where the facilitator serves merely as the sponsor of employment visas, it is imperative that the employees work exclusively for the customer, under their supervision and control. If employees work solely for the customer and are subject to their supervision and control, this condition is deemed fulfilled. It's important to note that if an employee conducts duties for the customer as well as other companies within the corporate group, this condition is not met, and the supply is treated as manpower services.

Rationally, it is often common practice where departments and their associated employees under a group of companies generally share duties and responsibilities across a multitude of entities, for the benefit of the group. In such scenarios, the conditions of visa facilitation services will not be met, and careful consideration needs to be given to determine the taxability of the transaction.

**Given the above, we have included an illustrative example as follows:** Consider Company A, which holds employment visas for individuals working for Company B, both entities being part of the same corporate group. However, Company A also provides secondment services to businesses outside its corporate group. In this scenario, Company A is regarded as supplying manpower services to Company B, as it fails to meet the condition for visa facilitation services (a facilitator engaged in the business of supplying manpower).

Adding on, when a facilitator meets the conditions for providing visa facilitation services, the supply is considered taxable if the place of supply is within the UAE. In such instances, the facilitator is required to levy VAT on the value of the supply.

The consideration for visa facilitation services includes charges for services like typing fees, medical tests, and the issuance of employee Emirates IDs. However, the value of the supply excludes employee salaries and other benefits, as these are the responsibility of the customer.

Alternatively, in cases where the facilitator charges a fee below market value within the same corporate group, a special valuation rule applies. If the fee is below market value and the customer cannot fully recover input tax, VAT is imposed on the market value of the supply.

In scenarios where the facilitator provides visa facilitation services at no monetary charge, the supply constitutes what is known as a "deemed supply". Nevertheless, the Public Clarification has provided a pivotal exception that arises when the facilitator does not seek to recover input tax, including both direct costs (e.g., VAT on typing fees) and indirect costs (e.g., overhead expenses such as office rent and utilities).

In cases where the associated input tax is not recovered, the supply will be deemed to be outside the scope of UAE VAT. Although, if input tax is recovered, the facilitator must account for output tax based on total costs, covering both direct visa-related expenses and operational overhead.

As a way forward, given the above clarity provided by the FTA, it is essential for businesses to evaluate their transactions and determine whether they are providing manpower supply services or are engaged in visa facilitation services. Since the topic involves substantial review of facts and interpretation thereof, it is recommended that a policy be drafted and maintained for future reference.

In case you would like any additional information or assistance, please get in touch with our dedicated team of professionals.

You may access the full Private Clarification via the enclosed link: [VATP038 - Manpower vs Visa Facilitation Services](#).

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