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TAX ALERT

Analysis of the UAE VAT Public Clarification (VATP040) on the November 2024 Executive Regulation Amendments

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Tax Alert

This tax alert will be outlining key VAT amendments from Public Clarification VATP040, effective November 15, 2024.

Introduction

On March 13, 2025, the Federal Tax Authority (FTA) issued Public Clarification (VAT P040) to elaborate on the amendments to the Executive Regulation introduced by Cabinet Decision No. 100 of 2024. This highly anticipated update has provided UAE businesses with essential clarity on the corresponding amendments, ensuring a comprehensive understanding of the key changes and their implications.

We have outlined a comprehensive analysis of the latest updates, emphasizing key changes and critical insights associated with this significant amendment. This analysis is designed to provide businesses with a clear understanding of the implications and business impact, enabling them to navigate the revised regulations effectively.

Insertion of exceptions of Supplies – Article 3(bis) of the ER

A new Article 3(bis) introduces exceptions to supplies under the VAT Law, specifying that the following are not considered supplies:

- The transfer of ownership, disposal, or grant of government buildings and real estate between Government Entities.
- The transfer of rights to use government buildings and assets, effective from January 1, 2023.

For Clause 1, government buildings and assets include:

- Government premises
- Capital projects
- Infrastructure projects
- Real estate used by Government Entities
- Assets serving public utilities
- Developed government land

The scope of these assets will be defined by a decision issued by the Minister.

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The exception does not automatically apply to all government properties or projects. Government entities must await the Minister's decision before implementing VAT treatment for out-of-scope supplies in such transactions.

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Retailers must conduct a critical assessment of their existing bundle offers, including pricing structures, promotional strategies, and marketing approaches, to ensure compliance with the amended provisions.

Voluntary registration - Article 8 of the ER

Article 8(6) now requires businesses to provide evidence to the FTA that they conduct business in the UAE and intend to make taxable supplies under Article 54(1) of the Decree-Law to qualify for voluntary VAT registration. This means taxable expenses alone are no longer sufficient, i.e., applicants must demonstrate a clear intention to make supplies when applying.

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Businesses must ensure that taxable supplies align with related expenses when applying for voluntary registration. Failure to do so could lead to the FTA rejecting the application.

Tax deregistration - Insertion of Article 14(bis) of the ER

Article 14(bis) empowers the FTA to deregister a registrant so moto, if their continued registration risks the tax system's integrity. This applies when the registrant:
·Fails to meet tax registration requirements under the Decree-Law.
·Does not apply for deregistration or leaves the application incomplete.
·Meets any other conditions set by the FTA.

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Following the recent amendment, companies should conduct a thorough review and submit a de-registration application if needed. The FTA now has the authority to proactively deregister entities, which may result in adverse consequences and penalties.

Deregistration of a tax group registration or amendment – Article 15 of the ER

Article 15(1) has been revised to replace "if the following conditions are met" with "in any of the following cases," clarifying that deregistration can occur if any one of the specified conditions is met.
A significant change under Article 15(2) introduces an additional reason for removing an entity from a Tax Group—if a member entity ceases to make taxable supplies, it must be removed from the group. The representative member is responsible for submitting the amendment application. Importantly, this removal condition applies only to the cessation of taxable supplies, not exempt or out-of-scope activities.

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While many large businesses have restructured following the UAE corporate tax implementation, others may need to review their Tax Group structures and submit necessary VAT amendments to comply with the updated regulation.

Accounting for Tax on the Profit Margin-Article 29 of the ER

Amendments to Article 29 of the UAE VAT Executive Regulation introduce a new definition for "purchase price" in Clause 5, leading to a renumbering of some provisions.

Under the updated Article 29(5), the purchase price now includes not just the price of the good itself but also additional costs and fees incurred to acquire it. These may include Customs duties, shipping, handling, wrapping, and installation charges imposed by the seller of the good.

For example, if a taxable person purchases a machine for AED 10,000 from a non-registrant, with an additional AED 1,000 for shipping and AED 500 for installation, the total purchase price for profit margin calculation becomes AED 11,500.

However, if shipping and installation fees are charged by a VAT-registered supplier, these costs should not be included in the purchase price since the recipient can recover input VAT through the supplier's tax invoice.

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The updated definition of purchase price under the profit margin scheme clarifies that only non-recoverable costs should be included. Businesses should carefully review cost components to ensure compliance and maximize VAT recovery where applicable.

Zero-Rating of Export of Goods – Documentary Requirements (Article 30) of the ER

Amendments to Article 30 of the UAE VAT Executive Regulation ease the burden of proof on suppliers by broadening the types of official and commercial evidence that can be used to substantiate the zero-rating of direct and indirect exports of goods.

Previously, only an export document issued by the Local Emirate's Customs Department (i.e., an exit certificate) was accepted as official evidence. From 15 November 2024, official evidence may now also include:

- A clearance certificate from the Local Emirate's Customs Department or another competent UAE authority confirming that the goods have exited the UAE.
- A document or clearance certificate certified by the destination country's authorities confirming the goods' entry. Such documents must include a clear certification mark (e.g., an official stamp or seal) and must be in Arabic or English (or have a certified translation).

The amendment also expands the definition of commercial evidence, which now includes transport documents issued by sea, air, or land carriers, such as:

- Air, sea, or land waybills/manifests proving that the goods were transported outside the UAE.
- A shipping certificate, which may substitute commercial evidence if unavailable, issued by the transport company confirming the goods' departure.

The FTA retains the discretion to reject documents that do not sufficiently prove the goods have exited the UAE. For example, if the text is illegible or the details required under Article 30(5) cannot be determined, the evidence may be deemed insufficient.

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The documentary requirements for zero-rating exports are now more flexible, allowing alternative forms of proof beyond the exit certificate. Businesses should ensure they retain the correct combinations of documents and maintain clear, verifiable records to support VAT compliance. From 15 November 2024, exporters must carefully assess whether their documentation aligns with the updated requirements to avoid potential VAT challenges.

Zero-rating of Export of Services – Article 31 of the ER

Article 31 of the UAE VAT Executive Regulations has been amended to clarify the conditions for zero-rating the export of services. The key changes are as follows:

The term "personal" was removed from Article 31(1)(a)(2) to clarify that services supplied in connection with movable assets located in the UAE at the time of performance do not qualify for zero-rating. Additionally, a new condition was added in Article 31(1)(a)(3), specifying that the following services supplied to non-residents do not qualify for zero-rating:

- Services related to goods (e.g., installation) located in the UAE when the services are provided.
- The supply of transport means to a non-taxable lessee in the UAE, where the transport was in the UAE when made available.
- Restaurant, hotel, and catering services performed in the UAE.
- Cultural, artistic, sporting, educational, or similar services performed in the UAE.
- Services directly connected with real estate in the UAE.
- Transportation services where goods or passengers are transported from the UAE.
- Telecommunication and electronic services used and enjoyed in the UAE.

The amendment to Article 31(2) replaced "a month" with "30 days." This means the total number of days the non-resident is present in the UAE over a 12-month rolling period will determine if they are considered to be "outside the UAE" when the services are provided.

The regulation also clarifies that the export of services may not be zero-rated if it is reasonably foreseeable that another person will receive the services in the UAE, unless that person would be entitled to full input tax recovery.

Furthermore, Article 31(3)(b) clarifies that if the recipient of the service is a government entity or charity eligible for full input tax recovery under Article 57 of the Decree-Law, the service may qualify for zero-rating, provided all conditions of Article 31(1) are met.

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It is important for businesses offering services to non-residents to determine the location of the service and the nature of the service provided. Services tied to goods, real estate, or performed within the UAE are excluded from zero-rating. On the other hand, services that are exported or performed outside the UAE can qualify for zero-rating, provided other criteria are met.

Businesses must ensure proper documentation and understanding of these conditions to avoid incorrect VAT treatment and potential compliance issues.

Zero-rating of International Transportation Services for passengers and goods – Article 33 of the ER

The amendment to Article 33 of the Executive Regulation clarifies the conditions under which domestic transportation services as part of an international transport service may qualify for zero-rating. The key change is that the domestic leg of transportation can only be zero-rated if it is supplied by the same supplier that provides the international transport service.

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The clarification ensures that businesses involved in international transportation services understand the requirements for zero-rating domestic transport as part of international logistics. Companies must ensure that they contract appropriately for both legs of the transport, and that the subcontracting arrangements do not risk the zero-rating eligibility. Additionally, local transport companies subcontracted by international suppliers need to ensure proper VAT treatment for their services.

Zero-rating Certain Means of Transport (“Qualifying Means of Transport”) – Article 34 of the ER

Article 34 of the Executive Regulation has been amended to clarify that zero-rating under Article 45(4) of the Decree-Law applies not only to the supply but also to the importation of qualifying means of transport.

The amended Clause 2 of Article 34 clarifies that only ships, boats, or other floating structures designed or adapted for the commercial transportation of passengers and goods qualify as means of transport eligible for zero-rating. These vessels must not be designed or adapted for recreational, pleasure, or sports purposes.
As a result, vessels such as commercial fishing ships, drilling ships, or dredgers are not considered qualifying means of transport. Therefore, the supply or importation of such vessels will not qualify for zero-rating under this article.

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This change helps provide greater clarity for businesses involved in the supply or importation of vessels. It ensures that only vessels specifically designed for commercial transport, excluding recreational or specialized vessels, are eligible for the zero-rate. Companies importing or supplying ships, boats, or floating structures must assess the primary purpose of the vessel to determine whether it qualifies for zero-rating.

Zero-rating Goods and Services in Connection with Means of Transport – Article 35 of the ER

The amendments to Article 35 clarify the three categories of goods and services that qualify for zero-rating when supplied in connection with a qualifying means of transport. The clauses have been renumbered to improve clarity and distinction between these categories.

Under Article 35(2), zero-rating applies to services directly connected with a qualifying means of transport, including repairs, maintenance, cleaning, repainting, inspection, and testing carried out onboard. Additionally, services related to the conversion of a means of transport remain zero-rated, provided the transport still meets the conditions under Article 34 after conversion. For instance, converting a passenger aircraft into a cargo aircraft qualifies, as long as it remains a commercial transport vehicle.

To qualify, the services must be supplied directly for the operation, repair, maintenance, or conversion of the transport. General services, such as cleaning a hangar where an aircraft is stored, do not qualify, even if cleanliness is necessary for maintenance. Similarly, services provided in respect of a vessel that does not qualify as a means of transport at the time of supply are not eligible for zero-rating.

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The amendments ensure greater precision in defining qualifying transport-related services. Businesses must ensure that services are directly linked to the operation or modification of qualifying transport, as indirect services will not qualify for zero-rating. Companies providing maintenance, repair, or conversion services should review their contractual obligations and documentation to ensure compliance with these refined rules.

Changes to the VAT Treatment of Residential Buildings – Article 37 of the ER

The amendment to Article 37(2)(c) clarifies that hotel apartments and serviced apartments are not considered residential buildings for VAT purposes. As a result, they are now subject to standard rated VAT and do not qualify for zero-rating or exemption. This change removes previous ambiguity and ensures alignment with hospitality sector VAT rules.
Example:

- A developer leases both standard residential apartments and serviced apartments in a mixed-use building:
- Residential apartments → VAT exempt
- Serviced apartments → Subject to 5% VAT

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This amendment prevents misclassification of serviced apartments as residential properties. Landlords and property managers should reassess their VAT treatment and update their invoicing accordingly.

Tax Treatment of Financial Services – Article 42 of the ER

The amendment to Article 42 of the ER introduces three major changes to the VAT treatment of financial services in the UAE:

- Clarification on Islamic Financial Arrangements
- VAT Exemption for Investment Fund Management Services
- Formal Recognition of Virtual Assets and Cryptocurrencies Under UAE VAT Law

We have provided a brief understanding of the above below:

1. Islamic Financial Arrangements

Islamic finance transactions (e.g., Murabaha, Ijarah, Salam) must now align with both VAT law and UAE commercial laws governing financial services.

VAT Exemption for Investment Fund Management of the ER

Fund management services for UAE-licensed funds are now VAT-exempt under Article 42(3)(d).

- If the fund is licensed → VAT exempt
- If the fund is not licensed → VAT 5% applies

VAT Treatment of Virtual Assets & Cryptocurrencies of the ER

The buying, selling, and conversion of virtual assets (e.g., Bitcoin) are exempt from VAT, effective retroactively from January 1, 2018. However, crypto wallet management fees and transaction charges remain taxable at applicable tax rates.

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·Islamic finance institutions must align VAT policies with both tax and commercial laws.

·Fund managers must assess licensing status for VAT exemption eligibility.

·Crypto businesses should differentiate between VAT-exempt transactions and taxable service fees. Retroactive exemption requires reviewing past VAT filings for adjustments.

Non-Recoverable Input Tax – Article 53(1)(c) of the ER

1. General Rule: VAT on Employee Personal Benefits is Non-Recoverable

Employers cannot recover input VAT on costs incurred to provide free goods or services to employees for personal use. This includes non-mandatory perks, such as free meals, team Iftars, gifts unless a specific exception applies.

2. New Exception for Health Insurance Input Tax Recovery

VAT on medical insurance for employees and up to one spouse plus three children under 18 is now recoverable, regardless of whether it is legal obligation of the employer to provide the same.

3. Effective Date and Compliance Considerations

This amendment is not retrospective in nature. VAT recovery on medical insurance premiums only applies from the date of amendment, i.e., 15 November 2024 and cannot be claimed for prior years.

For businesses that prepaid annual insurance premiums before the amendment, only the VAT applicable to the period after the amendment date can be recovered.

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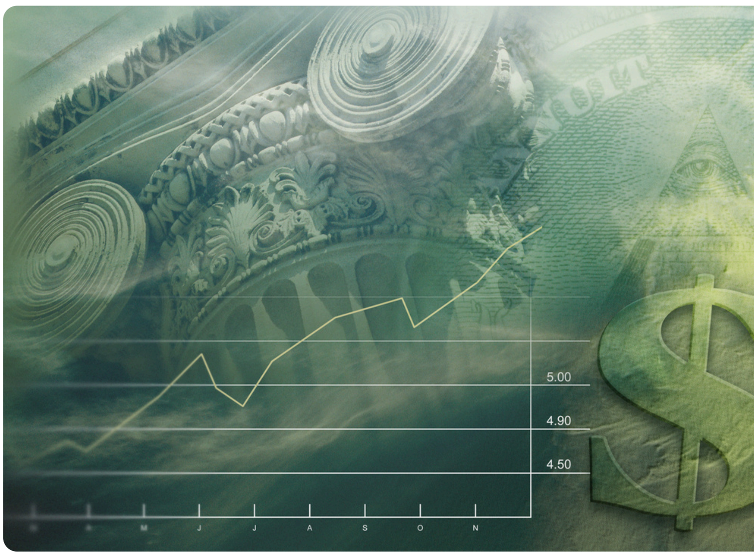
- Employers should update their VAT recovery process and track eligibility to avoid over-claiming VAT.
- Businesses that prepaid annual premiums before the amendment can only claim VAT from 15 November 2024 onward.



Apportionment of Input Tax – Article 55 of the ER

Article 55 of the Executive Regulation has undergone significant changes, including renumbering of clauses, introduction of special cases for tax year-end calculations/ determination, and the addition of a specified recovery percentage for input tax apportionment. These updates impact how taxable persons calculate and recover VAT on input tax related to both taxable and exempt supplies.

1. Special Cases Triggering the End of a Tax Year

A new Clause 4 specifies that a tax year ends in the following cases:

- VAT Deregistration – Ends on the last day the entity was a taxable person.
- Joining a VAT Group – Ends on the day before inclusion in the VAT group.
- Leaving a VAT Group – Ends on the day before exiting the VAT group.

These changes ensure that businesses align VAT recovery calculations with their actual taxable period, avoiding discrepancies in apportionment calculations.

2. Apportionment Methodology and Simplified Calculation in VAT Guide

A key amendment under Article 55(7)(a) of the ER states that apportionment should now consider the "sum of input tax for the tax period." However, this does not override the simplified input tax apportionment method outlined in the FTA's VAT Input Tax Apportionment Guide (VATGIT1), which remains applicable.

Although the regulation now refers to the sum of input tax, businesses should continue using the simplified calculation method from VATGIT1. This ensures consistency and prevents unnecessary changes to existing VAT recovery calculations.

3. Threshold for Actual Use Adjustment

A new Article 55(12) of the ER clarifies that if a tax year is shorter than 12 months, the AED 250,000 threshold for requiring an actual use adjustment must be apportioned proportionally.

If the difference between the apportioned recovery percentage and the actual recovery percentage exceeds this amount, an adjustment is required.

4. FTA's Authority to Enforce Alternative Apportionment Methods

Under Article 55(13) of the ER, the FTA now has the authority to mandate businesses to apply an alternative apportionment method if the standard method does not fairly allocate VAT recovery.

For instance, if a financial institution with investment banking, retail banking, and real estate divisions applies a single input tax apportionment method, the FTA can intervene if this does not accurately reflect taxable and exempt supplies. The business may be required to use a sector-based apportionment method instead.

5. Introduction of the Specified Recovery Percentage for Input Tax – Effective 15 November 2024

Businesses can now apply for a "specified recovery percentage", allowing them to use a fixed VAT recovery rate based on the previous tax year's percentage, rather than recalculating it every tax period.

To qualify, the business must have been registered for VAT for at least one full tax year, and the FTA must approve the request before the method can be used. Once approved, the specified percentage remains valid for four years, with a minimum lock-in period of two years before changes are allowed.

This is particularly beneficial for large businesses and sectors with predictable taxable and exempt supplies, such as financial services, real estate, and government contractors, as it reduces administrative burdens associated with frequent VAT recalculations.

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- Businesses must still follow the simplified apportionment calculation from VATGIT1, even though the regulation wording was amended to mention 'sum of all input tax' as the denominator for input tax apportionment calculation.
- Companies undergoing VAT registration changes (VAT deregistration, tax group changes) must carefully review how these events impact their tax year-end calculations.
- FTA has expanded its authority—businesses should be prepared for potential mandates to change their input tax apportionment method if their current approach is not deemed accurate.
- The introduction of a specified recovery percentage provides a strategic advantage for businesses looking to simplify VAT recovery calculations over a longer period.

Businesses should assess their VAT recovery practices, input tax apportionment methods, consider whether to apply for the specified recovery percentage, and ensure compliance with the new special cases for tax year-end calculations.

Adjustments Under the Capital Assets Scheme – Article 58 of the ER

A new provision under Article 58(17) clarifies that for internally developed capital assets, the first tax year for VAT adjustments is the year in which the asset is first used, not the year it was ready for use.

This ensures that input tax adjustments under the Capital Assets Scheme align with the actual economic use of the asset, rather than when it was initially developed.

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Businesses should ensure that VAT adjustments for capital assets are based on the year of first use, not just the year of development or readiness. Proper tracking and documentation of the capital asset usage will be critical for compliance.

Tax Invoices – Article 59 of the ER

The amendments to Article 59 of the ER introduce several clarifications and additional requirements for tax invoices, the key changes include:

- Simplified Tax Invoices → Must show total amount & VAT in AED.
- Restrictions on Simplified Invoices → Cannot be used when RCM applies (e.g., concerned services). Full tax invoices (self-invoicing) must be issued unless an FTA exception applies.
- FTA Can Withdraw Administrative Exceptions → If conditions are no longer met.
- Record-Keeping for Agents → When an agent issues a tax invoice on behalf of a principal, both parties must maintain records of each other's TRN and business details.
- Time Limits for Issuing Tax Invoices:
    a. Standard invoices → Within 14 days of supply.
    b. Simplified invoices → On the date of supply.
    c. Summary invoices → Within 14 days after month-end.
- FTA Can Require Full Tax Invoices Even If Simplified Invoice Criteria Are Met.

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The amendments introduce stricter controls and enhanced clarity in tax invoice requirements. Businesses must ensure they issue invoices correctly, comply with RCM restrictions on invoicing, and maintain comprehensive records.

Entities relying on administrative exceptions should be aware that these are subject to FTA review and potential revocation. Additionally, the FTA's authority to mandate full tax invoices reinforces the need for businesses to monitor compliance requirements and adapt to any industry-specific guidance that may be issued.

Tax Credit Notes – Article 60 of the ER

Amendments to Article 60 of the Executive Regulation clarify the treatment of multiple tax credit notes, administrative exceptions, and record-keeping requirements for agents.

Some of the key updates are:

- Multiple Tax Credit Notes - Article 60(1)(e) - When issuing multiple tax credit notes against the same tax invoice, the value of supply in subsequent credit notes must be the adjusted value as per the previous tax credit note.
- Administrative Exceptions - Article 60(2) - The FTA may grant exemptions from delivering tax credit notes, subject to necessary conditions being met.
- Record-Keeping for Agents - Article 60(6) - When an agent issues a tax credit note on behalf of a supplier, both must retain records of each other's name, address, and TRN.

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The amendments ensure accurate value adjustments when multiple credit notes are issued, provide flexibility via administrative exceptions, and reinforce record-keeping obligations for agents, aligning with the FTA's focus on VAT compliance and transparency.

Foreign Governments – Article 69 of the ER

Article 69 of the Executive Regulation was restructured to outline the conditions for VAT repayment claims by foreign governments, international organisations, diplomatic bodies, and officials.

A 36-month time limit was introduced for officials to submit claims unless a different period is specified in an international treaty or agreement in force in the UAE.

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The amendment formalises the VAT repayment process, ensuring clarity while aligning with international agreements.

Effective action plan for Ensuring Compliance

Conclusion

The 2024 VAT amendments represent a significant shift in UAE tax compliance, focusing on streamlining VAT administration, closing gaps in zero-rating provisions, and strengthening regulatory oversight. Businesses must ensure full compliance with the new rules, particularly in areas of invoicing, input tax apportionment, tax group management, and VAT recovery.

Looking ahead, businesses must remain agile and adaptable, anticipating further refinements to the VAT system as the UAE continues to enhance its tax regime. Regular VAT health checks, collaboration with tax advisors, and staying informed of future updates will be critical in ensuring compliance and optimizing VAT management. By adopting a comprehensive and forward-thinking approach, businesses can not only mitigate risks but also position themselves for greater operational efficiency and long-term financial stability within the evolving UAE tax landscape.

For further guidance on navigating these VAT amendments and ensuring compliance, you can reach out to our dedicated team of tax professionals, who are ready to provide expert insights and tailored solutions for your business needs. Contact us today to stay ahead of regulatory changes and optimize your VAT strategy.

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