

VATP019- Public Clarification on Zero Rating of Export of Services

Following the Recent Amendment in the Executive Regulations of the UAE VAT Law, the FTA has provided a high-level clarification on the two conditions that have to be fulfilled to apply the Zero Rate on export of Services

WHATS HAS CHANGED

Recently FTA has Amended Article 31(2) of the Cabinet Decision No (52) of 2017 on the Executive Regulation to Federal Decree Law no (8)

“Pursuant to Article 31(1)(a)(1) of VAT Executive Regulation, a supply may only be Zero-Rated provided where a recipient of services does not have place of residence in UAE and is outside the UAE at the time the services are performed”

Summary of Important Highlights of the Clarification

- Supplier needs to know the Residency status and location (physical presence) of the recipient while making the Taxable Supply.
- If Recipient has multiple establishments, supplier has to determine the establishment most closely related to the supply of the services made.
- If services received by both the place of establishment and the Fixed establishment, factors such as contractual recipient, the party benefiting from such supply, the entity receiving the invoice and making the payment, etc needs to be analyzed.
- If there is no place of residence or Fixed establishment (eg like Natural Person) the Place of Residence of the person is the state in which the usual place of Residence of that person
- If the client is temporary in UAE for the meeting when services are performed, the supply will not be considered as Zero rated Supply.
- If the Client Visits UAE for personal reason and has no connection with the services performed, it may be considered as Zero Rated.

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Key Takeaways

1. Where the recipient has the place of Establishment in multiple countries in and outside UAE and the supply is **most closely connected** with the establishment outside UAE, then that establishment will be treated as the location of the recipient for the purpose of the Article 31(1)(a) of 22ER
2. A Non –resident recipient of the Services (including a recipient which may already have a UAE Establishment) may lose the ability to receive a zero rated supply where they create a **temporary presence in the UAE at the time the services are performed**, which relates to the supply being made.
3. FTA has resolved on of the most contentious issue where the supply is made to Head Office (located outside UAE) and having branch in the UAE. It can now be construed that such supplies can be Zero Rated as the place of establishment most connected with the supply is Outside UAE.
4. In order to ensure that the Zero Rated treatment is not applied incorrectly, the supplier **should consider all available facts and seek**. If necessary, additional information from the recipient needs to take in order to ascertain the **recipient's residency status and location** at the time the services are performed.

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