



VAT Guides and Clarification issued in December 2018

Introduction

Recently, the Federal Tax Authority ('FTA') issued user guides and a clarification to explain procedural aspects under VAT and provide a method to be followed for certain transactions.

In this alert, we have summarised the key aspects of the following guides and the clarification issued by the FTA:

Guide/ Clarification	Subject
VATP009	Date of Supply for Independent Directors
VATGIT1	Input Tax Apportionment: Special Methods
VAT Guide	VAT Refunds for Business Visitors

VATP009 – Date of Supply for Independent Directors

Previously, the FTA issued a VAT Guide on VAT treatment on director's services which contained a detailed analysis on taxability, place of supply, recovery of input tax along with certain scenarios. Said Guide did not cover the timing of paying VAT, and it was presumed that the provisions pertaining to the date of supply prescribed in Article 25 and 26 of the VAT Law would apply.

Ambiguity existed concerning the timing of paying VAT, i.e. whether VAT liability would arise following the completion of board meeting despite the fees not being finalised or whether the liability can be deferred till the time amount is agreed.



To clarify these issues, the FTA has issued a Public Clarification which explains the date of the supply for different scenarios and the same is summarised below:

Scenarios	VAT Law Reference	Date of Supply Applicability
Board fees are known only upon conclusion of Annual General Meeting	Article 25 of the VAT Law	Date of supply would be triggered only when director fees are known to the independent directors. Hence, such event shall be considered as a completion of services in accordance with Article 25 of the VAT Law.
Board fees are known at the outset and involve periodic payments or consecutive invoices	Article 26 of the VAT Law	Earliest of the following: <ul style="list-style-type: none"> • Date of issuance of tax invoice; • The date on which payment is due as shown on the tax invoice; • Date of receipt of payment.
Board fees are known at the outset but there are no periodic payments or consecutive invoices	Article 25 of the VAT Law	Earliest of the following: <ul style="list-style-type: none"> • Date of issuance of a tax invoice; • The date on which the provision of services was completed; • Date of receipt of payment

Comments

Based on the Public Clarification, it is imperative that the independent directors determine the tax point for the purpose of paying VAT and ensure that VAT is appropriately accounted for and paid to the FTA.

An important aspect clarified in the Public Clarification is what constitutes a completion of service. A service shall be regarded as complete when the fee/ value of the service is agreed between the parties. Said rationale could be extended to similar business scenarios and based on this, the liability to pay VAT would not arise on the provision of a service but once the fee is agreed between the parties.

VATGIT1 – Input Tax Apportionment: Special Methods

Introduction

For businesses engaged in taxable and exempt / non-business supplies, input tax which can be claimed is determined as below (standard method) –

- Full input tax can be claimed on expenses incurred for the provision of taxable supplies
- No input tax can be claimed on expenses incurred for the provision of exempt / non-business supplies
- Residual input tax is to be claimed based on the ratio of fully recoverable input tax and fully non-recoverable input tax as under:

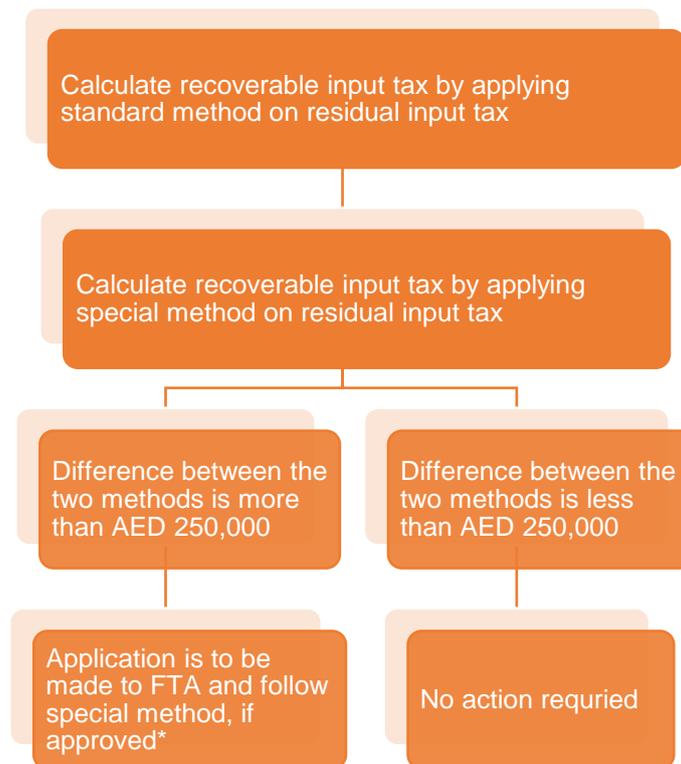
$$\text{Percentage \%} = \frac{\text{Total recoverable input tax}}{\text{Total input tax (recoverable + non-recoverable)}} \times 100$$



The above percentage is to be rounded off to nearest whole number and applied on the residual input tax.

The aforesaid methodology is to be undertaken for each tax period by the businesses.

- Further, businesses are required to undertake an annual wash-up calculation for the entire tax year using the same principles and make adjustments (if required) in the first return due in 2019.
- **Another adjustment, which is required to be undertaken by the businesses in the first tax period of 2019, is to adjust the input tax based on actual usage (to be determined as per special method – discussed in detail below) provided the difference of input tax claimed for the year (as per standard method) and input tax as per the special method is more than AED 250,000, explained below -**



* to be followed for each tax period and for annual adjustment in the first tax period (of 2019) of the following tax year

It should be noted that there is no requirement to adjust input tax if the difference of input tax as per standard method and special method is less than AED 250,000.



1. Which special methods can be applied?

Special methods	Calculation	Type of Business
Output	$\% = \frac{\text{Taxable Supplies}}{\text{Total supplies (taxable + exempt + non business)}} \times 100$	<ul style="list-style-type: none"> Insurance companies (Islamic and non-Islamic) Retail banks (Islamic and non-Islamic) Banks engaged in certain aspects of wholesale and/or investment banking (Islamic & non-Islamic) Providers of local passenger transportation services
Transaction count	$\% = \frac{\text{Taxable transaction count}}{\text{Total transaction count}} \times 100$	<ul style="list-style-type: none"> Banks (Islamic and non-Islamic) engaged in wholesale and investment trading activities
Floorspace	$\% = \frac{\text{Floorspace (in sqm) used in taxable activity}}{\text{Total floorspace (in sqm)}} \times 100$	<ul style="list-style-type: none"> Dealing in supplies (sales and rental) of commercial and residential properties Real estate companies Sell or rent out real estate on an ongoing basis
Sectoral	<p>Headcount -</p> $\% = \frac{\text{Number of staff in the sector}}{\text{Total number of staff}} \times 100$ <p>Output -</p> $\% = \frac{\text{Value of supplies in the sector}}{\text{Total value of supplies + non business activities}} \times 100$	<ul style="list-style-type: none"> Large complex businesses with different business activities through different divisions, independent of each other (e.g. a bank)

* Aforesaid percentage (%) is to be rounded off to nearest whole number and applied on the residual input tax.

2. Application for special input tax apportionment method

- An application is to be filed with the FTA in a prescribed format along with supporting documents emphasising why a special method will be more appropriate than a standard method.
- Any application approved by the FTA will be effective **from 1 January 2019** and the same would be applicable for four years in case of a non-sectoral method and two years for the sectoral method.
- An approved method is required to be used for at least two years and thereafter businesses can apply for a change in method, if required, or make a new application to continue with the same method.
- If the actual result as per special method differs by more than 10% on comparing with the result generated during the application, then the businesses are required to notify the FTA.



- While the guidance note mentions that an application will be effective from 1 January 2019, it does not clearly indicate whether the special method has to be followed for the previous tax year. In our view, it is advisable to undertake annual adjustment for the previous tax year (if required).

3. Who may apply for a special input tax apportionment method?

To be eligible to apply for the special method of input tax apportionment, the following conditions must be met:

- The applicant should be registered for VAT for at least six months;
- The applicant is engaged in both taxable supplies and exempt / non-business supplies; and
- The standard method of input tax apportionment does not give a fair and reasonable result to input tax recovery, i.e. the difference in input tax as per the standard method and special method is more than AED 250,000.

4. Procedural aspects

- The template of Input Tax Apportionment Form is provided in an Excel format on the FTA Portal
- The calculation under the standard method should be a minimum of six months and a maximum of 12 months
- A soft copy of Input Tax Apportionment Request Form, along with the supporting documents should be sent to InputTaxMethod@tax.gov.ae
- Accepted file types are PDF, JPG, PNG and JPEG with a maximum file size limit of ten MB
- It may take FTA up to 40 business days to respond to initial input tax apportionment request in case of the non-sectoral method, and up to 80 business days for the sectoral method.
- It should be noted that it is not mandatory for businesses to apply for a special method; the application is to be made only if the difference as per standard method and special method is more than AED 250,000.

5. What businesses need to do

- At the end of the tax year, determine the input tax for the entire year using the standard method (this is to ascertain if there is any change on comparing the values disclosed in the VAT returns)
- Determine the special method which would be applicable considering the nature of business
- Compute the input tax as per the applicable special method after the tax year ends and ascertain if the difference is more than AED 250,000 on comparing the input tax as per the standard method
- File application with FTA along with supporting documents in case the business is eligible for the special method (as FTA may take at least forty business days to respond, it is advisable to ascertain if the special method is applicable and file application once the first tax year is complete)
- Once the special method is approved, follow the method for each tax period and for annual adjustment (for the previous tax year) in the first tax period of the following year.



- Ascertain if there is any opportunity to optimise input tax recoverability, i.e. re-classification of expenses from residual input tax to fully recoverable, etc
- Businesses may also need to evaluate the impact of the re-computation of input tax on its P/L

Comments

Special apportionment methods issued can be considered as a welcome step to ensure that businesses recover input tax appropriately. Basis the guide, it is advisable for businesses to follow the above-mentioned guidelines to avoid any penal consequences.

Businesses should ensure that the application for special method is made on completion of previous tax year; since the same is required to be applied in the first tax period of the year 2019 for undertaking annual adjustment of previous tax year.

VAT Guide on Refunds for Foreign Business Visitors

Introduction

The FTA has issued a VAT guide on VAT refunds for foreign business visitors. The guide provides eligibility criteria and the procedure to claim a VAT refund by the foreign business visitors.

Key aspects are summarised below:

1. Person eligible to claim the refund

Foreign business visitors can claim a refund provided the following conditions are fulfilled:

- The business visitor does not have a place of establishment or fixed establishment in the UAE or any Implementing State
- The business visitor does not qualify as a taxable person in UAE
- Said business is registered as an establishment with a competent authority in their home country
- Said business is registered in a country that has a value-added tax law and provides refunds of VAT to UAE entities in similar situations

It may further be noted that businesses resident in any GCC state that is not an implementing state can claim a VAT refund in the UAE under this scheme.

2. Cases of non-eligibility for a refund claim

Foreign business visitors are not entitled to refund claim in the following cases:

- If the foreign business makes supplies in the UAE except for supplies where the recipient is liable to pay VAT under the reverse charge mechanism.
- If the refund claim is in relation to VAT paid on goods or services, which are non-recoverable as per Article (53) of the Executive Regulations.



3. Procedural aspects

- The period of each refund claim shall be a calendar year (e.g. 1 January 2018 – 31 December 2018). In relation to the refund claim for 2018, refund applications can be made from 1 April 2019.
- The minimum claim amount of each VAT claim that may be submitted shall be AED 2,000.
- The FTA may require original tax invoices for which a refund is being claimed as part of the application.
- The FTA will issue a detailed guidance with respect to the application process at a later date.

Comments:

The criteria specified in the guide provides relief to the foreign business visitors by way of a refund of the tax paid in UAE. However, an important aspect which needs to be checked (before applying for a refund) is whether the VAT/tax refund is available in the home country of the business visitor to UAE entities.



W T S Dhruva Consultants

Dubai

U-Bora Tower 2,
11th Floor, Office 1101
Business Bay P.O. Box 127165
Dubai, UAE
Tel: + 971 56 900 5849

Abu Dhabi

Sky Tower, 23rd Floor, Office 2317,
Reem Island, P. O. 113100
Abu Dhabi, UAE.

Dhruva Advisors

Mumbai

1101, One India Bulls Centre,
11th Floor, Tower 2B,
841, Senapati Bapat Marg,
Elphinstone Road (West),
Mumbai 400 013
Tel: +91 22 6108 1000 / 1900
Fax: +91-22-6108 1001

Ahmedabad

B3, 3rd Floor, Safal Profitaire,
Near Auda Garden,
Prahlanagar, Corporate Road,
Ahmedabad - 380 015
Tel: +91-79-6134 3434
Fax: +91-79-6134 3477

Bengaluru

Prestige Terraces, 2nd Floor
Union Street, Infantry Road,
Bengaluru 560 001
Tel: +91-80-4660 2500
Fax: +91-80-4660 2501

Delhi/NCR

101 & 102, 1st Floor, Tower 4B
DLF Corporate Park
M G Road, Gurgaon
Haryana - 122 002
Tel: +91-124-668 7000
Fax: +91-124-668 7001

Pune

305, Pride Gateway, Near D-Mart,
Baner, Pune - 411 045
Tel: +91-20-6730 1000

Kolkata

4th Floor, Unit No 403, Camac Square,
24 Camac Street, Kolkata
West Bengal – 700016
Tel: +91-33-66371000

Singapore

Dhruva Advisors (Singapore) Pte. Ltd.
20 Collyer Quay, #11-05
Singapore 049319
Tel: +65 9105 3645

New York

Dhruva Advisors USA, Inc.
340 Madison Avenue, 19th Floor, New York,
New York 10173 USA
Tel: +1-212-220-9494

Silicon Valley, USA

5201 Great America Parkway,
Santa Clara, California 95054
Tel: +1 408 930 5063

Contacts

Dinesh Kanabar

Chief Executive Officer
dinesh.kanabar@dhruvaadvisors.com
Phone: +91 22 6108 1010/11

Pratik Shah

Resident Partner & VAT Expert
pratik.shah@dhruvaadvisors.com
Phone: +971 55 957 8232

Nimish Goel

Resident Partner & VAT Expert
nimish.goel@dhruvaadvisors.com
Phone: +971 50 106 6531

Nilesh Asher

Resident Partner & International Tax Expert
nilesh.asher@dhruvaadvisors.com
Phone: : + 971 50 182 7701

Disclaimer

This information contained herein is in summary form and is therefore intended for general guidance only. This publication is not intended to address the circumstances of any particular individual or entity. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. This publication is not a substitute for detailed research and opinion. Before acting on any matters contained herein, reference should be made to subject matter experts and professional judgment needs to be exercised. We cannot accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication.