

## VAT for indirect export

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### The facts

A company (Supplier) sells goods to a foreign customer (the Customer) for subsequent export. The Customer resells these goods to another foreign customer before the goods exit the UAE. Neither the Customer nor the subsequent customer is registered for VAT in the UAE. The goods are handed over (shipped) to the Customer under the following scenarios:

- Scenario 1: in the mainland.
- Scenario 2: in a Free Zone.
- Scenario 3: in a Designated Zone. In this scenario, the goods were transferred from the mainland to the Designated Zone and subsequently sold and shipped abroad, i.e. the sale and purchase agreement was entered into after the goods were transferred into the Designated Zone.

### The question

What are the VAT ramifications for the Supplier and Customer?

### The summary

After considering the facts and the analysis below, we opine as follows:

- 1) The operations of either Party may fall within the scope of UAE VAT if the Place of Supply is in the UAE.
- 2) Place of *original* Supply is:
  - a) within the UAE in Scenarios 1 and 2,
  - b) outside the UAE in Scenario 3.
- 3) The Place of *subsequent* Supply is:
  - a) within the State in Scenarios 1 and 2. The Customer is obliged to register for UAE VAT;
  - b) outside the State in Scenario 3. This supply is not within the scope of UAE VAT, and the Customer is not required to register with the UAE tax authority.
- 4) Since in scenario 3 the Supply and subsequent Supply are out of the UAE VAT scope, they don't trigger any VAT ramifications for either party. Therefore, there is no need to consider this scenario further. The conclusions that follow below concern only Scenarios 1 and 2.

- 5) If the Customer within 90 days from the date of original supply ships the goods from the UAE or puts them under the customs suspension regime **after reselling the goods prior to customs clearance**, then::
  - a) the Supplier will be deprived of the zero VAT rate and have to apply the 5% standard rate.
  - b) The Customer shall register with the FTA, apply the 0% rate and may have VAT charged by the Supplier refunded.
- 6) If the Customer modifies the previous scenario posing **custom clearance before the resale**:
  - a) The Supplier may retain the zero VAT rate.
  - b) The Customer shall register with the FTA and apply the 0% rate.
- 7) We extrapolated this effect of the custom clearance from the interpretation given by the [Omani](#) and [Saudi](#) tax authorities. They are relevant since the UAE and these States operate under a common VAT framework. However, the lack of similar clarifications from the FTA may trigger a dispute. Therefore, we advise to obtain clarification from the FTA to confirm a favorable approach.

## The analysis

### *Place of Supply*

1. For a transaction to be within the scope of UAE VAT regime, the supply needs to take place in the UAE. If a supply takes place outside the UAE, the supply is treated as out of the scope of UAE VAT and therefore UAE VAT will not apply.<sup>1</sup>

Supplies *'that are not subject to UAE VAT are not considered taxable supplies, and therefore do not require a tax invoice'*.<sup>2</sup> Section 5.3.2 of the [Taxable Person Guide VATG001](#) excludes supplies placed outside of the UAE from the scope of VAT and the definition of Taxable Supplies.

Article 19 of the [VAT Law](#)<sup>3</sup> includes in the calculation for Mandatory and Voluntary Registration Thresholds *'the value of taxable Goods and Services...'*. Supplies which Place is outside the UAE are not taxable. Hence, they may not be included in such calculations.

Therefore, the zero VAT effect is applicable only if the Place of Supply for the transactions at hand is located outside of the UAE. For supplies placed outside of the UAE, the zero rate is not applicable, as well as any other rate. They are out of the UAE VAT scope.

2. The general rules for the Supply of Goods are determined in Article 27:

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<sup>1</sup> Section 7.1 of the FTA's VAT [Taxable Person Guide VATG001](#)

<sup>2</sup> Ibid, Sect.

<sup>3</sup> Federal Decree-Law No. 8 of 2017 on Value Added Tax

- 1) If there was no export or import, the Place of Supply is obviously the State.<sup>4</sup>
- 2) *'If the supply includes **exporting** to a place outside the Implementing States', the Place of Supply is deemed **'inside the State'**.*<sup>5</sup>

If there is no special rule, there is no doubts that that Place of Supply is within the State.

Therefore, in Scenarios 1 and 2, the Place of Supply is inside the UAE.

### ***Special Rules for the Designated Zones***

3. In Scenario 3, the goods were transferred from the mainland to the Designated Zone and subsequently sold and shipped abroad.
4. Article 50 of the [VAT Law](#) excludes from the definition of the State a Designated Zone, which *'shall be treated as being outside the State'*.
5. The list of Designated Zones has been adopted by Cabinet Decision No. [59](#) of 2017. The amended list is [published](#) by the FTA.

The FTA clarified<sup>6</sup> that *'although an area might be identified as a Designated Zone, it is not automatically treated as being outside the UAE for VAT purposes'*. There are several main criteria which must be met in order for a Designated Zone to be treated as outside the UAE for VAT purposes. These are as follows:

- 1) The Designated Zone must be a specific fenced geographic area.
- 2) The Designated Zone must have security measures and Custom controls in place to monitor the entry and exit of individuals and movement of goods to and from the Designated Zone.
- 3) The Designated Zone must have internal procedures regarding the method of keeping, storing and processing goods within the Designated Zone.
- 4) The operator of the Designated Zone must comply with the procedures set out by the FTA.

This means that, where a Designated Zone has areas that meet the above requirements and areas that do not meet the requirements, it will be treated as being outside the UAE only to the extent that the requirements are met.

For the purpose of this study, we assume that the area where the goods were located and from where they were sold is a fully-fledged Designated Zone.

6. The movement of one's own goods, or a supply from the mainland UAE to a Designated Zone, is not considered to be an export of goods from

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<sup>4</sup> Clause 1.

<sup>5</sup> Clause 2.

<sup>6</sup> Sec. 2.2 of the VAT Guide Designated Zones No. [VATGDZ1](#).

the UAE.<sup>7</sup> Therefore, such movements and supplies are treated as local movements / supplies.<sup>8</sup>

7. The movement of previously imported goods from the mainland to a free zone (designated or not) is treated as re-export for the purpose of custom regulation. Any goods entering the zone *'are considered to be outside the customs zone and shall not be subject to the usual customs control and procedures'*.<sup>9</sup>

As per Cl. (a) of Art. 78 of the [GCC Common Custom Law](#), *'all foreign goods, of whatever kind or origin may be brought into the free zones ..., and taken out from them to outside the country or to other free zones and duty-free shops, **without being subject to customs duties or taxes.***

Clause (b) of the same Article allows the re-export of foreign goods in a free zone that were previously imported to the mainland: *'Subject to the export restrictions and customs procedures applicable to re-exportation, **the foreign goods re-exported from inside the country may be admitted into the free zones...***'.

According to Clause (c), *'goods in the free zones ... **shall not be subject to any restriction in respect of the period they can remain therein***'.



Hence, no customs duty applies upon the transfer of the goods into any free zone, including designated zones. VAT is not applicable either, if the goods are transferred into a Designated Zone before they have been sold and not within the framework of any current sale.

8. A movement of one's own goods or a supply from the UAE mainland to a Designated Zone is not considered to be an export of goods from the UAE.<sup>10</sup> Therefore, such movements and supplies are treated as local movements / supplies.<sup>11</sup>

Further, the FTA provides for a high-level outline of the VAT treatment of goods, where:

Origin	Destination	VAT treatment	Notes
UAE mainland	Designated Zone	Subject to normal VAT rules	Same treatment as any other local supply
Designated Zone	Outside UAE	<b>Outside the scope of VAT</b>	Subject to correct controls, processes and records being in place

<sup>7</sup> Article 30(3) of the [Executive Regulations](#).

<sup>8</sup> Sec. 3.4.2 of VAT Guide on Designated Zones No. [VATGDZ1](#) of 1 July 2018.

<sup>9</sup> [GCC Common Custom Law](#), Article 2 para 32.

<sup>10</sup> Article 30(3) of the [Executive Regulations](#).

<sup>11</sup> Sec. 3.4.2 of VAT Guide on Designated Zones No. [VATGDZ1](#) of 1 July 2018.

9. Therefore, if the Supplier transfers the goods into a Designated Zone before the sale, this transfer will not be treated as an export or taxable supply. The subsequent sale of these goods will be treated as outside the scope of UAE VAT.
10. Resale from a Designated Zone to a place outside of the UAE will also be outside the scope of VAT in the UAE.
11. Supplies *'that are not subject to UAE VAT **are not considered taxable supplies**'*.<sup>12</sup> Section 5.3.2 of the [Taxable Person Guide VATG001](#) excludes supplies placed outside of the UAE from the scope of VAT and the definition of Taxable Supplies.

Therefore, the resale conducted after the goods are moved into a Designated Zone shall not trigger an obligation to register the Customer for VAT purposes in the UAE.

### **Zero-rating**

12. Clauses (1) and (2) of Article 30 of the [VAT Executive Regulation](#) sets out the zero percent VAT rate for Direct and Indirect Exports.
13. Article 30(2) of the [VAT Executive Regulation](#) sets forth that an Indirect Export shall be subject to the zero rate subject to the conditions specified in this Article being met. The conditions include:
  - a. *'The Goods are physically exported to a place outside the Implementing States or are put into a customs suspension regime in accordance with GCC Common Customs Law, within 90 days of the date of the supply under an arrangement agreed by the supplier and the Overseas Customer at or before the date of supply', and*
  - b. *'The Overseas Customer obtains official and commercial evidence of Export or customs suspension in accordance with GCC Common Customs Law, and provides the supplier with a copy of this'.*

In Scenarios 1 and 2, the export results from the subsequent supply rather than the initial one. This raises doubts as to whether the original supply falls within the Indirect Export clause.

14. Indirect export is determined by Art. 1 of the [VAT Executive Regulation](#) as *'an Export of Goods to a destination outside of the Implementing States, where the **overseas customer** is responsible for arranging the collection of the Goods from the supplier in the State and who exports the Goods himself, or has appointed an agent to do so on his behalf'.*

An overseas customer is defined *'a Recipient of Goods who does not have a Place of Establishment or Fixed Establishment in the State, does not reside in the State, **and does not have a Tax Registration Number**'* (TRN). The latter is defined as a unique number issued by the Authority for each Person **registered for Tax purposes**.

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<sup>12</sup> Ibid, Sect.

Article 13(2) of the [VAT Law](#) sets forth that 'every Person, who does not have a Place of Residence in the State or an Implementing State, **shall register for Tax if he makes supplies of Goods or Services, and where no other Person is obligated to pay the Due Tax on these supplies in the State**'. The subsequent supply is:

- 1) Taxable. Article 27(3) of the [VAT Law](#) determines the Place of Supply for exported goods as located in the State, making export a taxable supply for which the zero rate is applicable where the conditions are met.
- 2) Not within the scope of the VAT obligations of the Supplier or any other Person.

This leans to the conclusion that the Customer shall be registered with the FTA, and therefore may not be considered an Overseas Customer. Consequently, an arrangement with this Customer doesn't fall within the scope described as an Indirect Export.

15. For example, ZATCA in the KSA instructs that, in a case of indirect export,

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Zakat, Tax and Customs Authority



'the supplier must also be able to confirm from the commercial arrangements that the goods **are not the subject of another supply made before those goods are cleared for export from the KSA**'.<sup>13</sup>

In Sec. 1.2.3 of the [Imports and Exports Vat Guide](#) (ver. 1.3), the National Bureau of Revenue (NBR) clarified:

'For a supply of goods to qualify as an export of goods and to be subject to VAT at the zero-rate, all of the following conditions must be met: ... b. **The goods must not have been changed, used or sold to a third party** before leaving Bahrain'.



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National Bureau for Revenue

The NBR reiterates this in the following way: 'if the shipping is organized by the purchaser of the goods or by a third party acting on his behalf, **it is critical that the supplier obtains all the required documentation from the purchaser to support that the goods:**

- Have been shipped by the purchaser (or by a third party acting on his behalf) to outside the territory of the Implementing States within the 90-day timeframe; and

<sup>13</sup> ZATCA, [VAT Imports and Exports Guideline](#), March 2019, Sec. 7.3.



- **Have not been transformed, used or sold by the purchaser before their shipping’.**

The supplier is expected to treat a supply of goods as a local supply of goods if the evidence provided by the purchaser is not satisfactory’.

16. There is one exception from this rule. It is envisaged for a resale conducted after custom clearance.



In Oman, ‘once goods have been exported and cleared by Directorate General of Customs, they may be supplied to another customer. Any supplies **made after clearance but within Oman are considered to be exports subject to zero rate VAT’.**<sup>14</sup>

The Saudi Tax Administration provides the same clarification<sup>15</sup>: ‘Supplies of certain commodities can often be purchased and sold whilst on a ship carrying out an international transport, subsequently to a previous export sale. In this way, goods may be supplied whilst physically located in the Kingdom (i.e. within its territorial waters), despite having been earlier cleared for export. **The supply of goods involving their export clearance is an export. Any subsequent supply of goods made after the export clearance is also an export of goods and zero-rated’.**

The ZATCA exemplifies this with the figure as follows:



In this figure, a ‘KSA Refinery Company registered for VAT enters into a contract to sell 200,000 litres of bitumen to an Italian customer. The goods are sold under the Cost Insurance and Freight (CIF) trade term, with the named destination port of Trieste, Italy. Under this trade term, **KSA Refinery Company is liable for clearing the goods for export and for the costs and risk of transport to the destination port.** KSA Refinery Company makes an export of goods for VAT purposes. **After the**

<sup>14</sup> Omani Tax Authority (OTA) [Export and Import Guide](#), Sec. 5.3.

<sup>15</sup> Saudi Arabia Zakat, Tax and Customs Authority (ZATCA) [Imports and Exports Guideline](#), Sec. 7.5.

***goods are cleared for export and loaded onto the vessel, the Italian customer accepts an offer to sell the same quantity of 200,000 litres of bitumen to a Swiss commodity trader for an increased price, under the same trade terms. The sale and the transfer of ownership of the bitumen is zero-rated'.***

Based on this, the impact of resale timing on 0% VAT Rate may be determined as such:

- If the resale of goods occurs after customs clearance, the 0% VAT rate for the original supply generally remains unaffected. This is because the goods are recognized as exported, and subsequent sales are treated as exports, which are typically zero-rated.
- If the resale occurs before customs clearance for export, the original supply is exposed to the standard VAT rate.

### ***VAT-registration and deregistration of the Customer***

17. Article 30(2) of the [VAT Law](#) stipulates that *'every Person, who does not have a Place of Residence in the State or an Implementing State, shall register for Tax if he makes supplies of Goods or Services, and where no other Person is obligated to pay the Due Tax on these supplies in the State'*. This rule is not conditioned by any threshold. Therefore, regardless of the value of supply, the Customer shall register to declare 0% VAT rate.
18. Article 15(1) of [VAT Law](#) authorizes the FTA to *'except a Taxable Person from Tax Registration whether a Registrant or not, upon his request **if his supplies are only subject to the zero rate'***. Hence, the Customer may claim for the exception if his only supply is the export of the goods.
19. To exercise the exception option, the applicant must submit a VAT registration application. In the "Eligibility Details" section, there is a prompt asking, "Do you want to apply for an Exception from VAT?" The applicant should select "Yes" if he does. The details on registration may be found in the [VAT Registration - Taxpayer User Manual](#) dated 1 October 2022.
20. Article 21 of the [VAT Law](#) governs Tax Deregistration Cases. The clause obliges the Registrant to *'apply to the Authority for Tax deregistration ... if he stops making Taxable Supplies'*. Therefore, if the supply at hand is the only taxable supply for the Customer, and if he wasn't excepted from the registration, he shall deregister.

However, Article 14(2) of the [VAT Executive Regulation](#) provides for the two conditions to be met for the deregistration:

- a. *The Registrant stops making supplies ... and does not expect to make any such supplies over the next 12-month period;*
- b. *The value of supplies referred to in Article 19 of the Decree-Law made, or taxable expenses incurred, by the Registrant **over the previous 12-months** is less than the Voluntary Registration Threshold and the Authority is satisfied that his supplies, according*



*to the provisions of the Decree-Law, or taxable expenses, expected over the next 30 days, are not expected to exceed the Voluntary Registration Threshold’.*

Condition (b) prevents the Customer from immediate deregistration, requiring a twelve-month period to elapse.

Consequently, it is worth considering to request an exception at initial stage of the registration. If not requested initially, the Customer may opt to apply for the exception later rather instead of seeking deregistration. Article 15(1) of the [VAT Law](#) doesn’t preclude a registered person from being granted the exception. It states that the FTA ‘*may except a Taxable Person from Tax Registration **whether a Registrant or not**, upon his request if his supplies are only subject to the zero rate’.* By doing so, the Customer may achieve the desired outcome sooner.

## The disclaimer

Pursuant to the [MoF’s press-release](#) issued on 19 May 2023 “*a number of posts circulating on social media and other platforms that are issued by private parties, contain inaccurate and unreliable interpretations and analyses of Corporate Tax*”.

The Ministry issued a reminder that official sources of information on Federal Taxes in the UAE are the MoF and FTA only. Therefore, analyses that are not based on official publications by the MoF and FTA, or have not been commissioned by them, are unreliable and may contain misleading interpretations of the law. See the full press release [here](#).

You should factor this in when dealing with this article as well. It is not commissioned by the MoF or FTA. The interpretation, conclusions, proposals, surmises, guesswork, etc., it comprises have the status of the author’s opinion only. Like any [human](#) job, it may contain inaccuracies and mistakes that I have tried my best to avoid. If you find any inaccuracies or errors, please let me know so that I can make corrections.

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