

AMENDMENT OF VAT EXECUTIVE REGULATION TO VAT DECREE LAW VIDE CABINET DECISION NO. 99 OF 2021 (W.E.F January 01,2023)

"The Federal Tax Authority (FTA) has recently amended **The Executive Regulation to the Federal Decree-Law No. 8 of 2017 on Value Added Tax (ER)** vide Cabinet Decision No. 99 of 2022 issued on 21 Oct 2022 (w.e.f 1 Jan 2023). The following Articles have been amended:

1. Article 3: Supply of Services
2. Article 72: Record keeping of the supplies made

In relation to the amendment in Article 3 of ER, The FTA has also issued a public clarification VATP031 on 'Performing the function of Director on a Board of Directors by a Natural person' on 17 Nov 2022 providing clarification on the instances when the services of directors would be outside the scope of UAE VAT or would be taxable, transitional provisions in relation to the same and provisions for deregistration from UAE VAT by individual directors providing such services.

For ease of reference, we have summarized below the key amendments including our comments from a practical aspect:

- **Services provided by a board member as natural person not to be considered as Supply of Services** [Article 3]: The FTA has amended and provided the clarifications vide amending Executive Regulation and issuing a Public Clarification on the functions/services provided by a natural person in the capacity of serving as member of board of directors. The same has been summarised as follows:

Particulars	Explanation	
Eligibility criteria and services/functions not to be considered as Supply of Services	In the public clarification, the FTA has provided the below mentioned clarification with respect to the eligibility of person and category of functions/services which would be outside the scope of UAE VAT law.	
	Criteria	Explanation
	Persons eligible	A natural person performing the functions as a Director on a Board of Directors of any government entity or private sector.
	Persons not eligible	Legal person who may delegate a natural person to act as director on their behalf.
	Functions/ services eligible	Only the services performed in the formal capacity as a Director.
Functions/ services not eligible	Any free-lance services rendered by a third-party natural person who is not a Director during the meetings of a Board of Directors.	

Transitional rules	The date of supply for certain situations has been specified in the public clarification as follows:	
	Situation	Date of Supply
	<u>Performance of service:</u> Calendar year 2022 <u>Tax Invoice issued:</u> No. Board fees determined and known w.e.f. 01-01-2022.	Date of actual completion of the services (Article 25 of Decree Law) Conclusion: Within the scope of UAE VAT.
	<u>Performance of service:</u> Calendar year 2022. <u>Fees determination:</u> Conclusion of the AGM to be held on 31-01-2023.	Date on which the provision of the Director's services was completed (i.e., after 31-01-2023). Conclusion: Outside the scope of UAE VAT.
<u>Contract period:</u> 2 consecutive years (i.e. 2022 & 2023) <u>Date of Payment:</u> First business day after end of each calendar quarter. <u>Tax Invoice:</u> To be issued after receipt of payment.	Date of receipt of payment (Article 26 of Decree Law) <u>Payments received on 01-04-2022, 01-07-2022, 03-10-2022</u> Conclusion: Within scope of UAE VAT. <u>Payments received on or after 01-01-2023</u> Conclusion: Outside the scope of UAE VAT	
Deregistration	<ul style="list-style-type: none"> ➤ A natural person already registered under UAE VAT not meeting the requirements for mandatory registration after this amendment must deregister themselves. ➤ However, only value of services supplied as part of performance of functions as board of directors as specified above would be excluded from the calculation of threshold limit for registration. 	

PKF Comments:

- For the period between January 01, 2018 to December 31, 2022, any services provided by the board members and the remuneration/or any other fee earned in the capacity of serving as an Independent Director, is considered as supply of taxable services. Accordingly, the member of board of directors is liable to take registration under UAE VAT if the supply of services would exceed mandatory threshold registration limit.
- However, w.e.f. January 01, 2023, Article 7 of UAE VAT Decree Law has been amended to widen the base for cases which are not to be considered as supply under UAE VAT Law and would also include 'any other category which would be specified in the Executive Regulations' under the subject provision. 'Director Services' performed by Natural persons as specified above is one of the category included by FTA which would be Out of Scope of UAE VAT since the same would not qualify as supply for UAE VAT purposes.

- Post this amendment, if director’s services are received from any non-resident director then there would be no accountability on the UAE VAT registrant to account for VAT under Reverse charge Mechanism.

- **Changes in Emirate wise record keeping if Taxable Person does not have a Fixed establishment in the state** [Article 72(3)]: The FTA has amended record keeping provisions of the supplies as follows:

Situation	Provision
Taxable Person does not have a Fixed establishment in the state	Record to be kept to prove the Emirate, where Place of Establishment is located.
Taxable Person does not also have a Place of establishment in the state	Record to be kept to prove the Emirate, where the supply is received.

PKF Comments:

Prior to the amendment, if Fixed establishment for a taxable person was not available in the state then all records were required to be kept to prove the Emirate, where the taxable person has a Place of Establishment. After an amendment to Clause 3, if the taxable person does not even have Place of Establishment in the state, then record is required to be kept to prove the Emirate, where supply is received.

- **Relief to E-Commerce Operators for record keeping of the supplies made** [Article 72(4), 72(5), 72(6)]: The FTA has included clauses pertaining to the record keeping requirements in respect of the supplies through E-commerce operator as follows:

Particulars	Explanation									
Turnover limitation [Article 72(4)]	Emirate wise recording of transactions to prove the Emirate, where supply is received is required to be kept only if Taxable supplies exceeds AED 100 million during the calendar year.									
Time limit for record keeping [Article 72(6)]	<p>Taxable person exceeding the above threshold limit is required to keep the records as follows:</p> <table border="1"> <thead> <tr> <th>Calendar year ending in which Taxable supplies exceed AED 100 million turnover threshold</th> <th>Period for which record to be kept</th> <th>Period till which record to be kept</th> </tr> </thead> <tbody> <tr> <td>31-12-2022</td> <td>From first Tax period beginning on or after 01-07-2023</td> <td>For 18 months</td> </tr> <tr> <td>31-12-2023 and onwards</td> <td>From first tax period of the calendar year subsequent to the calendar year, during</td> <td>For 2 years</td> </tr> </tbody> </table>	Calendar year ending in which Taxable supplies exceed AED 100 million turnover threshold	Period for which record to be kept	Period till which record to be kept	31-12-2022	From first Tax period beginning on or after 01-07-2023	For 18 months	31-12-2023 and onwards	From first tax period of the calendar year subsequent to the calendar year, during	For 2 years
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		which Taxable supplies exceeds AED 100 million threshold limit.	
Meaning of E- Commerce [Article 72(5)]	<i>Electronic commerce refers to the process of selling Goods or services through electronic means, an electronic platform, a store in social media, or electronic applications, in accordance with criteria and conditions determined by the Minister.</i>		

PKF Comments:

The purpose of amending the requirement of keeping records Emirate wise by a taxable person may be to determine tax revenue collection for the respective Emirate by FTA in case of e-commerce supplies. By prescribing a threshold limit, the FTA intends to make this compliance applicable only to large e-commerce operators.

[Source: <https://www.tax.gov.ae/en>]

How can PKF help?

- Businesses in the UAE must imbibe the new VAT regulations and establish for themselves a tailor-made VAT-oriented business system. PKF UAE brings world-class capabilities and high-quality service to clients helping them to align their working model to government reporting and compliance requirements.
- Our role as tax advisers include:
 - ✓ Analyzing the impact of VAT on your business – A complete analysis of the VAT effect on your business helps us provide tailor-made solutions for the financial, operational, and legal aspects of your business.
 - ✓ Advising on managing the VAT transaction process – Our expert advice will help your business manage VAT transactions effectively without any room for errors.
 - ✓ Invoicing under VAT – We help you to create and manage invoices in accordance with the VAT System.
 - ✓ Advising on VAT related compliances as required by UAE VAT Law –
 - Assistance in compiling of information regarding VAT return.
 - Assistance in preparing and filing VAT return.
 - Assistance in communication with the Federal Tax Authority (FTA) for tax related queries and processes (such as refund application, voluntary disclosures) and during tax audits conducted by the FTA.
 - Any other VAT related queries and compliances.
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