الهيئة الاتحادية للضرائب
FEDERAL TAX AUTHORITY

United Arab Emirates

Automotive Sector

VAT Guide | VATGAM1

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1. Introduction

1.1. Overview

1.1.1. Short brief

VAT was introduced with effect from 1 January 2018 in the United Arab Emirates ("UAE"). As a general consumption tax on the supply of goods and services, it applies to taxable supplies which take place within the territorial area of the UAE.

Businesses in the automotive sector in the UAE are principally engaged in the trading of cars. The cars in question are usually manufactured overseas and are sold in the UAE through a network of authorized distributors. This guide discusses the VAT implications of certain activities common within the automotive sector, particularly in respect of the sale of cars, the import and export of cars and warranty supplies.

1.1.2. Purpose of this document

This document contains guidance about the VAT treatment of supplies made by motor vehicle dealers in the UAE including but not limited to the supply of new cars, the supply of used/ second-hand cars, supplies under warranty and the export and import of cars.

The purpose of this document is to provide guidance on how VAT affects businesses which operate within the automotive sector.

1.1.3. Who should read this document?

This document should be read by anyone responsible for tax matters in the automotive sector in the UAE, as well as their tax agents. It is intended to be read in conjunction with other relevant guidance published by the Federal Tax Authority ("FTA").

1.1.4. Status of the document

In this guide, Federal Decree-Law No. 8 of 2017 on Value Added Tax is referred to as "Decree-Law" and Cabinet Decision No. 52 of 2017 on the Executive Regulation of the Federal Decree-Law No. 8 of 2017 on Value Added Tax and its amendments is referred to as "Executive Regulation". This guidance is not a legally binding statement, but is intended to provide assistance in understanding and applying the VAT legislation.

This guide is issued in accordance with Article 73 of the Executive Regulation and provides general guidance concerning the application of the Decree-Law and Executive Regulation in respect of the business activities within the automotive sector in the UAE.

It should be noted that this guide is not intended to provide comprehensive details associated with VAT and is not intended for legal reference but as a framework discussing VAT issues relevant specifically to the automotive sector. As a consequence, the guide does not provide an overview of the general operation of VAT but assumes that the reader already has an understanding of the basic principles of VAT. For details in respect of the general operation of VAT, refer to the *Taxable Person Guide – Value Added Tax* which is available on the FTA website (www.tax.gov.ae).

2. Sale of Cars within the UAE

The sale of cars within the UAE is subject to VAT at 5%. It is important to note that the sale of cars can be carried out by a number of different types of agreements. In this guide, the two most common types of agreements, i.e. outright sales and sale through hire-purchase arrangements, will be discussed. In addition, the guide will also explain the VAT implications in respect of the leasing of cars.

2.1. Outright sales

The simplest form of sale of cars within the UAE is by way of an outright sale. This happens when a customer either has cash resources available or has borrowed funds from a financial institution to purchase the vehicle outright. The VAT implications of outright sales are as follows:

(a) The supply of cars is subject to VAT at 5%. The date of supply[1] is typically triggered by the earlier of one of the following events:

- the date on which the car is transferred to the customer;
- the date on which the customer took possession of the car;
- the date of receipt of payment; or
- the date of issuance of a tax invoice.

(b) Where the contract for the sale of cars involves periodic payments or consecutive invoices, the date of supply[2] is the earliest of any of the following dates provided that it does not exceed one year from the provision of the car:

- the date of issuance of a tax invoice;
- the date payment is due as shown on the tax invoice;
- the date of receipt of payment.

It should be noted that where the date of supply is triggered because a payment is made or a tax invoice is issued in respect of a supply of a car, VAT will only be due[3] to the extent of the payment made or stated on the tax invoice, and the remainder of the due tax on that supply will be payable as and when further dates of supply are triggered.

[1] Article 25 of the Decree-Law.
[2] Article 26 of the Decree-Law.
[3] Article 19 of the Executive Regulation.

(c) A tax invoice must be issued within 14 days of the date of supply. The tax invoice must also be delivered to the customer. Please note that if you charge any amount as a disbursement for and on behalf of a Designated Government Entity (e.g. Transport Authority / Department) for provision of a Sovereign Activity, this amount should be clearly identified on the tax invoice and VAT should not be charged on this amount.

(d) The output tax must be reported in the VAT return of the tax period in which the date of supply is triggered.

2.2. Hire-purchase arrangements

Where a motor vehicle trader sells cars to customers under hire-purchase arrangements, two separate supplies take place for VAT purposes. The first supply is by the motor vehicle trader to the finance company; and the second supply is by the finance company to the customer. For a car sold under such an arrangement, the motor vehicle trader transfers the ownership of the car to the finance company which lets the hirer use the car during the period of hire. The ownership of the car is passed to the hirer upon full payment of all the hire instalments.

(a) VAT treatment: Motor Vehicle Trader

As a supplier making a supply of a car to the finance company, a motor vehicle trader is required to issue a tax invoice to the finance company and account for VAT on the sale price of the car.

(b) VAT treatment: Finance company

The finance company is in turn required to issue invoices to the customer which will generally have two components: (a) the hire instalments which are subject to VAT; and (b) the interest amounts which are exempt for VAT purposes. However, if the finance charge is included in the total amount payable by the customer in instalments, then the total amount payable will be liable to VAT, as the amount will be subject to the same VAT treatment as the car itself.

It is important to note that often a finance company will issue consecutive invoices to the customer under the hire-purchase arrangement, for example monthly invoices for the term of the hire period. In such a case, the date of supply will be determined in accordance with Article 26 of the Decree-Law. Accordingly, whilst the finance company would have passed the possession of the car over to the customer at the beginning of the contract, it will not be under an obligation to account for VAT on the full value upfront. In contrast, the finance company will be able to account for VAT as

and when it issues invoices (provided payments are not received prior to issuance of the invoices).

Repossession of cars sold under hire-purchase arrangements

Under a typical hire-purchase arrangement, a customer essentially receives a right to use the car from the finance company and at the end of the hire period, the ownership of the car passes from the finance company to the customer.

Where a finance company repossesses a car supplied under a hire-purchase arrangement before the expiry of the hire period, the right provided to use the car ceases. It is important to note that no supply takes place for VAT purposes on account of repossession of the car and therefore no VAT implications arise at this point. However, when the finance company further supplies the car to another customer, the normal VAT implications arise.

It is possible that a finance company may have issued tax invoice(s) to a customer for a certain period but is not able to collect the debt before repossessing the car. As the finance company would have accounted for VAT at the time of issuing the invoice, it will be entitled to adjust the output tax under the Bad Debt Scheme[4] provided the prescribed conditions are met.

2.3. Trade-ins

It is a common practice for a customer to trade in an old car for a new car. In a trade-in situation, two separate supplies take place for VAT purposes:

(a) The sale of the new car to the customer; and
(b) The customer's sale of the old car to the motor vehicle trader.

For (a), the motor vehicle trader should account for VAT on the sales price of the new car. In computing the amount of VAT to charge on the sale of the new car, the motor vehicle trader should not net-off the trade-in value of the old car against the sales price of the new car.

The position stated above also applies to 'trade-in over allowances' where a motor vehicle trader agrees to purchase an old car for a value higher than the market value. In such a case also, while accounting for VAT on the new car, the motor vehicle dealer should not net-off the trade-in value (including the over allowance) of the old car.

[4] Article 64 of the Decree-Law.

2.4. Price display

Cars are often displayed by motor vehicle traders in their showrooms. For sales of cars to the public, a motor trader vehicle must display, advertise, publish or quote VAT-inclusive prices. This is required so that the customer knows upfront the price that is payable for the car. For example, if the car is priced at AED 100,000 and the VAT applicable on the sale is AED 5,000, a motor vehicle trader must advertise the price as AED 105,000 with a stipulation that the price includes VAT.

There are two exceptions to the above rule where the advertised price is not required to be inclusive of VAT: (a) Where the supply of car is for export; and (b) Where the customer is registered for VAT. If any of the exceptions apply and a motor vehicle trader advertises the price as exclusive of VAT, it must clearly specify that the price is exclusive of VAT.

2.5. Sale of cars to foreign governments, international organisations, diplomatic bodies and missions

Sale of cars to foreign governments, international organisations, diplomatic bodies and missions, or an official thereof, are also subject to VAT at 5%. The foreign governments, international organisations, diplomatic bodies, missions or an official thereof may, however, seek a refund of such VAT incurred under the special VAT refund [5] scheme prescribed in the VAT legislation.

[5] Article 75(4) of the Decree-Law read with Article 69 of the Executive Regulation.

3. Sale of used/ pre-owned cars

The sale of used cars is also subject to VAT at 5%, provided the sale is made by a VAT registered supplier. The implications relating to the date of supply, invoicing obligations and payment of tax as discussed in section 2.1 above apply similarly to the sale of used cars. Further, the implications regarding price displays apply similarly to used cars as well – irrespective of whether the VAT is accounted for on the full sales value of the car or in accordance with the Profit Margin Scheme as discussed below.

A key difference between the VAT implications for the sale of new cars and the sale of used cars is the possibility of accounting for VAT using the Profit Margin Scheme which is available to motor vehicle dealers trading in used cars.

3.1. Profit Margin Scheme

In accordance with the Profit Margin Scheme[6], a VAT registered supplier can account for VAT on the basis of the profit earned on taxable supplies instead of accounting for VAT on the value of such supplies. In other words, under the Profit Margin Scheme, VAT can be accounted for on the difference between what was paid for a good at the time of purchasing it and what was charged to the customer at the time of selling it.

Amongst other things, the Profit Margin Scheme can also be used to account for VAT when selling used cars. It is important to note that applying the Profit Margin Scheme is optional. The rationale for the Profit Margin Scheme and the conditions which must be met for applying the scheme are discussed below.

3.1.1. Rationale for the Profit Margin Scheme

The Profit Margin Scheme is intended to avoid the cascading of taxes. The cascading effect arises where a motor vehicle trader purchases a used car from a non-registered seller or from a seller who also accounted for VAT by reference to the Profit Margin Scheme and consequently the motor vehicle trader is not able to recover the VAT embedded in the price of the car. The Profit Margin Scheme seeks to avoid this cascading issue by permitting the motor vehicle trader to account for VAT only on the profit earned on the supply.

[6] Article 43 of the Decree-Law and Article 29 of the Executive Regulation.

3.1.2. Conditions for applying the Profit Margin Scheme

The applicability of the Profit Margin Scheme is subject to meeting certain prescribed conditions. From the perspective of the sale of used cars, the conditions[7] that are required to be satisfied by a motor vehicle trader are:

a. The car must have been purchased by the motor vehicle trader from:

- a non-taxable person; or
- a taxable person who calculated tax on the supply by reference to the Profit Margin Scheme.

b. As an alternative to condition (a), where the car is purchased from a VAT registered supplier, input tax must not have been recovered by reference to Article 53 of the Executive Regulation.

c. The car must have been subject to VAT before the supply in question. The FTA expects the motor vehicle trader to maintain documentation to evidence that the car was previously subject to VAT. For example, where the car is purchased from a non-taxable person with a view to making a further sale applying the Profit Margin Scheme, a copy of the tax invoice received by the non-taxable person at the time of the original purchase should be sufficient. If the non-taxable person does not have the tax invoice for any reason, it may engage with the original dealer from which the car was purchased. Alternatively, the non-taxable person can provide other documents such as its motor insurance policy or vehicle registration certificate issued by the relevant authority provided that such documents establish that VAT was charged on the original purchase.

d. The motor vehicle trader must issue a tax invoice that clearly states that the tax has been charged by reference to the profit margin, in addition to all other information required to be stated on a tax invoice with the **exception of the VAT amount.**

e. The motor vehicle trader must keep the prescribed records and documents. The prescribed documents are:

- a stock book or a similar record showing details of each car purchased and sold under the Profit Margin Scheme;
- Purchase invoices showing details of the car purchased under the Profit Margin Scheme. Where the car is purchased from a non-taxable person, the motor

[7] Article 29 of the Executive Regulation.

vehicle trader must issue an invoice himself stating details of the car, including at least the following information:

(i) the name, address and Tax Registration Number of the motor vehicle trader;
(ii) the name and address of the person selling the car;
(iii) the date of the purchase;
(iv) the details of the car;
(v) the consideration payable for the car; and
(vi) the signature of the person selling the car or authorized signatory.

f. The motor vehicle trader must inform the FTA that it has opted to account for VAT by reference to the Profit Margin Scheme via its tax return.

Example

A motor vehicle dealer, ABC LLC, provides a new car model to its Senior Vice President as a marketing initiative. As the car is available for the personal use of the Senior Vice President, ABC LLC blocks the input tax incurred on the purchase of the car from the original manufacturer.

Upon return of the car, ABC LLC can opt to sell the car under the Profit Margin Scheme since the input tax incurred on the purchase of the car was not recovered by reference to Article 53 of the Executive Regulation.

3.2. Instances when the Profit Margin Scheme does not apply

As stated in the preceding paragraphs, the Profit Margin Scheme applies only when the prescribed conditions are fully satisfied. Below are two instances where the scheme does not apply – however, certain businesses have incorrectly applied the scheme in these instances:

(a) Cars purchased prior to the implementation of VAT

One of the conditions for the application of the Profit Margin Scheme is that the goods should have been previously subject to VAT before the supply in question. Accordingly, any stock on hand of used goods which were acquired prior to the implementation of VAT, or which have not previously been subject to VAT for other reasons, are not eligible to be sold under the Profit Margin Scheme.

(b) Cars imported into the UAE where the VAT paid upon import has been recovered

In accordance with Article 29 of the Executive Regulation, the Profit Margin Scheme applies to instances where goods are purchased from: (i) a person who is not a VAT registrant or, (ii) a taxable person who calculated the tax on the supply by reference to the profit margin. The scheme is also applicable where goods are purchased from a VAT registered supplier but input tax is not recovered by reference to Article 53 of the Executive Regulation

While the overseas supplier is **not** a VAT registrant in the UAE and consequently does not charge VAT on the sale, the scheme generally does not apply to scenarios where the purchase is made through import. This is because at the time of import, the importer would be able to recover the input tax. Accordingly, the sale of imported 'used' cars into the UAE is not eligible for the Profit Margin Scheme. However, if the import VAT was not recovered by the importer by reference to Article 53 of the Executive Regulation, the Profit Margin Scheme will continue to remain applicable.

4. Lease of cars

Motor vehicle dealers or car rental companies may engage in leasing cars to residents and tourists. Depending on the requirements of the customers, the cars may be leased for long durations (i.e. on a monthly or yearly basis) or shorter durations (i.e. on a daily or weekly basis). The activity of leasing cars is a taxable supply which is subject to VAT at 5%.

4.1. VAT implications on lease of cars

The implications relating to the date of supply, invoicing obligations and payment of tax as discussed in section 2.1 above apply similarly to the lease of cars. Where the contract for the lease of cars is for an extended period, it is expected that the contract will involve periodic payments or consecutive invoices, and therefore the date of supply will be the earliest of any of the following dates provided that it does not exceed one year from the start of the lease:

- the date of issuance of a tax invoice;
- the date payment is due as shown on the tax invoice;
- the date of receipt of payment.

4.2. Value of supply in the case of lease of cars

The usual rules to determine the value of supply[8] also apply to the leasing of cars. Therefore, where the entire consideration is monetary, the value of supply is the consideration less the tax amount. In other words, the value of supply is the entire amount received or expected to be received for the lease of cars, less the tax amount.

It is observed that certain suppliers do not consider that they should account for VAT on the entire sum that they receive for the leasing of cars to VAT. It is, however, the supplier's obligation to carefully consider the different components of fees charged by them and account for VAT accordingly.

Example

A motor vehicle trader, XYZ LLC, leased a car to a tourist for three months. The customer regularly used one of the toll roads which resulted in salik being deducted from the vehicle's account. The lease contract stipulated that the cost of salik will be recharged by XYZ LLC to the customer.

The salik deducted from the account is essentially a cost incurred by XYZ LLC to provide car leasing services to the customer. The recharge of such a cost is subject to VAT and should be included in the taxable value of the supply.

5. Export of cars

5.1. Direct and Indirect export of cars

Where cars are exported from the UAE, the supply may be eligible for zero-rating as an export in accordance with Article 30 of the Executive Regulation. The conditions for zero-rating vary depending on which party is contractually responsible for arranging the dispatch of goods:

1. Where the motor vehicle trader is responsible for arranging the transport of sold cars from the UAE or appoints an agent to do so on its behalf (this is known as a "direct export"), the supply can be zero-rated if the following conditions are met:

    a. The cars are physically exported to a place outside the Implementing States (currently, this is any country outside the UAE) or are put into a customs suspension regime in accordance with GCC Common Customs Law within 90 days of the date of the supply.

    b. Official and commercial evidence of export or customs suspension is retained by the exporter i.e. the motor vehicle trader.

2. Where the "overseas customer" is responsible for arranging the collection of the cars from the motor vehicle trader in the UAE and then exporting the cars or has appointed an agent to do so on his behalf (this is known as an "indirect export"), the supply can be zero-rated if the following conditions are met:

    a. The cars 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 motor vehicle trader and the overseas customer at or before the date of supply.

    b. The overseas customer obtains official and commercial evidence of export or customs suspension in accordance with GCC Common Customs Law, and provides the motor vehicle trader with a copy of this.

    c. The cars are not used or altered in the time between supply and export or customs suspension, except to the extent necessary to prepare the cars for export or customs suspension.

d. The goods do not leave the UAE in the possession of a passenger or crew member of an aircraft or ship. The FTA does not expect this condition to be relevant for the export of cars.

It should be noted that one of the common conditions for zero-rating of exports is that the supplier (in the case of a direct export) or the recipient (in the case of an indirect export) must obtain official and commercial evidence of export.

Official evidence means export documents issued by the local Emirate Customs Department in respect of any car leaving the UAE – this would require the exporter to retain a certificate issued by the relevant Customs Department proving the exit of the car from the UAE (for example, an exit certificate or a similar document evidencing the export).

On the other hand, commercial evidence refers to a document issued by commercial parties which provides evidence of the transportation of the car to outside the UAE. Acceptable commercial evidence includes airway bills, bills of lading, consignment notes, and certificates of shipments.

The purpose of the requirements to obtain official and commercial evidence of export is to ensure that there is sufficient proof that the transaction has taken place and the car has actually left the UAE. As such, the official and commercial evidence of export must identify the following:

- the supplier;
- the consignor;
- the goods (i.e. car);
- the value of the goods (i.e. car);
- the export destination; and
- the mode of transport and route of the export movement.

Where the above conditions for zero-rating are not met, or if the car in question is not exported from the UAE or put into a customs suspension regime within the required period of 90 days, the motor vehicle trader should account for VAT on the supply at the default rate of 5%.

If an exporter is of the view that it is impossible to obtain the evidence prescribed under Article 30 of the Executive Regulation, then it may apply for an exception from the FTA. In addition, if an exporter believes that the export is not possible within 90 days from the date of supply either because the circumstances have prevented or will prevent the export within the said period or it is not practicable for the exporter to export the car within 90 days of the

date of supply due to the nature of the supply, it may apply for an exception from the FTA. Please refer to VAT Administrative Exceptions Guide VATGEX1 for further details.

> Example
>
> ABC LLC is a motor vehicle trader established in Abu Dhabi. On a visit to the UAE for tourism purposes, Mr. X decides to purchase a car from ABC LLC. Mr. X has represented that he will self-drive the car to Oman and whilst he will be able to submit official evidence of export (i.e. exit certificate), he will not be able to furnish any commercial evidence of export because no logistics company will be appointed for transporting the car.
>
> ABC LLC should submit a request for an administrative exception requesting the FTA to allow the use of an alternative form of evidence (instead of commercial evidence) so that the company is able to apply the zero-rating.

5.2. Multiple sale of cars resulting in single export

It is common in the automotive sector that a single export is supported by two or more underlying sales of cars. In such instances where a single export is supported by two or more underlying supplies, only the final supply can be zero-rated.

For example:

- A Customer based in the USA orders a car from a motor vehicle trader “X” (based in the UAE);
- “X” purchases the car from another motor vehicle trader “Y” (also based in the UAE) but does not take delivery of the car;
- “Y”, at the request of “X”, exports the car directly to the customer in USA.

In the above example, there are two separate underlying transactions but one export of car and accordingly the VAT treatment will be:

- The supply of the car from Y to X is a local supply in the UAE and VAT at the rate of 5% must be accounted for on this supply;
- The supply of the car from X to the customer in the USA is zero-rated as an export subject to the satisfaction of the relevant conditions. It is important to note that in this example, Y is acting as an agent to export the car on behalf of X and, therefore, the export documents must demonstrate this fact clearly, for example, in the remarks section of the customs declaration.

6. Import of cars

6.1. Imposition and accounting for import VAT

Where cars are imported into the UAE from abroad, the cars will be subject to import VAT at 5%. Import VAT is imposed on the customs value as calculated pursuant to Customs legislation, including the value of insurance, freight and any customs fees paid on the import of the cars. Where the determination of such customs value is not possible, then the value can be determined based on the alternative valuation rules stated in the applicable Customs legislation.

The obligation to account for import VAT is on the "importer", being the person whose name is listed as the importer of the relevant cars for customs clearance purposes. The mechanism for accounting for VAT on imported cars depends on the VAT registration status of the importer at the time of importation.

6.2. Deferred payment at the time of filing the VAT return

In certain situations, an importer may be able to account for VAT in the VAT return which relates to the tax period in which the cars are imported. In order for this to occur, the importer must meet the following conditions:

- the importer must be registered for VAT at the time of import;
- the importer must have sufficient details for the FTA to verify the import and the VAT which is due on the import and is able to provide these as required;
- the importer must have provided the FTA via the eServices portal with its own Customs registration number issued by the competent Customs department for the import in question; and
- the importer must cooperate with, and comply with any rules imposed by the FTA in respect of the import.

In practice, these conditions require a VAT-registered importer to register its Customs registration number with the FTA prior to importing cars into the UAE (this can be done at the time of registering for VAT or at a later time). When any cars are subsequently imported into the UAE by this importer using the Customs registration number which is registered with the FTA, no VAT will be charged at the time of import and the cars will be released to the importer as soon as other customs formalities are completed. The applicable import VAT would then be prepopulated as output tax in box 6 of the importer's next VAT return. It should be noted that the importer has an ongoing obligation to ensure that the VAT return reflects the correct VAT payable in respect of the import – as a consequence, the importer should review the correctness of the

import VAT prepopulated in its VAT return and make corrections in box 7 of the VAT return, if necessary.

VAT incurred on imports is treated as input tax of the importer, and the importer may be able to recover it in box 10 of its VAT return, if eligible under the normal VAT recovery rules. Where the importer is entitled to recover the input tax in full, VAT will not represent a cost to the business.

Payment at the time of import

In situations where the conditions for deferring the payment of import VAT are not met – for example, the importer is not registered for VAT at the time of import – the importer would need to pay VAT to the FTA before the cars can be released to it by the relevant Customs department. This process requires the importer to use the FTA's e-Services portal to complete the VAT301 – Import Declaration Form for VAT Payment and to make the payment of applicable VAT.

Please refer to the VAT Import Declaration User Guide for detailed guidance regarding accounting for import VAT by non-registered importers.

6.3. Import with the assistance of an import clearing agent

Often, the task of importing goods (including cars) into the UAE and fulfilling all importation formalities is delegated to a clearing agent. For example, the task of clearing the goods through Customs may be undertaken by a specialised clearing agent, a freight forwarder responsible for delivering the goods to the purchaser, or a third-party local company.

Where a clearing agent or equivalent business is importing goods on behalf of a VAT-registered importer, the clearing agent should declare the importer's TRN on the customs import declaration. This will allow the importer to account for the import VAT in its VAT return as described in section 6.2.

On the other hand, where a clearing agent is importing goods on behalf of a non-registered importer, the agent should declare its C/O TRN on the customs import declaration and should be responsible for the payment of VAT in respect of the import in its VAT return.

It should be noted that since the clearing agent or equivalent business is not the owner of the goods, but simply facilitates the import of those goods into the UAE, it should **not** recover the import VAT as its own input tax in the VAT return, and doing so would expose the clearing agent or equivalent business to an assessment for over-recovered

VAT and penalties. Instead, if the VAT is paid by the clearing agent or equivalent business, the amount can be recharged by the agent directly to the importer. To do so, the clearing agent or equivalent business must issue a statement to the importer which contains, as a minimum, the following details:

- the name, address, and TRN of the clearing agent or equivalent business;
- the date on which the statement is issued;
- the date of import of the relevant goods;
- a description of the imported goods which is sufficient to identify them; and
- the amount of VAT paid by the agent to the FTA in respect of the imported goods.

It should be noted that the statement issued by the clearing agent is treated as a *de facto* tax invoice for VAT purposes. As a consequence, the importer is able to rely on the statement to recover VAT if and when available (for example, if the non-registered importer registers for VAT at a later date and it was eligible to recover the input tax paid before registration on such goods imported).

The FTA requires all clearing agents to retain copies of these statements, so that they are available for inspection when the FTA undertakes audits of these agents' VAT accounts.

6.4. Exceptions from import VAT

Certain categories of goods (including cars) are relieved from import VAT. In some cases, these categories generally mirror reliefs which are available in respect of customs duties, therefore allowing certain goods not to be subject to both VAT and customs duties.

Import VAT suspension

Goods are not treated as imported into the UAE where they are under customs duty suspension arrangements in accordance with the GCC Common Customs Law under any of the following categories[9]:

1. temporary admission;
2. goods placed in a customs warehouse;
3. goods in transit; or
4. imported goods intended to be re-exported by the same person.

[9] Article 47(1) of the Executive Regulation.

Where any of the above exceptions apply, the movement of goods into the UAE is not treated as an import, and therefore not subject to import VAT. If any conditions for the VAT suspension are subsequently broken, the goods can be treated as having been imported into the UAE and the VAT will become due on the import from the date the goods were originally imported.

In order to benefit from the above exceptions, the importer is required to provide a financial guarantee to the FTA via a clearing agent for the amount of VAT chargeable in respect of the goods. This guarantee will be refunded once the goods leave the UAE in accordance with the relevant customs suspension conditions.

Import VAT exemption

In certain situations, imports of goods into the UAE are fully exempt from VAT. The exemption applies to goods which are treated as exempt from Customs duty under any of the following categories[10]:

1. goods imported by the military forces, and internal security forces;
2. personal effects and gifts accompanied by travelers (please note that this exemption is not relevant for import of cars);
3. used personal effects and household items transported by UAE nationals living abroad on return or expats moving to live in the UAE for first time (please note that this exemption is not relevant for import of cars); or
4. returned goods.

The last of the above categories may apply in respect of goods which were sold and exported from the UAE, but then returned to the supplier in the UAE. It should be noted that this import exemption only covers import VAT and does not extend to VAT, if any, which may have been originally charged by the supplier on the sale of the goods.

6.5. Purchase returns after import

It may happen that after the importation of a car by a motor vehicle dealer, the car is returned to the overseas original manufacturer and consequently exported out of the UAE.

At the time of importation of the car, the motor vehicle dealer would have accounted for import VAT (via the deferred payment method or by making the upfront payment) and would have recovered the input tax in box 10 of the VAT return. Upon return of

[10] Article 47(2) of the Executive Regulation.

the car, the motor vehicle dealer should make a negative adjustment in box 7 and box 10 of the VAT return of the tax period in which the car is returned and exported out of the UAE.

7. Warranty claims

A warranty service is a guarantee given by a manufacturer to his customer, undertaking to remedy any defects of the car due to faulty workmanship or materials for a specified period.

Generally, a warranty service is made available to the customer at the time of sale of the car and in such instances the price for the warranty service is included in the price of the car. In other cases, the warranty service is supplied separately from the sale of the car and in such instances the price for the warranty service is charged separately.

7.1. Warranty service included in the price of car

As stated in the preceding paragraph, in cases where the cost of the warranty is included in the price of the car, the supplier would undertake to repair any defects in the car for a specified period free of charge. In other words, the supplier would not charge any extra fees for the warranty repair services provided during the specified period.

As VAT would have already been accounted for on the original supply of the car (including on the price for the warranty), no further VAT implications will arise at the time of providing the actual repair services. It should be noted that the input tax incurred on carrying out the warranty repair services will be recoverable since it was incurred in the making of taxable supplies. This position will also apply to the sale of used cars where a motor vehicle dealer has accounted for VAT under the Profit Margin Scheme (provided the cost of warranty is included in the price of the used car).

7.2. Warranty service supplied for an extra charge

A supplier may provide its customers with the option to purchase an extended warranty for a specified period. The extended warranty is provided for a separate charge and the supplier undertakes to rectify any defect in the car during the additional period and does not charge any further amount to carry out actual repair services.

The supply of an extended warranty is a taxable supply of services which is subject to VAT at 5%. The supplier accordingly needs to account for VAT on the supply of the extended warranty. The actual repair services provided during the additional period would, however, not attract VAT. This is because the VAT would have already been accounted for on the supply of extended warranty and no further implications arise at the time of providing actual repair services.

7.3. Reimbursement of repair costs by distributors from manufacturers

Where a distributor provides warranty services to a customer in the UAE, no VAT implications arise. This is because a distributor's warranty for no extra charge is treated as a composite supply together with the vehicle sold on which VAT has already been accounted for at the time of the original sale.

It should be noted that warranties are typically provided by the car manufacturers. Where a distributor is involved in the supply chain, the manufacturer's warranty is essentially passed on to the end customer. Such arrangements, therefore, allow the distributor to recover the costs incurred in honoring the warranty on behalf of the manufacturer.

The supply made by the distributor under a warranty arrangement with the manufacturer is a separate supply for VAT purposes. Accordingly, the VAT treatment relating to the recovery of costs relating to such supplies needs to be determined independently.

For vehicles manufactured outside the UAE, a key point to note is that the reimbursement of costs by UAE distributors from overseas manufacturers to carry out warranty repairs is subject to VAT at 5%. This is because the pre-requisite[11] for treating the supply as a zero-rated export of service (i.e. the service must not be supplied directly in connection goods situated in the UAE) is not met.

Example

A Germany based manufacturer of cars, XYZ Gmbh, sells cars in the UAE through its exclusive distributor ABC LLC. Mohammad purchased a car from ABC LLC and the sales price included a 5-year warranty. On noticing some issue in the engine of the car, Mohammad took the car for a service. ABC LLC confirmed that certain parts in the engine need repair and that the service will be covered under the warranty.

Whilst ABC LLC did not charge any fees to Mohammad for repairing the engine, it recovered the cost from XYZ Gmbh. The supply made by ABC LLC to XYZ Gmbh to carry out warranty repairs is subject to VAT at 5%. The supply will not qualify for zero-rating because the services are provided directly in connection with goods (i.e. the car) situated in the UAE.

[11] Article 31(2) of the Executive Regulation.

8. Auctions

Motor vehicle traders may make sales of cars at auctions. Auctions are places where goods are sold to the highest bidder. Although the motor vehicle trader (hereafter referred to as an "auctioneer") could be the owner / principal seller of the cars, auctions are more commonly conducted by the auctioneer acting as an agent on behalf of other persons selling their cars.

The VAT treatment of auctions depends on whether the auctioneer is acting as a principal supplier or as an agent on behalf of another person.

8.1. Auctioneer acting as the principal supplier

In these instances, the auctioneer is, for VAT purposes, the principal supplier of the cars. This arrangement is also known as "undisclosed agency" where two supplies take place for VAT purposes i.e. (i) between the seller and the auctioneer; and (ii) between the auctioneer and the end customer.

As a consequence, similar to any other person making a supply of goods, the auctioneer has to consider whether or not it should charge VAT on the sale. Where the auctioneer is registered for VAT, the auctioneer must account for VAT at 5% on the supply (unless the conditions of zero rating are met on exporting the cars). Further, where the auctioneer is not registered for VAT, it must evaluate whether VAT registration obligations have arisen on account of the supply.

8.2. Auctioneer acting as an agent of the principal supplier

The second type of arrangement, which is more common, is when the auctioneer is not the owner / supplier of cars, but simply provides the marketplace and assistance in the process of selling the cars belonging to others through the auction. This arrangement is also known as "disclosed agency".

In such situations, the auctioneer is not a principal supplier of the cars in question. Instead, the auctioneer is acting as an agent on behalf of and in the name of the owner of the cars as per Article 9(1) of the Decree-Law. As a consequence, when the cars are sold, the sale constitutes, for VAT purposes, a supply by the principal seller directly to the principal buyer – with the auctioneer being ignored for the purposes of the sale.

This means that the VAT treatment of the sale of the cars must be considered from the perspective of the principal supplier / owner of the cars. As such, depending on the facts of the sale, the supply may be either standard-rated (if the principal supplier

is registered for VAT), zero-rated (if the principal supplier is registered for VAT and the car is exported from the UAE) or outside the scope of VAT (if the principal supplier is not registered and not required to register for VAT).

It should be noted that in situations where the auctioneer makes a sale of car as an agent on behalf of a principal seller, it is the obligation of the principal seller, rather than the auctioneer, to correctly comply with their tax obligations in respect of the sale. It is common for auctions that payments for the sold cars are made by the buyer to the principal supplier through the auctioneer. Where this is the case, the auctioneer would be expected to pass on the VAT charged by the principal supplier to that supplier, in order to enable the supplier to account for this VAT to the FTA.

The FTA expects the auctioneer to maintain sufficient documents to establish that the sale was made directly by the principal supplier to the customer and the auctioneer only acted as an intermediary. Such documents could include: a contract (if any) between the principal seller and the auctioneer; a copy of an invoice issued by the principal seller to the customer; the invoice issued by the auctioneer to the principal seller for his commission etc.

8.3. Issuance of tax invoices by auctioneer on behalf of the principal supplier

In accordance with Article 65 of the Decree-Law, where a taxable supply is made by a VAT-registered person, the taxable person must issue and deliver a valid tax invoice to the recipient of the goods or services. This requirement applies without exception for any supplies subject to VAT at 5%. Therefore, in the event that a taxable supply is made at an auction, it is a requirement that a tax invoice is both issued and delivered to the buyer of the car.

Typically, the tax invoice must be issued by the VAT-registered supplier of the car itself, in accordance with the requirements in Article 59 of the Executive Regulation. However, pursuant to Article 59(11) of the Executive Regulation, a VAT-registered agent which makes a supply on behalf of a VAT-registered principal supplier may issue their own tax invoice in respect of the supply with the particulars of the agent, as if that agent had made the supply of goods or services itself (the invoice should, however, contain a reference to the principal supplier, including the supplier's name and TRN on the invoice). If the agent does issue a tax invoice on behalf of the principal supplier under this provision, the principal supplier should not issue any other tax invoice in respect of the same supply. Furthermore, the principal supplier remains responsible for accounting for the VAT on the supply to the FTA and still must comply with all other tax obligations in respect of the supply.

The rule discussed in the preceding paragraphs may also be used by auctioneers in order to issue their own tax invoices to buyers of cars sold at an auction.

8.4. Commission charged by auctioneers

It is common that the auctioneer will charge a commission and/or premium to the principal supplier of a car or the buyer of a car or both. Such commission and/or premium is consideration for a taxable supply by the auctioneer of auctioning services. Where the auctioneer is registered, or required to be registered, for VAT, the auctioneer must charge VAT on such fees and account for the VAT to the FTA on its tax returns.

Example
Motor & Motor LLC is a car trader and operates auctions of cars in the UAE. On a certain date, Motor & Motor LLC sold two cars in an auction. The first car was sold by Motor & Motor LLC as the principal supplier and the second car was sold as an agent of a VAT registered company, Zenith LLC.

Motor & Motor LLC, being the principal supplier for the first car, is responsible for undertaking all VAT obligations relating to the sale, including issuing a tax invoice and accounting for VAT.

Zenith LLC, being the principal supplier for the second car, is responsible for undertaking all VAT obligations relating to the supply. Motor & Motor LLC may issue a tax invoice on behalf of Zenith LLC in accordance with Article 59(11) of the Executive Regulation; however, the responsibility to account for VAT on the sale of the second car will still be that of Zenith LLC.

9. Promotions and discounts

9.1. Free promotional gifts

Motor vehicle traders often offer promotional gifts with the sale of cars free of charge. This means that the motor vehicle trader does not receive any consideration for the supply of free gifts.

Where the motor vehicle trader recovers input tax on the purchase of the gift and in turn supplies such a gift free of charge, the free supply will be subject to the deemed supply [12]provisions. However, if the motor vehicle trader does not recover input tax on the purchase of the gift, the deemed supply provisions will not [13]apply.

9.2. Discounts

In addition to offering free gifts, motor vehicle traders also operate promotional schemes whereby they offer discounts on the sales price of the cars.

Where a motor vehicle trader funds the discount and the customers benefit from the reduction in price, VAT is applicable on the discounted value[14] charged by the motor vehicle trader. It is important to note that the tax invoice issued by the motor vehicle trader must clearly state the discount offered to the customer in order to account for VAT on the discounted value.

Further, a motor vehicle dealer may itself receive a volume discount / bulk discount from the original manufacturer on purchasing a specified number of units. Where a volume discount is provided by the original manufacturer (for example, a discount on purchasing 100 units of a car), the manufacturer should clearly state the discount on the invoice.

In addition, a motor vehicle dealer may also receive a contingent discount or payment from the original manufacturer such as a discount on achieving a sales target or a payment upon selling a specified number of units of a particular car model. In the case of a contingent discount or payment, the parties should carefully evaluate whether the discount/payment in reality reduces the original value of the car or it is in fact consideration for a separate supply made by the motor vehicle dealer. Where the discount/payment actually reduces the original value of the car, the manufacturer should issue a credit note to reduce the value. Alternatively, if the discount/payment

[12] Article 11(1) of the Decree-Law.
[13] Article 12(1) of the Decree-Law.
[14] Article 39 of the Decree-Law and Article 28 of the Executive Regulation.

is received because the motor vehicle dealer has performed a specific activity, the motor vehicle dealer should issue a tax invoice and charge VAT at the appropriate rate depending on the nature of the supply.

10. Company cars and Demo cars

10.1. Input tax recovery on the purchase, rent or lease of a company car

The input tax incurred on the purchase, rent or lease of a company car is blocked[15] if the car is available for the personal use of an employee.

Please note that the fact that a car is taken home by an employee will not of itself preclude a taxable person from recovering input tax provided the reason for this is to ensure that the vehicle is available for emergency purposes, or the nature of the job (and vehicle) is such that it requires the employee to keep the vehicle with himself/herself. The key point, however, is whether the vehicle will be available for personal purposes as well. Where the vehicle is available for personal purposes, the input tax incurred on the purchase, rent or lease of the vehicle is blocked in full.

It is important to note that where the input tax on the purchase, rent or lease of a company car is blocked, a taxable person should not recover input tax incurred on associated expenses such as insurance, maintenance, servicing etc.

10.2. Demo cars

Motor vehicle traders often display demo cars in their showrooms for demonstration/ test drive purposes. As a demo car cannot be sold at the full retail value, the manufacturer may agree to make a one-off payment in respect of each demo car to compensate the trader for the lower retail value.

Where the payment made by the original manufacturer is a genuine reduction of the original sales price, such a payment will be considered as a retrospective discount. In such a case, the original manufacturer should issue a credit note to reduce the original sales price.

In contrast, if the payment relates to any obligations assumed by the motor vehicle trader to perform a specific activity (such as marketing services), the payment will be treated as consideration for a taxable supply and the motor vehicle trader will be required to issue a tax invoice and charge VAT at the appropriate rate depending on the nature of the supply.

[15] Article 53(1)(b) of the Executive Regulation.